

In Re: Water Quality Division

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1 We are moving to a presentation regarding the DEQ
2 rules of practice and procedure, Chapter 1.

3 I'll hand it over for presentation.

4 MS. THOMPSON: Okay. Madam Chairman, we
5 have staff from our Cheyenne office presenting to you this
6 morning.

7 And, Cheyenne office, if you'll go ahead and
8 introduce yourselves --

9 MR. FRANKEN: Sure.

10 MS. THOMPSON: -- clearly for the record,
11 and Kathy will get you noted down in the transcript.

12 MR. FRANKEN: All right. Thank you. Good
13 morning, Madam Chairman and board members. My name is
14 Joe Franken. I guess first I should ask can you hear us
15 okay?

16 MS. THOMPSON: Yes.

17 CHAIRMAN BEDESSEM: Yes. Very well.

18 MR. FRANKEN: Very good. My name is Joe
19 Franken. I'm a management service administrator for DEQ.
20 We have several folks in the room. We'll just go around
21 the table and have them introduce themselves.

22 We'll start here with Mr. Edwards.

23 MR. EDWARDS: I'm Alan Edwards. I'm the
24 deputy director and also the administrator of the Abandoned
25 Mine Lands Program.

1 MS. SHAW: Kelly Shaw. I'm the advising
2 attorney for the Water Quality Division.

3 MR. KUNZE: Matt Kunze from Land Quality
4 Division.

5 MR. LAROCK: James LaRock, advising
6 attorney for the Solid and Hazardous Waste Division.

7 MR. GUILLE: Keith Guille, public
8 information officer, DEQ.

9 MS. KVIEN: And Allison Kvien, the advising
10 attorney for Air Quality.

11 MR. FRANKEN: All right. Well, thank you
12 for giving us the opportunity to discuss the incorporation
13 by reference of the Department of Administration &
14 Information's -- A&I uniform rule. This legislatively
15 mandated rule titled Uniform Procedures, Fees, Cost and
16 Charges for Inspecting Copying and Producing Public Records
17 allows for a standardized approach for all state agencies
18 to charge a fee for the production and construction of
19 electronic public records.

20 Today we are seeking the board's recommendation
21 to the council for approval to incorporate by reference the
22 uniform ruling into DEQ's Rules of Practice and Procedure,
23 Chapter 1, General Rules.

24 Just a little bit of background. A&I proposed a
25 uniform rule to comply with the legislative mandate

1 outlined in Wyoming Statute 16-2-204(e), which directed
2 that A&I shall adopt uniform rules for the use of state
3 agencies establishing procedures, fees, costs and charges
4 for inspection, copies and production of public records
5 under the following statutes: 16-4-202, 16-4-203 and
6 16-4-204.

7 The rule complies with that mandate and creates
8 uniform rules for use by all state agencies. Additionally,
9 Wyoming Statute 16-3-103(j)(ii) requires that each state
10 agency ultimately adopt these uniform rules. The uniform
11 rules establish production and construction costs related
12 to electronic public records under Wyoming Statutes
13 16-4-202(d)(i), and it breaks it out -- the rule breaks it
14 out into several costs. \$15.50 per hour for clerical staff
15 time; \$30 per hour for IT staff time; and \$40 per hour for
16 professional staff time.

17 In addition, these rules create a minimum dollar
18 threshold that must be met -- met prior to any production
19 or construction cost being charged for electronic public
20 records request. If production and construction costs for
21 electronic public record are less than or equal to \$180,
22 the applicant or requestor will not be charged any
23 production or construction costs.

24 In a moment we'll talk about a little bit of
25 history as to how many public record requests DEQ has

1 received over the past four years and how many we feel of
2 those roughly 1900 public records requests would have
3 fallen outside the \$180 threshold.

4 Additionally, under Wyoming Statute 16-4-204(a),
5 the uniform rules establish copy and transmittal fees.
6 Under 16-4-204(b), the rules create -- establish a fee that
7 applies when a custodian's required to supervise the
8 copying of public records if someone other than the
9 custodian makes the copies.

10 During their public hearing, A&I addressed
11 several commenters that opposed the rules and had concerns
12 about A&I's legal authority to create these uniform rules.
13 A&I explained that during the 2014 legislative session the
14 legislature created Wyoming Statute 16-4-204(e) which
15 required A&I to adopt uniform rules for electronic public
16 records and nonelectronic public records.

17 Wyoming Statute 16-4-202(d) (i) specifically
18 addresses electronic records inspection and copying and
19 requires that the reasonable cost of producing a copy of
20 the electronic public record shall be borne by the party
21 making the request. The cost may include the cost of
22 producing a copy of the public record and the cost of
23 constructing the record.

24 Others commented to A&I that it is unreasonable
25 to ask the public to pay to review a public record, and

1 that doing so is an unreasonable obstruction. A&I stated
2 as part of those comments it appears commenters believe the
3 production and construction cost applied to both electronic
4 and nonelectronic public records -- excuse me, A&I stated
5 as part of those comments, it appears the commenters
6 believe that the production and construction cost applied
7 to both electronic and nonelectronic public records.

8 It should be noted that the production and
9 construction cost outlined in rules only apply to
10 electronic public records. Those costs do not apply to
11 nonelectronic public records.

12 A&I and DEQ does not believe requiring an
13 applicant to pay production and construction costs for
14 electronic public records is unreasonable. In fact, the
15 requirement that the applicant or requestor pay the
16 production and construction cost has been around since
17 2002, when the legislature specifically created Wyoming
18 Statute 16-4-202(d) (i).

19 These rules simply create uniform rules for use
20 by all state agencies. A&I was accommodating when it
21 created in the rules an \$180 cost threshold or credit that
22 will apply to all electronic public records request. Based
23 on that statute, A&I could have created rules with no
24 threshold.

25 However, A&I wanted to strike a fair balance

1 between the statutory requirement that the applicant
2 reimburse an agency its production and construction costs,
3 the public's right to inspect electronic public records and
4 burdens placed upon state agencies when responding to
5 electronic public records requests.

6 DEQ believes these rules make electronic public
7 records requests and the subsequent production or
8 construction of those more efficient by encouraging
9 specific and detailed requests which help both the
10 requestor and the state agency.

11 Some commenters expressed concern that the costs
12 for the production of electronic public records could lead
13 to less transparency in government. A&I stated that the
14 fees are not designed to create less transparency in
15 government, but rather to allow the legislature -- excuse
16 me, but rather to follow the legislative mandate to
17 encourage -- encourage more specific and detailed requests
18 for electronic public records and to alleviate the burden
19 on state agencies.

20 Further, A&I believes by creating the threshold,
21 the belief is that the electronic public records process
22 will become more efficient and effective for both the
23 requestor and the state agency.

24 DEQ received numerous comments. I'd like to
25 maybe -- or excuse me. I'd like to go over a few of these.

1 One of the overarching comments is DEQ should
2 comply with the Environmental Quality Act's core mandate of
3 open records to make all agency information available
4 without charging an access fee. DEQ believes the
5 incorporation by reference of the uniform rule is not in
6 conflict with the Wyoming Environmental Quality Act,
7 specifically 35-11-1101.

8 DEQ also received comments along the lines DEQ
9 should not charge a fee for the public related to records
10 that are part of the agency permitting, enforcement or
11 rulemaking process. There is no fee for the inspection of
12 public records. The proposed uniform rule only allows --
13 excuse me. The proposed uniform rule allows for a
14 reasonable fee for the production and construction of
15 electronic public records.

16 Another comment. DEQ needs to develop internal
17 procedures that produce records faster and make more
18 information available to the public as opposed to limiting
19 access to public records. And we don't disagree with that,
20 and we're in the process of working on several initiatives
21 using software applications that I think eventually will
22 make it much easier and much more accessible for the public
23 to view public records. And in a minute we'll have
24 Keith -- Keith talk about that.

25 Another comment. Adopting the uniform rule will

1 violate the terms of DEQ's primacy agreements with EPA and
2 OSM. DEQ does not believe that the uniform rule will
3 violate the terms of privacy. In fact, 44 other state DEQs
4 or environmental agencies charge for records in some
5 capacity.

6 Finally, in no way is DEQ attempting to limit
7 access to public records. Voluminous public records
8 request stress agency resources and this legislatively
9 mandated uniform rule will lessen the burden on state
10 agencies and assist the applicant in narrowing the request.
11 DEQ is requesting the board's recommendation to the council
12 for approval to incorporate by reference the rule into
13 DEQ's Rules of Practice and Procedure, Chapter 1 under
14 General Rules. We propose adding a new Section 11 titled
15 Public Records Request.

