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WYOMING WATER AND WASTE ADVISORY BOARD

IN RE: SOLID AND HAZARDOUS WASTE DIVISION

TRANSCRIPT OF MEETING PROCEEDINGS

Pursuant to notice duly given to all parties in interest, this matter came on for meeting on the 21st day of June, 2018, at the hour of 9:09 a.m., at the University of Wyoming Biodiversity Institute, Berry Center Room, 10th Street and East Lewis Street, Laramie, Wyoming, before the Wyoming Water and Waste Advisory Board, Ms. Marjorie Bedessem, Chairwoman, presiding, with Ms. Lorie Cahn, Mr. Klaus Hanson, Mr. Alan Kirkbride, and Mr. Brian Deurloo in attendance.

1 ALSO IN ATTENDANCE (ALPHABETICAL ORDER):

2 Dale Anderson
3 Solid Waste Permitting & Corrective Action Program,
4 District 3 Supervisor

5 Lily Barkau
6 Groundwater Section Manager, Water Quality Division

7 Jerry Breed
8 Hazardous Waste Voluntary Remediation Program Manager

9 Bob Breuer (via videoconference)
10 Solid and Hazardous Waste Inspection and Enforcement
11 Program Manager

12 Matt Buchholz (via videoconference)
13 Hazardous Waste Senior Project Manager

14 Suzanne English
15 Program Manager For the Solid Waste Program

16 Mr. Luke Esch
17 Solid and Hazardous Waste Administrator

18 Kevin Frederick
19 Water Quality Division Administrator

20 James LaRock (via videoconference)
21 Attorney General's Office

22 Lindsay Patterson
23 Supervisor For the Water Quality Standards Program

24 John Robitaille
25 Petroleum Association of Wyoming

Carol Stark
Hazardous Waste Voluntary Remediation Project Manager

Gina Thompson
Water Quality Division, Policy and Planning Analyst,

David Waterstreet
Watershed Protection Section Manager

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

2 (Meeting proceedings commenced at 9:09 a.m.,
3 Thursday, June 21, 2018.)

4 CHAIRWOMAN BEDESSEM: We'll call to order the
5 second quarter Water and Waste Advisory Board meeting.

6 First, I'd like to introduce the Water and
7 Waste Advisory Board members. I'm Marj Bedessem,
8 representing the public at large.

9 BOARD MEMBER DEURLOO: I'm Brian Deurloo,
10 representing industry.

11 BOARD MEMBER KIRKBRIDE: Alan Kirkbride,
12 representing agriculture.

13 BOARD MEMBER CAHN: Lorie Cahn, representing the
14 public at large.

15 BOARD MEMBER HANSON: Klaus Hanson, elected
16 official representing municipalities and communities.

17 CHAIRWOMAN BEDESSEM: Okay. And we have a revised
18 agenda for this morning, and the first item on the
19 agenda is the Water Quality Division Rulemaking
20 Briefing, Chapter 1, Wyoming Surface Water Quality
21 Standards, Triennial Review.

22 MS. PATTERSON: Thank you. Good to see everybody
23 this morning. I'm Lindsay Patterson. I'm the
24 supervisor for the Water Quality Standards Program. So
25 I'm responsible for developing and adopting Wyoming's

1 Anything else? Thank you very much.

2 MS. PATTERSON: Yeah.

3 CHAIRWOMAN BEDESSEM: We appreciate the update.

4 So the next item on the agenda is Water
5 Quality Division Rules and Regulations, Chapter 27,
6 Underground Injection Control Program.

7 MS. BARKAU: Are we all set?

8 Hello, my name is Lily Barkau. I am the
9 Groundwater Section Manager of the Water Quality
10 Division.

11 I oversee the groundwater protection control,
12 pollution control program, federal facilities, special
13 projects related to groundwater contamination or other
14 potential issues for groundwater in the state and the
15 underground injection control program, which brings us
16 here today to present our rule changes to Chapter 27
17 for financial assurance of underground injection
18 control wells, specifically, Class 5 coal bed methane
19 wells and adding text for Class 1 non-hazardous and
20 hazardous waste wells.

21 So just an overview of the financial
22 assurance needs, there are currently 980 wells that are
23 classified coal bed methane wells in the state that
24 have been authorized by permit. 491 of those wells
25 have been constructed, where 318 of those wells are

1 covered under the Oil and Gas Conservation Commission
2 plug and abandonment program, which leaves 173 wells
3 not covered by OGCC or the DEQ.

4 We estimate that 75 are currently operating,
5 and the cost to close and reclaim those would be
6 approximately \$1.1 million.

7 At the moment, there are approximately
8 98 orphans which are considered no viable operator
9 identified. So the estimated cost to close those and
10 reclaim those is \$1.47 million.

11 So since 2014, the DEQ Water Quality Division
12 has worked to address the burden of closure,
13 post-closure, plugging and abandonment and reclamation
14 of CBM empanelments (phonetic) and wells that were
15 orphaned due to declining revenues.

16 In order to prevent the state from bearing
17 the burden of future reclamation and decommissioning
18 costs in the case of operator default, the Wyoming
19 legislature enacted Enrolled Act No. 2 or SEA002 in
20 2018.

21 That act directs the Division to revise
22 Chapter 27 to include financial responsibility
23 requirements of the UIC Class 5 coal bed methane
24 produced water injection facilities that are permitted,
25 renewed, and/or transferred after July 1, 2018.

1 SEA002 also clarifies the existing financial
2 responsibility requirements of UIC Class 1 hazardous
3 and non-hazardous well facilities. The financial
4 assurance requirement proposed by the Division and
5 authorized by SEA002 exceed the federal requirements at
6 40CFR Part 144.

7 So our time line to bring this rule forward,
8 DEQ met with the Joint Minerals Committee on June 30th
9 of 2017 in Casper and briefed the committee and offered
10 recommended statutory language for the DEQ to proceed
11 with a rule to require financial assurance on existing
12 and future Class 5C5 injection wells.

13 DEQ then briefed PAW on this issue on
14 August 15th of 2017 and which led us to the Wyoming
15 legislature enacted Enrolled Act No. 2 in 2018, which
16 establishes the applicability to permits issued,
17 renewed, or transferred after July 1, 2018; directed
18 DEQ to initiate rulemaking before July 1, 2018; and
19 makes this act effective July 1, 2018.

20 And that brings us here today to present our
21 modified -- or modifications to Chapter 27, Section 19.
22 I will turn it over to Gina Thompson to discuss those
23 particular changes.

24 We hope to do this in two different steps.
25 Discussing the changes that were provided to you and

1 that went through public notice, at which time during
2 the public notice period, we felt that there were some
3 clarifications that were needed in the rule.

4 So we'll discuss those as a second step after
5 we've discussed the public notice portion and any
6 questions you may have.

7 CHAIRWOMAN BEDESSEM: Thank you.

8 BOARD MEMBER HANSON: I do have a question. I
9 read the act here, and what occurred to me under
10 35-11-302, it says, "Administrator's authority to
11 recommend standards." Is that the common language
12 because I thought it would be "required certain
13 standards"?

14 And I was surprised because "recommend" was
15 kind of wishy-washy, you know. It says "recommend,"
16 and they can say, "Okay. Fly a kite."

17 And so how does this work?

18 MS. THOMPSON: Madam Chairwoman, Mr. Hanson --
19 Dr. Hanson.

20 BOARD MEMBER HANSON: That's fine. Dispense with
21 the doctor.

22 MR. FREDERICK: Kevin Frederick, Water Quality
23 Administrator.

24 Dr. Hanson, to the question, I believe the
25 language recognizes that there is a process for rule

1 development that has to be --

2 BOARD MEMBER CAHN: Excuse me. Can you speak up?
3 Sorry.

4 MR. FREDERICK: Sure. There's a process for rule
5 development such as taking a proposed rule before this
6 advisory board, moving it through the Environment
7 Quality Council, the AG's office, and finally signed
8 off by the governor.

9 So this case, I think it recognizes that our
10 role here with the agency is to essentially recommend
11 these rules and regulations for final adoption.

