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WYOMING AIR QUALITY ADVISORY BOARD

TRANSCRIPT OF SPECIAL MEETING PROCEEDINGS

Pursuant to notice duly given to all parties in interest, this matter came on for meeting on the 12th day of July, 2018, at the hour of 1:00 p.m., at the Wyoming State Library, 2800 Central Avenue, Cheyenne, Wyoming before the Wyoming Air Quality Advisory Board, Chairman Tim Brown presiding, with Board Member Diana Hulme, Board Member Klaus D. Hanson, Ph.D., and Board Member John Heyneman and Board Member Doug Vickrey in attendance by telephone.

Ms. Nancy Vehr, Air Quality Administrator, Ms. Amber Potts, Mr. Darion Donnelly, Mr. Mike Morris, Mr. Rob Leteff of the Air Quality Division, and Ms. Allison Kvien, Assistant Attorney General, were also in attendance.

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I N D E X

ALSO PRESENT: MS. DARLA POTTER  
MS. NATALIE KUHLMANN  
MR. CASEY QUINN  
MS. MARY FLANDERKA  
MS. GINA THOMPSON  
MR. JOE FRANKEN  
MR. KEITH GUILLE  
ATTORNEY GENERAL PETER MICHAEL  
DEPUTY ATTORNEY GENERAL JAMES KASTE  
MR. TODD PARFITT

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

2 (Special meeting proceedings commenced  
3 1:00 p.m., July 12, 2018.)

4 CHAIRMAN BROWN: All right. Let's call  
5 this special meeting to order. First thing we want to do  
6 is do some introductions and then open it up to Nancy for  
7 some direction on what we're going to talk about today.

8 MS. VEHR: Sure.

9 CHAIRMAN BROWN: First -- yeah, let's do  
10 the introductions and then approve the minutes.

11 MS. VEHR: You want start with the board or  
12 would you like --

13 CHAIRMAN BROWN: Let's go this way and then  
14 go to DEQ.

15 MS. VEHR: Nancy Vehr, Air Quality  
16 Administrator.

17 BOARD MEMBER HULME: Diana Hulme, member of  
18 the Air Quality Advisory Board from Laramie, Wyoming.

19 CHAIRMAN BROWN: Tim Brown, member of the  
20 board from Green River, Wyoming.

21 BOARD MEMBER HANSON: Klaus Hanson,  
22 Laramie, Wyoming, on the board.

23 MS. VEHR: And on the phone?

24 BOARD MEMBER VICKREY: Doug Vickrey from  
25 Daniel, for the board.

1 MS. VEHR: And with that, I'll introduce  
2 the -- we'll go down the row of the staff that have  
3 participated from DEQ on the rulemaking package before you.

4 So, Amber, if you can start.

5 MS. POTTS: Amber Potts with Air Quality  
6 SIP and Rulemaking Section.

7 MR. DONNELLY: Darion Donnelly with Air  
8 Quality SIP and Rulemaking.

9 MS. THOMPSON: I'm Gina Thompson with Water  
10 Quality Division, and I'm assisting  
11 Mr. Joe Franken with the development of his rule package.

12 MS. VEHR: Okay. And then I'll skip over  
13 our guests until the end, and then proceed with Joe.

14 MR. FRANKEN: Joe Franken with DEQ  
15 Management Services.

16 MR. GUILLE: Keith Guille, the public  
17 information officer, DEQ.

18 MR. MORRIS: Mike Morris, also with the SIP  
19 and Rule Development.

20 MR. LETEFF: And Rob Leteff with the SIP  
21 and Rule Development Team as well.

22 MS. VEHR: That's everybody that has  
23 participated from the DEQ and Air Quality Division on the  
24 rulemaking.

25 We also have two guests here today from the DEQ.

1 Start with Director.

2 MR. PARFITT: I'm Todd Parfitt. I'm the  
3 director for the DEQ.

4 MS. VEHR: And with Allison Kvien. Start  
5 with Allison from the Attorney General's Office.

6 MS. KVIEN: I'm with the Attorney General's  
7 Office, and I represent the Air Quality Division of the  
8 Environmental Protection Agency.

9 (Power bump.)

10 BOARD MEMBER HANSON: Did we lose the  
11 phone?

12 CHAIRMAN BROWN: Hey, Doug, can you hear  
13 us? We can hear Doug.

14 MS. THOMPSON: So you need to unmute. If  
15 you hold on, he'll unmute the -- hit auto muted button.

16 MR. DONNELLY: Try now.

17 CHAIRMAN BROWN: Hey, Doug?

18 BOARD MEMBER VICKREY: Yeah.

19 CHAIRMAN BROWN: We had a power bump here,  
20 so we're back on.

21 BOARD MEMBER VICKREY: I thought so. It  
22 got awful quiet there.

23 CHAIRMAN BROWN: Yes.

24 MS. VEHR: So, Allison, we can resume with  
25 you.

1 MS. KVIEN: I'm Allison Kvien. I'm with  
2 the AG's office, and I represent the Air Quality Division  
3 of DEQ.

4 MR. KASTE: I'm James Kaste. I'm Deputy  
5 Attorney General, in charge of the Water and Natural  
6 Resources Division of the Attorney General's Office, which  
7 serves the DEQ.

8 ATTORNEY GENERAL MICHAEL: I'm Pete  
9 Michael, Wyoming Attorney General.

10 MS. THOMPSON: We just had another caller  
11 join.

12 CHAIRMAN BROWN: Who just joined?

13 BOARD MEMBER HANSON: An elephant. Hello?

14 CHAIRMAN BROWN: Who's on the line?

15 BOARD MEMBER VICKREY: I don't know. I am  
16 still.

17 CHAIRMAN BROWN: Okay. It sounds like  
18 somebody rang in.

19 BOARD MEMBER VICKREY: It did.

20 BOARD MEMBER HEYNEMAN: Yes. I'm  
21 looking -- I'm watching you all. John Heyneman.

22 CHAIRMAN BROWN: Oh, okay.

23 BOARD MEMBER HEYNEMAN: I'm trying to get  
24 on the computer, but I'm having a difficult time getting to  
25 the Google site. So I will keep trying.

1 MS. THOMPSON: This is fine.

2 CHAIRMAN BROWN: What's that?

3 MS. THOMPSON: This is fine what he's  
4 doing.

5 MS. POTTS: Yeah, just on the phone is  
6 fine.

7 CHAIRMAN BROWN: What you're doing on the  
8 phone is just fine, John.

9 BOARD MEMBER HEYNEMAN: Okay. I hate to  
10 deprive you of having my image.

11 CHAIRMAN BROWN: Well, we'll deal with  
12 that. It's our loss.

13 Okay. Now, we just went through introductions,  
14 so you're up next, John.

15 BOARD MEMBER HEYNEMAN: My name is John  
16 Heyneman. I'm on the DEQ Air Quality Advisory Board from  
17 Sheridan, Wyoming.