16 So that's kind of an overview of where we are
17 with the uniform rule. And if -- will you guys have any
18 questions or the board has any questions, Madam Chairman,
19 it would be -- Madam Chairwoman, we'd be happy to address
20 those.

21 CHAIRMAN BEDESSEM: So you said you were
22 going to provide additional information on how many
23 requests have happened. You said 1900 over the past four
24 years; is that correct?

25 MR. FRANKEN: That's correct, Madam

1 Chairman.

2 CHAIRMAN BEDESSEM: And what percentage of
3 those were under the 180 -- would be equivalent to be under
4 the \$180 limit?

5 MR. GUILLE: Madam Chairman, this is Keith
6 Guille. I'll address that.

7 So there are about 50 records requests that would
8 go -- that I feel, looking at these, would be above that
9 threshold. Obviously, I'd have to -- we don't have a
10 system currently that could analyze the hours spent. And
11 we are going to address that. We're actually working on
12 new software now that will be able to keep time for staff
13 as well as have a communication outlet with the requestor
14 and with certain staff that handle the records requests.
15 This way we can also put records electronically through
16 this system and they can download those. So this system
17 should help. But, yeah, currently we have 1,949, as of
18 today, records requests since 2014.

19 The majority of records requests we get are due
20 diligence, in the sense you have people that own property
21 or looking at property or they have a -- an attorney that
22 is doing that for them, and they're just making sure
23 there's -- you know, if there's any issues environmentally
24 with those -- with those properties. And so by -- what we
25 are hoping to do is make more of our records online, in a

1 sense. That way they wouldn't be in physical format. And
2 have an outlet where they can go to one specific place to
3 be able to download all those documents, and they wouldn't
4 even have to go through a records request process.
5 Obviously, that doesn't address all of them, but a majority
6 of our records requests would greatly be reduced.

7 BOARD MEMBER HANSON: Madam Chair. Was
8 that 50 above per annum or since 2014? I didn't catch
9 that.

10 MR. GUILLE: Since 2014, we've -- there was
11 about 50 records requests.

12 BOARD MEMBER HANSON: Thank you.

13 MR. GUILLE: That would most likely be
14 above that threshold.

15 BOARD MEMBER HANSON: Okay.

16 CHAIRMAN BEDESSEM: I find it very
17 interesting that the majority of your record requests are
18 pretty much Phase I due diligence on properties, and that
19 would be an easy thing to narrow down to have available
20 online to search and not take any staff time for that kind
21 of thing, so...

22 MR. GUILLE: Correct. And I think it would
23 be important too, then it would, you know, reduce that
24 staff time. And then when we do get these larger records
25 requests, staff would have more time to be able to focus on

1 those.

2 BOARD MEMBER CAHN: Can you give us any
3 more information about the 50 record requests in terms of
4 types of requests or --

5 MR. GUILLE: Certainly. I can give you
6 some examples.

7 BOARD MEMBER CAHN: -- where it came from.

8 MR. GUILLE: Oh, go ahead. I'm sorry.

9 BOARD MEMBER CAHN: Go ahead.

10 MR. GUILLE: Okay. I'll give you one
11 example. Here we had a nongovernment organization, Sierra
12 Club, filed a records request in May of this year. And
13 this records request is fairly extensive. It has to do
14 with five facilities. And they have specific needs that
15 they're wanting for records, including correspondence --
16 that would be emails, electronic correspondence -- and
17 they're wanting those not just from Air Quality, but also
18 Solid and Hazardous Waste and the Water Quality Division.

19 And so, you know, in a perfect world you'd have a
20 record that is located in one place. But when you have --
21 part of these records may be in various locations. And so,
22 obviously, that's going to take some staff time. We're
23 also looking at if there's any electronic documents on
24 their computers. And also think about the correspondence
25 as well. It definitely has taken us some time. I know

1 that staff is still working on this records request to
2 comply and, you know, respond.

3 Additionally, another records request received
4 was from a former employee that has done three of them.
5 One I would say probably would be the most extensive, and
6 they're looking for emails dating since 2005. Now, prior
7 to our Google system implementations, some of those former
8 emails may be difficult to find. But definitely after
9 that, we can work with our ETS or our IT, State Department,
10 to pull those emails. But you can probably imagine the
11 sheer amount that may be involved, especially if we have to
12 redact due to personnel redaction, human resources type of
13 issues. So that one has taken some time, and I know that
14 our division head is still working on responding to that.

15 CHAIRMAN BEDESSEM: Thank you.

16 Any other questions from the board?

17 BOARD MEMBER KIRKBRIDE: Well, yes. What
18 about nonelectronic records? Are we going to deal with
19 that?

20 MR. FRANKEN: Madam Chairwoman. Yes.
21 Within the rule it does delineate between electronic and
22 nonelectronic records. Section 5 of the rule addresses
23 nonelectronic public records, and it has fees for copying
24 nonelectronic public records. It's just a standardized
25 approach or a fee structure that all state agencies would

1 utilize.

2 Currently within DEQ, we have an internal policy
3 which essentially would be trumped by this policy. And I
4 think our internal policy is the first 25 copies are free.
5 Anything beyond that we would make arrangements with the
6 requestor and probably a third-party entity to have those
7 copies made. For example, somebody comes in and they want
8 a thousand copies of something. What we've done in the
9 past to maintain chain of custody of the records, we would
10 coordinate with a third-party copy organization. They
11 would come and sign for the records, take the records, make
12 copies of that third-party location. And then the
13 requestor would come and get the copies, pay the third
14 party, and then the third party would return the records
15 back to DEQ.

16 But to answer your question, Section 4 -- excuse
17 me. Section 5 of the rule talks about nonelectronic public
18 records and what the fees would be associated with those.

19 BOARD MEMBER KIRKBRIDE: Okay.

20 CHAIRMAN BEDESSEM: And I'm under the
21 impression that DEQ, by and large, is converting all their
22 records to electronic format. So we're probably going to
23 see less and less of the non -- of, you know, having to
24 scan documents for copies.

25 MR. GUILLE: Yes, Madam Chairwoman, that's

1 what we're doing. Right now we have all of our AML
2 documents online at this point. I know Solid and Hazardous
3 Waste Division has been going through the process to scan
4 all of their documents, and I believe Air Quality as well.
5 You can probably imagine the tall order it is with how many
6 records there are, but we are working on that.

7 CHAIRMAN BEDESSEM: Okay. Thank you.

8 BOARD MEMBER HANSON: Just a procedural
9 question. Section 5 is also under discussion, or is
10 that an established rule already? I was unclear whether
11 Section 4 was the only one that was up for discussion. Are
12 both of them up for discussion?

13 MS. THOMPSON: Mr. -- Madam Chair.
14 Mr. Hanson, the Administration & Information Rule is fully
15 effective. So everything in that A&I Chapter 2 is
16 effective, and that's what we're recommending to adopt.

17 CHAIRMAN BEDESSEM: By reference.

18 MS. THOMPSON: By reference.

19 So what you're -- what our goal is for you today
20 is to take a look at Rules of Practice and Procedure,
21 Chapter 1, this new Section 11, and we would ask you to
22 recommend adoption of Section 11. We would ask you to
23 recommend adoption to the Council. So at the end, if you
24 get to the point where you -- you're calling for motions,
25 that -- this is the -- this is the piece that DEQ is asking

1 for today. This particular chapter Administration &
2 Information, this is rule, this is the law, this is in
3 effect. So we're not -- we're not proposing any changes to
4 this.

5 And we're -- this particular chapter, until we
6 have incorporated it by reference, any -- A&I promulgated
7 this according to their statutes and structure. So this
8 one -- I guess I should ask, does that clarify your -- does
9 that answer your question or --

10 BOARD MEMBER HANSON: Not quite.

11 MS. THOMPSON: Okay.

12 BOARD MEMBER HANSON: So we're looking at
13 the whole document.

14 MS. THOMPSON: Yes. Yes, we are.

15 BOARD MEMBER HANSON: The permanent -- I
16 mean, electronic and nonelectronic.

17 MS. THOMPSON: That is correct, sir.

18 BOARD MEMBER HANSON: Okay.

19 MS. THOMPSON: We did not propose to
20 deviate from any bits of this chapter.

21 BOARD MEMBER HANSON: Okay.

22 MS. THOMPSON: And so when we're asking you
23 to adopt it by reference --

24 BOARD MEMBER HANSON: Okay.

25 MS. THOMPSON: Or when we're asking to

1 adopt it by incorporating by reference, essentially we're
2 saying we want to do the whole thing.