12 BOARD MEMBER HANSON: Okay. That makes some
13 sense. Thank you.

14 MS. THOMPSON: All right. Gina Thompson with the
15 Water Quality Division.

16 If you would all turn to the strike and
17 underlined copy in your packages, all of the proposed
18 changes that we're recommending today are in
19 Section 19.

20 So the copy that we sent to you in May and a
21 copy that was out for notice in May, we have added a
22 new paragraph at paragraph A to kind of identify the
23 applicability and to cross-reference that new bit of
24 the statute which authorizes us to do rulemaking for
25 Class 5 coal bed methane produced water injection

1 facilities.

2 With that, then we made some adjustments. We
3 moved the old paragraph A down to paragraph B. We
4 added the Class 5 coal bed methane produced water
5 injections facilities. And then in the list of
6 activities that they needed to demonstrate financial
7 assurance, we added reclamation and did some small
8 formatting updates.

9 We added new language at paragraph C. We
10 wanted -- in addition to just putting in the classified
11 facilities as part of this section, we also wanted to
12 expand and clarify what we were expecting as far as
13 financial assurance and what kind of activities needed
14 to be covered in those estimates.

15 When we -- if we move on to paragraph D, we
16 also added some language as to what kind of estimate
17 information they would need to keep at their facility.

18 We renumbered paragraph E, renumbered
19 paragraph F, and cleaned up a verb issue there.

20 And then we have a list of instruments at
21 paragraph G, and I'd like to point out that the
22 instruments we've listed for qualifying for financial
23 assurance, these are consistent with other instruments
24 of financial assurance that the agency uses. So we
25 used a list from our Industrial Siting Division.

1 Paragraph H, we cleaned up the language a
2 little bit there and fixed a formatting issue. And
3 then we corrected the reference to the CFR at
4 paragraph I. So those are the changes that we did that
5 we sent out for notice.

6 And as Lily explained, when we were preparing
7 to come before you today, we were -- we went through
8 the section again and identified some areas that we
9 thought we could do a little bit better.

10 And so we'd like to present -- we've brought
11 copies for you to look at and to hand out to any
12 members of the public that would like to review them,
13 but we think that we could do some pieces a little bit
14 better to be even more clear than the version that we
15 sent out for notice. So we'd like to potentially
16 discuss tweaking this a little from what we had sent
17 out for notice in May.

18 So if you don't mind, I'll go ahead and pass
19 out a copy that kind of demonstrates -- two copies, if
20 you'll hold for just a moment.

21 BOARD MEMBER HANSON: That supersedes the version
22 that we see?

23 MS. THOMPSON: Yeah.

24 BOARD MEMBER HANSON: Okay.

25 MS. THOMPSON: That's what we --

1 BOARD MEMBER HANSON: Yeah.

2 MS. THOMPSON: -- compare, but that would be the
3 strike.

4 BOARD MEMBER HANSON: Okay.

5 BOARD MEMBER DEURLOO: Remind me here. This one
6 here is the one we should be looking at? I was reading
7 while you were talking.

8 MS. THOMPSON: That's okay.

9 CHAIRWOMAN BEDESSEM: Explain the difference
10 between the two sets.

11 MS. THOMPSON: So we have two sets. We have one
12 which would be pure strike-and-underline. So what I'll
13 reference is the one that says "green" at the top, and
14 it's going to compare the two strike-and-underline
15 copies together so you could see how we are proposing
16 to be different from what we sent you in May.

17 In the past, the Board had found it helpful,
18 when we are giving you multiple versions of the same
19 chapter, to show what we had changed since the last
20 time we gave you something.

21 BOARD MEMBER DEURLOO: Oh, right. Yeah, okay.

22 BOARD MEMBER CAHN: I'm sorry. I'm confused.

23 So the difference between what was put out
24 for public comment and given -- put in our board packet
25 is different from the red version here?

1 MS. THOMPSON: Correct. So we have considered
2 some additional changes that we would like to make.
3 And so the changes that we'd like to propose from our
4 May draft, we've compared them to the -- we've compared
5 our June -- so our comments today to the May draft, and
6 that's in the green version so you could see how is it
7 different from what we sent you in May.

8 Do you have a green one?

9 BOARD MEMBER CAHN: I do. I'm still --

10 BOARD MEMBER HANSON: So -- I'm sorry.

11 BOARD MEMBER CAHN: I'm still confused because
12 mine starts out, the one we had, with "A. This section
13 applies to all Class 1 and Class 5." And I don't see
14 that anywhere in either the green or the --

15 MS. THOMPSON: Right. And I can explain. It's
16 because we moved the paragraph.

17 BOARD MEMBER CAHN: Okay.

18 MS. THOMPSON: So the layout is a little bit
19 different. We didn't cut the paragraph. We just moved
20 it to a different place.

21 BOARD MEMBER DEURLOO: Lorie, what she did is she
22 explained the moves and the changes before she handed
23 it out. So we -- so you moved paragraph A around, and
24 you -- maybe if you want to do a really quick overview
25 of how you did that again.

1 MS. THOMPSON: Yes.

2 CHAIRWOMAN BEDESSEM: I think it's paragraph A had
3 been in the original document and not an addition, it
4 would have shown up here. But because it was an
5 addition and it was moved, then it just shows up later.

6 MS. THOMPSON: So I made a list of the things
7 that -- so if it pleases the Board, I'll go through
8 what I've given you here so hopefully it will alleviate
9 your confusion, if that's helpful.

10 BOARD MEMBER CAHN: So just another question.

11 MS. THOMPSON: Yes, ma'am.

12 BOARD MEMBER CAHN: So all -- there's no
13 substantive changes between these? This is just to
14 clarify -- am I correct in saying this is to clarify
15 the language rather than to make a substantive change?

16 MS. THOMPSON: We believe so, but we will leave
17 that up to the Board's discretion, and we can discuss
18 that as soon as we're done going through the actual
19 individual changes.

20 MR. FREDERICK: Madam Chair, Kevin Frederick.

21 Perhaps what might be considered a
22 substantive change would be clarifying the effective
23 date or requiring financial assurance. That was one
24 thing that occurred to us after the proposed revision
25 had already been sent to the board and out for public

1 comment.

2 On review, it occurred to us that it wasn't
3 clear when the financial requirements would essentially
4 kick in. So that was perhaps the most significant
5 change that we'll review with you here.

6 Other than that, it's essentially been
7 revised to recognize a couple of things. One being
8 that we've always required financial assurance on
9 Class 1 wells according to this regulation.

10 We have approximately 50 to 60 Class 1
11 non-hazardous injection wells statewide now. Many of
12 those are for oil field waste disposal. Many of those
13 are associated with in situ uranium mining operations
14 where they essentially dispose of the process
15 wastewater.

16 Many are industrial waste disposal wells such
17 as the Diamond & Bell (phonetic) facility in Casper or
18 Cheyenne as an example.

19 The recognition is that we have many of these
20 already under existing permits, and the permits have a
21 duration of ten years, at which time they can be
22 renewed and normally are.

23 So we wanted to make it clear, more clear
24 that, given what the statute required us to do was to
25 look forward from July 1st of this year on at newly

1 permitted facilities and it really didn't speak to
2 facilities that were already under permit unless they
3 were renewed or transferred after July 1st.

4 So we wanted to make sure that our
5 regulations continued to recognize that, for Class 1
6 wells that were already permitted before July 1st of
7 this year, that the financial assurance requirement
8 remained in place under that existing permit. Even
9 though it wouldn't be renewed or transferred, it would
10 still be in effect. So that was one realization that
11 we had after the original rule had gone out.

12 And the same requirements applied to the
13 Class 5 coal bed methane produced water injection
14 wells. We have many of those under permit already, and
15 the statute essentially dealt with those the same way
16 it does with the Class 1 wells. In other words, after
17 July 1st for new permits, renewals, or transfers,
18 financial assurance is required.

19 So we wanted to recognize in the regulation
20 an effective date for financial assurance for these
21 Class 5 wells also when it kicks in. So those were the
22 two significant changes that were made.