18 CHAIRMAN BROWN: Okay.

19 MS. VEHR: I think that's everybody.

20 CHAIRMAN BROWN: Okay. That's all the  
21 introductions.

22 So our first call to order is approval of minutes  
23 of the April 27, 2018 meeting.

24 BOARD MEMBER HANSON: So moved.

25 BOARD MEMBER HULME: Second.

1 CHAIRMAN BROWN: All those in favor?

2 BOARD MEMBER HANSON: Aye.

3 BOARD MEMBER HULME: Aye.

4 BOARD MEMBER HEYNEMAN: Aye.

5 BOARD MEMBER VICKREY: Aye.

6 CHAIRMAN BROWN: Okay. All those opposed?

7 Meeting minutes from the April 27, 2018 meeting  
8 have been approved as written.

9 On to new business. And Ms. Vehr has a statement  
10 or --

11 MS. VEHR: Yeah.

12 CHAIRMAN BROWN: -- something to read to  
13 us.

14 MS. VEHR: Yeah. So I just wanted to give  
15 a reminder to the board that at the April 27th meeting,  
16 that the board had entered into deliberations at the close  
17 of the public comment period and wanted to continue the  
18 discussion and their deliberations at a special meeting.  
19 So we called -- scheduled this meeting. And thanks for  
20 everyone -- I know in the summertime it's hard to -- to get  
21 dates and coordinate. But we wanted, then, to start this  
22 special meeting as a continuation of those discussions that  
23 the board had entered into.

24 As a reminder -- and you probably noticed this  
25 when you reviewed the transcript that was provided to



1 you -- the board had asked if the Attorney General's Office  
2 could, you know, provide some additional information. You  
3 wanted a copy of the transcript to review, so we provided  
4 that so that you could take a look at some of the concerns  
5 that you would -- had mentioned.

6           Where the board had left off at the last meeting  
7 was that there were legal requirements for adoption of this  
8 rule that both the Department -- I think Gina had mentioned  
9 at the last meeting -- Allison had mentioned at the last  
10 meeting kind of what those requirements were. And one of  
11 those requirements is from the legislation, the statutory  
12 mandate from 16-3-103(j), that each state agency shall  
13 adopt as much of the A&I rule as is consistent with  
14 specific and distinct requirements of the agency and state  
15 or federal law governing or applicable to the agency.

16           The other provision --

17                   BOARD MEMBER HEYNEMAN: Tim.

18                   CHAIRMAN BROWN: John, could you mute your  
19 phone, please? There's some feedback.

20                   BOARD MEMBER HEYNEMAN: Mine's muted, but  
21 there's a ton of feedback. I agree.

22                   CHAIRMAN BROWN: Did that help at all?

23                   MS. THOMPSON: It's flat.

24                   BOARD MEMBER VICKREY: Tim, this is Doug  
25 Vickrey. I can hear you fine when you speak, but Nancy was

1 in a tunnel for me.

2 CHAIRMAN BROWN: Well, there was a bunch of  
3 feedback. And we don't know where it was coming from.

4 All right. Let's try it.

5 MS. VEHR: Okay. And so the other  
6 requirement came from the DEQ Rules of Practice and  
7 Procedure that dealt with the actions that the board could  
8 take in terms of making a rule recommendation. So that's  
9 where we left off.

10 So I want to turn it over to Todd Parfitt, the  
11 director, and Attorney General Pete Michael, you know, for  
12 a few words.

13 MR. PARFITT: All right. Thanks, Nancy.

14 And good afternoon. And just for the record, I'm  
15 Todd Parfitt, director of the DEQ. Appreciate the  
16 opportunity to be here and address the board.

17 I know you've been discussing and deliberating  
18 this proposed rule for incorporation by reference, but  
19 haven't got to a point of making any final determinations  
20 on whether to recommend that rule package move forward  
21 to -- for formal rulemaking with the Environmental Quality  
22 Council. And, hence, here we are with the special meeting,  
23 which I think was a good idea to have the special meeting.

24 The Air Quality Advisory Board serves an  
25 important role with the agency actions, as you all know. I

1 do appreciate your careful consideration of this rule and  
2 the comments that you've received, but I do -- would like  
3 to offer some comments here, understanding that some of  
4 it's going to be redundant with what you already heard.

5           So, first off, just to say the Wyoming  
6 legislature supports this action through its mandate in  
7 Wyoming statute. As Nancy mentioned, specifically Wyoming  
8 Statute 16-3-103(j), which states "Each state agency shall  
9 adopt as much of the uniform rules promulgated pursuant to  
10 the following provisions as is consistent with the specific  
11 and distinct requirements of the agency and state or  
12 federal law governing or applicable to the agency."

13           And I wanted to read that specific language for a  
14 reason. This -- this provision of 103(j) applies to two  
15 sets of uniform rules. The first one -- and you'll  
16 probably recall this -- we went through -- the Office of  
17 Administrative Hearings developed rules for contested  
18 cases. And I -- it's been a couple years, I think. We  
19 went through a similar process, only the difference was we  
20 brought all the advisory boards together at the same time.  
21 And the difference here is that with the administrative  
22 hearings, there were -- there were differences within the  
23 Environmental Quality Act and with our requirements with  
24 federal agencies. And so we did make some adjustments  
25 to -- we didn't do a straight incorporation by reference

1 because it wouldn't have been appropriate, wouldn't have  
2 been consistent with the act.

3 Same thing as here. The only difference is now  
4 these are the A&I rules on how we handle public records --  
5 certain public records requests and fees associated with  
6 those. And so where that brings us is the role of the  
7 advisory board.

8 In this instance, I believe it's straightforward,  
9 and its role, your role, is to determine whether or not the  
10 103(j), if the -- according with -- in accordance with  
11 103(j), if the proposed incorporation by reference is  
12 consistent with the specific and distinct requirements of  
13 the agency and state or federal law governing or applicable  
14 to the agency. I'll say, with regard to the impact of the  
15 programs with federal primacy, we've identified no  
16 conflict. In fact, 44 states -- and I know you've heard  
17 this -- 44 states have similar laws in place for their  
18 environmental agencies. They're not exactly the same  
19 because they're going to be specific to those states. But  
20 44 of the states. And the other states have something on  
21 their books in terms of fees, but we weren't able to find  
22 anything directly related to their environmental programs.

23 With regard to consistency with the Wyoming  
24 statute, or more specifically the Environmental Quality  
25 Act, we've reviewed that rule with the attorneys at the

1 AG's Office and found no consistent -- inconsistencies or  
2 conflicts. Now, Pete will talk more in detail about that.

