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WYOMING WATER AND WASTE ADVISORY BOARD

RE: Revisions to Solid Waste Rules, Chapter 18

TRANSCRIPT OF WWAB HEARING PROCEEDINGS

Pursuant to notice duly given to all parties in interest, this matter came on for hearing on the 21st day of December, 2021, at the hour of 9:14 a.m., at the Capitol Extension Room 4, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming before the Wyoming Water and Waste Advisory Board. Mr. Alan Kirkbride, Chairman, presiding, with Mr. James Cochran in attendance, and Mr. Brian Deurloo, Ms. Lorie Cahn, and Brian Dickson also in attendance virtually.

MR. Matt VanWormer, Attorney for the Board present in person; Ms. Suzanne Engels, Solid & Hazardous Waste Administrator present virtually; Ms. Jody Weikart, Solid Waste Permitting and Corrective Action Program Manager; and Ms. Gina Thompson, Water Quality Division, were also in attendance, as well as various members of the public.

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

2 (Hearing proceedings commenced
3 9:14 a.m., December 21, 2021.)

4 CHAIRMAN KIRKBRIDE: All right. Welcome to
5 this meeting of the Water Waste Advisory Board to all
6 members of the public, to all of you on Zoom and otherwise.

7 Briefly, we should introduce the members of the
8 Board. I'm Alan Kirkbride, and I'm the chairman and
9 representing the agriculture community.

10 My colleagues, go ahead.

11 BOARD MEMBER COCHRAN: I'm Jim Cochran,
12 representing local government.

13 BOARD MEMBER DEURLOO: Hi. I'm Brian
14 Deurloo. I represent industry.

15 BOARD MEMBER CAHN: I'm Lorie Cahn. I'm
16 the vice chair, and I represent the public at large.

17 BOARD MEMBER DICKSON: My name is Brian
18 Dickson. I represent the public at large.

19 CHAIRMAN KIRKBRIDE: All right. Thank you
20 very much.

21 Do we want to move into -- Gina, what's
22 appropriate? Do we move right into our -- our -- so who do
23 we have that's going to present?

24 MS. THOMPSON: We'll start with Suzanne.
25 She'll go ahead and give you an introduction. But, yeah,

1 it's okay to go ahead and start with Suzanne, please.

2 MS. ENGELS: Thank you, Mr. Chairman. My
3 name is Suzanne Engels, and I am the Administrator for the
4 Solid and Hazardous Waste Division. My apologies for not
5 participating in person. Unfortunately, I am at home with
6 a recovering sick daughter.

7 And Jody Weikart is here with me today -- not
8 here at the house, but in the room with you, and she will
9 go over in more detail on the rule. But, first, I wanted
10 to introduce myself as the Administrator. The last time I
11 was in front of the Board, I think I presented the
12 revisions to our financial assurance chapter. And at that
13 time Luke Esch was our Administrator.

14 Since then, Luke accepted the deputy director
15 position for the agency, as well as being the administrator
16 for the Industrial Siting Division. So with that change
17 for Luke, that opened up this position that I was appointed
18 to in July. And I naturally -- I vacated my previous
19 position that Jody moved into in August. So those are some
20 changes that have happened at DEQ since we've been to you
21 earlier this year.

22 And then this rule package that we are presenting
23 in front of you today is our Chapter 18. It's a new
24 chapter for the Solid Waste Program and a new chapter for
25 the Division.

1 We brought it in front of the Board previously,
2 twice in 2019. This is our third time bringing it. But I
3 will briefly summarize the history for you, because not
4 everyone on the Board had the opportunity or pleasure to be
5 part of those previous discussions.

6 So DEQ's moving forward with this chapter because
7 EPA established national regulations, and that was by some
8 spills that took place in Tennessee and Virginia. So EPA
9 set these standards, and over time they made amendments to
10 the rule, in 2016 and 2018. So there's been a lot of
11 action at the federal level for this, the national
12 standards, which is also why DEQ sort of waited to see what
13 was happening.

14 And with the original set of rules, the standards
15 were self-implementing. So it was up to industry to ensure
16 that they were meeting all the standards. It wasn't until
17 2016 when Congress passed the WIIN Act, which stands for
18 the Water Infrastructure Improvements for the Nations Act,
19 which allowed EPA to approve CCR permitting programs by the
20 State, and then also give EPA that permitting authority.

21 So the states are currently pursuing primacy.
22 That is our ultimate goal also, once we have this rule in
23 place, so that industry in Wyoming will be regulated by
24 Wyoming DEQ and not EPA.

25 And I'm just looking over my notes to see if

1 there is anything else of significance. Oh, yes.

2 So since the last time we brought this rule to
3 the Board, that was October of 2019, our Attorney General's
4 Office implemented a more detailed review of all of the
5 chapters that agencies are currently revising. And so the
6 changes presented to you today will incorporate the changes
7 that the AG's Office has suggested to us. So there's quite
8 a few changes, more of changes for readability and
9 consistency. It doesn't really change the content.

10 And we've also met with EPA Region 8 and
11 headquarters to make sure that they are also happy and
12 satisfied with our current version so that once we finish
13 our rulemaking process, that we'll have a pretty solid rule
14 to present to them in our primacy package.

15 So with that, I will turn it over to Ms. Weikart
16 and let her introduce herself.

17 MS. WEIKART: Good morning, Mr. Chairman,
18 Members of the Board. I am Jody Weikart. I'm the Solid
19 Waste Permitting and Corrective Action Program Manager.
20 And I do have just a couple of items just to chat on before
21 we dive straight into Chapter 18.