23 BOARD MEMBER KIRKBRIDE: Excuse me. It seems to
24 me that how has this been overlooked?

25 MR. FREDERICK: Madam Chair.

1 BOARD MEMBER KIRKBRIDE: I'm talking about
2 financial assurance on such wells.

3 MR. FREDERICK: Sure. The Wyoming DEQ rules and
4 regulations, when they're adopted for the purpose of
5 obtaining primacy or being delegated a program from EPA
6 as a federal program under the Safe Drinking Water Act,
7 normally, during that process of rule development that
8 we have to provide to EPA for approval in order to be
9 delegated the authority to implement the program --

10 BOARD MEMBER KIRKBRIDE: Uh-huh.

11 MR. FREDERICK: -- our rules and regulations or
12 draft rules and regulations that we put together pretty
13 much mirror the federal requirements.

14 For Class 5 wells in particular, there are no
15 financial assurance requirements in the federal rules.
16 The subset of Class 5 wells, 5C5 are coal bed methane
17 produced water injection wells aren't even recognized
18 in the federal regulations as a Class 5 facility
19 because the federal regulations were developed before
20 the concept of recognizing coal bed methane produced
21 water injection wells that inject into an underground
22 source of drinking water.

23 I'm not going to go into a lot of detail.
24 But that's part of the requirement of a Class 5 well is
25 that it injects into an underground source of drinking

1 water.

2 They weren't even recognized at the time. So
3 the State of Wyoming had to modify its program to pull
4 those in under Class 5 permitting requirements, which
5 is what we did.

6 We certainly didn't, I think, at the time,
7 foresee the demise of the CBM industry in the Powder
8 River Basin that caused a lot of operators to go into
9 default and essentially orphan many of the produced
10 water injection wells that they were using. We simply
11 couldn't foresee that.

12 So this, I think unfortunately, is what
13 brought us to this point now to where, as a Lily
14 mentioned in her presentation, we're actually going to
15 be a little bit more stringent than the federal rules
16 because the legislature has directed us to develop
17 rules moving forward to require financial assurance on
18 these.

19 BOARD MEMBER KIRKBRIDE: Well, Kevin, not to
20 belabor this very long, but it seems like to me if they
21 have some liability to do things right that, you know,
22 that obviously they've got -- somehow they've got to be
23 held accountable. And guys vanish, companies vanish
24 that are abdicating their responsibility.

25 So anyway, just kind of I'm glad we're

1 getting it tightened up. It obviously needs to be.

2 MR. FREDERICK: Sure. Thank you.

3 MS. THOMPSON: Okay.

4 BOARD MEMBER HANSON: Oh, me next?

5 Now that you've taken out paragraph A because
6 that had listed Class 1 and Class 5 together and you've
7 bracketed them out and from what I understand for
8 Class 1, you're continuing what was there before, and
9 so my suggestion would be to make this clear because
10 now I'm beginning to faintly understand this.

11 In this first paragraph, the operator or the
12 now permittee of any Class 1 well shall -- and I would
13 suggest to add words like "continue to demonstrate"
14 because that's been there before.

15 And then that makes it clear that, in the
16 paragraph of the Class 5 well, you add something new.
17 That wasn't clear to me at all what you're changing
18 there.

19 MS. THOMPSON: Okay.

20 BOARD MEMBER HANSON: So that would be my
21 suggestion to add something, for one, because it's
22 not -- you're not doing anything new. That's
23 continuing what was there before. So just a suggestion
24 to clarify that.

25 MS. THOMPSON: If I might, Madam Chair?

1 CHAIRWOMAN BEDESSEM: Please.

2 MS. THOMPSON: So I'll go through what we did, and
3 that might clear up some of the confusion you're
4 having. I understand when you get a new draft at the
5 last minute that it can be a little confusing, and the
6 strike-and-underline with comparing the two can be
7 confusing.

8 So when we look at subsection A --

9 BOARD MEMBER CAHN: Before you start, can you tell
10 me again the final language you're proposing to the
11 board. Is it the blue and red, not the green?

12 MS. THOMPSON: So the final language is in the
13 strike-underlined draft 6/14/18. The green is a
14 reference that was intended to be helpful.

15 CHAIRWOMAN BEDESSEM: Shows the difference between
16 the first proposal and your second proposal.

17 BOARD MEMBER HANSON: This is the one --

18 BOARD MEMBER CAHN: Okay.

19 BOARD MEMBER HANSON: No, this is the one.

20 CHAIRWOMAN BEDESSEM: This is the final --

21 BOARD MEMBER CAHN: The red and blue --

22 BOARD MEMBER KIRKBRIDE: Thank you.

23 BOARD MEMBER HANSON: Red and blue --

24 BOARD MEMBER CAHN: -- without the green, okay.

25 BOARD MEMBER HANSON: I looked at them wrong.

1 MS. THOMPSON: This is the one.

2 BOARD MEMBER HANSON: Okay.

3 CHAIRWOMAN BEDESSEM: Right.

4 MS. THOMPSON: All right.

5 CHAIRWOMAN BEDESSEM: Go ahead.

6 MS. THOMPSON: So what we've done is we've gone
7 back to Section A, and we restored a number of the
8 changes that we had initially proposed to you.

9 And we took out the classified piece because,
10 as Kevin mentioned, we did want to make it clear that
11 the Class 1 facility did need to continue to maintain
12 financial assurance and that the existing Class 1s
13 would -- wouldn't be held to some different standard.
14 They're a continuation of what they're held to now.

15 And the changes to the term "operator" to
16 "permittee," we noticed throughout the section that we
17 were using both.

18 And so we felt that since -- we evaluated it,
19 and we chose "permittee." We felt like that was the
20 clearest because there can be some differences between
21 who operates a facility and who, you know, is handling
22 the permitting for the facility. So we wanted to make
23 sure that we were holding the right individual or the
24 right entity accountable.

25 So with that being said, we cut the last

1 passage in that subsection because it was redundant
2 through a list of materials or the list of qualifying
3 instruments that we expanded later on in the section.
4 And we were trying to -- we were being cognitive of
5 duplication and consistency.

6 So we cut those so that we could keep our
7 list later on and make sure that that was complete and
8 it's the most up-to-date list of qualifying
9 instruments.

10 Then if we move to paragraph B, this is where
11 we put the change in to give our permittees a deadline
12 of when we want to have that financial assurance
13 submitted to us.

14 So in the previous version, we didn't outline
15 when they needed to put -- when they needed to submit
16 it. And we felt that could potentially be a problem
17 and potentially be confusing for permittees since this
18 is for the Class 5 facilities that will be coming
19 onboard as they renew and transfer and apply for new
20 permits.

21 We wanted to make sure that they understood
22 that, going forward, if they have a new facility, we
23 want that financial assurance in place at least 30 days
24 prior to drilling. And for permit renewals and permit
25 transfers, we would like that demonstration made before

1 we authorize those.

2 So we will not -- we would propose to not
3 authorize any permit transfer or permit renewal until
4 the financial assurance is demonstrated for the
5 facilities that are covered under this section.

6 MR. FREDERICK: Madam Chair, I would like to point
7 out too -- and I'm looking at the strikeout,
8 redline-blue strikeout version of what we're proposing
9 the final would look like.

10 BOARD MEMBER CAHN: The green strikeout or the
11 red --

12 MR. FREDERICK: No. (Inaudible.) (Several speaking
13 simultaneously.)

14 CHAIRWOMAN BEDESSEM: Yeah.

15 MR. FREDERICK: Then on line 2352, clarify an
16 effective date to actually implement the requirements
17 that we're talking about for financial assurance.

18 And in conversations that we had with the
19 Attorney General's Office, they felt that we had the
20 opportunity to either require the effective date to be
21 July 1st of this year or the effective date of the
22 regulation when it's actually promulgated. So we had
23 an opportunity to go either way.

24 From our conversations, we feel that it's
25 much more clear to tie the effective date to the

1 effective date of the regulation and that the small
2 subset of Class 1 or Class 5 facilities that may be
3 permitted or renewed or transferred between July 1st
4 and what we anticipate the effective date of this rule
5 to be, which will hopefully be around January 1st.

