

1 BEFORE THE WATER AND WASTE ADVISORY BOARD

2 STATE OF WYOMING

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5 HEARING TO DISCUSS PROPOSED REVISIONS TO WATER QUALITY
6 RULES AND REGULATIONS CHAPTER 8, SECTION 6, AND CHAPTERS
7 9, 13, 16 and 27 FOR REVIEW BY THE WATER AND WASTE
8 ADVISORY BOARD

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11 TRANSCRIPT OF HEARING PROCEEDINGS

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13 Transcript of Hearing Proceedings in the above-
14 entitled matter before the Water and Waste Advisory
15 Board, commencing on the 24th day of October, 2014, at
16 12:30 p.m. at the Oil and Gas Conservation Commission
17 Building Hearing Room, 2211 King Boulevard, Casper,
18 Wyoming, Ms. Marjorie Bedessem presiding, with Board
19 Members Mr. Calvin Jones, Mr. Klaus Hanson and Mr. David
20 Applegate in attendance and Board Member Ms. Lorie Cahn
21 appearing via video-conferencing. Also present were
22 Mr. Kevin Frederick, Mr. Bill Tillman and Ms. Gina
23 Johnson from DEQ.

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1 you still wanted those comments, and your response was
2 you didn't think it was necessary at that point. Hence,
3 I did not bother to send them to you. But if you would
4 like them, I'd be more than happy to send them to you.

5 MS. CAHN: I don't recall saying that. I
6 still would be interested. I thought I received the
7 presentation, but I'm interested in the spreadsheets that
8 go behind them to see what was done in specifics. Thank
9 you.

10 MR. TILLMAN: We can do that.

11 MR. FREDERICK: Madam Chair.

12 CHAIRMAN BEDESSEM: Shall we move on to
13 Chapter 27?

14 MR. FREDERICK: Moving forward, Madam
15 Chairman, the rule-making effort we have before you today
16 is essentially an effort to help support the governor's
17 streamlining and rule-reduction initiative. In this
18 particular case, we have two existing regulations. We
19 have a Chapter 13 that governs permitting and so forth
20 for Class 1 underground injection control wells, and we
21 have an existing Chapter 16 that governs permitting
22 actions and so forth for Class 5 underground injection
23 control wells.

24 Both of these regulations were developed
25 several years ago. Both of the regulations are

1 administered by the Department under a delegation primacy
2 agreement with EPA for the underground injection control
3 under the Safe Drinking Water. And as part of the
4 delegation agreement, our rules and regulations have to
5 be as stringent as the federal rules and regulations.

6 What we see and hopefully what you've seen in
7 this particular effort was that for the Class 1 wells
8 under Chapter 13 and the Class 5 wells under 16,
9 regulations are fairly similar, if not identical, in
10 several respects. Definitions are virtually identical in
11 both chapters, and there are many of them that take up a
12 few to several pages. There are permit conditions that
13 are very similar, if not identical, for both Class 1 and
14 Class 5 wells. So those take up several pages in each
15 chapter.

16 And the public participation requirements are
17 consistent under the UIC federal rules of regulation.
18 So, in Chapter 13, Class 1 wells, there's a section on
19 public participation requirements essentially identical
20 to the section in Chapter 16 for Class 5 wells.

21 So this particular effort seemed to make sense
22 for a couple reasons. One was to combine underground
23 injection control rules and regulations into one chapter,
24 rather than having two chapters out there, to accommodate
25 the rule-reduction objectives by limiting duplication and

1 redundancies in existing rules and regulations and
2 therefore streamlining, and hopefully to also make them a
3 little bit easier to understand for the public, as well,
4 rather than, for instance, having to flip through two
5 different chapters to look for similarities or
6 differences, be able to actually see that very clearly
7 where the similarities exist for permitting and so forth
8 for Class 1 wells, as opposed to Class 5 wells.

9 I think the only additional change that we did
10 was to incorporate a section out of Chapter 8, which is
11 our groundwater quality standards rules and regulations.
12 And it's really specific to the management and disposal
13 of waste, is essentially an early precursor of
14 underground injection control requirements in Chapter 8
15 that I believe best fits in with the other underground
16 injection rules and regulations in 13 and 16. So we've
17 incorporated that section from Chapter 8 into the new
18 combined chapter, which is Chapter 27, by the way.