3 BOARD MEMBER HANSON: Okay. Nonelectronic
4 and electronic.

5 MS. THOMPSON: Nonelectronic and electronic
6 and definitions, et cetera.

7 BOARD MEMBER HANSON: Thank you.

8 MS. THOMPSON: Thank you.

9 BOARD MEMBER CAHN: I have a question.

10 Why was there not a minimum requirement to charge
11 costs for the nonelectronic public records like there is
12 for the electronic? So why isn't there that -- something
13 like the \$180 for -- how come -- how come as soon as you
14 request a nonelectronic public record you have to pay? So
15 that's one of the questions I have.

16 MR. FRANKEN: Yeah. Madam Chairwoman.
17 When A&I promulgated this rule, they came up with the fee
18 structure. And I can give you somewhat of an example.
19 Let's say somebody comes in and they want copies of a
20 permit or copies of emails and it's just below the \$180
21 threshold and if we do that numerous times, you can see how
22 expensive that would be if we had multiple requestors that
23 wanted \$179 worth of nonelectronic records, copies made.
24 So -- and I can't speak for A&I exactly, but we're looking
25 at it from our perspective, I can see where that would be

1 very expensive.

2 BOARD MEMBER CAHN: That was one of my
3 question, but that wasn't the question I asked.

4 MR. FRANKEN: Okay. Sorry.

5 BOARD MEMBER CAHN: No. What I mean is if
6 you look at Section 4, 4(b), there's a minimum requirement
7 to charge costs, and it says production and construction
8 costs will be charged only if they exceed 180. And that's
9 for electronic public records. But in Section 5, for
10 nonelectronic public records, there are -- there is no
11 minimum of \$180, as I read it.

12 CHAIRMAN BEDESSEM: Well, I believe the
13 production and construction costs are these items here,
14 which is not actually copies.

15 BOARD MEMBER CAHN: But what I'm saying
16 is --

17 CHAIRMAN BEDESSEM: There is a cost for
18 producing copies, and it's not subject to the 180.

19 MS. THOMPSON: Correct.

20 CHAIRMAN BEDESSEM: Is that correct?

21 MS. THOMPSON: I believe that's her
22 statement, Madam Chairwoman. I believe she's asking why is
23 there a threshold for nonelectronic production, and why is
24 there no threshold for -- no minimum for nonelectronic
25 public records.

1 CHAIRMAN BEDESSEM: I'll reserve my comment
2 until they respond.

3 MS. THOMPSON: Thank you.

4 BOARD MEMBER CAHN: So, in other words, if
5 I'm a member of the public and I'm asking for a
6 nonelectronic public record -- I need a copy of something
7 that hasn't -- that goes back a ways and isn't in
8 electronic format yet, then I'm immediately -- even if I
9 only need one page, I'm going to be charged that 10 cents,
10 or if I need \$180 -- 179 worth of pages, my understanding
11 from this is I would get charged immediately on that. Am I
12 reading this wrong? And then -- but if I request
13 electronic public records, I would have -- I could get
14 179.99 worth of copies of things before I would get
15 charged. Is that -- is that not correct?

16 MR. FRANKEN: Madam Chairman. That is
17 correct. So if you request a nonelectronic public record,
18 then you're going to be subject to those fees in Section 5.
19 So your example, if you had \$179 worth of copying, if you
20 wanted one made, at 10 cents a page, then it would be --
21 you would pay the 179 for the nonelectronic public records.

22 BOARD MEMBER CAHN: Okay. So my question
23 is, why is there a difference between you get your \$180
24 free if you ask for an electronic public record, but you
25 don't if it's nonelectronic? I'm trying to understand why

1 is there this kind of double standard.

2 CHAIRMAN BEDESSEM: Well, when I read it, I
3 thought that the \$180 that -- well, it's confusing because
4 the first part, A, says production and construction costs
5 include copying the electronic public record, but I think
6 that's making an electronic copy, because the actual paper
7 copy is down here and doesn't look like it's in -- this is
8 just staff time in programming and computer services. The
9 copying isn't here. The copying is in subsection (h).

10 BOARD MEMBER CAHN: Right. But combined
11 you get \$180 worth of this and this.

12 CHAIRMAN BEDESSEM: For production and --
13 is it? Is that considered under production and
14 construction costs? That's the question. Because this
15 says production --

16 BOARD MEMBER CAHN: That's the exception.
17 Okay.

18 CHAIRMAN BEDESSEM: Not it's the same exact
19 question. Because if copying is under production and
20 construction costs, then, yes, you're getting \$180 worth of
21 copying for free, potentially, in this case, but not in
22 this case. But if they're two separate items, then there
23 is no difference.

24 So I'd like to hear a response from the group.

25 MR. FRANKEN: So Madam Chairwoman, if I

1 understand the question -- and I can read out -- hopefully
2 I'm answering your question. But under A&I's comments,
3 they talk about the uniform rules established production
4 and construction costs related to electronic public
5 records. And the outlying -- the statute, which is
6 164-204(d)(i), says these production and construction costs
7 may include but are not limited to the time spent
8 retrieving, compiling, sorting, reviewing, redacting,
9 formatting, converting or copying electronic public records
10 as well as activities required to create or construct a new
11 electronic public record from existing data sources and all
12 associated program and computer services.

13 The rules establish production and construction
14 costs, and then they break it out. If it's clerical, it's
15 \$15.50 an hour; \$30 an hour for IT staff time; and \$40 an
16 hour for professional staff time.

17 As far as the copying and transmittal fees, they
18 came up with that it was going to be the actual cost for a
19 nonelectronic public record to make copies, to make -- to
20 scan and those type of things. And to answer your
21 questions, why isn't there \$180 threshold for the
22 nonelectronic public records versus the electronic public
23 records, I'm not a hundred percent sure why they did that.
24 My assumption would be is that there's going to be an
25 actual cost because somebody's going to go and take a

1 physical nonelectronic record and make copies of it. So on
2 the -- if you compare that to the nonelectronic public
3 records, the rule is very lenient in that it gives somebody
4 an \$180 threshold, which, as we mentioned earlier, the vast
5 majority of those nonelectronic public records are going to
6 fall within that threshold.

7 MS. SHAW: Madam Chair and Board Member
8 Cahn, if I could also direct you to in the A&I rules
9 Section 4, paragraph (h), that's where it specifies that if
10 a person wants a paper copy of an electronic record, then
11 those same fee schedules from Section 5 will apply. So I
12 think it's important to distinguish between the cost to
13 obtain a copy and the cost for the department to produce a
14 readable version of an electronic record and those are
15 different costs.

16 CHAIRMAN BEDESSEM: So I think the
17 confusion is is that in Section 4, under Production and
18 Construction Costs, it would have probably been better to
19 say cost of producing and constructing an electronic copy
20 of an electronic public record. I think that's where the
21 confusion is because when you read it, A, you first think
22 we're talking about a physical copy, and that's included in
23 the \$180, you know, de minimis amount. But, in actuality,
24 all copies look like they're being charged under
25 Section 4(h) by fees that are listed under, you know, 5(b).

1 So it seems like the \$180 threshold are
2 production and construction costs as they're listed in
3 Section 4(c), which is not the actual physical copies. The
4 paper copies. That's my understanding of it.

5 BOARD MEMBER CAHN: Is that a correct
6 interpretation?

7 MR. FRANKEN: Madam Chairwoman. That would
8 be my interpretation of how A&I developed the rule.

9 CHAIRMAN BEDESSEM: So everybody has to pay
10 for copies. You just, if you have an electronic public
11 record, you get \$180 for the electronic production.

12 BOARD MEMBER CAHN: So you get \$180 towards
13 the staff time, but you don't get \$180 towards paper
14 copies? No. That's not right?

15 BOARD MEMBER KIRKBRIDE: Yeah.

16 CHAIRMAN BEDESSEM: Yes.

17 BOARD MEMBER CAHN: That is right.

18 MR. GUILLE: Madam Chairwoman. I believe
19 that's correct.

20 BOARD MEMBER HANSON: Madam Chair. May --
21 might it clarify things if in paragraph (b) you state
22 production and construction costs outlined in paragraph (c)
23 as the -- in brackets -- will be charges only if they
24 exceed. Then that would clarify it.

25 CHAIRMAN BEDESSEM: It might have been --

1 MS. THOMPSON: Madam Chair.

2 CHAIRMAN BEDESSEM: -- clear. However,
3 this is already a --

4 BOARD MEMBER CAHN: Already a rule.

5 CHAIRMAN BEDESSEM: -- adopted rule.

6 BOARD MEMBER CAHN: Correct.

7 CHAIRMAN BEDESSEM: And we're just
8 considering whether we're going to adopt by reference. So
9 we don't have the opportunity to make these corrections and
10 make it more understandable at this point.