22 We do plan to present the rule from the orange
23 copy. This version of the rule was emailed to the Board
24 last Thursday, on the 16th. And it is also provided in the
25 room as a hard copy to the board members here,

1 Mr. Chairman.

2 I'd also like to note for the Board that the text
3 in green and orange are the two colors that the most recent
4 changes are in since the October 2019 meeting. We also did
5 not receive any public comments on Chapter 18 during the
6 public comment period.

7 So with that, I'd like to begin presenting the
8 rule by going section by section. And so section -- and
9 I'll draw the Board's attention to any of the major changes
10 in each section.

11 The Section 1, which is the authority, begins on
12 line 7. Here we made additional revisions for grammar,
13 clarity and consistency with other recently revised
14 chapters.

15 Does the Board have any questions regarding
16 Section 1? With none, I'll proceed to Section 2. This is
17 our Incorporation By Reference section. It begins on line
18 number 13. Here we also made revisions for grammar,
19 clarity, consistency with recently revised rules. And we
20 also removed any redundant language.

21 I'd like to draw the Board's attention to line
22 number 21. This is where we revised the incorporation by
23 reference date. As Suzanne mentioned, in 2020 there
24 were -- there were two amendments passed at the federal
25 level. And by using the December 14, 2020 date, we are

1 including those amendments in our incorporation by
2 reference. So we are including the most up-to-date version
3 of the Federal Rule.

4 Does the Board have any questions on Section 2,
5 Incorporation By Reference?

6 CHAIRMAN KIRKBRIDE: Apparently not. Go
7 ahead.

8 MS. WEIKART: All these sections together
9 here, the changes are pretty consistent throughout them.
10 Section 3, which is General Provisions, begins on line 52;
11 Section 4, which is Coal Combustion Residual Landfill
12 Surface Impoundment Permits Application Requirements, which
13 begins on Section -- or, sorry, line 97; Section 5, General
14 Facility Information, which begins on line 261; and,
15 finally, Section 6, Location Standards, which begins on
16 line 329.

17 Here we made revisions for grammar, clarity,
18 consistency with other recently revised chapters and
19 removed any redundant language.

20 Does the Board have any questions or comments on
21 Sections 3 through 6?

22 BOARD MEMBER COCHRAN: I got a question.

23 CHAIRMAN KIRKBRIDE: Yes, Mr. Cochran.

24 BOARD MEMBER COCHRAN: Mr. Chair. Thank
25 you.

1 I can't find it in the copy you're working on,
2 but in the clean draft, on line 149, it's the (ii). It
3 says "The Operator shall submit the proposed amendment in a
4 format approved by the Administrator unless an alternative
5 is approved by the Administrator." That seems kind of
6 redundant, unless there's some format that's kind of the
7 standard out there and -- and -- I don't know. It just --
8 the wording doesn't seem quite right there to me.

9 MS. WEIKART: Mr. Chairman. Board Member
10 Cochran, that does seem quite repetitive. The intent there
11 is to allow for only electronic copies to be submitted to
12 the Department and not require any hard copies. And so
13 originally the language had hard copies and then anything
14 approved by the administrator as an alternate. So, yes, I
15 do think that language is redundant, and we could probably
16 remove the second portion of that sentence to make it a
17 little clearer that it's only the operator shall submit a
18 proposed amendment in a format approved by the
19 administrator, and end that sentence there.

20 MS. ENGELS: Jody, I'll just chime in that
21 we pulled language that was consistent with other rules
22 within the agency, so we'll just double-check that before
23 making a modification too.

24 CHAIRMAN KIRKBRIDE: Is that acceptable,
25 Jim?

1 BOARD MEMBER COCHRAN: Thank you,
2 Mr. Chairman.

3 MS. WEIKART: Does the Board have any
4 additional questions?

5 CHAIRMAN KIRKBRIDE: I don't think so.

6 BOARD MEMBER CAHN: Yes, I do. Sorry.

7 CHAIRMAN KIRKBRIDE: Yes. Ms. Cahn.

8 BOARD MEMBER CAHN: So I had a question on
9 location standards. And let me just check if I had other
10 ones. And the language from -- about endangered species
11 was struck, and -- starting on line 380, and I just want to
12 understand why.

13 MS. WEIKART: Mr. Chairman. Board Member
14 Cahn, that language was struck because it is redundant.
15 That requirement is found in Section 3, subsection -- 3(b),
16 begins on line 60. The "Applicability of other
17 regulations." 40 CFR 257.52 is the Endangered Species Act.

18 BOARD MEMBER CAHN: Okay. Great. Thank
19 you for that.

20 Okay. Thanks. I'll mute myself.

21 CHAIRMAN KIRKBRIDE: Okay. Thank you,
22 Lorie.

23 BOARD MEMBER DEURLOO: Chairman Kirkbride,
24 this is Brian. I have a comment, please.

25 CHAIRMAN KIRKBRIDE: Yes, go ahead, please.

1 BOARD MEMBER DEURLOO: Thank you. Question
2 for you on location -- location standards again here,
3 starting on line 352, "Distance to other surface waters."
4 It reads on 355, "Except that surface" -- or 354, "Except
5 that surface impoundments not containing hazardous or toxic
6 wastes may be located within the ordinary high water mark
7 of intermittent rivers, streams, creeks, and draws," et
8 cetera.

9 Now, does that mean a landfill can be -- even a
10 nontoxic landfill could be placed within the ordinary high
11 water mark? That's one question.