3 Now, what we found is that the proposed rule is  
4 consistent with the specific and distinct requirements of  
5 the agency and state or federal law governing or applicable  
6 to the agency. So in my review of the information and so  
7 forth, the board should make the recommendation to EQC to  
8 move forward with formal rulemaking. Now, if the board  
9 finds the rule is not consistent with specific and distinct  
10 requirements of the agency and state or federal law  
11 governing, then the board needs to identify the area  
12 specifically where it is not consistent with the law. And  
13 if we can do that, then we can do the same process that we  
14 went through the administrative hearings contested case  
15 rule -- uniform rules.

16 So -- and just to kind of wrap up. It's worth  
17 noting that 35 of 43 state agencies have already adopted  
18 these same rules. The other eight, including the DEQ, were  
19 in the process of adopting the rule. Now, it's important  
20 to point out that the rule has been adopted by one division  
21 within the agency. So we've got essentially six divisions  
22 that would be looking to adopt these rules. The Abandoned  
23 Mine Land Program has already adopted them. The Industrial  
24 Siting Division has gone through the Industrial Siting  
25 Council, and the Industrial Siting Council has promulgated

1 those rules and they're working their way through the  
2 process. So two of the six agency divisions have already  
3 essentially adopted these rules.

4 So in -- just to kind of wrap up, so when  
5 considering the options, the board could vote to recommend  
6 the rules to move to the EQC or recommend the rules move to  
7 the EQC with a list of concerns identified by the board,  
8 and there are different mechanisms by which you can do  
9 that. So with that, before we take any questions, I'd like  
10 to turn it over to Pete and let him address the board.

11 ATTORNEY GENERAL MICHAEL: Thank you.  
12 Mr. Chairman. I'm Pete Michael, the Wyoming Attorney  
13 General. I don't bring any real new legal advice on this  
14 subject. I've talked to my attorneys -- Allison, James --  
15 about this issue.

16 I guess what I bring to this a little bit is I've  
17 been around a while now. I've been with the State -- I'm  
18 retiring next year. I've been with the State of Wyoming  
19 since 2006. And I started off in the Natural Resources  
20 Division, which James is now in charge of as deputy. And  
21 one of the first things that I experienced -- so I think  
22 what we're dealing with here is the substance, which I  
23 don't think actually is at issue. In fact, I don't think  
24 the substance of whether it's a good or bad idea to  
25 charge -- begin charging people when you get to 180 bucks

1 worth of work on public records request is really something  
2 that is before us.

3 But I will say this, I've lived it. And so as a  
4 state agency director I've lived the public records  
5 requests. And it wasn't -- it wasn't Air Quality requests,  
6 but I've seen public records requests. As soon as I got to  
7 the AG's Office, there was a public records request from  
8 the Republican Party to Governor Freudenthal's office. We  
9 did it. We kept track -- the governor wanted us to keep  
10 track in those days. It came from the Republican Party  
11 Chair, Drake Hill. And our numbers in the Attorney  
12 General's Office were 1,525 man-hours devoted to that  
13 public records request in the Attorney General's Office.  
14 You know, it went to other places as well.

15 I've also lived it later in my career. Later on,  
16 after I was doing water law for the State of Wyoming, I was  
17 involved in the Montana-Wyoming case, U.S. Supreme Court  
18 case. Very important case in the State of Wyoming. James  
19 took that case over from me and we finished it this spring.  
20 It was an 11-year case.

21 When I was working on that case, I was promoted  
22 to Chief Deputy Attorney General. And at that time --  
23 you'll remember this because it was all over the  
24 newspapers -- the superintendent of public instruction was  
25 in an adversarial relationship with the legislature and

1 with the governor. And there were public records requests  
2 that came out of that. And we had -- I don't have a tally  
3 of the man-hours, but I know it was extremely significant.  
4 We hired two people in an eight-month period, temporary  
5 lawyers, to handle that public records request to get us  
6 over the hump. I think it took us six years to answer that  
7 public records request.

8 I don't think anything ever became of that public  
9 records request as far as substance, as far as advancing  
10 the ball for the public interest, but, nonetheless, at that  
11 time that was what was happening. And I can tell you, my  
12 life was affected by it. I was working on a U.S. Supreme  
13 Court case, and I had to also review the briefs in our  
14 agency that came through the main office because Bridget  
15 Hill, our well-paid -- now Director of State Lands --  
16 excellent attorney, spent two-thirds of her time working on  
17 one public records request.

18 So understand, resources at times can go to this.  
19 Thankfully -- and I've seen the statistics, I've been told  
20 by others -- thankfully, in this area -- in this particular  
21 area, most of the requests are ones that can be dealt with  
22 in less than \$180 and are free for the public, which is the  
23 current rule. Hasn't been in force all that long.

24 I'll give a little bit more of my perspective  
25 before -- on this issue. Todd talked about the practice



1 and procedures. What we had -- we had a team of eight  
2 attorneys, including me, working on this practice and  
3 procedure rules. And we talked about at great length --  
4 and Deb Baumer was on that committee, head of OAH at the  
5 time, Office of Administrative Hearings. We talked at  
6 length about a lot of the balancing issues in those rules.  
7 How do you do those rules? What's the balance that's right  
8 in terms of uniformity, but also specific agencies have  
9 their specific needs.

10 Good example, Public Service Commission. Public  
11 Service Commission had a long history of taking prefiled  
12 handwritten testimony. That's not something you can do in  
13 the uniform rules for practice and procedure, but we had  
14 good discussions with the Public Service Commission. They  
15 opted out on a few things. But the concept with both those  
16 rules and these public document rules, managing public  
17 records requests rules, is uniformity. That's been the  
18 push in the legislature. The word is here right in the  
19 statute, "uniform." It's been -- and so there's balancing  
20 that goes on here. Why uniformity? What's great about  
21 uniformity? Uniformity is great for the regulated public,  
22 because as they deal with different agencies, they have an  
23 idea of what path to go down. When a lawyer or another  
24 type of person -- and it doesn't have to be a lawyer  
25 anymore. We made that uniform in the rules of practice and

1 procedure, that nonlawyers can practice in front of the  
2 State. That was a question. Different agencies did it  
3 differently. But they can read the rules and the same  
4 basic process applies to them, except for some carve-outs  
5 that are really necessary. Those same basic rules apply  
6 whether they appear before the Board of Equalization or the  
7 Industrial Siting Council or -- you name it. The Martial  
8 Arts Board.

9           So we have -- so there was -- I'm just giving  
10 some background, because I've been around long enough, been  
11 on the inside of this to see how these kind of come about  
12 and how it develops. And normally what happens is with  
13 what the supreme court said -- Wyoming Supreme Court said  
14 when they interpreted one of the statutes that I'll mention  
15 here in a minute, which is 16-4-204, which was the statute  
16 on -- bear with me. Maybe I got the wrong one. Doesn't  
17 matter. I'll get there. It's 202(d)(i), actually. You  
18 know, the supreme court had to look and say what did the  
19 legislature do here in that litigation? What was the  
20 legislature trying to do?