11 MS. THOMPSON: Correct. This is similar to
12 when we incorporate by reference out of the CFR. And
13 occasionally when we are incorporating by reference we
14 don't do this as much in Water Quality, but they do it in
15 Air Quality a lot. And you don't always wholeheartedly
16 agree with their grammar and punctuation bits, but when we
17 incorporate by reference, we sort of waive our right to
18 change the language around. And so if we were
19 incorporating the rule by pulling the language out and
20 putting it into our rule, and that's what we were
21 proposing, it would be different. We would have --
22 potentially have some leeway. But all we are doing is
23 giving you a date of the rule we are incorporating and
24 telling the public that we are incorporating this rule so
25 we are using this rule as our rule, and that we will have

1 this rule available in our office. So we are open to any
2 suggestions you have on that language, but, sadly, we are
3 not taking recommendations for the A&I Rule, whether or not
4 we believe pieces are confusing or could use a little
5 tightening up.

6 CHAIRMAN BEDESSEM: Well, I would think in
7 the future, when they go back and revise this, that they
8 might take these components into consideration, like
9 putting the word electronic copy, et cetera. And also
10 because as this rule is adopted -- was adopted, \$15.50 for
11 a clerical per hour, you know, that's a point in time. You
12 know, 10 years from now that number's going to look pretty
13 pitiful, you know. And so I imagine at some point that --
14 that, you know, one might argue it looks pretty pitiful
15 right now.

16 MS. THOMPSON: No comment, Madam Chairman.

17 CHAIRMAN BEDESSEM: So the thought is at
18 one point they might go back and do some editing revisions
19 to -- to this. And if so, perhaps they might consider
20 those comments for the future.

21 BOARD MEMBER CAHN: Go ahead.

22 BOARD MEMBER KIRKBRIDE: Well, I hate to
23 pound this to death, but it seems to me like a weak point
24 of this is, if you want paper copies, you get your staff
25 time for free.

1 CHAIRMAN BEDESSEM: If -- no.

2 BOARD MEMBER KIRKBRIDE: Yeah, you do.

3 You staff time for free. Just pay for the copies. If you
4 want it electronically, you got to pay for the staff time.

5 CHAIRMAN BEDESSEM: Well, you have to
6 pay --

7 BOARD MEMBER KIRKBRIDE: According to
8 this --

9 CHAIRMAN BEDESSEM: If you want --

10 BOARD MEMBER KIRKBRIDE: -- you --

11 THE REPORTER: One at a time.

12 CHAIRMAN BEDESSEM: -- paper copies, you
13 have to pay a custodian's fee to supervise the copying.
14 Okay?

15 BOARD MEMBER KIRKBRIDE: Okay. There it
16 is.

17 CHAIRMAN BEDESSEM: But you don't get your
18 \$180, I guess.

19 BOARD MEMBER KIRKBRIDE: Yeah. Yeah.

20 BOARD MEMBER CAHN: It --

21 BOARD MEMBER HANSON: Madam Chair. My
22 question would be why are we looking at it if we can't make
23 suggestion to improve it? Then blessings to you and adopt
24 it. Next.

25 CHAIRMAN BEDESSEM: Klaus is very good at

1 cutting to the chase.

2 BOARD MEMBER CAHN: My question is similar
3 but asked from a different perspective. Rather than you
4 giving our blessings, what if this board says we don't
5 think you should do this. We think there should be 180 --
6 you know, we want more flexibility. We think DEQ should
7 have, for nonelectronic public records, there should be the
8 \$180 free -- you know, get out of jail free card. What
9 would happen if our board didn't suggest adopting this?
10 That's my question.

11 MR. FRANKEN: Kelly, you can answer that?

12 MS. SHAW: Sure. There's actually a state
13 statute which obligates all agencies of the state to adopt
14 these uniform rules. So if this board did not recommend
15 adoption, then DEQ would potentially not be compliant with
16 that statute.

17 BOARD MEMBER CAHN: That isn't very clear,
18 but I've got handcuffs on. I'm chained to my chair.

19 CHAIRMAN BEDESSEM: Honestly, I see they
20 don't get you \$180 free, but, essentially, you know, most
21 of this copying -- you know, they're encouraging you to get
22 an electronic copy and copy it yourself or get a third
23 party to do the copying, in which case you'd be paying for
24 it anyway. It's pretty difficult for them to give you \$180
25 credit at Kinko's. So I'm okay with the difference between

1 that, because that's just -- it's not a manageable thing,
2 like I said, because the state would have to spend the \$180
3 at the third party, you know. So that's my opinion.

4 BOARD MEMBER KIRKBRIDE: We have -- I'm
5 sorry. We have public comments next, Madam Chairman?

6 BOARD MEMBER HANSON: I have one more
7 suggestion. I think there should be -- in discussion,
8 there's a difference between making -- suggesting
9 substantive changes and editorial observations. You know,
10 it seems to me why are we discussing it if we are supposed
11 to just blindly accept it. I can see where they don't want
12 to have substantive changes to this, but I think we made
13 some suggestions to clarify the document, which is an
14 editorial statement, and that should be acceptable, quite
15 frankly.

16 MS. THOMPSON: And I understand -- Madam
17 Chairman. Mr. Hanson, I understand where you're coming
18 from. This is our sister agency. This agency -- the
19 Department of Administration & Information is not under the
20 subject of the Environmental Quality Act, and they're not
21 under the oversight of the Water and Waste Advisory Board.

22 BOARD MEMBER HANSON: Okay.

23 MS. THOMPSON: And they promulgated this
24 rule under the rules that the state has laid out, that all
25 agencies have to follow. And so they've done their

1 rulemaking and they've done it in accordance with the law.
2 We don't -- we're past the point where we can -- where we
3 can say we disagree with your statement. We'd like you to
4 change it.

5 If we say we disagree with your statement, we'd
6 like you to change it, they get to go through rulemaking
7 again. And the other 12 agencies that have adopted this
8 rule already potentially have to go through rulemaking
9 again. So we're not trying to shut down your -- your
10 discussion or your -- your disagreement with how it's
11 written. It's just I want to point out that they're not
12 under your purview as the Water and Waste Advisory Board.
13 And I know that's a little confusing. It would be similar
14 if we were going to tell EPA, hey, that bit in the CFR,
15 it's really poorly written. Can you work on that? Well,
16 we can make the suggestion, and I'm sure there are channels
17 that we can use to do that. However, they're not under our
18 purview. And so that's where we are in the process.

19 I'm -- does that -- does that clarify that for
20 you?

21 BOARD MEMBER HANSON: Uh-huh.

22 MS. THOMPSON: Okay. Thank you.

23 CHAIRMAN BEDESSEM: Go ahead.

24 BOARD MEMBER CAHN: Why do we even take
25 public comments or boards comments on something we can't do

1 anything about or change? I mean --

2 MS. THOMPSON: Because by incorporating it,
3 you're saying it's the rule, and we're required to seek
4 your recommendation of adoption.

5 BOARD MEMBER CAHN: But if we say don't
6 adopt --

7 MS. THOMPSON: Right. And that's the fun
8 part of being a bureaucrat is -- I would love to just put
9 this in process -- in place, but -- because it would make
10 it all tidy and -- but I'm not allowed to do that. We're
11 not allowed to do that as an agency. We're required to
12 come before you. And then we're also going to go before
13 the Air Quality Advisory Board. You're going to get to see
14 this again.

15 BOARD MEMBER HANSON: Thank you.

16 MS. THOMPSON: And then we're going to go
17 to the Land Quality Advisory Board, and then we're going to
18 go before the council, you know, if you recommend adoption
19 and they all recommend adoption. Our statute makes it to
20 where we have to go through all of you and then through
21 them. So because the way the statutes written, our hands
22 are tied. We have to come before you.

23 BOARD MEMBER CAHN: Okay. But if your
24 board says -- if we vote and the majority says we don't
25 like this, we're not going to recommend adoption, what

1 happens?

2 MS. THOMPSON: Allison and Kelly, do you
3 have a sense of what the governor or the legislature, what
4 their -- like how -- what would the process be for us if
5 the board here decides to not recommend approval?

6 MS. SHAW: I can't speak to exactly what
7 would happen. Administrative agencies are created by the
8 legislature and their heads are generally accountable to
9 the governor. And so if a state agency is not following
10 the directives of the legislature, it's hard to say what
11 would happen. But in general, it would probably be a messy
12 situation.

13 BOARD MEMBER CAHN: In that --

14 MR. EDWARDS: Madam Chairwoman.

15 CHAIRMAN BEDESSEM: Yes.

16 MR. EDWARDS: Oh, I'm sorry.

17 Madam Chairwoman, this is Alan Edwards.
18 Perhaps -- I'd like to make one other point, just also to
19 clarify. We are required by statute to incorporate this
20 rule, this uniform rule. So it's a statutory requirement.
21 It's not a personal decision on our part.