12 And number two is what is an ordinary high water
13 mark? Is that an average over several years? what it was
14 last year? So just -- could you just expound on that part,
15 please.

16 MS. WEIKART: Mr. Chairman. Board Member
17 Deurloo, I'm just taking a look for just a moment here.

18 So that language is applicable, the except that
19 surface impoundments not containing hazardous wastes or
20 toxic waste may be located within the ordinary high water
21 marks of intermittent rivers, streams, creeks, draws, et
22 cetera, that language is specific to surface impoundments
23 that are not containing hazardous waste, and so, therefore,
24 landfills would be allowed to.

25 The ordinary high water mark is based off of a

1 number of years. And looking at the variations in rivers
2 and streams and where their high water mark is over a
3 period of time.

4 BOARD MEMBER DEURLOO: Do we have it -- are
5 there examples of this CCR landfills within -- are there --
6 are there currently examples of landfills like this in
7 Wyoming?

8 MS. WEIKART: Mr. Chairman. Board Member
9 Deurloo, I'm just recalling. I don't believe there are any
10 landfills at CCR facilities that are located within the
11 intermittent high water mark.

12 BOARD MEMBER DEURLOO: Okay. I don't know,
13 I'm not Chairman Kirkbride, and I'm not suggesting any
14 changes on here, I just want -- for some reason it doesn't
15 sit right for me having a -- allowing any sort of a
16 landfill within -- whether it has a bypass or not, within
17 the high water mark -- ordinary high water mark of a river,
18 stream, or creek.

19 But if the -- if the DEQ and the staff at DEQ is
20 okay with this -- this addition, then I'm okay with it.

21 MS. WEIKART: Mr. Chairman and Board Member
22 Deurloo. I would like to mention that this location
23 standard is currently a part of the Water Quality Chapter 3
24 for location standards.

25 BOARD MEMBER DEURLOO: Okay.

1 MS. WEIKART: We did pull the language from
2 their rule for this rule.

3 BOARD MEMBER DEURLOO: Okay. Thank you. I
4 don't remember that part. But okay. Thank you.

5 No further comment on that section, Chairman
6 Kirkbride. Thank you.

7 MS. WEIKART: Thank you. I'll move forward
8 to Section --

9 BOARD MEMBER CAHN: I've had my hand
10 raised.

11 CHAIRMAN KIRKBRIDE: I'm sorry, Lorie. I'm
12 sorry. I'm not -- it's not just real easy for me to see.

13 BOARD MEMBER CAHN: Okay.

14 CHAIRMAN KIRKBRIDE: So, Ms. Cahn, please.

15 BOARD MEMBER CAHN: Okay. Thank you.

16 CHAIRMAN KIRKBRIDE: Speak up maybe also.

17 BOARD MEMBER CAHN: So I would -- I'm
18 interpreting the sentence that Brian was concerned about
19 starting on 352. I'm interpreting that different than what
20 DEQ explains, so since the first sentence talks about CCR
21 landfills and surface impoundments not being located within
22 the ordinary high water mark, but the "except that" only
23 applies to surface impoundments. And as I read it, it
24 doesn't apply to landfills. So CCR landfills would not be
25 allowed to be in the high water -- high water mark. But

1 the only thing that would be would be surface impoundments
2 not containing hazardous toxic waste. So I just want to --
3 because that's not the way the DEQ explained it, so I just
4 want to make sure the way I'm interpreting it is the way
5 that it was intended. Thank you.

6 MS. WEIKART: Mr. Chairman. Board Member
7 Cahn, my apologies. I think I misspoke there.

8 BOARD MEMBER CAHN: Thank you.

9 CHAIRMAN KIRKBRIDE: So we're comfortable
10 what it says is what we mean, it sounds like.

11 BOARD MEMBER DEURLOO: Chairman Kirkbride.
12 Thanks for the clarification, Lorie.

13 MS. WEIKART: I will move forward to
14 Section 7. This is the Design Criteria section. It begins
15 on line 405. In this section we also made revisions for
16 grammar, clarity, consistency with other recently revised
17 chapters, and also removed any redundant language.

18 I would like to draw the Board's attention to two
19 specific changes. These changes are two of the three
20 orange -- or the additional changes that we made since
21 November 5th. The first is on lines 421 to 423. And the
22 second is on line 427 to 428. In both of these instances,
23 upon closer review of the federal rule, we determined that
24 the phrase "not to exceed a height of six inches above the
25 slope of the dike" had been remanded to the EPA. The EPA

1 has not addressed this item in the two revisions in 2020,
2 and so it was advised to us that we exclude that phrase
3 from the incorporation by reference. And so we made that
4 change after November 5th, which is why it's in orange.

5 Does the Board have any questions on Section 7?

6 CHAIRMAN KIRKBRIDE: Does that mean that
7 this provision is part of our regulations or not --

8 MS. WEIKART: Chairman.

9 CHAIRMAN KIRKBRIDE: -- about the six-inch
10 thing?

11 MS. WEIKART: Yes, Chairman Kirkbride.
12 That means the six-inch -- that numeric value is not part
13 of the regulations that we're incorporating. We excluded
14 it.

15 BOARD MEMBER CAHN: Can you -- this is
16 Lorie. Can you explain what that all means? Like what's
17 the significance of the height of six inches above the
18 slope of the dike, and just kind of -- I'm not sure I
19 really understand this, so can you just kind of explain it?

20 MS. WEIKART: Sure. Mr. Chairman. Board
21 Member Cahn, just give me one moment. I'm going to grab my
22 Federal Rule here, and I think that will help put this into
23 a little bit of a clearer perspective.