21           And I thought on page 24 of that opinion, the  
22 legislature said it very well. And this is Wyoming  
23 Tribune-Eagle. The court said it very well. The Cheyenne  
24 Newspapers against the Board of Trustees of Laramie County  
25 School District Number Two. Court said the Tribune-Eagle

1 next contends that reading Section 202(d)(i) to allow  
2 charges for the inspection of electronic records can have a  
3 chilling effect on access to public records and is very --  
4 therefore, contrary to our longstanding rule of Public  
5 Records Act be liberally construed in favor of public  
6 access to government information.

7           And then the court said, "While this is a  
8 legitimate concern, so too is the concern regarding the  
9 demand public records requests can place on government  
10 resources."

11           And then they cite a Law Review article that  
12 noted the tension of guarantee of public access and  
13 financial burden on the government.

14           I mentioned to you I've been in the trenches on  
15 financial burden. I've seen the personal burden, not just  
16 financial. So we've seen the development.

17           It -- so -- and so what happens in a process like  
18 this? Well, the legislature, which is 90 -- that's the --  
19 that's the -- you all know, they make the laws for the  
20 State of Wyoming. We have to follow them. And if you  
21 don't like them, you still follow them if you want to be in  
22 government. I follow them. I have a rule book, a statute  
23 here, that says what the Attorney General can and can't do.  
24 I get two or three contacts every week where somebody says  
25 I'd like you to help me. Please be my lawyer. State of

1 Wyoming needs to help me. State of Wyoming Attorney  
2 General's Office needs to get involved in this case. I'm a  
3 prisoner. Terrible things are happening to me at the  
4 prison. What do I have to say? No, we can't -- we can't  
5 represent private people. The statutes say who the  
6 Attorney General represents. Cities, towns, can you please  
7 get involved in this fight -- we're in a fight with the  
8 county commissioners in this county. We've got to get this  
9 worked out. You can step in and work it out. Sounds like  
10 a great idea. Maybe would be a good idea. But you know  
11 what? That statute says I can be a legal adviser to the  
12 county attorneys. And I have absolutely no authority to  
13 assist municipal attorneys or municipalities. That's the  
14 law. That's the law we live in. It gets changed from time  
15 to time. And, you know, sometimes it puts more burdens on  
16 our office, sometimes less.

17 Another law that I live with, of course, and stay  
18 within the bounds is is budget. We have one less person in  
19 Water and Natural Resources now than we did three years  
20 ago. Part of the budget cuts -- the legislature chose a  
21 position and said you can live without this position. You  
22 can live without the position. You may not prosper without  
23 the position. We like to prosper. Like any good agency, I  
24 want to prosper. We do everything we can to live within  
25 those constraints, but that's what the legislature gives

1 us. That's what they tell us.

2 So that's where I'm coming from. I just want you  
3 to know that, you know, in these kind of debates we talk  
4 about public comments. Well, public comment's important.  
5 It's important in the rulemaking process. It's important  
6 to you when you're dealing with rules. It's important to  
7 A&I when they deal -- when they're building rules. It's  
8 important. But it's common.

9 The legislature is both. They represent the  
10 entire population of the State of Wyoming. And when they  
11 put something in a statute, we can have public comment  
12 that disagrees all we want with what the legislature said,  
13 but ultimately we have to do what the legislature said,  
14 until -- if it -- we have to do that first.

15 Now, within the legislative mandate can we do  
16 rules? Yes. In this case the legislature charged A&I with  
17 developing a uniform rule. And, again, one of the things  
18 the legislature wanted was uniformity. Did they strike the  
19 right balance? Who knows. We'll never know. None of us  
20 will ever know if it was the right balance, whether it  
21 could have been a better balance. But the balance the  
22 supreme court described here, one of the major balancing  
23 provisions, what does it cost the taxpayers of the state of  
24 Wyoming the legislature represents versus what does it cost  
25 other members of the public that want to get information

1 and be part of government in other ways, to show up at  
2 meetings, to provide public comment and do all the things  
3 they do to the benefit of the people of Wyoming. That's a  
4 benefit. I think most legislators recognize that as a  
5 benefit as well. Of course, their whole process is public  
6 comment. They have committee meetings on everything.

7           So it's -- it's all a question of balance. But I  
8 guess my -- my take on this -- and, again, I don't have any  
9 different legal advice on what these statutes say than what  
10 Allison's already given you, but my -- my overall emphasis  
11 is that just that at this stage of the game, I don't think  
12 that this -- the advisory board is in much different  
13 position than I'm in many, many times as a state agency  
14 head. The legislature says "you shall do this." The word  
15 "shall" appears in the statute that I just read. And when  
16 the legislature says "you shall do this," you do it. Do it  
17 to the best of your ability. And the legislature says we  
18 shall take resources away from you, but you will do it  
19 anyway. And our cuts, I think the total over the last  
20 three years, 16.5 percent of the Attorney General's budget,  
21 we still march as hard and fast as we possibly can.

22           Is it good or bad for the people of the state of  
23 Wyoming? They have a tough call to make. They have to  
24 decide what to do with their budget. They have to decide  
25 how much of the budget they want to spend on free public

1 documents.

2           There are situations -- you all know, there's  
3 situations -- I mentioned a couple situations that I felt  
4 from the inside were pretty much abusive of the process.  
5 And there's other ones. There's people out in other states  
6 that send -- that want to start a business. And their  
7 business is gathering up a bunch of public data at the  
8 expense of the state they target and sticking on their  
9 brand-new website and say we have all the data on this  
10 particular thing, come get it at our place. These -- these  
11 mass public document requests. And they come into the  
12 state of Wyoming from other states. And if it's free --  
13 it's a trend.

14           So these are the kind of things, you know, from  
15 my perspective, knowing -- seeing how this legislation goes  
16 through and hearing what I hear, from my position as  
17 Attorney General that is in this mix. And so what came out  
18 of it are the statutes that you have before you. And, you  
19 know, look, when the legislature does statutes in their  
20 two-month or one-month session, a lot of times they don't  
21 have time to say, okay, we're going to tell exactly every  
22 ramification. If we pass this rule that says you shall do  
23 this and it says a state agency shall -- each state agency  
24 shall do this, well, it wasn't hard for us to advise A&I we  
25 got to get going. And A&I got going and we got going and

1 worked on these rules. And what's the best mix? What's  
2 the best balance? What's the right price point for people  
3 to come in? What makes the most sense? That's the kind of  
4 thing that A&I studies, and that's the kind of thing they  
5 get legal advice from us. We help them write the rules and  
6 they write the rules. And that's the rule that you're  
7 dealing with, the uniform rule.

8 But, you know, the legislature didn't say each  
9 state agency and every advisory board that might say  
10 something to a state agency as they promulgate these rules.  
11 Right? Because most -- most state agencies don't have an  
12 advisory board. It's unusual. So the legislature left a  
13 hole. They didn't say exactly what. So we have to, as  
14 lawyers -- as we always do, right -- fill those holes,  
15 because we know they're a citizen legislature. Even  
16 professional legislatures in other states have more holes  
17 than we do. Sometimes I'm very proud of our legislature in  
18 a lot of ways for what they do, but...