22 But I also would like to point out one of the
23 other items is this rule has gone through a public --
24 public notice and public comment period through the A&I
25 process. And so it -- it is not that by incorporating by

1 reference means there is no public input and public
2 comment, because A&I went through the full public process.
3 Joe had identified some of the questions that were raised
4 and the responses, but this particular rule has been vetted
5 through a public review and public comment period. So I
6 think I'd like to place that out there just as a reminder
7 that even though it's an incorporation by reference, and I
8 can understand some of the frustration, it is -- does not
9 mean it has not been vetted through public process. But I
10 think that's important to know.

11 MS. THOMPSON: And, Mr. Edwards, I'd also
12 like to point out to the board, Madam Chairman, that DEQ is
13 not the only sister agency to take upon this task. So all
14 of our other sister agencies also get to go through the
15 proper public notice and taking public comment process that
16 we are doing. We get to do it an extra time for good
17 measure, but the Oil & Gas Conservation Commission has just
18 heard these rules. The governor's office promulgated this
19 rule into their own rules. The Secretary of State, the
20 Attorney General's Office. There's 12 or 13 other agencies
21 that have gone through formal rulemaking. And that doesn't
22 count the other agencies that are working on adopting this
23 as their statute process outlines. So this isn't a DEQ
24 only thing either. We all get to do this.

25 BOARD MEMBER CAHN: But -- go ahead.

1 BOARD MEMBER HANSON: Go first. I'll go
2 second.

3 BOARD MEMBER CAHN: So it has happened in
4 the past with this board where we had a policy and then a
5 rule -- that ag use policy that our board did not recommend
6 adopting, and DEQ went ahead and took it to the gov -- to
7 the EQC. So it has happened in the past where the board
8 has not recommended something going forward and it has gone
9 forward. So I assume that the answer to us is going to be
10 if we don't recommend adoption of this, that you would
11 likely go ahead, go forward to EQC with or without --
12 you'll go forward to EQC with or without our approval, is
13 my guess. But maybe you could comment on that.

14 MR. EDWARDS: Madam Chairwoman, if I could
15 respond to that.

16 I really do not want to speculate upon a decision
17 that has not been rendered by the advisory board yet. If
18 the decision is to not recommend approval and move ahead,
19 we will likely meet to consult with the Attorney General's
20 Office and the governor's office on how we proceed from
21 here.

22 I assume one of the topics that would be -- one
23 of the options that would be considered is just that,
24 taking it directly to the council. Our preference would
25 be, despite the fact that it is frustrating and that it's

1 an incorporation by reference, our preference, clearly,
2 would be to have the council acknowledge and accept the
3 rule as it's intended and as it's required by the statute.
4 But if it is not, then we'll have to consider our options
5 in which that would be one.

6 BOARD MEMBER HANSON: Madam Chair. Madam
7 Chair. I think I spent considerable time reading through
8 public comments, and quite a number of public comments
9 wanting to do away altogether with the fees because they
10 were counted to whatever and et cetera. So all these
11 comment makers on those public fees statements, to have
12 them or to not have them, basically wasted their time
13 because we can't even consider that. So I think they
14 should be informed ahead of time, don't write. It's
15 useless anyway.

16 So I am confused. I am more than confused, I
17 must say, on this matter. And let me add. I disagree with
18 the statement that the -- there should not be fees, because
19 I -- I've seen it happen, they have lots of frivolous
20 requests, and I think fees are a good thing to curb that.
21 If you want to have a document, you ought to pay for it.
22 And the citizens have not, as a whole, paid for requests by
23 individuals. So that's a disagreement I have with that
24 statement. But at least these statements were made and
25 you're telling us they are of no consequence whatsoever.

1 So I thought we were listening to our public. We are not.

2 MR. EDWARDS: Madam Chairwoman. I would
3 refer back to an earlier comment in that there has been
4 a full public comment period that was offered through the
5 A&I process. These rules were fully vetted through the
6 public -- all members of the public had the opportunity to
7 participate and provide comments into the -- that organic
8 rule as it was being developed. So while we find ourselves
9 in this situation, I do want to go back and remind you that
10 every member of the public had a totally open process and
11 the opportunity to comment at that point. And it would
12 seem that the comments would have been most appropriate at
13 that point, since the intention was to require all
14 agencies, not DEQ, to incorporate by reference. And that
15 was the main and primary opportunity for public comment.

16 So I would like to reiterate that, once again,
17 and emphasize, there has been and was a public comment on
18 this basic rule. We just find ourselves in this particular
19 situation.

20 CHAIRMAN BEDESSEM: It seems to me that --
21 I don't know if for the other divisions and so forth, if
22 their public comment was simultaneous with ours or not, but
23 that if it hasn't been, then it may be beneficial to be
24 more specific in requests for public comment, that the
25 comment is only on whether or not to incorporate, not on

1 the content of that rule, because we cannot make any -- if
2 it's an incorporation by reference, there is -- we cannot
3 make any edits to, you know, what's being incorporated by
4 reference. And so then you won't be in a situation of
5 looking like you're accepting comments on specific items in
6 that document that we really don't have the ability to
7 change at this point.

8 So it might just be a matter of being very
9 specific in that request for public comment that it's only
10 about the -- whether or not the agency should incorporate
11 it by reference or not, not the exact content of it so that
12 people aren't making --

13 MR. EDWARDS: Madam Chairwoman -- Madam
14 Chairwoman, that's a very good comment. And we'll keep
15 that in mind in the future. That is a very extremely
16 observant comment to make. Definitely appreciate it.

17 CHAIRMAN BEDESSEM: Well, we don't want to
18 be misleading the public as to what they can impact and
19 what they cannot.

20 Lorie?

21 BOARD MEMBER CAHN: Yeah. So I know you
22 said that the Department of Administration & Information,
23 A&I, went before the public. But you would have known that
24 this would have to go before all agencies and all boards
25 and all agencies. And I don't recall getting a public

1 notice that it was going -- this was going before A&I and
2 was going to eventually be coming before this board, when I
3 might have made a public comment on it, so...

4 MS. THOMPSON: So Madam Chair. Ms. Cahn,
5 A&I followed the statutory requirements, according to the
6 Public Meetings Act and the Administrators --
7 Administrative Procedures Act. They published this in a
8 newspaper. They sent it out to the parties that they were
9 aware of that were interested. There were -- to my
10 knowledge, there wasn't anything -- we don't have a
11 procedure in place to where everyone who is interested in
12 any agency would have been notified. So I believe it's --
13 that's -- it's an inherent limit in the system, but DEQ
14 wasn't required to notify our interested parties or -- and
15 I don't believe it would have even occurred to us that, oh,
16 they're adopting a rule. Oh, we should let our people
17 know -- all our interested parties know that they're
18 adopting a rule. That wouldn't have occurred to us because
19 there -- there wasn't anything -- there wasn't a war group
20 or no one made that recommendation.

21 And so while you were not aware that they were
22 doing a rule, they did follow procedures. They did receive
23 public comment. They did notify the public at large. And
24 so I understand that frustration, but there -- no one did
25 anything that wasn't transparent. It's just there are --

1 this is not a perfect system in the state of Wyoming.

2 CHAIRMAN BEDESSEM: There's always a
3 difference between what's legal and what's advisable.

4 MS. THOMPSON: Correct. But I mean --
5 Madam Chairman, I would not have thought to -- that we
6 would need to do that. Somebody would have had to come up
7 with that idea before it would have occurred to me.

8 CHAIRMAN BEDESSEM: Thank you.

9 BOARD MEMBER HANSON: Madam Chair, I
10 suggest we do not adopt but rather accept this rule. It
11 seems to me that's what we're doing. We're not allowed to
12 adopt it, basically.

13 MS. THOMPSON: Well, what we're seeking
14 your recommendation of approval on is this language in
15 Section 11, this new Section 11, Public Records, lines 177
16 through 189 of the Rules of Practice and Procedure,
17 Chapter 1. That is -- that is what we're seeking your
18 recommendation of approval on today.

19 And for the record, Madam Chairman, whether or
20 not we can recommend actual changes to the rule, all of the
21 comments that we've received today, those are part of the
22 public record. Those are permanent. We're not throwing
23 those in the trash. Those are permanent. People have
24 voiced their concerns.

25 CHAIRMAN BEDESSEM: Maybe, as I said, in

1 the future revision, they, you know, might be able to
2 rectify some of those.