6 So we have a window of essentially six months
7 that we're looking at. But that subset of new
8 permittees or transfers or renewals is going to be
9 very, very small. We can deal with that
10 administratively when those permits, if there are any,
11 do come up for transfer. We're not concerned about
12 that.

13 CHAIRWOMAN BEDESSEM: So I have a question. So
14 is --

15 BOARD MEMBER DEURLOO: I have several questions
16 through it. Are you going to -- are we going to go
17 through this line by line like we sometimes do? Or is
18 this overall on the questions?

19 CHAIRWOMAN BEDESSEM: Let me ask this one question
20 because it's related to what Kevin just spoke about.

21 BOARD MEMBER DEURLOO: My apologies. Thank you.

22 CHAIRWOMAN BEDESSEM: In little Subsection I at
23 the very end of Section 19, line 2412, that little
24 section has it in effect as of July 1st. Is that
25 referring to when the 40CFR rule was in effect?

1 MS. THOMPSON: Yes, ma'am.

2 CHAIRWOMAN BEDESSEM: Okay.

3 MS. THOMPSON: Our attorney general noticed that
4 we didn't have an effective date tied to our
5 cross-reference to the CFR, which can be problematic if
6 it's been revised a number of times.

7 So we put July 1st because it's a current
8 date. And so if they revise that CFR after July 1st,
9 then we will need to review that and evaluate whether
10 or not we need to adjust the date.

11 We're not allowed to incorporate or reference
12 materials in the future, which is why they made us put
13 a firm date in there. So the CFR that is in effect as
14 of July 1st, which will be in the past once this rule
15 is signed into effect --

16 CHAIRWOMAN BEDESSEM: So that's a date you just
17 picked --

18 MS. THOMPSON: Yes.

19 CHAIRWOMAN BEDESSEM: -- because, you know, this
20 rule won't get promulgated until after that. But it's
21 not the date that that section of the CFR was last
22 revised.

23 MS. THOMPSON: No. They generally revise them in
24 July, but we want everything that's in effect in
25 144 Subpart F in effect as of July 1st. That's what

1 the operator can look for as they're reviewing the
2 financial assurance requirements.

3 BOARD MEMBER CAHN: I think the confusing part is
4 having a comma after Subpart F because then it's not
5 clear it's in effect as of July 1st whether it's
6 requirements of the section or it's the CFR.

7 So I think if the comma was removed, then it
8 would be clear we're talking about CFR --

9 CHAIRWOMAN BEDESSEM: I think that would be
10 helpful.

11 BOARD MEMBER CAHN: -- Subpart F in effect as --
12 or, comma, "which were in effect" --

13 CHAIRWOMAN BEDESSEM: Because that --

14 BOARD MEMBER CAHN: -- which would be the right --

15 MS. THOMPSON: Sure.

16 CHAIRWOMAN BEDESSEM: -- because that lifts the
17 confusion about whether anything in your Subsection I
18 is -- excuse me -- CI, double I, which talks about --
19 oh, no. Excuse me -- B-I that talks about the
20 different days of when it goes into effect and "no
21 later than such" and make sure that that didn't
22 conflict with this but it actually isn't related to
23 that. It's just a reference related to the 40CFR. So
24 take the comma out would help me. So thank you.

25 MS. THOMPSON: So the additional changes made

1 throughout this section, the only other thing we
2 changed was to change "operator" to "permittee." So
3 everything, all of the other wordings were the same in
4 Subsection C through --

5 CHAIRWOMAN BEDESSEM: (Inaudible.)

6 MS. THOMPSON: Yes, ma'am.

7 CHAIRWOMAN BEDESSEM: So I have an additional
8 question for a word to me that does look different.

9 MS. THOMPSON: Okay.

10 CHAIRWOMAN BEDESSEM: So in Section 19A, looking
11 at the green copy, we have the word "reclaim" crossed
12 out. So what happened with the "reclaim" part?

13 MS. THOMPSON: What we did was we restored a
14 number of proposed changes in that section because
15 we're going to talk later, or we do talk later in
16 paragraph in Subsection C that starts on 2366 --

17 CHAIRWOMAN BEDESSEM: Of the green?

18 MS. THOMPSON: Of the green or of the -- either
19 one. Subsection C talks about the activities that
20 they're expected to provide financial assurance for.
21 So we were just trying to keep it as tidy as possible,
22 and we covered reclamation later on in the section.

23 CHAIRWOMAN BEDESSEM: So the only thing I'm
24 concerned about is did you feel like Subsection C, when
25 it says "post-closure care," I'm concerned it talks

1 about removing the physical materials, plugging and
2 abandonment. But, you know, if you are going to
3 restore the ground surface and reclaim and seed it,
4 make sure that it's not a scar on the landscape, what
5 words here tell me that that's going to happen?

6 MR. FREDERICK: Madam Chair, I understand what
7 you're saying there. I think you're looking for
8 consistency between what we're saying in paragraph A
9 and paragraph C.

10 CHAIRWOMAN BEDESSEM: Yes, thank you.

11 MR. FREDERICK: And I certainly see some value in
12 that, and we could simply reference to that particular
13 section.

14 CHAIRWOMAN BEDESSEM: Do you think -- you're
15 saying -- I mean, reference to Section C in Section A?
16 I guess I just didn't see what the harm was with
17 leaving "reclaim" in there if there was any concern
18 about making sure, you know, that because I said that
19 things were maintained, that it was seeded and that the
20 ground surface was reclaimed. I just wasn't sure where
21 it specifically said that if we did not have "reclaim"
22 in there.

23 MR. FREDERICK: Madam Chair, we can certainly add
24 that.

25 MS. THOMPSON: Or un-restore it. There's many

1 layers of change here, but we will put it in the
2 proposed chapter as we move forward.

3 MR. FREDERICK: That was a proposed addition.

4 MS. THOMPSON: And then we un-proposed it.

5 CHAIRWOMAN BEDESSEM: Yeah, we proposed it, and
6 then un-proposed it. But I think you proposed it
7 originally to make sure it covered what they were
8 trying to cover in this statute.

9 And so I wasn't sure that all -- even though
10 it's more detailed language that it actually covered
11 all aspects of reclamation of a well pad, for example.

12 So my next question is do we go through these
13 lines, or should we just go through each board member
14 with their questions? How would you prefer to handle
15 it?

16 MS. THOMPSON: Let's go through the board members'
17 questions since we've covered the changes, we've
18 discovered additional changes. Like I said, the only
19 additional changes we made were we changed "operator"
20 to "permittee," and then I noticed on Subsection G on
21 line 2393 that we were -- we wanted to make sure that
22 we're consistently calling out these facility types.

23 So we have Class 1 hazardous waste or
24 non-hazardous waste underground injection facility.
25 Because sometimes we will abbreviate, and we wanted to

1 make sure that everyone knew that they were covered
2 every time that we were intending to cover them. So
3 that's the extent of our changes.

4 CHAIRWOMAN BEDESSEM: So I did want to comment
5 that, when I reviewed the original proposal, I was
6 concerned about when Class 1 and Class 5 descriptions
7 were put together in the same sentences, I had marks
8 all those over these because there were issues with the
9 grammar where I wasn't sure if Class 1 and Class 5 was
10 a modifier for coal bed methane produced water. You
11 know, it was hard to make sure that it was
12 understandable when there was an "and" or when there
13 was an "or" and so forth.

14 So I like it that you've separated them out
15 for understanding. I think it's a lot better in this
16 second version.

17 The one other question I had was this wasn't
18 e-mailed to the board members, was it?

19 MS. THOMPSON: This was not e-mailed to you. We
20 were still working on it as of yesterday, Madam Chair.

21 CHAIRWOMAN BEDESSEM: Okay. I just wasn't sure
22 since it has the 6/14 date on it.

23 BOARD MEMBER CAHN: To clarify, you're now
24 proposing to put "reclaim" back in paragraph A?

25 MS. THOMPSON: That's correct.

1 CHAIRWOMAN BEDESSEM: Okay. So pertinent
2 comments, then we'll just go around to the board
3 members, and everyone can go through and ask their
4 specific questions.