19 So my view on this is consistent with what  
20 Allison has said. I think that you have a statute that  
21 says the agency shall adopt as much of the uniform rules  
22 promulgated pursuant to the following provisions. And, of  
23 course, then they list the provision which involves the  
24 costs. So it is that provision specifically called out in  
25 this statute. And, again, as is consistent with the



1 specific and distinct requirements of the agency and state  
2 or federal law governing or applicable to the agency. So  
3 it's a call for uniformity with a pretty -- pretty  
4 specific -- pretty -- pretty narrow, I believe, specific  
5 and distinct exceptions by which you can say, no, here we  
6 have a specific and distinct requirement. We can't adopt  
7 this.

8           So that's, I think, the best interpretation, this  
9 particular language. How does it play with your process?  
10 Well, your process is to -- and we had an opinion that was  
11 under my -- my signature, I think, in 2015, about what do  
12 we do with an advisory board? Do they get to do a negative  
13 recommendation? Do they -- do they get to de-recommend  
14 something to the EQC? And our opinion, I think -- and I  
15 think a sound one -- I still believe it's sound -- we work  
16 on these opinions very carefully -- was, no, it needs to  
17 be -- you can make a positive recommendation or a  
18 recommendation with concerns, but, you know, a negative  
19 recommendation actually is not on the table.

20           And so I think that's kind of where you stand.  
21 What does that mean? It means you're in the same position  
22 I'm in, I think, a lot of times, that as a public --  
23 working for the public, working under the auspices of  
24 statutes that we've been handed to by the legislature in  
25 other rules, that we need to -- a lot of times we're

1 constrained in what we can do. We're constrained in -- in  
2 how we move forward. You know, I can't -- I can't hire  
3 people at the Attorney General's Office based on unlawful  
4 description. I can't do it. Federal law says I can't do  
5 it. I'm constrained. I wouldn't want to do it. I don't  
6 do it, but somebody might, but they can't. So it's an  
7 obvious constraint. We have lots of constraints that we  
8 have. But when the statute provides this kind of  
9 constraint, I think you operate within the bounds of that  
10 constraint. That's what you're told to do. That's what  
11 the legislature has said, and they represent the entire  
12 population of the state of Wyoming when they pass that law.  
13 And it says "shall."

14 So these are somewhat general, but I think,  
15 again, it dovetails into the advice we've already given. I  
16 agree with the advice that's given, and I think you need to  
17 move forward to follow what the legislature says shall be  
18 done, unless you can say that exception, we're going to  
19 send it up to EQC with -- saying that we think there's  
20 exceptions here that fit this narrow exception, specific  
21 and distinct requirement.

22 So that's -- that's kind of what -- how I've  
23 looked at this, based on what's happened to date, as I  
24 understand it. And I thank you for that time.

25 CHAIRMAN BROWN: Thank you.

1 MS. VEHR: And I think, unless the board  
2 has questions, I don't have any other information to get  
3 before you that tees it up from where you left off at the  
4 last meeting, so...

5 CHAIRMAN BROWN: So if I read my notes  
6 right, if, for some reason, we disagreed with this, we'd  
7 have to find inconsistencies within this -- with the act or  
8 federal government. I mean, we would -- we would have to  
9 point out the inconsistencies we found here with the  
10 Environmental Quality Act.

11 ATTORNEY GENERAL MICHAEL: Yes,  
12 Mr. Chairman.

13 CHAIRMAN BROWN: I mean, and that's --  
14 that's the only way we would have moving forward if we  
15 disagreed with this. But the way I see it, and correct me  
16 if I'm wrong, we have two options. The recommendation or  
17 recommendation with concern. Is that --

18 MS. VEHR: Yeah.

19 CHAIRMAN BROWN: Okay. So any comment from  
20 the board?

21 BOARD MEMBER HANSON: You want me to go  
22 first?

23 BOARD MEMBER HULME: If you have something,  
24 go ahead.

25 BOARD MEMBER HANSON: There is the

1 statement that information should be available uniformly to  
2 anybody who comes and asks for it. We have had a lot of  
3 concerns raised by different entities that say -- oops.  
4 Sorry. I seem to trigger this. That seemed to say we are  
5 not, for example, public boards, environmental quality  
6 agency or somebody like that. They say we do not have the  
7 means to pay for the requests that we made -- bring  
8 forward, while other agencies that are more flush  
9 financially would have the means to ask for the requests  
10 and pay for it accordingly.

11           And this flies in the face of the uniform  
12 availability to all comers that are interested in getting a  
13 public record. And this is, I think, where we were  
14 concerned, because we've had a lot of comments, a whole  
15 stack come in, of -- of people who were concerned,  
16 objecting for different reasons, but the reason that speaks  
17 to me is that there is the statement that these records  
18 should be uniformly, without prejudice, be available to any  
19 comer. And that some boards say -- some of these agencies  
20 or boards say we cannot afford the price while others can,  
21 and that leads to an unevenness. And that is stated as a  
22 -- as a preamble in the availability as a statement that  
23 they should be available to anybody, regardless of who is  
24 asking. And so that's where we, I think, had a -- a  
25 concern.

1           I've also suggested before that if this is a rule  
2 that has come to us and we have incorporated -- we have to  
3 incorporate it, we'll incorporate it by reference. I think  
4 that was the statement. If we have no choice, so we do it.  
5 But I think the -- the question here arises that we are  
6 being asked to approve something that we have concerns  
7 with, because the public has written us, has communicated  
8 to us that they have a problem with that because of the  
9 unevenness or fairness, depending on the -- the financial  
10 means of different boards.

11           I hope I made that clear, what I'm trying to say  
12 here. If we have no choice in incorporating it, we'll  
13 incorporate it. But to ask us to speak -- to approve  
14 something that we have had a lot of concern with from  
15 interested parties and then we are then -- probably  
16 different from the legislature -- speaking against the will  
17 of the public, that public that is concerned in this  
18 particular instance.

19           Thank you, Mr. Chair.

20           CHAIRMAN BROWN: Quick question. When --  
21 during the legislative process, were there a number of  
22 comments received when the legislature was promulgating  
23 these?