3 So today -- oh, there's additional board
4 discussion.

5 BOARD MEMBER KIRKBRIDE: Madam Chairman, we
6 do have members of the public here --

7 CHAIRMAN BEDESSEM: Yes. That's what I was
8 just going to get to.

9 BOARD MEMBER KIRKBRIDE: -- who have sent
10 comments in and we should -- before we do anything, maybe
11 we should hear.

12 CHAIRMAN BEDESSEM: That's what I was just
13 making sure that we did -- caught me right in the middle of
14 that sentence.

15 BOARD MEMBER HANSON: Aren't you glad you
16 came?

17 CHAIRMAN BEDESSEM: So do we have any
18 members of the public that would like to speak with respect
19 to adoption of the incorporation of this rule by reference?

20 MS. ANDERSON: Madam Chairman.

21 CHAIRMAN BEDESSEM: Yes. Please come up.

22 MS. THOMPSON: And then if you can speak at
23 this speaker, they'll pick up your voice better so it
24 doesn't cut in and out.

25 Sorry to make you sit near the projector.

1 MS. ANDERSON: No, that's fine.

2 Thank you very much. Shannon Anderson. I'm a
3 staff attorney for the Powder River Basin Resource Council.

4 Thanks so much for your time and review of this
5 very important subject to the members of the public. I
6 first want to preface my comments by saying this has
7 nothing to do with the DEQ staff. For instance, Gina and I
8 worked together for years to get access to Air Quality
9 records. I've worked with Tammy in Land Quality to get
10 access to Land Quality records. I know Pat at the Sheridan
11 DEQ office by first name because I see her regularly enough
12 when I go in to look at their records. So we've had a
13 long-standing relationship with the DEQ staff over the
14 years to get access to very important information to our
15 organization, our members and the general public. And that
16 is what we see our organizational charge as being.

17 We are an organization that works with citizens
18 that are dealing with permit applications for large
19 industrial facilities in their back yards. We're dealing
20 with, you know, folks that have significant concerns about
21 the public process and environmental protection interests.
22 So that's who we work with, and that's -- when we do Public
23 Records Act requests, that's why we're doing them.

24 So I thought today I would tell you a few stories
25 of some of our Records Act requests in the past and maybe

1 kind of relate how these rules would impact those kind of
2 Records Act requests.

3 So one, for instance, you may have heard about.
4 We recently challenged a coal mine permit for a proposed
5 coal mine seven miles north of Sheridan. We were working
6 with about a dozen landowner members who would be directly
7 impacted by this proposed coal mine. We were working
8 with -- with them and requesting records on their behalf.
9 Most of them worked during the day, so they weren't
10 actually physically able to go into the DEQ office. At one
11 point we asked the DEQ staff in Sheridan if they could hold
12 the records available after hours so people could come in
13 and look at them and inspect them physically there in the
14 DEQ office. DEQ said, no, they couldn't do that.

15 We couldn't check out the records during the
16 public comment opportunity. So the only way that some of
17 these folks had to get access to these records was through
18 us. And so what that meant is when we would go in, we
19 would need copies of those records. It's 13 volumes of
20 this permit application. You can't just look at it for an
21 hour and be done with it. You have to make sure that you
22 look at it. You take the time to assess it. So what we
23 would often do is we would scan the information at the DEQ
24 copier. That's now 10 cents a page under these rules. So
25 that would be hundreds of dollars for us to get all of

1 those records, supporting information, 13 volumes of a
2 permit application, all the correspondence files, all of
3 it-- you know, five rounds of technical review, comments
4 between DEQ and staff and the agency and the permit
5 applicant.

6 So that's a lot of money for our organization.
7 And it would be, in some cases, cost prohibitive for us to
8 engage in that way through that comment process. We were
9 also making copies for our experts. We had hired two
10 experts to review that permit application through this
11 public comment process. Because we were going to a
12 contested case hearing before the Environmental Quality
13 Council, and we knew we had to present information to the
14 Environmental Quality Council. You may have heard the
15 Environmental Quality Council agreed with our concerns and
16 rendered the permit application deficient because of our
17 involvement in this public process.

18 We also, through the contested case hearing
19 process, learned that there were about 10,000 pages of
20 emails that were not actually part of the official
21 correspondence file at the agency office. And so, again,
22 we were physically going in and inspecting the public
23 permit file regularly at the DEQ office. It wasn't the
24 whole file. So in order for us to get the whole file, we
25 would have had to do a Public Records Act request. We

1 actually didn't in this case because we thought we were
2 getting the whole file. It was only through discovery,
3 when another party to the proceeding requested everything,
4 we realized what we weren't getting. And that was about
5 10,000 pages of emails that we had not previously had
6 access to through the public inspection at the DEQ office.

7 I'll tell you another story about Pavillion. I
8 think folks are familiar with that area of our state and
9 the troubles that some of our landowner members have been
10 having with water quality issues and oil and gas
11 operations. There have been a number of Public Records Act
12 requests dealing with Pavillion and both the EPA
13 investigation, how this state DEQ has been meeting with EPA
14 and involved in the EPA process and then now the state
15 investigation and review. There's been Records Act
16 requests from our organization, from the organizations
17 outside of our state, from members of the press, from
18 individual landowners, so those -- and a lot of those
19 records are electronic records. Again, there's no real
20 permit file for Pavillion. So if you want to get the whole
21 story, you're going to have to do an official Records Act
22 request and request those electronic records and
23 correspondence. And that's how you're going to get the
24 full story.

25 We recently did a Records Act request for

1 communications between the DEQ and Arch Coal Company
2 related to self-bonding. Our organization has a
3 long-standing concern about reclamation and bonding for our
4 state's coal mines. Several coal mines have been through
5 bankruptcy recently, and they started bankruptcy as
6 self-bonded companies, which is a big concern of ours, and
7 our organization had been involved, actually, in those
8 bankruptcy proceedings.

9 So we did a Records Act request for
10 communications between Arch and the DEQ. It took a year to
11 get a response back. Largely because of Attorney General
12 review. So under these new rules, \$40 an hour professional
13 time for the Attorney General's Office. And all of our
14 requests, I think, from what I can tell, go through the
15 Attorney General's Office. They probably don't have to,
16 but they do. And that's -- you know, that creates this
17 backlog -- over a year it took to get a response to that
18 Records Act request.

19 We got 75 pages of electronic records at the end
20 of it, most of which were actually helpful. They would
21 have been more timely a year ago, but they were good to
22 get. Nonetheless at the end of the day. And I was told by
23 DEQ staff that nothing ended up being withheld, although it
24 had gone through that fairly rigorous Attorney General
25 review.

1 We've been dealing with a company called Link.
2 It's a company that's proposed underground coal
3 gasification in the Powder River Basin. They also recently
4 have gone through bankruptcy. Their whole file is treated
5 as confidential. It's locked up in the DEQ office in
6 Sheridan. So we have to do an official Records Act
7 request. There has to be Attorney General review every
8 time we make a request to review that file to make sure
9 that we're not getting anything that's supposed to be
10 confidential.

11 So, again, the Attorney General time, 40 bucks an
12 hour, it's going to add up. The \$180 threshold is going to
13 look pretty small, I have a feeling, once we start getting
14 Attorney General time involved in some of these requests.
15 And then you, you know, tack on supervision for copier
16 time.

17 So you go into the office and, you know, again
18 previously -- I've done this with Gina repeatedly, where,
19 you know, she gives me a stack of files, some of which
20 she's had to get from the archives, so there's staff time
21 associated with that. But she'll give me the files I
22 requested. I take them over to a table. I look through
23 them. I then take them to the copier. I scan the ones on
24 thumb drive that I want to have, and that's the whole
25 process. Gina's still at her desk working. Now there's

1 going to be somebody watching you that whole time or
2 somebody's going to be doing it for you. That's staff
3 time. And, I mean, when I've done them, it takes several
4 hours to make these copies sometimes. So, again, \$180,
5 it's going to add up pretty fast and it's going to take a
6 lot of DEQ time to make these requests work for our
7 organization and for the public.

8 It's also been a challenge with the temporary DEQ
9 offices in Cheyenne. More things are in archives, or you
10 know, has been harder for them because they have just
11 temporary space right now in their Cheyenne office.
12 Cheyenne is also the official record. So I can get records
13 in Sheridan, but if I want the official permit record, it's
14 the record in Cheyenne, which is four and a half hours from
15 our office in Sheridan. Could be pretty far from some of
16 our members and folks that may be interested in this
17 information.

18 So we just have a lot of concerns, again, how
19 this specifically will work at DEQ. And we understand that
20 there was a rulemaking process by A&I. We participated in
21 that process. We offered, I would say, general comments
22 because they were at that point general rules. They were
23 meant to apply to every single agency in the state. They
24 weren't specific to DEQ and DEQ's mission and obligations.