19 And also as part of that, we're addressing a
20 typographical error in that section that changes Roman
21 Numeral IV, or 4, to Roman Numeral 6, or VI. When the
22 regulation was finalized, it seems pretty clear to us
23 that those two letters were transposed. And
24 unfortunately, doing so has an entirely different
25 meaning. We've gone back and -- I personally have gone

1 back and read the transcript from the Environmental
2 Quality Council hearing that dealt with this rule change.
3 It was clearly identified in the discussion on the rule
4 change at the time, and there isn't that much of it, but
5 that the intent was that it should be VI and not IV.

6 That relates to the groundwater classification,
7 by the way. Groundwater classification of IV, or Roman
8 Numeral 4, is for industrial use. A groundwater
9 classification VI, or Class 6, is essentially unusable or
10 unsuitable groundwater. So a logical interpretation of
11 the regulation would obviously indicate, as supported by
12 the previous transcripts, that the intent is for the
13 management and disposal of waste and unusable or
14 unsuitable waters, as opposed to industrial waters.

15 And just for the board's information, the draft
16 statement of principal reasons that we will be presenting
17 before the council at its action based upon the board's
18 recommendation of the preceding Environmental Quality
19 Council seems to spell out fairly clearly what the
20 specific changes are to the regulation.

21 CHAIRMAN BEDESSEM: Administrator
22 Frederick, I want to say that the draft statement of
23 principal reasons has incredible level of detail with
24 respect to what is actually changed in the rule and that
25 it's much appreciated and very, very good. A lot of

1 times we see SOPRs that are extremely vague, and it's
2 difficult -- particularly in this case, it's harder to go
3 through the rule to see what all those revisions amount
4 to. And the SOPR really is a good summary of all the
5 changes that have occurred within the chapter to
6 accomplish that combining to reduce the rules. So, thank
7 you. It's a very excellent SOPR.

8 MR. FREDERICK: Thank you, Madam Chair.

9 CHAIRMAN BEDESSEM: Is there any more?

10 MR. FREDERICK: No. If it please the
11 board, we'll take questions.

12 MR. HANSON: I think you probably referred
13 to page 27 of 47. I see the juxtaposition of these two,
14 the IV and the VI. I just happened to see another one on
15 page 23.

16 CHAIRMAN BEDESSEM: Is this the red-line
17 strikeout?

18 MR. HANSON: Yeah. This version here.

19 CHAIRMAN BEDESSEM: We have both. We have
20 the clean and the red-line strikeout.

21 MR. HANSON: I'm looking at the red-line
22 one. The first one -- and I probably am correct. At
23 page 27 is this. IV is crossed out and VI is inserted.
24 That seems to be correct. I happened to see another one
25 on page -- what would it be? 23, page 23 of 27. There

1 is an IV crossed out, but then what is inserted is VII.

2 Is that, by any chance, a mistake, or is that correct?

3 MR. TILLMAN: I believe that is correct.

4 MR. HANSON: That's correct? Okay. I
5 just happened to see it. And since this reversal was
6 mentioned before --

7 MR. TILLMAN: Board Member Hanson, Madam
8 Chair, basically that was a reference, and we were
9 verifying -- when I combined the chapters, I went back
10 through and checked the references and made sure that
11 they referenced the correct sections. So that should be
12 correct.

13 MR. HANSON: Okay. I just happened to see
14 that was a Number 7, Roman Numeral 7, and I thought --

15 MS. CAHN: And, Klaus, if you look at the
16 clean version, you'll see that those numbers -- section
17 numbers are not in there. So that was just kind of a
18 record-keeping on the part of Mr. Tillman.

19 MR. HANSON: Okay. Thank you, Lorie.

20 CHAIRMAN BEDESSEM: Any other comments
21 from the board?

22 MS. CAHN: Is there public comment on
23 this?

24 MR. FREDERICK: Madam Chair, there were no
25 public comments received.

1 MS. CAHN: Madam Chair, is there anybody
2 there to make comments?

3 CHAIRMAN BEDESSEM: Is there anyone in the
4 audience today that would like to present testimony
5 regarding these rules?

6 (No response.)

7 CHAIRMAN BEDESSEM: Thank you, Lorie, for
8 pointing that out, but we are not seeing any public
9 comment today at the meeting in Casper.