5 So we'll start with Mr. Deurloo.

6 BOARD MEMBER DEURLOO: Thank you, Chairwoman
7 Bedessem.

8 I had the same point as you about "restore"
9 and "reclaim" because I remember having that comment.
10 I know from experience that they're two entirely
11 different words, I think, sometimes -- exactly the same
12 but only different. "Restore" and "reclaim" mean
13 different things in the DEQ's and in EPA's eyes;
14 correct?

15 MS. THOMPSON: So let me clarify what I meant by
16 "restore." So from an administrative perspective, I
17 had crossed that out. So what I meant by "restore" was
18 I will uncross that out. We will include that word of
19 "reclaim" in our proposal so --

20 BOARD MEMBER DEURLOO: I understand that. But so
21 there's certain regulations that I've seen before, and
22 there's language in -- and not necessarily in this one
23 but the words "reclaim" and "restore" mean two
24 different things sometimes; right?

25 "Reclaim" is I think where is you get it back

1 to a certain percentage of seed cover or grass cover,
2 and "restore" is where it needs to look almost exactly
3 like it did before you got there maybe.

4 But I think it would be valuable to add the
5 word "reclaim" in there. So I agree with your
6 sentiments, Chairwoman.

7 And I'm looking at sheet, the green, it's
8 called the "Strike Underline Draft 6/14/18." And then
9 I go down to -- let's see -- yeah, so to your point,
10 Chairwoman Bedessem, again not to belabor the point or
11 anything like that where we're talking about
12 reclaiming, because I hear that you want to put it in
13 Section 19C, starts on line 2363. So you're going to
14 put it on there.

15 Because what I see right there that you're
16 talking about is only the removal of infrastructure.
17 All we're talking about is cost of plugging and
18 abandonment, removal of infrastructure not including
19 pipe, tanks, buildings, empanelments, (unintelligible),
20 fencing, and so forth. Nowhere does it say to reclaim.
21 So with that, I'll leave it at that.

22 Down to line 2369 Romanette "ici," it reads:
23 "The permittee shall adjust the cost estimate
24 for inflation within 30 days after each
25 anniversary at the date on which the first

1 cost estimate was prepared."

2 I feel it can -- it may be too often I've had
3 to do cost estimates for a structure that I put in, and
4 then it seems like nine months later I have to start
5 the cost estimate again.

6 I know we've talked about this as a board
7 before, but then you go out to your fencing contractor
8 and plugging contractor, all these people, and you have
9 to make them go through and do a bunch of free work for
10 you just to get a cost estimate that you can give to
11 the DEQ.

12 Now, I think now we absolutely have to update
13 the cost estimates within a time frame. I would put it
14 back to Mr. Frederick or your team, saying, "What is a
15 reasonable time frame? Is it two, three years? Or is
16 it -- will be maybe put a maximum limit on there."

17 But I just feel, as an industry
18 representative, it's a little bit onerous on the
19 company and especially the three -- because you require
20 three bids -- correct? -- for each, like if you're
21 going remove the fence? Mr. Frederick, if you're going
22 to move the fence, do you need three bids to remove
23 that fence?

24 MR. FREDERICK: Normally, an engineering, one
25 engineering cost estimate is sufficient. We do on

1 occasion receive cost estimates that we feel need some
2 additional confirmations with a second or third
3 estimate.

4 BOARD MEMBER DEURLOO: Uh-huh, I understand.

5 So I would just ask that we consider
6 stretching that time line out just a -- I never saw
7 things changing within a year except for when like
8 2014-15 when things were hitting the tank, and all of a
9 sudden people were leaving the state and leaving wells
10 behind and everything like that.

11 And it's always nice to know that you have a
12 good estimate for the last 12 months. Maybe it's 18;
13 maybe it's 24 or something like that.

14 And definitely during -- I don't see a
15 reference to -- and maybe this is already covered under
16 different rules that you have or the CFR, but that
17 maybe the cost estimate is updated before a transfer of
18 ownership or renewal or something like that?

19 So if you stretch out the time line a little
20 bit and then -- but then you know they're going to sell
21 it. So between transfer from company A to company B,
22 you have to update your cost estimate so this new
23 company is comfortable with the cost estimates and the
24 reclamation amounts and so forth like that.

25 MR. FREDERICK: Madam Chair, Mr. Deurloo, when a

1 permit is transferred, the transfer is not authorized
2 until the new owner has financial assurance in place.

3 BOARD MEMBER DEURLOO: Oh.

4 MR. FREDERICK: I think, since we're recognizing
5 here that the financial assurance estimate is updated
6 every year, that during the permit transfer, I wouldn't
7 expect to see a drastic change that would require
8 another financial estimate.

9 BOARD MEMBER DEURLOO: Madam Chair, Mr. Frederick,
10 can that company B use company A's cost estimate? Or
11 do they have to go get their own?

12 MR. FREDERICK: Madam Chair, Mr. Deurloo, normally
13 the transfer requires that an equivalent amount that's
14 held by the seller be provided for financial assurance
15 by the new owner.

16 BOARD MEMBER DEURLOO: So they can use the old
17 cost or the dated one within the last year?

18 MR. FREDERICK: Yeah.

19 BOARD MEMBER DEURLOO: Okay. What do you think
20 about stretching that time line out, Mr. Frederick?

21 MR. FREDERICK: I have no problem with that.

22 BOARD MEMBER DEURLOO: What time line do you think
23 would be appropriate?

24 MR. FREDERICK: I don't believe that we have a
25 time line in other regulations. Water Quality Division

1 requires financial assurance on commercial oil field
2 waste disposal facilities under a separate set of rules
3 and regulations, Chapter 14.

4 I would like to see if there's a stipulated
5 deadline for doing the annual update in that regulation
6 just for the sake of consistency. If there is, then I
7 would suggest we recognize the same time frame in this
8 rule. I could check that fairly quickly.

9 BOARD MEMBER DEURLOO: Thank you. You said that's
10 Chapter 14?

11 MR. FREDERICK: Yes.

12 BOARD MEMBER DEURLOO: Thank you.

13 Madam Chair, another question please.

14 On line 2372, Romanette "i," it reads:

15 "The permittee shall revise the cost estimate
16 whenever a change in the plan increases the
17 cost. The revised cost estimate shall be
18 adjusted for inflation."

19 I agree. And that rolls right into Romanette
20 "i." But I think maybe giving them 180 days? Do you
21 want to specify a time line there? That, say, they go
22 out there and add a new office space or something like
23 that on the site, you don't really have a stipulation
24 in there of how quickly they get that revision back to
25 you?

1 MR. FREDERICK: Again, I think that's a good
2 recommendation, and I'll consult with Chapter 14 to see
3 if we have anything similar.

4 BOARD MEMBER DEURLOO: Thank you.

5 So moving down to page 27-53, Madam Chair,
6 starting at line 2408, Romanette -- it's not
7 Romanette -- but 8:

8 "Upon completion of any of the activities
9 identified in the cost estimate, the amount
10 of the financial surety required may be
11 reduced by the administrator may be reduced."

12 So that's very nice. I think it's very good
13 that you kind of give -- there's always going to be
14 some exceptions out there.

15 Do you want -- this is kind of just grammar
16 and everything like that. Is it worth putting the --
17 first of all, my first question was on what basis? We
18 listed out what basis can you make an exception to
19 this? We could add about 12 pages to this whole thing,
20 which we don't want to do.

21 But is it worth stating at the end of that on
22 a case-by-case basis or not and just leaving it open?

23 CHAIRWOMAN BEDESSEM: I think it's okay.

24 BOARD MEMBER DEURLOO: It's fine?

25 CHAIRWOMAN BEDESSEM: Yeah.

1 BOARD MEMBER DEURLOO: Okay. And then, finally,
2 show the last part -- or letter I, it begins with:

3 "In addition to the other requirements of
4 this section, the well shall comply with the
5 financial responsibilities of 40CFR144
6 part -- Subpart F."