25 We did offer comments that there may be a problem

1 with these rules when it came to DEQ. As far as I know --
2 and I'd have to go back and look, it's been a while since I
3 looked at response to comments -- but I don't think there
4 was an actual response to that comment specifically related
5 to the Environmental Quality Act.

6 So we did engage in this other public comment
7 process, but we do feel that this one is very important
8 today. And I would disagree that that other process is the
9 main comment process. This, today, is the main comment
10 process for the public to talk about whether the DEQ should
11 adopt these rules and incorporate that by reference, given
12 particularly the Environmental Quality Act.

13 So there is this Section 1101 of the
14 Environmental Quality Act. And it's distinct from the
15 Public Records Act. It only applies to DEQ. It's the
16 only -- and the Environmental Quality Council, probably.
17 But these are the only agencies that are governed by
18 Section 1101 of the Environmental Quality Act.

19 And notably, it has actually a fee provision in
20 it where we would prosecute a Records Act request before
21 DEQ. And if we're successful in court, we get fees back.
22 DEQ's the only agency in the state with that provision.
23 And it's in there because it's so important that the public
24 has access to DEQ records and that they're available to the
25 public.

1 That's why this section in the Environmental
2 Quality Act exists. Why it's different than the Public
3 Records Act. There is already the Public Records Act. The
4 legislators knew that at the time of adopting the
5 Environmental Quality Act, but they also knew that DEQ had
6 to do something different. They have their own statutory
7 mandate for records availability. And they have that
8 because it's so important for members of the public to have
9 availability of records dealing with environmental quality,
10 public health, you know, these issues that are really
11 important to folks when you're dealing, again, with a large
12 industrial coal mine proposed right across the highway from
13 your house.

14 I mean, these are things that matter to people.
15 A new coal plant proposed down the street. A new, you
16 know, oil and gas well project, you know, across from your
17 house. I mean, this is what these records tell people.
18 They tell people what pollution's going to come and how
19 DEQ's managing it. And for organizations like ours, we're
20 able to learn whether DEQ's doing the right job for the
21 people of Wyoming. And like we just learned in Ramaco,
22 sometimes it takes our organization to be involved in that
23 process to make sure the Environmental Quality Act and its
24 provisions are met.

25 So I thank you for your time. I'd be happy,

1 again, to explore a little bit more with you about some of
2 these examples and how they actually apply.

3 We also provided written comments on behalf of
4 our organization and Wyoming Outdoor Council, the Sierra
5 Club, Wyoming Chapter, Wyoming Wilderness Association, the
6 Greater Yellowstone Coalition and Citizens United for
7 Responsible Energy Development. Again, we're all Wyoming
8 groups. We represent Wyoming citizens. We're all involved
9 in this public process that is very important through the
10 DEQ.

11 So thanks for your time. I appreciate it.

12 CHAIRMAN BEDESSEM: You were referring to
13 Section 1101. Is there a particular part of that that you
14 feel is -- conflicts incorporation of this rulemaking
15 Section 11?

16 MS. ANDERSON: Thank you, Madam Chair. I
17 do. It's cited in our written comments. So the basic
18 charge under Section 1101, as it reads, is any records,
19 reports or information obtained under this act or the
20 rules, regulations and standards promulgated hereunder --
21 so basically everything that DEQ does, are available to the
22 public.

23 So that's the DEQ charge. They have to be
24 available to the public. And, again, in the case of
25 electronic records, when you're going into that public file

1 and it doesn't have those electronic records in it, it's
2 going to cost staff time to make them available to the
3 public. But they have to be available to the public. And
4 we would argue that if you're being charged a prohibitive
5 fee, that record is no longer available. That's a limiting
6 factor for availability. Thank you.

7 CHAIRMAN BEDESSEM: Any other questions?

8 MR. EDWARDS: Madam Chairwoman, a couple of
9 items just for clarification in response.

10 We've reviewed the standard rules. We've
11 compared it against the act, and there is no conflict
12 between recovering the costs associated with public
13 records, construction and manufacture and the act. The act
14 specifically states that all records would be made -- would
15 be accessible to the public. That -- our policy in that
16 regard has not changed. The records are available to the
17 public. They're always open in-house for people to come in
18 and review. So in this regard, this statute doesn't
19 conflict with the act because all those records have been,
20 always have been, and will continue to be accessible to the
21 public.

22 I would also like to go back and reiterate I
23 understand the concerns that were expressed about the
24 possible conflicts between the act and this particular
25 request that's in front of you now. But as Joe indicated,

1 there are 44 other states who have agencies similar to
2 ours, who have cost reimbursement programs in place. They
3 fall under the same federal statutes for primacy that DEQ
4 does. So our Environmental Quality Act might be a little
5 different than theirs, but we fall under the same umbrella
6 federal acts.

7 I would point out that that is 44. So it might
8 make you wonder about the other remaining states. Every
9 one of those remaining states have legislative authority to
10 charge for -- for access -- for reproduction of records.
11 Basically it's a cost reimbursement. We were just unable
12 to find their procedures or their regulations that
13 implemented it. But even those that we couldn't find do
14 have legislative authority.

15 And those states, their primacy has, in fact, not
16 been questioned. So our interpretation is there's no
17 conflict. And that would appear to be the same
18 interpretation as far as the charge of making reasonable
19 cost recovery charges for the production of records, they
20 are not in conflict with their primacy statutes either.

21 So just for clarification, we do not feel there's
22 a conflict, and we do not feel it jeopardizes any of our
23 primacy across any of our programs. Thank you.

24 CHAIRMAN BEDESSEM: It seems to me that
25 DEQ, for one, is going to great expense trying to get all

1 its records in electronic format so no one will have to
2 scan a 13-page [sic] mine document because it might be a
3 large megabyte PDF, but it should be all scanned so that
4 we'll run into fewer and fewer issues, because if you want
5 an electronic copy of that, it would not very much -- take
6 much time to produce it, would be under the \$180 minimum,
7 and you would have your 13-volume document pretty simply.

8 I know recently we've had requests that, again,
9 were just done through a third party so there was no
10 concern about records walking off or anything like that.
11 And it was the standard fees that you would pay at a copy
12 center, which I guess is, you know, the cost of -- if you
13 need the physical copy, if you can just take the -- you
14 know, the PDF and copy it on your own copier, it's not
15 nearly the cost. But I'm sure there's lots of other
16 situations where it's been much, much more difficult, so...

17 MR. EDWARDS: And Madam --

18 CHAIRMAN BEDESSEM: Uh-huh. Yes.

19 MR. EDWARDS: Madam Chair, we've been
20 working on that for a few years. As you can gather, the
21 technology has really become refined. It makes it easier
22 to capture that data electronically. So there's been some
23 recent developments that -- that we're seeking to rely on
24 to do just that. And just add that if we continue to move
25 the records and have them electronically, we can avoid

1 these kind of challenges and issues. If the public can go
2 into those, access them electronically -- like if you have
3 a 1300-page mine plan, you know, rather than printing off
4 the entire thing, it would be our hope that somebody could
5 go into the electronic copy -- all of these would be word
6 searchable -- pull out the section or the elements that is
7 of the most interest and only capture those. So we don't
8 get into this situation do you need to copy the entire
9 document or do they have the ability to access specific
10 information.

11 As Keith had mentioned, the AML library and files
12 have been totally digitized, word searchable. So that
13 program was an early pilot, and the others are following in
14 that course. Unfortunately, that's still a work in
15 progress. I can't tell you when we'll be done with all the
16 divisions, but I can speak for the director in this regard.
17 We're committed to continue to move through that process to
18 make these records not only accessible but more easily
19 accessible. And a person, if they want copies, can choose
20 how many they want to print off.

21 And so we're committed to that. It's just that
22 it's a work in progress. So thank you for that.

23 CHAIRMAN BEDESSEM: Thank you. I
24 oftentimes get requests for DEQ for documents because
25 they're in transition, being converted somewhere, and are

1 not in DEQ files for the moment.

2 MR. EDWARDS: Well, Madam Chairman --

3 CHAIRMAN BEDESSEM: So I know it's a
4 process.

5 MR. EDWARDS: -- keep in mind once it's
6 digitized, it really saves on our staff time because the
7 staff would not need to be the ones pulling the data and
8 searching it and getting the right data. So it -- our --
9 we're envisioning it will be easier for both the agency and
10 the public when we get through that process.