24 So the full phrase in the Federal Rule reads "The
25 CCR unit and surrounding areas must be designed,

1 constructed, operated, and maintained with vegetative
2 slopes of dikes not to exceed a height of six inches above
3 the slope of the dike except for slopes which are protected
4 with an alternate form of slope protection." The portion
5 of that subsection where it states "not to exceed a height
6 of six inches above the slope of the dike," that has been
7 remanded to the EPA due to a court case. And the EPA is
8 currently evaluating whether or not a numeric value is
9 necessary for that requirement, and so that is why we've
10 excluded it. It doesn't mean that the slopes won't be
11 vegetated or protected. It just means the EPA is looking
12 at that specific numeric value, if that's necessary or not
13 for the requirement.

14 BOARD MEMBER CAHN: Okay. I have a couple
15 of questions. One is why wouldn't we also include the
16 words "vegetative slopes" in the quote to make it more
17 clear what it is in this rule that you're talking about?
18 So that would be, you know, make -- make the quote a little
19 bit longer.

20 And the second part is if you could explain to me
21 why EPA would have been concerned if your vegetative slope
22 was more than six inches above the slope of the dike. So
23 if you could -- I'm not -- in my head I'm not picturing why
24 that would be a concern. So thank you.

25 MS. WEIKART: Mr. Chairman. Board Member

1 Cahn, that's -- the reason why the EPA is reevaluating it
2 is whether or not that six inches really has an impact on
3 the protection of the slope. We did not include vegetative
4 slope in the quote because that's the portion of the
5 Federal Rule that is being incorporated by reference. We
6 only included the phrase that would be excluded. And so
7 the way the Section 7 reads, our rule, structural integrity
8 criteria for existing CCR impoundments, the criteria for 40
9 CFR 257.73 are incorporated by reference. And then we
10 removed just the portion of the phrase of 257.73(a)(4),
11 that has "not to exceed a height of six inches above this
12 slope of the dike." That's the specific language that EPA
13 requested that we remove or exclude.

14 BOARD MEMBER CAHN: I don't think I'm
15 getting my question across. Would you read the phrase that
16 is incorporated now by reference again, the whole thing,
17 and stop, you know, and say -- and stop when you get to
18 "not to exceed" so I can see what it's going to -- what's
19 being incorporated now by reference.

20 MS. WEIKART: Mr. Chairman. Board Member
21 Cahn, of course. The phrase in the Federal Rule would now
22 be the CCR unit and surrounding areas must be designed,
23 constructed, operated, and maintained with vegetative
24 slopes of dikes except for slopes which are protected with
25 an alternate form of slope protection.

1 BOARD MEMBER CAHN: So they're protected
2 with vegetative slopes except something -- an alternative
3 to a vegetative slope. Is that what that now means?

4 MS. WEIKART: Correct.

5 BOARD MEMBER CAHN: Okay. So the exception
6 is applying to the vegetative slopes or the alternative to
7 vegetative slopes?

8 MS. WEIKART: The exempt language is for
9 the vegetative slopes.

10 BOARD MEMBER CAHN: Okay. So because
11 that's confusing in this incorporation by reference, why
12 couldn't we say are incorporated by reference with the
13 exception of the phrase "not to exceed a height of six
14 inches above the slope of the dike" end of paren -- quote,
15 with regards to vegetative slopes in 40 CFR 257? It's only
16 three more words, but in my mind it would make it more
17 clear.

18 MS. WEIKART: Mr. Chairman. Board Member
19 Cahn, I think that's something we can look at. We are
20 incorporating that subsection as a whole and just removing
21 specific language. And so when folks are applying for a
22 permit, they will be looking at the Federal Rule and we'll
23 just remove that phrase from what's required of them.
24 So --

25 BOARD MEMBER CAHN: In my mind, it just has

1 to do with readability. That -- you know, this
2 incorporation by reference, I get it for EPA rules where
3 everybody can go look up what that is. But I just think
4 if there's just some key words or something that tells you
5 what -- you know, in this case where we're having an
6 exception so that somebody knows -- I don't know. To me it
7 just would make it more readable. I'm not going to -- you
8 know, I'm not going to insist on it or anything. It's
9 not -- but it would be nice if we can sometimes add a few
10 more words if it makes it more clear. So thank you.

11 CHAIRMAN KIRKBRIDE: Thanks for bringing it
12 up, Lorie. It's a little confusing to me too. But it
13 looks like to me that the dike can be higher, then, right?
14 Isn't that what it says? Or the -- that can be higher and
15 more protective, even, of the -- of the facility?

16 MS. WEIKART: Mr. Chairman, it allows for a
17 vegetative cover to be higher than six inches above the
18 dike.

19 CHAIRMAN KIRKBRIDE: Yeah.

20 MS. WEIKART: That's correct.

21 CHAIRMAN KIRKBRIDE: Yeah. Which seems
22 good.

23 Okay. Well, I guess you -- you're considering
24 Ms. Cahn's thoughts, why, if you guys are doing that, are
25 there any other questions? Okay.

1 MS. WEIKART: Thank you, Mr. Chairman. I
2 will move on to Section 8. This is the Operating Criteria
3 section, and begins on line 453.

4 Here we made additional revisions for grammar,
5 clarity, consistency with other recently revised chapters,
6 and we also removed any redundant language.