10 MS. CAHN: I have some questions, but I'll
11 let other people on the board go ahead if they have
12 comments.

13 CHAIRMAN BEDESSEM: There are no comments
14 from the board members here, Lorie, so please proceed.

15 MS. CAHN: Mine are minor. I do have a
16 question just on page -- and I'm working off the clean
17 version, 27-3, line 20. I'd like the definition of
18 aquifer to include "sufficient quantities for a specific
19 use," but I'm wondering is it left vague on purpose to be
20 "sufficient," the word "sufficient," or is that something
21 that's through statute or you -- you care to define, or
22 you have to have it vague?

23 MR. FREDERICK: Madam Chair, I have a copy
24 of the Chapter 9, which, by the way, will be replaced by
25 Chapter 7. Chapter 9 will be reserved. Just for

1 historical purposes, Chapter 9, again, was a very early
2 chapter. I believe it was first promulgated in the early
3 '80s to allow for the regulation of underground injection
4 wells. It subsequently was essentially replaced in part
5 by Chapter 13 for Class 1 wells, Chapter 16 for the Class
6 5 wells. And then Land Quality Division, I believe it's
7 Chapter 10 for the Class 3 in situ uranium might be under
8 this.

9 The definition of aquifer in Chapter 9 -- and I
10 believe it's identical to the one in Chapter 8, but I
11 would have to confirm that -- is aquifer means a zone,
12 stratum or group of strata that can store and transmit
13 water in sufficient quantities for a specific use. I
14 believe that the definition in these early rules and
15 regulations, particularly Chapter 8 and 9 that deal with
16 groundwater and underground injection control, have been
17 carried over consistently in subsequent regulations in
18 Water Quality Division and perhaps in other divisions, as
19 well. So I believe it's consistent with how we're
20 defining aquifer now. Would be my recommendation we try
21 to stay as consistent as possible, recognizing that the
22 terminology is elsewhere within Water Quality Division
23 rules and regulations. If we change it in 27, we should
24 go back and change it in other rules where it exists.

25 MS. CAHN: Okay. Thank you for that

1 explanation. That's fine with me.

2 The next definition that I have is on
3 page 27-7, line -- and I'm always going to be working off
4 the clean copy. Lines 227 through 229, which is the
5 vadose zone. I'm wondering if we need something that
6 says except perched water, because it seems like perched
7 water would also be considered the vadose zone. It's
8 above the aquifer, and it contains water at saturated
9 conditions -- less than saturated conditions. So I'm
10 wondering if we could just at the end of that sentence
11 add in "except perched water."

12 MR. FREDERICK: Madam Chair, I'd like to
13 point out that we here have the same situation as I
14 described with aquifer a few minutes ago. I know that
15 "vadose zone" terminology is used here in Chapter 9 and
16 in Chapter 7. Although I haven't got a Chapter 8 in
17 front of me right now, but I'd feel pretty confident it's
18 identical in Chapter 8 and perhaps other rules and
19 regulations in the division, if not the Department.

20 MS. CAHN: Okay. Thank you. I accept
21 that. I did want to know on the definitions if we
22 shouldn't add in "administrator," that the administrator
23 being the head of the -- your division or department.

24 MR. TILLMAN: Madam Chair and Board Member
25 Cahn, I believe "administrator" is defined in statute.

1 And by I think the rules on rules, we're not to redefine
2 something that is already defined in statute.

3 MS. CAHN: Okay. That sounds good.

4 The rest of my comments I would say, at least
5 up through page 49, are editorial, so I'll work
6 separately. There's some typos and things like that.
7 But I do have something I would like to just bring up.
8 On page 27-49 on line 2244, when we're talking about the
9 operator, you used gender-specific terminology, "He
10 receives" and "He has described." And I would prefer to
11 see that language nongender-specific. So it could be
12 "The operator receives authorization" and "The operator
13 has described actions or procedures." That does not
14 change the content, but I think we should be
15 nongender-specific.

16 The same thing happens on page 27-50 on line
17 2311. Says, "The administrator may extend the period of
18 post-closure monitoring if he determines," and again, I
19 would like that to be nongender-specific. Someday we may
20 have a female administrator.