11 CHAIRMAN BEDESSEM: So additional comments
12 from the board?

13 BOARD MEMBER KIRKBRIDE: I just want to
14 express in -- I would -- I'm preparing to move that we
15 approve this recommendation, but I want to -- in response
16 to the public concern about the costs. If you've got a
17 coal mine going in across the road from your house, you got
18 bigger problems than a thousand dollars you're going to
19 spend on those problems, and you're going to blow right by
20 it with your attorney fees that you're going to have to
21 hire. And I just think it's going to be the cost of your
22 problem.

23 And so it's great to have -- have things like
24 Powder River Basin Resource Council helping the little guy
25 in these times.

1 So I just want to say I'm not -- I'm sympathetic
2 to those concerns. But I'm prepared to move that we
3 approve that we get on board as -- as the language that --

4 CHAIRMAN BEDESSEM: I'll restate it for
5 you.

6 BOARD MEMBER KIRKBRIDE: Oh, good.

7 BOARD MEMBER CAHN: I still have -- okay.
8 Go ahead.

9 CHAIRMAN BEDESSEM: Okay. You're going
10 to -- I'll say you're going to make a motion. Lorie will
11 still have questions after that. But you'll make a motion
12 to recommend moving this chapter forward to the EQC for
13 their review and adoption.

14 BOARD MEMBER KIRKBRIDE: Yes, I would make
15 that motion.

16 CHAIRMAN BEDESSEM: Okay. Lorie?

17 BOARD MEMBER CAHN: I would just like to
18 make a comment, and then I have a question. And the
19 comment is, you know, when you say that -- you use the term
20 accessible and say that these documents are all accessible,
21 you can interpret accessible if it's prohibitively
22 expensive, then they're really not accessible. So, yes,
23 they are accessible, but -- but they're also not. I would
24 just make that comment.

25 The other question that I have is the -- the

1 Powder River Basin Resource Council brought up this
2 13-volume permit, and you're in the process of digitizing
3 these permits. So my question is how many months before
4 you think that example, 13-volume permit, might be
5 digitized and available electronically?

6 MR. EDWARDS: Madam Chairwoman. I do not
7 have an estimate and the timeline. I know each division is
8 working through the process. And we're moving through it
9 as quick as we can, but I do not have a timeline, and I
10 don't think one has been set as far as when that would be
11 done.

12 BOARD MEMBER CAHN: I guess -- I guess my
13 feeling is -- okay. Go ahead.

14 CHAIRMAN BEDESSEM: My question is, are
15 most of the divisions requiring electronic submittal now so
16 that it's mostly old documents, or are we not getting
17 electronic submittals at the current moment?

18 MS. THOMPSON: Madam Chairman, it depends
19 on which division that the application is going through.
20 Air Quality Division has an electronic online system.
21 Parts of Water Quality have electronic systems the
22 applicants can upload to. But parts of water quality also
23 do not. And I can't speak for Land Quality. I'm not as
24 familiar with them. But I would have -- I can say
25 accurately, that it varies by division based on is there a

1 statutory recommendation or do we have something in rule
2 recommending hard copies. Like I said, Air Quality has a
3 very good electronic system, but it varies by division.

4 CHAIRMAN BEDESSEM: Oftentimes agency staff
5 will just, you know, inform the request can you send me
6 electronic copy of the application you submitted as well.
7 And so if that's staff policy or becomes more included in
8 the various rules, it will make this less onerous for
9 people to get copies of documents, so...

10 BOARD MEMBER CAHN: Could -- I notice
11 that Mr. Tillman was shaking his head that the records were
12 not --

13 CHAIRMAN BEDESSEM: Electronic.

14 BOARD MEMBER CAHN: -- electronically
15 always.

16 I was just wondering would you be willing to
17 recognize Mr. Tillman, and he can just kind of give us a
18 discussion on that where it stands in your group.

19 MR. TILLMAN: As far as -- again, as far as
20 electronic records?

21 BOARD MEMBER CAHN: How much you're still
22 nonelectronic. Because you were shaking your head.

23 MR. TILLMAN: I'm in the Water -- Bill
24 Tillman. I work in the Water Quality Division.

25 MS. THOMPSON: Come up so they can hear you

1 in Cheyenne.

2 MR. TILLMAN: Unfortunately, a lot of
3 times, depending on the application and what the project
4 may be within our group, it's difficult to get electronic
5 copies and to see all the information because we're talking
6 about plans that could be, you know, the size of this
7 table, 60, 70 pages worth of drawings. And to get that
8 digitally/electronically and be able to handle that with
9 our machines is difficult at times. And that's an
10 electronic, I guess, technology hurdle that we haven't
11 quite got around yet.

12 So it's -- right now we're still requiring some
13 paper copies. We're trying to get some electronic. But
14 it's just sheer the nature of what we do doesn't lend
15 itself to entirely electronic copies all the time. And
16 depending on the division and what they're working and the
17 application for the type of work that they do, that
18 sometimes is the driver, is technology hasn't caught up
19 with the ability to do all that digitally. And sometimes
20 as engineer I want to see the hard copy. I've got to be
21 able to look at individual portions of that drawing that's
22 hard to capture on screen.

23 Madam Chair.

24 CHAIRMAN BEDESSEM: So you can get
25 electronic copy, but you're going to want your paper copy

1 too. But you have -- you know, you could get a PDF of
2 that. It's just not an easy thing for you to review in
3 that format. You'd rather review the paper copy.

4 MR. TILLMAN: Right. Also technology --
5 sometimes our computers can't handle sometimes the size of
6 some of these drawings if they came in electronically.
7 And, again, that's something ETS, the IT folks, would have
8 to identify who's getting those and those people that need
9 maybe higher quality of computer equipment to be able to
10 handle some of these electronic submittals.

11 CHAIRMAN BEDESSEM: Okay. Thank you.

12 BOARD MEMBER CAHN: Thanks.

13 I guess one of my thoughts on this is that until
14 DEQ is further along with having, you know, documents
15 digitized, each group, I'm not comfortable with
16 recommending going forward with this. So I'll just make
17 that comment.

18 CHAIRMAN BEDESSEM: Okay. We have a motion
19 on the floor. Do we have any further discussion?

20 BOARD MEMBER KIRKBRIDE: We would need a
21 second, would we not?

22 BOARD MEMBER CAHN: And a second.

23 CHAIRMAN BEDESSEM: I can still second. So
24 I will second the motion to incorporate Section 11 as
25 moved.

1 Okay. There's a motion on the floor and a
2 second. All those in favor?

3 BOARD MEMBER KIRKBRIDE: Aye.

4 CHAIRMAN BEDESSEM: Aye.

5 BOARD MEMBER HANSON: Aye.

6 CHAIRMAN BEDESSEM: Opposed?

7 BOARD MEMBER CAHN: Aye. Same sign.

8 CHAIRMAN BEDESSEM: Yeah, same sign.

9 BOARD MEMBER HANSON: It would have failed
10 if I hadn't joined you.

11 CHAIRMAN BEDESSEM: So the motion passes.

12 So we are -- the Water and Waste Advisory Board
13 is recommending that we move this chapter forward to the
14 EQC for their review and adoption.

15 MS. THOMPSON: Thank you, Madam Chairman.

16 CHAIRMAN BEDESSEM: Okay. It was a very
17 informative discussion. Thank you all in Cheyenne for
18 being here to engage us in that discussion, and I hope the
19 second round revisions of that section might include some
20 of our comments in the future.

21 MR. EDWARDS: Madam Chairman, thank you
22 very much for the time and the willingness to hear us on
23 this. It is greatly appreciated.

24 MR. FRANKEN: Thank you, Madam Chairman and
25 board.

1 CHAIRMAN BEDESSEM: Thank you. And I look
2 forward to DEQ being further along in their electronic --
3 I know scanning is the worst job in the world, but
4 hopefully it will get mostly done soon. So thank you very
5 much.

6 Okay. We're going to take a lunch break now and
7 then reconvene in about an hour. Okay?

8 (Meeting proceedings recessed
9 12:07 p.m. to 1:24 p.m.)

10 CHAIRMAN BEDESSEM: Thank you. We're now
11 reconvening the Water and Waste Advisory Board. And I
12 believe first on this agenda after lunch is Water Quality
13 Division Chapter 5 changes.

14 And I'll turn it over to Bill Tillman with Water
15 Quality for the presentation.

16 MR. TILLMAN: Thank you, Madam Chair. Bill
17 Tillman, Water Quality Division, water and wastewater
18 section.

19 Again, the changes -- excuse me. What we're
20 presenting here is Chapter 5 deals with operations of
21 certification for publicly owned water distribution systems
22 and wastewater treatment and collection systems. In
23 general, the changes that were made were basically
24 concerning the requirements about operator availability.
25 We added a couple of levels of certification that were