7 But initially you were just saying 20 minutes
8 ago that there is no -- and I actually, in full
9 disclosure, I haven't read CFR144, Subpart F, but why
10 are we referring back to a federal rule when they don't
11 cover classified injection wells anyhow? What reason
12 is that?

13 MS. THOMPSON: Mr. Deurloo, the reason we left
14 that reference in is because it does -- that portion of
15 the CFR does cover Class 1 facilities. So Class 1
16 facilities at the federal level are required to have
17 financial assurance, but we wanted to maintain that
18 consistency for those facilities with that federal
19 expectation.

20 BOARD MEMBER DEURLOO: So do we want to say -- do
21 we want to say that this relates to Class 1 wells only,
22 or just leave it open when we have more rules around?
23 Looks like we've got a question or comment in the back.

24 UNIDENTIFIED SPEAKER: (Inaudible.)

25 THE REPORTER: I cannot hear the speaker.

1 MR. FREDERICK: The reference is specific to
2 hazardous waste injection wells, Class 1 hazardous
3 waste injection wells.

4 BOARD MEMBER DEURLOO: Got it. Thank you.

5 CHAIRWOMAN BEDESSEM: So maybe for clarity, we
6 could just say "the permittee of a Class 1 well
7 injecting hazardous waste" so that it's really obvious.
8 Put the word Class 1 in Romanette "i."

9 MS. THOMPSON: Uh-huh.

10 BOARD MEMBER DEURLOO: Madam Chair, that's all the
11 questions I have. Thank you.

12 Thank you, Mr. Frederick.

13 CHAIRWOMAN BEDESSEM: (Indicating.)

14 BOARD MEMBER KIRKBRIDE: I'm okay, Madam Chair.

15 CHAIRWOMAN BEDESSEM: (Indicating.)

16 BOARD MEMBER CAHN: On line -- I'm having a hard
17 time finding where I had comments before.

18 Okay. Line 2373, we talked about the
19 permittee revising cost estimates, but then there's a
20 second sentence that says: "The revised cost estimate
21 shall be adjusted for inflation," but it doesn't say
22 who is going to do that.

23 So you want the permittee to do it, not DEQ.
24 So I think you need to get rid -- make it one sentence
25 and just say at the end of "increases the cost,"

1 instead of a period, say "and adjust the estimate for
2 inflation."

3 CHAIRWOMAN BEDESSEM: What line?

4 BOARD MEMBER CAHN: I'm on line -- I'm on the
5 non-green version strikeout underline on line 2373, and
6 it starts on 2732. So we're Romanette "ii," and
7 there's two sentences, and I would like to see it as
8 one.

9 So remove the period and remove "the revised
10 cost estimate shall be adjusted" and replace it with
11 "and adjust for inflation" -- "and adjust the estimate
12 for inflation." So it now reads "the permittee shall
13 revise the cost estimate whenever a change in the plan
14 increases the cost and adjust the estimate for
15 inflation."

16 That's all that I have for this new revision
17 for that section.

18 I did find some typos and "which's" and
19 "thats" that are "which's" that are used wrong in the
20 whole rest of the thing. So when we're done, we'll get
21 back to the editorials if that's --

22 MS. THOMPSON: If I can speak to --

23 (Several speaking simultaneously.)

24 CHAIRWOMAN BEDESSEM: (Inaudible.)

25 BOARD MEMBER CAHN: Yes.

1 MS. THOMPSON: If I can speak to changes outside
2 of the section.

3 Because we had the legislative deadline to do
4 the financial assurance section and we had to initiate
5 our rulemaking by July 1st, we did not have a chance to
6 go through and consider all of the other areas of the
7 chapter.

8 But that is on the Division's radar, and we
9 would like to be able to consider those at a later
10 rulemaking because we would like to make some
11 corrections that our staff have also noticed and the
12 "which's" and "thats" do appear a number of times
13 throughout the rest of the chapter.

14 And we also have some passages that were
15 worded in a confusing manner or that our staff feel
16 that we could clarify in a better way.

17 So what I would ask is that we could consider
18 editorials in the rest of the chapter as a rulemaking
19 that we will be initiating later this year or early in
20 2019 because it is a large chapter and we wanted to go
21 through it in a thorough way but we didn't have enough
22 time to do a good job and get the financial assurance
23 changes in by July 1st.

24 BOARD MEMBER CAHN: Okay. I guess I was thinking
25 I could just hand you the typos and the "which's" that

1 should be "that" and just hand it to you and just have
2 you do those just and go ahead and with the staff
3 continue this.

4 MS. THOMPSON: Right. The way the process would
5 work -- and I'm probably not conveying this very
6 clearly. What we would like to move forward with to
7 the Council would just be changes to Section 19 and
8 keep our scope and our statement of reasons just to
9 Section 19.

10 However, if you have already gone through all
11 that work, I could include those with the additional
12 staff changes. You just wouldn't see the fruits of
13 your labor until next year.

14 BOARD MEMBER CAHN: So if you have problems with,
15 you know, grammar that are incorrect or words that are
16 missing, you don't want to get those now?

17 MS. THOMPSON: Because I would have to re-notice
18 the entire chapter.

19 BOARD MEMBER CAHN: Okay. Because I would say
20 that those are editorial and we wouldn't have to
21 re-notice it but if you --

22 MS. THOMPSON: According to statute --

23 BOARD MEMBER CAHN: Okay. I will give -- I will
24 leave you --

25 MS. THOMPSON: Okay.

1 BOARD MEMBER CAHN: -- all my changes.

2 MS. THOMPSON: Yes, I would love to have those. I
3 imagine that you found things that I did not find in my
4 quick look, but I wanted to prepare you to not see
5 those results of that --

6 BOARD MEMBER CAHN: I will hand them to you.

7 MS. THOMPSON: Okay. Great. Thank you very much.

8 CHAIRWOMAN BEDESSEM: Okay. I'll hand it over to
9 Klaus for any comments?

10 BOARD MEMBER HANSON: No.

11 CHAIRWOMAN BEDESSEM: I have one last thing just
12 to sort of revisit this.

13 I appreciate you putting the word "reclaim"
14 back in Section 19, Subsection A. I'm wondering, if
15 Mr. Frederick commented on consistency between
16 Subsection A and Subsection C, whether in Subsection C
17 it might be worth your while to include "after the cost
18 of plugging and abandonment of the well," "surface
19 reclamation"?

20 MR. FREDERICK: Madam Chair, I was thinking that
21 Mr. Deurloo's recommendation was to include
22 "reclamation and restoration."

23 BOARD MEMBER DEURLOO: I think we're going to get
24 into -- Madam Chair, we're going to get into a war of
25 words on this stuff.

1 CHAIRWOMAN BEDESSEM: Yeah.

2 BOARD MEMBER DEURLOO: I don't know. Whatever
3 everybody thinks is best, what's the best -- what's the
4 easiest way for you guys to enforce it and that things
5 ARE done right. And it's also a company -- the
6 industry can live with it as well, what's the best way
7 to do it?

8 MR. FREDERICK: I think I don't foresee a
9 situation where we'd be niggling with someone over what
10 is meant by "reclamation" or what's meant by
11 "restoration." So I'm comfortable it.

12 CHAIRWOMAN BEDESSEM: So we have "reclaim" in
13 Subsection A, and in Subsection C, what are you
14 suggesting? Are you suggesting to include in the items
15 "reclamation" or "surface reclamation and restoration"?

16 MR. FREDERICK: Again, Madam Chair, Mr. Deurloo's
17 recommendation is to add after "abandonment of the
18 well" in C --

19 CHAIRWOMAN BEDESSEM: Yes.

20 MR. FREDERICK: -- "reclamation, comma,
21 restoration." So it's the board's pleasure if you want
22 to further clarify that it's surface reclamation.

23 CHAIRWOMAN BEDESSEM: I think that's --

24 BOARD MEMBER DEURLOO: Actually, I say I think it
25 does matter, Chairwoman Bedessem, because what -- if

1 you're talking about surface reclamation, you're
2 talking about re-seeding, you're talking about the top
3 ten inches.