7 Does the Board have any questions for Section 8,
8 Operating Criteria?

9 BOARD MEMBER CAHN: I do.

10 CHAIRMAN KIRKBRIDE: Lorie.

11 BOARD MEMBER CAHN: On line 495, the words
12 "requires to," I'm thinking we either need to insert a
13 comma between "requires" and "to" or add "in order." So it
14 either needs to read -- in my mind, it either needs to read
15 the Administrator -- hold on. Let me shrink my -- "Attend
16 any training course sponsored by the Department that the
17 Administrator requires, to provide training on changes to
18 state or federal solid waste rules or guidelines," or
19 "Attend any training course sponsored by the Department
20 that the Administrator requires in order to provide
21 training." So it's not -- something just didn't read well
22 to me in there. I thought it needed a little more clarity.

23 MS. WEIKART: Mr. Chairman. Board Member
24 Cahn, I think we could insert a comma into that phrase.

25 BOARD MEMBER CAHN: Okay. Thank you.

1 MS. WEIKART: Thank you.

2 CHAIRMAN KIRKBRIDE: Other questions or
3 comments on this section? All right.

4 MS. WEIKART: We'll move on to Section 9.
5 This is the Groundwater Monitoring and Corrective Action
6 section. It begins on line 553. We made additional
7 revisions for grammar and clarity and consistency with
8 other recently revised chapters. We also removed some
9 redundant language.

10 There are four items that I would like to draw
11 the Board's attention to. Some of these changes were made
12 based on Board comments in October of 2019. And also one
13 of our additional orange changes can be found in this
14 section.

15 So the first portion of the Section 9 I would
16 like to point the Board to would be lines 561 to 587.
17 These are the additional requirements for the Annual
18 Groundwater Monitoring and Corrective Action Report. Since
19 the Department will be issuing Chapter 18 permits for the
20 lifetime of the facility through post-closure, we've added
21 these additional requirements to the already-required
22 Groundwater Monitoring and Corrective Action Report to
23 provide the Department with an update on the facility
24 throughout the course of the facility's life.

25 Since we do have three more items, I thought I

1 would stop here and ask the Board if they had any questions
2 on this particular portion of Section 9.

3 BOARD MEMBER CAHN: I do.

4 CHAIRMAN KIRKBRIDE: All right. Please
5 proceed.

6 BOARD MEMBER CAHN: So on line 582,
7 starting on 581, I think the word "data" is missing after
8 the word "monitoring." So it says "The Administrator may
9 require paper copies of monitoring, as well as supporting
10 charts." And I think -- I don't know what paper copies of
11 monitoring is. So I think it needs "monitoring data."

12 MS. WEIKART: Mr. Chairman. Board Member
13 Cahn, thank you. We will put the term back in there. That
14 was struck accidentally, it looks like. So we will
15 reinsert that term. Thank you very much for that comment.

16 CHAIRMAN KIRKBRIDE: All right.

17 MS. WEIKART: We'll move down a little bit
18 further in Section 9 to lines 605 to 612. This contains
19 the third additional or orange change. Also, at the
20 October 2019 meeting, the Board requested the Department
21 clarify when a facility would be required to monitor for
22 additional constituents from the Solid Waste Rule Chapter
23 3, Appendix A, which is Detection Monitoring, and Appendix
24 B, which is Assessment Monitoring.

25 The Department added clarifying language that

1 this would only occur when nonCCR industrial waste is
2 disposed of in a CCR unit. So we clarified both that in
3 the assessment and the detection monitoring portions of
4 Section 9.

5 Does the Board have any questions regarding this
6 portion of Section 9?

7 CHAIRMAN KIRKBRIDE: I think we're okay.

8 MS. WEIKART: Thank you, Mr. Chairman.

9 Moving on to lines 614 to 615. Also at our
10 October 2019 meeting the Board commented on the inclusion
11 of the Water Quality Rules Chapter 8, Table 1 be included
12 as part of Appendix IV in the Federal Rule. The Department
13 removed the Water Quality Rules Chapter 8, Table 1 from the
14 Federal Rule Appendix IV, and we clarified that it would
15 only be used for groundwater classification. So that
16 clarifying language is found on line 614 to 615.

17 Does the Board have any questions on those couple
18 of lines?

19 BOARD MEMBER CAHN: No. I just want to
20 thank you for doing that.

21 CHAIRMAN KIRKBRIDE: Okay.

22 MS. WEIKART: I will move on to line 623 to
23 645. Because of the removal of the Water Quality Rules
24 Chapter 8, Table 1 from Appendix IV, we also made the
25 decision to clarify the process for determining groundwater

1 protection standards for any additional constituents that
2 are included from the Solid Waste Rules, Chapter 3, the
3 industrial chapter. This would only be due to disposing of
4 nonCCR industrial waste in a CCR unit.

5 And we structured this portion of the rule to be
6 consistent with other solid waste rules, and also the
7 Federal Rule 257.95, which is the groundwater protection
8 standards portion of the Federal Rule. So we just try to
9 make the language a little clearer on how groundwater
10 protection standards would be determined for those
11 additional constituents.

12 Does the Board have any questions on that portion
13 of Section -- or Section 9 or any other portion of Section
14 9?

15 CHAIRMAN KIRKBRIDE: I think you're all
16 right.

17 MS. WEIKART: Great. I'll move on to two
18 more sections. We'll kind of clump them together here.
19 Section 10, which is Closure and Post-Closure Care, begins
20 on line 706; and Section 11, which is Recordkeeping,
21 Notification, and Posting of Information to the Internet,
22 which begins on line 726.

23 We made additional revisions for grammar and
24 clarity and consistency with other recently revised
25 chapters and removed any redundant language.