21 MR. TILLMAN: Just as a comment, Madam
22 Chair and Board Member Cahn, when I was combining these
23 chapters, I did not go into the grammar of either
24 chapter. I was simply combining them so that any of
25 those things that were carried forward were from previous

1 promulgations. But we'll take instruction from the board
2 as far as correcting those.

3 MR. APPLGATE: An example which
4 demonstrates our earlier discussion of why we all benefit
5 from Lorie's thorough review of the entire rule.

6 CHAIRMAN BEDESSEM: And especially when
7 they're not really substantive changes. They're not
8 something that you have to go back out for public comment
9 on but can be used to improve and update the rule.

10 MR. FREDERICK: Absolutely. We always
11 appreciate those comments from Ms. Cahn and the rest of
12 the board, as well.

13 MS. CAHN: The rest of my comments are all
14 editorial, so I can work with Gina specifically on those.
15 They will not change the context in any way.

16 MR. FREDERICK: Yes. If it please the
17 board, we'll coordinate with Ms. Cahn and make the
18 suggested revisions that she's going to be presenting to
19 us. If we see something that we think is more
20 substantial, which I have no reason that we will, we'll
21 certainly bring it back before the board.

22 MR. APPLGATE: So you would like us to
23 move this forward today to EQC? Is that correct?

24 MR. FREDERICK: Yes. Madam Chairman, it
25 would be our recommendation that the board approve the

1 proposed revisions to the regulation and move the rule
2 before the Environmental Quality Council for
3 consideration. Thank you.

4 MR. APPLGATE: Madam Chair, I make a
5 motion that we move this rule to the EQC following the
6 minor editorial changes that will be worked out between
7 Member Cahn and WDEQ.

8 CHAIRMAN BEDESSEM: Do I have a second?

9 MR. HANSON: Second.

10 CHAIRMAN BEDESSEM: Any further
11 discussion?

12 (No response.)

13 CHAIRMAN BEDESSEM: All in favor?

14 (All members vote aye.)

15 CHAIRMAN BEDESSEM: Any opposed?

16 (No response.)

17 CHAIRMAN BEDESSEM: Motion carries.

18 MR. FREDERICK: Thank you, Madam Chairman.

19 CHAIRMAN BEDESSEM: Are there any further
20 agenda items from the Water Quality Division?

21 MR. FREDERICK: I would like to briefly
22 mention that the Department of Environmental Quality is
23 in the process of modifying its website. Hopefully it's
24 going to be an improvement. Some of us -- most of us are
25 fairly excited about it, even though it will result in

1 more work for a little while, at least. But, Gina,
2 correct me if I'm wrong. I think -- is Air Quality
3 Division first and then Water Quality?

4 MS. JOHNSON: I think so.

5 MR. FREDERICK: I believe we're going to
6 have a new look and feel around the 1st of November, if
7 I'm not mistaken. So we'd certainly be interested in
8 hearing your comments and thoughts once you've had an
9 opportunity to take a look at it. But we're hopeful that
10 it's definitely going to be an improvement over what we
11 have now.

12 CHAIRMAN BEDESSEM: Fantastic.

13 Is the Water Quality Division expecting to move
14 any rules forward to our first-quarter meeting perhaps in
15 January?

16 MR. FREDERICK: Yeah. Madam Chairman,
17 members of the board, we're intending to have before the
18 board during that first-quarter meeting our financial
19 assurance requirements for Class 6 carbon sequestration
20 wells. That will be Chapter 24. It will essentially be
21 modification to the existing permitting, and so forth,
22 requirements in existing Chapter 24. So we intend to
23 have that ready to go before you first quarter.

24 CHAIRMAN BEDESSEM: Thank you. It's
25 always good for us to know what's upcoming.

1 Anything further from the board?

2 (No response.)

3 CHAIRMAN BEDESSEM: Then at four minutes
4 to 2:00, we will adjourn this meeting of the Water and
5 Waste Advisory Board. Thank you, everyone, and have a
6 good weekend.

7 (Hearing proceedings concluded
8 1:59 p.m., October 24, 2014.)

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C E R T I F I C A T E

I, RANDY A. HATLESTAD, a Registered Merit Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein constituting a full, true and correct transcript.

Dated this 6th day of November, 2014.


RANDY A. HATLESTAD
Registered Merit Reporter