24           ATTORNEY GENERAL MICHAEL: I'm sure there  
25 were, Mr. Chairman, but don't know if I can remember.

1 CHAIRMAN BROWN: No. That's good. I  
2 mean --

3 ATTORNEY GENERAL MICHAEL: I can't spend  
4 every day -- whether I was in the Capitol or across the  
5 street or up the street in the Jonah building, I mean --

6 CHAIRMAN BROWN: The only reason I ask,  
7 because there was opportunity there for public comment too,  
8 correct?

9 ATTORNEY GENERAL MICHAEL: Yeah. Well, I  
10 think I would say -- it's two tier, remember.

11 CHAIRMAN BROWN: Yeah.

12 ATTORNEY GENERAL MICHAEL: The first public  
13 comment would be what did the legislature say in the  
14 statute --

15 CHAIRMAN BROWN: Right.

16 ATTORNEY GENERAL MICHAEL: -- which is each  
17 state agency shall adopt as much of the uniform rules.  
18 It didn't say make the outcomes for different groups that  
19 want --

20 CHAIRMAN BROWN: Right.

21 ATTORNEY GENERAL MICHAEL: -- information  
22 uniform. You know, uniform result. It didn't say that.  
23 But it said that the rules -- there will be some uniform  
24 rules promulgated on this. And there will be uniform --  
25 other than specific and distinct requirements of an agency,

1 then there can be a departure from uniformity.

2 Then, of course, the comment period, there's  
3 been -- there's other comment periods.

4 CHAIRMAN BROWN: Right. And that's what  
5 I'm --

6 ATTORNEY GENERAL MICHAEL: And you know the  
7 second one is A&I's comment period. So they took public  
8 comment on whether -- from all interest groups. Not just  
9 people that are interested in Air Quality issues, but  
10 people that are interested in God knows what, right?  
11 Martial Arts. You name it. How the Attorney General's  
12 Office runs, all that stuff. They had the ability to  
13 comment then on this -- it's a uniform rule. Uniform rules  
14 have compromises. They have different outcomes.

15 Certain agencies maybe they affect a little  
16 differently than other agencies. And then the legislature  
17 has to decide is uniformity so valuable in this respect  
18 that we give up flexibility. And we -- flexibility can be  
19 great. Flexibility can be chaos. You know, some people  
20 say it's a conspiracy. Others call it a meeting, you know.  
21 Some people say flexibility; other people say chaos. So,  
22 you know, it depends. So they have to make that balancing  
23 call.

24 So, yes, there's an input process. I think  
25 you're aware there's been -- and you have an input process

1 as well. And the question is, well, heck if we're this  
2 constrained, we're taking all this input, but is that input  
3 relevant? And I guess what I'm saying is because the  
4 legislature didn't ask you to -- or ask a state agency --  
5 again, it's state agency, ask state -- this particular  
6 agency, which comes down -- although EQC approves it for  
7 DEQ purposes -- to have a uniform rule. If they've done  
8 that and put these constraints on it, they didn't really  
9 ask. They told. They said "shall." And if you have a  
10 moral or you think they did a poor job of balancing that,  
11 you might be right, you might be wrong, you might think its  
12 balanced -- should have been zero. They don't get a single  
13 -- nobody get a subsidy of documents. It should be 5,000  
14 hours or somewhere in between the 180. If you think those  
15 things, then, actually, that's not really something that's  
16 up for consideration here because of the statute you're  
17 operating under. That's my point.

18 CHAIRMAN BROWN: Thank you.

19 Diana.

20 BOARD MEMBER HULME: I'll just ask a  
21 clarification question, I guess.

22 So uniform rules adopted -- was created by A&I,  
23 and that's where this requirements for payment for public  
24 records past the threshold came from, correct?

25 ATTORNEY GENERAL MICHAEL: Correct.



1                   BOARD MEMBER HULME: And there was public  
2 comment on that. That is not in statute. That's a rule,  
3 but it's not statute, correct? Statute is the agencies  
4 will adopt that rule.

5                   ATTORNEY GENERAL MICHAEL: Let me go to  
6 statute, because there isn't --

7                   BOARD MEMBER HULME: I'm just trying to  
8 understand.

9                   ATTORNEY GENERAL MICHAEL: The statute  
10 that's referenced here -- and I'll just have to bounce  
11 around a little bit -- is 16-4-204(e). Let me pull my  
12 book -- you've got it handy? Okay.

13                   But the statute was passed -- said that the  
14 Department of A&I shall adopt uniform rules for the use of  
15 state agencies establishing procedures, fees, costs and  
16 charges for inspection --

17                   BOARD MEMBER HULME: Okay.

18                   ATTORNEY GENERAL MICHAEL: -- copies and  
19 production of public records under 16-4-202(d)(i). That's  
20 the key, right? Because that's the one that sends A&I to  
21 only electronic records. 202(d)(i) doesn't refer to paper.  
22 So when somebody goes to the State Engineer's Office and  
23 wants to pull out the files and look at -- look at  
24 somebody's water rights, you know, they just do it.

25                   BOARD MEMBER HULME: Right.

1                   ATTORNEY GENERAL MICHAEL: And then they  
2 pay for the copies only.

3                   BOARD MEMBER HULME: Right.

4                   ATTORNEY GENERAL MICHAEL: But here -- so  
5 it is very specific in the statute that A&I was to develop  
6 uniform rules. And that includes procedures, fees, costs  
7 and charges. Now, they could have said no charge, which is  
8 what the previous rule was. But the key here is if you're  
9 going to have something, the public needs to know what it  
10 costs. And then, of course, A&I added procedures. This  
11 was something we worked on, I'll be frank, you know,  
12 with -- with -- when we advised A&I about how do you make  
13 this known to the public -- how do you make it fair to the  
14 public so that if they're going to get charged, you know,  
15 you don't hold back and say, oh, by the way, here's your  
16 \$6,000 bill, and if you don't pay, we're going to take your  
17 house away three months from now. You don't want that,  
18 right? You have to warn the public. You try to estimate  
19 the cost. And that's -- that's done -- commonly it's  
20 done -- throughout state agencies, it's done by the elected  
21 officials when they get document requests, as well.  
22 They're subject to these, some of them.

23                   And so, yes, actually there is a statute that  
24 says -- that permits this. Now what's the right number?  
25 Could be zero. Like I said, 5,000 free hours? Zero free

1 hours? A&I chose 180 free hours. And that was discussed.  
2 I guarantee you there was a lot of discussion about whether  
3 that was reasonable. And it may be in three years  
4 everybody will decide that's not so reasonable. Maybe a  
5 member of the public, which they can do, or maybe the  
6 legislature, which is going to meet about this subject  
7 shortly, will start thinking about maybe tinkering with the  
8 statute. Or maybe even A&I will get a request for  
9 rulemaking to change this rule and change the amounts. Too  
10 much, too little, somebody gathers the statistics about how  
11 many groups -- legitimate groups that aren't trying to  
12 punish the government, you know. Of course -- and  
13 legitimate's in the eye of the beholder. Of course, we  
14 know that too, you know, in the public.

15 Sometimes when you're on the business end of one  
16 of these document requests, you feel like it's pretty  
17 illegitimate when you have to do the work, you know. But,  
18 again, that could happen too, of course. But that would be  
19 at the A&I process, and it would have the same -- would be  
20 comment, public comment, so forth, what have you there.