1 Did the Board have any questions regarding
2 Section 10 or Section 11?

3 BOARD MEMBER DEURLOO: Chairman Kirkbride,
4 this is Brian Deurloo. I have a comment.

5 CHAIRMAN KIRKBRIDE: Go right ahead.

6 BOARD MEMBER DEURLOO: Thank you.

7 I have a comment on Section 10. This is where I
8 really -- kind of some of my frustration came to a head.
9 Where incorporation by reference -- and I know we've talked
10 about this over the past few years. There's -- there was
11 guidance from former Governor Matt Mead that we sort and
12 clarified DEQ rules and regulations. So there's been a lot
13 of incorporation by reference.

14 There's also, I understand, from the introduction
15 to Chapter 18 that for -- in order for Wyoming to gain
16 primacy over CCRs, we need to write our own rules, based
17 upon something that happened in Tennessee and/or Kentucky.
18 But to that I've got a couple of questions. So I'd like --
19 I'm just going to send them all out there right now and we
20 can discuss them.

21 If we're -- okay. Why do we incorporate by
22 reference? I think I know the answer, but I want to know
23 why do we incorporate by reference? Here's Section 10.
24 It's got -- one, two, three, four, five, six -- five meaty
25 parts on it, and there's five incorporations by reference.

1 And if I go to Code of Federal Regulations 40 CFR 257.100
2 to 40 CFR 257.104 -- I'll talk slower so the court reporter
3 can keep up -- that if we actually wrote those codes out,
4 it would add another probably 10 pages to this -- to this
5 chapter. So I would like a -- why are we doing this
6 incorporation by reference?

7 Who within the DEQ staff decides what -- what we
8 incorporate by reference? As we're going through this
9 Section 10 -- I'm being a little bit flippant -- says let's
10 not write it all out. Let's just incorporate the whole
11 thing. So now it requires anybody that is either reviewing
12 this permit on the industry side or somebody within the DEQ
13 staff has to flip back and forth between two regulations to
14 find -- to find the answer or to -- to regulate.

15 And then, finally, how does this help -- if
16 we're -- how is incorporation by reference helping Wyoming
17 gain primacy over the EPA? If we keep -- if we keep
18 referencing this code, 40 -- you know, if we keep
19 referencing the Code of Federal Regulations, what primacy
20 are we gaining? I mean, we're just -- I get it, but I -- I
21 want to have a short discussion here, if you don't mind,
22 because it's -- after looking at all these, it's sticking
23 in my craw a little bit.

24 There's my comment, Chairman Kirkbride.

25 CHAIRMAN KIRKBRIDE: Thank you.

1 MS. ENGELS: Mr. Chairman, I'll jump in
2 here to try to answer some of those questions.

3 CHAIRMAN KIRKBRIDE: Thank you.

4 MS. ENGELS: So incorporating by reference
5 is an internal decision. And if we look at the Federal
6 Rule to see what's in the rules, would it be best if we do
7 incorporation by reference or not. And given the length of
8 the CCR standards, the decision was made to incorporate
9 them by reference.

10 And when we look at gaining primacy for a
11 program, we have to show EPA that we are as stringent as
12 the Federal Rule. So that's easily accomplished through
13 incorporation by reference, to make sure that we're not
14 missing anything, those federal standards that are applied
15 throughout the country, no matter what state a facility is
16 in.

17 So I think I answered all three of your
18 questions. I mean, we can talk more about primacy or the
19 federal standards. I mean, when EPA is working on the
20 federal standards, we review them, comment on them to the
21 best of our abilities.

22 And I'm aware that facilities within Wyoming also
23 comment on the Federal Rules. So there is opportunity to
24 have Wyoming industries' voice heard, Wyoming DEQ's voice
25 heard at the national level when the rulemaking is done

1 there. That's a separate issue of whether or not EPA
2 considers it and what they do with the comments that they
3 get. And then ultimately, like I said, we have to show
4 that we're as stringent as the Federal Rules to gain
5 primacy.

6 BOARD MEMBER DEURLOO: Thank you.

7 Mr. Chairman, another comment back.

8 Thank you. I understand that. I understand that
9 meet or exceed their regulations in order to gain primacy.

10 Question for you, for staff. If somebody wanted
11 a permit or closed one of these CCRs and all the
12 regulations were found in the Code of Federal Regulations,
13 does it make it easier for your staff to defend their
14 position if it's written in the Wyoming rules and
15 regulations or if they're -- I'm just -- I'm kind of
16 talking nuts and bolts here.

17 You're sitting across a conference table with
18 somebody that's trying to close a CCR. And there's some
19 arguments or, I don't know, some discussion on how to close
20 it. Does your staff have more weight, credibility, what
21 have you, to defend their rules that are written out black
22 and white, Wyoming regulations, or having to refer back to
23 the EPA? And if it's a -- if it's a -- I'm trying to think
24 how the staff makes it more defensible for their position
25 easy.

1 But also if we're doing this incorporation by
2 reference, does it cause the EPA to be more involved with
3 the -- the regulation -- regulation's not the right word.
4 But if we incorporate by reference, does it allow more
5 intrusion or voice from the EPA? Does that make any sense?

6 MS. ENGEL: It does. Mr. Chairman. By
7 using incorporation by reference and once we have primacy,
8 it does not allow EPA to come in and make those decisions.
9 However, without primacy, that does allow EPA to come in,
10 review the compliance status of facilities and provide them
11 feedback. So there is this time lag of our rulemaking
12 process and when we submit to EPA for primacy where EPA
13 understands that we're working through all of that. And --
14 and we've been given reassurances from EPA locally, where
15 they're not going to come in and ask any of the industries
16 for a permit.