4 But if you're talking about, if this is a
5 Class 5 injection well and if you say "restore," you
6 have to -- well, what does restore mean? Is it restore
7 you brought the water back to the original?

8 I mean, if you've been injecting stuff in
9 there for ten years and you're required restore it
10 back, what are you trying to solve with this? Is it
11 just the surface? Or are talking about the aquifer
12 itself or...

13 CHAIRWOMAN BEDESSEM: We don't want to open a
14 larger can of worms than our intent here.

15 MR. FREDERICK: This regulation applies to
16 essentially providing financial assurance to reclaim
17 and close the site, not to deal with any contamination
18 or pollution.

19 BOARD MEMBER DEURLOO: So to your point surface
20 reclamation...

21 CHAIRWOMAN BEDESSEM: Yeah. I'm fine with having
22 it say "reclaim and (unintelligible) surface
23 reclamation."

24 I view reclamation as if you have a denuded
25 landscape for an activity like mining or oil and gas

1 that we are reclaiming it while we may have negatively
2 impacted adjacent habitat but it's not that we've, you
3 know, cleared the landscape. So I think using
4 "reclamation, surface reclamation" is fine here.

5 MR. FREDERICK: Let me speak a little bit more
6 about your comment, I think, with respect to pollution
7 that might exist on the site.

8 In the event that that's identified or
9 discovered during an inspection or reported by the
10 operator to the Department, we have other rules and
11 regulations that require that to be addressed under
12 some sort of corrective action.

13 I can't foresee that we would be interested
14 in someone providing financial assurance to say more or
15 less, "Don't worry about it. We'll deal with it when
16 we close the site." That's not what we're interested
17 in. We want that taken care of.

18 BOARD MEMBER DEURLOO: Got you.

19 CHAIRWOMAN BEDESSEM: So I think if you have
20 "reclaim" in Subsection A and have "surface
21 reclamation" as well as keeping "post-closure care,"
22 you're covered. That would be sufficient. I don't
23 think you need to have "additional restoration" in
24 there.

25 BOARD MEMBER KIRKBRIDE: Madam Chair, I just want

1 to go back into something real basic here.

2 If we -- if somebody is operating a well, not
3 applying for a new permit, just operating one, they
4 need -- what triggers that they have to have this
5 financial assurance? What is the trigger?

6 MR. FREDERICK: Sure.

7 BOARD MEMBER KIRKBRIDE: It may be in there. I'm
8 just trying to dig it out.

9 MR. FREDERICK: So Class 1 wells are already
10 covered. So what you're essentially asking is about
11 those wells that aren't covered, those existing Class 5
12 wells that aren't covered.

13 BOARD MEMBER KIRKBRIDE: Right.

14 MR. FREDERICK: Okay. So the way the statute
15 reads, what we try to incorporate in the rules after
16 July 1st, if an existing permit is renewed and they're
17 good for a term of ten years under an individual
18 permit. Under a general permit, they're essentially
19 authorized until we renew the general permit. Okay?

20 BOARD MEMBER KIRKBRIDE: Okay.

21 MR. FREDERICK: Or transferred to a different
22 operator. Either one of those two actions would kick
23 in the financial assurance requirement.

24 BOARD MEMBER DEURLOO: How often is a general
25 renewal?

1 MR. FREDERICK: How often is the general renewal?

2 BOARD MEMBER DEURLOO: Yeah.

3 MR. FREDERICK: The general renewal is at the
4 discretion of the Department. Normally, they're for a
5 term of ten years, but we have the ability to
6 essentially renew at any time before or after ten
7 years.

8 In this case, for those Class 5 facilities
9 we're talking about and we have covered under a general
10 permit now, we intend to renew that permit at about the
11 same time this rule goes into effect.

12 BOARD MEMBER DEURLOO: Oh.

13 MR. FREDERICK: The renewal then will require them
14 to essentially obtain --

15 BOARD MEMBER DEURLOO: That's a trigger.

16 MR. FREDERICK: -- authorization under a new
17 permit and kick in the financial assurance requirement.

18 BOARD MEMBER KIRKBRIDE: So you're going to pick
19 up everybody?

20 MR. FREDERICK: We'll pick up all of those after
21 July 1st that are permitted, renewed, or transferred,
22 yes.

23 Our intention is to essentially see that all
24 the existing operators have financial assurance in
25 place shortly after the rule is promulgated. Not to

1 say anything about the orphans that are out there, so
2 it won't cover those.

3 BOARD MEMBER HANSON: Madam Chair, paragraph C has
4 something in it which is a catchall one because it
5 starts off with the statement "at a minimum." So you
6 can really hound them forever and ever and say, "That's
7 just the minimum. Here is what else we require" or
8 whatever.

9 And it doesn't occur in paragraph A. I
10 noticed that. It's just in this paragraph. Okay.
11 It's paragraph A, it simply says shall do such and
12 such, but that was kind of interesting.

13 CHAIRWOMAN BEDESSEM: I'm happy, though, with the
14 changes with respect to reclaim and surface reclamation
15 because restoration, for example, with sage brush
16 habitat, you can't -- you might not be able to restore
17 the habitat for 50 or 100 years, and we're not going to
18 do a cost estimate to reflect that. So I think it's
19 fine. So I appreciate that.

20 Any more questions from the board?

21 BOARD MEMBER CAHN: Any public comments?

22 MS. THOMPSON: A gentleman.

23 CHAIRWOMAN BEDESSEM: Anybody from the public who
24 would like to speak with respect to comments on this
25 rule? So come have a seat (indicating).

1 MR. ROBITAILLE: John Robitaille, Petroleum
2 Association of Wyoming.

3 As you were told, we've been involved in this
4 for a while. We were involved with it legislatively
5 and also through this rulemaking.

6 We are supportive of this rulemaking, and
7 agree entirely with the concept behind it. We think
8 they should all be bonded, wish it had happened sooner
9 but better now than never.

10 CHAIRWOMAN BEDESSEM: Well, thank you, because the
11 facilities that are abandoned give the industry a bad
12 name when they're out there. So I understand
13 completely the PAW's support of these type of rules.

14 MR. ROBITAILLE: We're working on that too.

15 CHAIRWOMAN BEDESSEM: Thank you.

16 MR. ROBITAILLE: You bet.

17 MS. THOMPSON: Madam Chair, I'd also like to point
18 out for the record we have not received any written
19 comments or electronic comments before today's meeting.
20 So at this time we do not -- we're not aware of any
21 other public comments.

22 CHAIRWOMAN BEDESSEM: Thank you very much.

23 So I think the -- any other comments or
24 additions from anyone attending?

25 So I think the only thing we have out there

1 is the changing of Chapter 14.

2 BOARD MEMBER DEURLOO: Right.

3 MR. FREDERICK: Madam Chair, I haven't had enough
4 time to go through the entire rule, but I have found
5 references again in looking at the financial assurance
6 requirements in the rule for commercial oil field waste
7 disposal facilities. The requirement is that, under
8 certain types of bonding situations in providing a
9 replacement, the operator is provided 60 days.

10 It's a little different than what we're
11 talking about here with respect to adjusting the cost
12 estimate for inflation which, quite honestly, I don't
13 think is a very time-consuming effort. But
14 nevertheless for the sake of consistency, I think there
15 is some parallel, I guess, to what we're seeing in
16 Chapter 14.

17 And unless I go home and read a rule and find
18 out that Chapter 14 allows only 30 days for an
19 adjustment, I'm willing to go with 60.

20 BOARD MEMBER DEURLOO: Deal.

21 MR. FREDERICK: However, again with the caveat
22 that I'll check Chapter 14 and see if there is some
23 specific language.

24 BOARD MEMBER DEURLOO: Thank you.

25 MR. FREDERICK: If there is, I'll inform the

1 board, and we'll go from there.

2 CHAIRWOMAN BEDESSEM: So that was the 60 days for
3 the adjustment.

4 But there was also I believe the issue of
5 doing the annual, whether it was annual or every couple
6 of years, I believe. Mr. Esch, the financial assurance
7 for solid and hazardous waste facilities I think the
8 municipal facilities is that it's an annual update, is
9 it not?