21 BOARD MEMBER HULME: Can I ask a follow-up?

22 CHAIRMAN BROWN: Okay. Please.

23 BOARD MEMBER HULME: Maybe just a comment.

24 I don't quite know yet until it comes out.

25 So I'm just trying to clarify were we stand as a

1 board on this issue. So obviously what you're saying,  
2 we're not recommending or recommending with concerns  
3 anything having to do with that specific statute that --  
4 where A&I was required --

5 ATTORNEY GENERAL MICHAEL: Right.

6 BOARD MEMBER HULME: -- to promulgate  
7 uniform rules related to fees. We are asked to do this --

8 CHAIRMAN BROWN: Yes.

9 BOARD MEMBER HULME: -- recommend --

10 CHAIRMAN BROWN: Adoption of the proposed  
11 revisions.

12 BOARD MEMBER HULME: -- adoption of the  
13 proposed rules, right.

14 So they're two separate things. And so I guess,  
15 you know, as you're alluding to, Mr. Attorney General, is  
16 that particular statute that deals specifically with the  
17 fee structure for electronic public records is something  
18 that I guess needs to be changed, if citizens would maybe  
19 get ahold of their local legislator or petition somehow to  
20 have that statute changed, because if that's what their --  
21 if that's what the public has a concern with.

22 ATTORNEY GENERAL MICHAEL: They can  
23 petition for rulemaking --

24 BOARD MEMBER HULME: Sure. Right.

25 ATTORNEY GENERAL MICHAEL: -- Mr. Chairman,

1 without --

2 BOARD MEMBER HULME: But that's outside --

3 CHAIRMAN BROWN: That's outside the --

4 BOARD MEMBER HULME: Our --

5 THE REPORTER: One at a time. One at a  
6 time.

7 BOARD MEMBER HULME: I'm sorry.

8 CHAIRMAN BROWN: I'm sorry. I think that's  
9 outside --

10 BOARD MEMBER HULME: Of our --

11 CHAIRMAN BROWN: -- our scope.

12 ATTORNEY GENERAL MICHAEL: I think so. And  
13 that's where, again, the statute critical to you, which is  
14 subsection (j) of 103, says each state agency shall adopt.  
15 And as I said before, you know, the legislature writes this  
16 and says, okay, we got it done. We got -- all the agencies  
17 are going to do this, and then you find out, well, this  
18 agency actually has a process, has another step to it than  
19 another agency. How does that fit in?

20 But I think -- again, my advice to you is that it  
21 fits in when you look at the purpose the legislature had,  
22 which is clear from this language. I think it sets up the  
23 goalpost. I think it sets up your parameter within which  
24 you operate. Because, you know, the DEQ has to adopt as  
25 many of those rules that is consistent with specific and

1 distinct requirements, you know, as much of them as they  
2 can adopt that are consistent. DEQ is advising you that  
3 the entire proposal, the entire set of uniform rules that  
4 A&I proposed are consistent with our specific and distinct  
5 requirements. And they're consistent with federal and  
6 state law governing and are applicable to this agency.  
7 They're telling you that. I think that's -- I -- I think  
8 that's probably true -- these experts within DEQ day in,  
9 day out.

10 I used to be Nancy's supervisor.

11 Remember, Nancy?

12 Nancy was the DEQ Air Quality attorney before --  
13 you know.

14 And we -- we had fun, didn't we, Nancy?

15 MS. VEHR: We sure did.

16 ATTORNEY GENERAL MICHAEL: It was great. I  
17 loved it.

18 CHAIRMAN BROWN: Good. I think we have two  
19 board members on the phone.

20 John or Doug, comments?

21 How about you go first, Doug?

22 MR. DONNELLY: You might have to ask Doug  
23 to unmute himself.

24 CHAIRMAN BROWN: Doug, can you unmute,  
25 please?

1                   Are you there, John?

2                   BOARD MEMBER HEYNEMAN: Yeah.

3                   CHAIRMAN BROWN: Okay. How about you move  
4 forward with your comment while Doug gets back on the line.

5                   BOARD MEMBER HEYNEMAN: My comments, I  
6 just -- I have deep reservations about the legislation and  
7 the rules. And I guess I'm surprised that we weren't -- we  
8 weren't able to find a way to try to make some progress in  
9 between meetings. It was disheartening that didn't seem to  
10 be encouraged or even allowed.

11                   I understand the public meeting issues, and we  
12 can do that. But I tried to get in contact with the AG's  
13 Office and better understand these issues and just have  
14 communication, and I was not -- that was -- I was not  
15 allowed to do. So I'm disheartened by the -- by the --  
16 anyway, I have reservations about the rules for sure. And  
17 I do think I have more options than approving or approving  
18 with reservation with -- with hesitation. I forget what  
19 the term was.

20                   CHAIRMAN BROWN: Concerns.

21                   BOARD MEMBER HANSON: Concerns.

22                   BOARD MEMBER HEYNEMAN: Concerns. I do  
23 think there's another option.

24                   ATTORNEY GENERAL MICHAEL: Well, we're  
25 here, Mr. Chairman. If he wants to state what the concerns

1 are and what the option he thinks he should have, we're  
2 here to advise.

3 CHAIRMAN BROWN: Yes. Do you have some  
4 specific concerns right now, John, or --

5 BOARD MEMBER HEYNEMAN: I'm concerned about  
6 the fee structure. It seems arbitrary and painfully low.  
7 It seems -- seems like it would be wise to have some  
8 contingencies for -- I don't know, contingencies to -- for  
9 some waivers. We talked about the idea of a waiver for  
10 organizations or individuals.

11 CHAIRMAN BROWN: Mr. Attorney General, can  
12 you --

13 ATTORNEY GENERAL MICHAEL: I'll respond to  
14 that. I guess I'll go back. I think I prefaced what I  
15 said. I mean, I talked a little bit about my history just  
16 so you kind of knew where I was coming from on public  
17 records, and I had a history dealing with public records  
18 requests. And -- but the reality is DEQ has made the rule.  
19 DEQ made the rule with public comment. It is a valid rule  
20 signed by the Secretary of State on the Secretary of  
21 State's website. And that rule has struck a balance. And,  
22 again, if you disagree with that balance, very  
23 understandable. There's a lot of people who would  
24 disagree.

25 Probably some people that would disagree in the



1 opposite direction and say nobody should get subsidy to get  
2 state records, and taxpayers should never pay dime one for  
3 somebody to get a public record -- electronic record. So  
4 it can go either way. People have discussion.

5 But that ship has sailed legally. And so where  
6 we are now is do we follow -- does this advisory board, as  
7 part of a DEQ process, an agency process, follow the  
8 requirement of the legislature that the uniform rule be  
9 adopted except for the possibility of the narrow exception.  
10 That's the statute.

11 BOARD MEMBER HEYNEMAN: Well, you asked for  
12 our concerns. You asked me to list my concerns. That's --  
13 that's it. So that ship has sailed, then we are in -- we  
14 remain in a very difficult place.