17 They do communicate with each other. It's sort
18 of, you know, everyone's in the loop right now until we
19 have primacy. EPA lets us know their concerns at a
20 facility and we reach out to the facility. It's sort of
21 this quasi group effort in a way. But once we have primacy
22 and using incorporation by reference, EPA's involvement
23 with the facility goes away. There is a review of our
24 permitting program that EPA has. I believe it's once every
25 12 years they do an audit of our program to make sure that

1 we are implementing those federal standards appropriately.
2 So then we're held to that accountability. But doing
3 incorporation by reference doesn't allow EPA any additional
4 hold or footing within the state once -- once we have a
5 primacy program.

6 BOARD MEMBER DEURLOO: Thank you. Thank
7 you for that clarification. That is good to know.

8 I -- and I'll just -- just for the record, as
9 well, you know, that I do not hold any grudges or begrudges
10 against the EPA. It's just that I believe the more we can
11 bring the -- the overseeing of the regulations closer to
12 home and within our state the better.

13 Chairman Kirkbride, I thank you for the time. My
14 comment is over.

15 BOARD MEMBER CAHN: Chairman Kirkbride.

16 CHAIRMAN KIRKBRIDE: Yes.

17 BOARD MEMBER CAHN: So, Suzanne, could you
18 just kind of elaborate on the incorporation by reference
19 direction that you're getting? Does it come from
20 Mr. Parfitt? Does it come from yourself? Does it
21 come from the AG's Office? Does it come from the
22 governors? I mean, I know what drove it when Matt -- when
23 Governor Mead was governor. If you could just kind of go
24 through what -- where's the decision being made, at what
25 level and just -- thank you.

1 MS. ENGELS: Thank you. Mr. Chairman. The
2 decision, I guess, ultimately -- you know right now -- I'll
3 go back a little bit. The surface impoundments are
4 currently being regulated by the Water Quality Division,
5 under -- I think it's their Chapter 3. And the landfills
6 are currently being regulated under Solid Waste Rules, not
7 to the degree that is outlined in Chapter 18 or the Federal
8 CFR.

9 And so it was really an agency effort, probably
10 back in 2017 time frame, sometime after the national
11 standards were implemented. Members from both divisions
12 were involved in discussions, staff, program managers, the
13 administrator, the director were all involved with
14 discussions of how to implement these standards, which
15 division these rules would be best suited under, and how to
16 move forward with the rule. And if the governor's office
17 was involved, I'm not aware.

18 CHAIRMAN KIRKBRIDE: Does that answer your
19 question?

20 BOARD MEMBER CAHN: Yeah. I just -- I just
21 remember seeing, you know, a whole surge of incorporation
22 by reference when Governor Mead came in and basically said,
23 you know, look at all of the regulations and shorten them.
24 And I just want to say that claiming credit for shortening
25 rules when -- if you -- there's incorporation by reference

1 of things -- for this example, you know, half a page versus
2 10 pages -- you know, to get credit for shortening it up by
3 10 pages -- I mean, it -- obviously, this isn't an example
4 of that, because this is a new rule. But in the case of
5 existing rules, it's kind of disingenuous, you know, to
6 take credit for reducing requirements if we're just
7 incorporating by reference. And so it makes it look
8 smaller, but it may make it much bigger. And I'll have
9 more to say on that when we get to the next chapter with
10 Water Quality Rules. So thank you.

11 MS. ENGELS: And, Mr. Chairman, I will also
12 add that -- I know we're just talking about Section 10, and
13 that's one section of many on this chapter. So we did --
14 we evaluated the entire rule. We made the decision to
15 incorporate by reference the standard throughout the
16 chapter. And if we had -- I call it regurgitating the
17 federal standard -- this chapter would have been closer to
18 150 pages. So it's -- it's a very, very long, detailed
19 chapter if we did not use incorporation by reference.

20 And I'll add this one other point, and then I
21 will stop. I think most of the addition that we have done
22 to this chapter really make it so we're outlining what we
23 need for a permit, along with some other additional
24 requirements. We're not really changing the standards from
25 the Federal Rule because the standards were originally

1 self-implementing. There wasn't anything included to say
2 we need X, Y and Z from facilities so that we can permit
3 them and review the information.

4 So that's, I think, our whole goal of this
5 chapter is to elaborate on what information the agency
6 needs to evaluate all of the federal standards so then that
7 we are the permitting oversight for these requirements.
8 Thank you.

9 BOARD MEMBER CAHN: Yeah. I just -- I
10 don't have as much heartburn of it with federal rules where
11 everybody can sit at their laptop and look up the rules and
12 find, you know, anybody can Google those 40 CFR 257.101 and
13 find it. So I'll have more to say on that later on when we
14 get to -- you know, where -- we'll hear the next thing on
15 the agenda, we're going to hear about the 10 State
16 Standards, which people have a hard time finding. So I'll,
17 you know, say I have less of a heartburn here, so...

18 CHAIRMAN KIRKBRIDE: Ms. Weikart.

19 MS. WEIKART: Thank you, Mr. Chairman.

20 Moving on to Section 12. This would be our
21 Industrial Waste Standards, begins on line 761. Also at
22 our October 2019 meeting the Board requested the Department
23 clarify when a facility would be required to show
24 compliance with the Solid Waste Rule Chapter 3, and so we
25 added some clarifying language here that would only occur

1 when nonCCR industrial waste is disposed of in a CCR unit.