10 MR. ESCH: That is correct, Madam Chair.

11 BOARD MEMBER HANSON: Madam Chair, this refers to
12 line 2355; is that correct?

13 BOARD MEMBER DEURLOO: No. No, it refers to
14 line --

15 BOARD MEMBER HANSON: No.

16 BOARD MEMBER DEURLOO: -- 2373.

17 BOARD MEMBER HANSON: 2373.

18 BOARD MEMBER DEURLOO: Somewhere around there.

19 CHAIRWOMAN BEDESSEM: That was the six days we
20 talked about?

21 BOARD MEMBER DEURLOO: Yeah.

22 CHAIRWOMAN BEDESSEM: But how often do you
23 update --

24 BOARD MEMBER DEURLOO: Are you talking about
25 Romanette "i" starting 2369, Madam Chair?

1 CHAIRWOMAN BEDESSEM: Yeah, where it says after
2 each anniversary date.

3 And there is a precedent through other
4 financial assurance rules to update that annually, and
5 it doesn't usually require a whole new --

6 BOARD MEMBER DEURLOO: Madam Chair, Mr. Frederick
7 actually just pointed something out that I hadn't
8 thought about.

9 Is this yearly thing, is this yearly cost
10 estimate renewal update to the DEQ is mainly just a
11 cost of change to the inflation or looking at
12 inflation? It's not -- you don't have to go up --

13 CHAIRWOMAN BEDESSEM: New estimate.

14 BOARD MEMBER DEURLOO: -- you're not requiring
15 them to go out there and get a new bid on PNA fencing
16 and stuff like that, are you?

17 CHAIRWOMAN BEDESSEM: That's not the way I read
18 it. I read it as you're adjusting for inflation.

19 BOARD MEMBER DEURLOO: Yeah.

20 CHAIRWOMAN BEDESSEM: So I don't think it's
21 onerous. And so if we have -- if we leave it at one
22 year, and that's the other line, the 60 days, I think
23 we will have covered the issues about the timing.

24 BOARD MEMBER DEURLOO: I think you're right.

25 So how long -- how old are some of these cost

1 estimates, Mr. Frederick?

2 CHAIRWOMAN BEDESSEM: I just wanted to make sure
3 we had covered all the different time lines. So we
4 have the opportunity and nothing was left hanging out
5 there, we have the opportunity to make a decision
6 whether to, you know, send this forward to --

7 BOARD MEMBER DEURLOO: Right.

8 CHAIRWOMAN BEDESSEM: -- kind of wrap those up.

9 MR. FREDERICK: Sure. Question again?

10 BOARD MEMBER DEURLOO: So if I drilled -- so
11 starting today, I drill a well, a Class 1 or Class 5
12 injection well, and I get a cost estimate to do that
13 and it's today's dollars, everything is a million
14 dollars. And then for the next -- some of these things
15 are around for decades; right?

16 So in 20 years, it's just been climbing it up
17 and down -- hardly see inflation go down -- but it's up
18 and down. Is there a certain point where you do have
19 to go out there because it's always adjusted for
20 inflation?

21 Because if you don't ever transfer it, is
22 there ever a time you have to go out and get new
23 estimates on PNA reclamation and stuff like that?

24 MR. FREDERICK: Yes. As stated in the rule,
25 whenever a change in the plan increases the cost, in

1 other words, there's a new facility, a new tank,
2 storage tank, something like that, that type of a
3 change would trigger --

4 BOARD MEMBER DEURLOO: But if it's just an
5 injection well, it's back up and you don't do it or
6 inject into it for 15 years and you don't ever make a
7 change, it's working just fine, you're good with your
8 cost; right?

9 MS. BARKAU: You would -- you would have to at
10 your permit renewal because --

11 BOARD MEMBER DEURLOO: Oh, right --

12 MS. BARKAU: -- Class 1 wells are --

13 BOARD MEMBER DEURLOO: -- every ten years.

14 MS. BARKAU: -- for every ten years.

15 BOARD MEMBER DEURLOO: Got you, okay. Thank you,
16 Madam Chair.

17 CHAIRWOMAN BEDESSEM: Thank you.

18 So I believe it was the Water Quality
19 Division's interest in having the Advisory Board
20 consider whether to approve the revisions and recommend
21 adoption by the EQC.

22 MR. FREDERICK: Yes.

23 CHAIRWOMAN BEDESSEM: I'm looking for a motion by
24 the board.

25 BOARD MEMBER KIRKBRIDE: I will move to approve

1 what's been presented and amended here.

2 CHAIRWOMAN BEDESSEM: Uh-huh.

3 BOARD MEMBER CAHN: With the caveat of what --

4 CHAIRWOMAN BEDESSEM: The changes that we
5 discussed here.

6 BOARD MEMBER HANSON: This is the version we're
7 talking about?

8 CHAIRWOMAN BEDESSEM: Yes.

9 BOARD MEMBER DEURLOO: I'll second that motion.

10 CHAIRWOMAN BEDESSEM: Thank you. I have a motion
11 and a second.

12 All those in favor.

13 BOARD MEMBER DEURLOO: Discussion?

14 CHAIRWOMAN BEDESSEM: Oh, discussion?

15 BOARD MEMBER DEURLOO: Madam Chair?

16 CHAIRWOMAN BEDESSEM: Uh-huh.

17 BOARD MEMBER DEURLOO: So to your point, they --
18 so we'll look at Chapter 14 on the time line for
19 notifying the DEQ of any changes and then adding words
20 around Part A and Part C with surface reclamation and
21 reclamation just so it's in the motion and discussion.

22 CHAIRWOMAN BEDESSEM: Okay. Any other discussion?

23 All those in favor say aye.

24 SEVERAL: Aye.

25 CHAIRWOMAN BEDESSEM: Opposed?

1 (No audible response.)

2 CHAIRWOMAN BEDESSEM: Abstentions?

3 (No audible response.)

4 CHAIRWOMAN BEDESSEM: Motion passes.

5 We'll move on to the EQC.

6 MS. THOMPSON: Madam Chair, we'd like to ask for a
7 short break. We've been meeting for about an hour and
8 a half, and we need to go ahead and get our next
9 division up for presentation.

10 CHAIRWOMAN BEDESSEM: Before we conclude, I just
11 want to thank the Water Quality Division for putting --
12 even though we had this last-minute ruffle, the
13 explanations were good enough that we all figured that
14 out in the time period, but that initially we put
15 together a very good packet, meaning that we're
16 appreciative of you including the SPR and the statute
17 so that we knew what we were referencing. That was
18 very helpful.

19 Do you guys have this done outside as far as
20 the copies made outside, you know, like a Kinkos or
21 something?

22 MS. THOMPSON: That particular one, we did have it
23 made at Kinkos. I had some unexpected leave. So I
24 sent that one out to have it done. So it was maybe not
25 done -- I believe they weren't double-sided for some

1 reason and --

2 CHAIRWOMAN BEDESSEM: We are the environmental
3 quality.

4 MS. THOMPSON: On the record, I just want to say
5 that the director's assistant helped with that in my
6 absence, and she had to actually return it to them at
7 least once to redo. So the fact that you got a package
8 at all is a testament to Jody's miracle-working, and we
9 will be --

10 CHAIRWOMAN BEDESSEM: We'll be double-sided next
11 time.

12 MS. THOMPSON: That is correct.

13 CHAIRWOMAN BEDESSEM: The content and putting all
14 the necessary pieces of information in there, we
15 greatly appreciate it. Thank you.

16 MS. THOMPSON: Good. Glad to help.

17 CHAIRWOMAN BEDESSEM: Thanks.

18 BOARD MEMBER CAHN: So the next pass will be up to
19 your high standards.

20 MS. THOMPSON: That's right.

21 CHAIRWOMAN BEDESSEM: I handed you them. They're
22 artisanal.

23 Okay. We'll take a 15-minute break, and we
24 will reconvene at 5 minutes to 11:00.

25 (A break was taken.)