2 Does the Board have any questions regarding
3 Section 12?

4 CHAIRMAN KIRKBRIDE: I guess not.

5 MS. WEIKART: And I will group the
6 remaining sections together. We have Section 13, which is
7 the Transfer, Treatment, and Storage Facility Standards,
8 which begins on line 767; Section 14, Special Waste
9 Standards, beginning on line 773; and Section 15,
10 Supporting Documentation and Appendices, which begins on
11 line 778. We made additional revisions for grammar and
12 clarity, consistency with other recently revised chapters,
13 and also removed redundant information.

14 Does the Board have any questions on Section 13,
15 14 and 15?

16 CHAIRMAN KIRKBRIDE: It doesn't look like
17 it.

18 MS. WEIKART: The final item would be
19 Appendix IV. Previously the rule included a copy of
20 Appendix IV, because we were adding Water Quality Rules
21 Chapter 8, Table 1 to Appendix IV. We decided we should
22 remove Water Quality Chapter 8, Table 1 from Appendix IV,
23 and, therefore, we removed Appendix IV from the rule. We
24 did incorporate it by reference in the Groundwater
25 Monitoring section. So we only removed it so that we

1 didn't have to note the Chapter 8, Table 1 additions,
2 because we're no longer adding those constituents.

3 Does the Board have any questions on removal of
4 Appendix IV?

5 BOARD MEMBER CAHN: So just to clarify. So
6 now what's required for -- with your incorporation by
7 reference. Just go over what constituents you require for
8 assessment monitoring -- or for detection and then
9 assessment monitoring.

10 MS. WEIKART: Chairman Kirkbride. Board
11 Member Cahn, of course for a facility that's totally
12 disposing of CCR industrial waste, then they would only be
13 required to monitor for federal rules Appendix III and
14 Appendix IV. Appendix III is detection monitoring.
15 Appendix IV is detection [sic] monitoring. We only add
16 constituents to either of those appendices if nonCCR
17 industrial waste is being disposed of with CCR waste in a
18 CCR unit.

19 Board Member Cahn, if you'd like, I can read off
20 the constituents of each of those appendices, if that would
21 be helpful.

22 BOARD MEMBER CAHN: Yes. That would be
23 helpful. Thanks.

24 MS. WEIKART: In Appendix III of the
25 Federal Rules, there's boron, calcium, chloride, fluoride,

1 pH, sulfate, and total dissolved solids or TDS.

2 In Appendix IV, which is assessment monitoring,
3 we have antimony, arsenic, barium, beryllium, cadmium,
4 chromium, cobalt, fluoride, lead, lithium, mercury,
5 molybdenum, selenium, thallium and radium 226 and 228
6 combined.

7 BOARD MEMBER CAHN: Thank you.

8 CHAIRMAN KIRKBRIDE: Is it appropriate for
9 public comment at some point here? Are there any members
10 of the public, either in person or on the Zoom, who have
11 comments or questions about this rule as presented?

12 All right. Hearing none, does the Board have
13 any?

14 BOARD MEMBER CAHN: Excuse me, I see Clint
15 Bassett has his hand raised of the --

16 CHAIRMAN KIRKBRIDE: I'm sorry. See, I
17 have a glare and I can't see anybody.

18 MS. THOMPSON: So please if you would like
19 to make a comment on Chapter 18, go ahead and introduce
20 yourself and speak slowly for the record, please.

21 MR. BASSETT: Hi. I'm sorry. I was going
22 to comment on Chapter 12. I apologize.

23 MS. THOMPSON: No problem.

24 CHAIRMAN KIRKBRIDE: All right. Okay.

25 Well, is the Board -- is the Board ready to do any action

1 upon this or -- as we've stated?

2 BOARD MEMBER CAHN: Mr. Chair.

3 CHAIRMAN KIRKBRIDE: Yes.

4 BOARD MEMBER CAHN: I would like to propose
5 that we have a motion that DEQ incorporate, to the extent
6 possible, the comments we've provided today and forward
7 this on to EQC.

8 CHAIRMAN KIRKBRIDE: That was a motion, was
9 that not, Lorie? Did you move that?

10 BOARD MEMBER CAHN: Yes, I move that.

11 CHAIRMAN KIRKBRIDE: All right. Is there a
12 second? Motion dies for lack --

13 BOARD MEMBER DEURLOO: I will second that.
14 I will second that, Chairman Kirkbride. This is Brian
15 Deurloo. Whatever one.

16 CHAIRMAN KIRKBRIDE: Okay. Moved and
17 seconded. Is there discussion upon this?

18 With that we shall proceed to vote. All in favor
19 say aye.

20 BOARD MEMBER COCHRAN: Aye.

21 BOARD MEMBER CAHN: Aye.

22 BOARD MEMBER DICKSON: Aye.

23 CHAIRMAN KIRKBRIDE: All opposed say no.

24 The ayes have it. We'll proceed that way.

25 MS. WEIKART: Thank you, Mr. Chairman.

1 Members of the Board, thank you for your time.

2 CHAIRMAN KIRKBRIDE: You're welcome. Thank
3 you.

4 MS. ENGEL: Thank you, everyone.

5 MS. THOMPSON: Mr. Chairman, can we request
6 a 15-minute break so we can switch out staff and everyone
7 do what they need to do before we get started on the next
8 rule package?

9 CHAIRMAN KIRKBRIDE: I think that's a good
10 idea. So declared. 10:30.

11 (This portion of the hearing proceedings
12 concluded 10:18 a.m., December 21, 2021.)

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C E R T I F I C A T E

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

Dated this 24th day of January, 2022.


KATHY J. KENDRICK
Registered Professional Reporter