15 ATTORNEY GENERAL MICHAEL: Well, if I may,  
16 Mr. Chairman.

17 CHAIRMAN BROWN: Yes.

18 ATTORNEY GENERAL MICHAEL: That's good,  
19 though. But having you state the concern is good, because  
20 then I can try to figure out is there a concern that we can  
21 say, as far as legal advice, that, no, that concern -- you  
22 know, if it fell within the exception, that's something you  
23 ought to consider, and the ship hasn't sailed. So just  
24 knowing what the concern is is still valuable, I think. So  
25 I'm glad I was able to hear that.

1 BOARD MEMBER HEYNEMAN: Well --

2 CHAIRMAN BROWN: Any other comments, John?

3 BOARD MEMBER HEYNEMAN: No.

4 CHAIRMAN BROWN: Okay. Doug Vickrey, are  
5 you on the line?

6 MR. DONNELLY: Ask Doug to press star 6,  
7 please.

8 CHAIRMAN BROWN: Doug, if you could press  
9 star 6, please.

10 Can you tell if he's still on the line.

11 MR. DONNELLY: I can't unmute him on my  
12 end.

13 CHAIRMAN BROWN: Right.

14 Doug, please unmute your phone. Hello?

15 MR. DONNELLY: Press star 6 or he can try  
16 calling back in.

17 CHAIRMAN BROWN: If not, try calling back  
18 in, Doug.

19 MR. DONNELLY: He's trying to call back.

20 CHAIRMAN BROWN: What's that?

21 MR. DONNELLY: He's going to try to call  
22 back.

23 CHAIRMAN BROWN: Okay.

24 MR. DONNELLY: He just signed off.

25 CHAIRMAN BROWN: Okay. Did we lose him?

1                   MR. DONNELLY: Yeah, he logged off the  
2 meeting, so I assume he's calling back.

3                   CHAIRMAN BROWN: There we go.

4                   BOARD MEMBER VICKREY: Am I there now?

5                   CHAIRMAN BROWN: You're here now, Doug.

6                   BOARD MEMBER VICKREY: Okay. So I listened  
7 to John's comments, and I guess I'm thinking to myself, if  
8 we as a board have to -- have to okay, why are we even  
9 being involved in it? I mean, if it's saying you shall do  
10 it, why are we even taking a vote on it? It appears to me  
11 it's already a done deal with or without our authorization,  
12 if you would.

13                   The issue of public records that I've been  
14 involved with, and as weed and pest board chairman here in  
15 Sublette County, we have a number of them requested, and  
16 some are so far out in the atmosphere that it's incredible  
17 what people will ask for, and the amount they will ask for  
18 as long as it doesn't cost them anything. So we have set a  
19 policy here where we will charge X for copy, dependent upon  
20 that -- the -- whether it requires color, whether it  
21 requires maps and et cetera. And then after that, the  
22 price escalates to the point where if they want a lot of  
23 stuff, they're going to have to pony up some of the  
24 expenses involved. We've also -- when we get requests from  
25 organizations -- we've had several -- that are like

1 Florida, California, et cetera, we invite them to show up  
2 at our airport. We'll ferry them here, they can have right  
3 at it. And when that happens, we generally don't get a  
4 second request.

5           So the issue of cost is obviously an issue. But  
6 there has to be -- there has to be a threshold of what any  
7 agency or -- and, in this case, our agency, can withstand  
8 from a financial standpoint because the folks that have to  
9 dig into those records are not able to do the job that they  
10 should be doing. So that should all come into play, I  
11 think. And the people who request have a legitimate reason  
12 of doing so. But after a while, that request gets to the  
13 limits where it becomes untenable. At least in my mind it  
14 does. And that's sort of where I'm at.

15           CHAIRMAN BROWN: Thank you, Doug.

16           Any comment --

17           MR. KASTE: If I might, Mr. Chairman.

18           CHAIRMAN BROWN: Yes, sir.

19           MR. KASTE: Remember, my name is James.

20           I think Mr. Vickrey makes a wonderful point, and  
21 a point of clarification you probably need to hear, which  
22 is why do I have to do this if I don't have any choice?  
23 And I suspect that you're all struggling with that  
24 question. And you can blame the legislature for that. The  
25 legislature, of course, in the legislation said A&I must

1 adopt these rules. And then it required every single state  
2 agency to go through their very own rulemaking process in  
3 conformity with their rulemaking procedures to adopt the  
4 uniform rules. The legislature could have done that  
5 differently, and maybe they should have, and just said the  
6 rules apply and we only go through one rulemaking process.  
7 But they did not. They said every state agency has to  
8 adopt it.

9           And there's some wisdom in that, because certain  
10 agencies have very different requirements related to public  
11 records in their specific statutes. DEQ does not. And so  
12 we're forced to go through this process, even though we  
13 know what the outcome will be. And you can blame your  
14 legislators for that. You're being asked to approve this  
15 rule package because that is the process that DEQ must go  
16 through in order to promulgate rules. You understand, I'm  
17 sure, very well your role in that process is at the outset,  
18 and then it goes through a series of steps, ultimately to  
19 be signed by the governor. And every single one of you  
20 have to do your part in that rulemaking process in order  
21 for DEQ and EQC to promulgate a valid rule.

22           That's -- that's the heart of your concern, and  
23 the reason why I think you have that concern. That's not  
24 unusual for the legislature to do in certain circumstances,  
25 because, you know, every public official is subject to both

1 ministerial and discretionary duties. Sometimes you have  
2 to because that's what the law says. I have to do a lot of  
3 things I don't really want to do because that's what the  
4 law is. I don't want -- I don't want to go slow. I want  
5 to speed. Doesn't matter. I must follow the speed limit.

6 But you also at times are given authority to make  
7 discretionary decisions. And you typically do that when  
8 you review these rulemaking packages. You look at them  
9 very carefully. You weigh the pros and cons. You make  
10 your recommendations. But that's not the case in this  
11 instance. In this instance, you know, you've been --  
12 you've been given a rule with the legislative mandate to  
13 push it through the process so that DEQ can conform with  
14 its mandate to adopt these uniform rules. And that's  
15 really, I think, the heart of your concern is this  
16 dichotomy between ministerial duties and your discretionary  
17 duties. And this -- this is one of your ministerial  
18 duties.

19 CHAIRMAN BROWN: Thank you.

20 Klaus.

21 BOARD MEMBER HANSON: Let me bring up my  
22 point succinctly. My concern is that the uniform --

23 (Cell phone rings.)

24 BOARD MEMBER HANSON: -- we have birds  
25 now -- the uniform availability to any organization needs

1 to be safeguarded in some fashion. And if that warrants an  
2 exception where some agencies who say we do not have the  
3 financial means to get the records that we require, will be  
4 given a variance or an exception. That -- that is my  
5 concern that the uniformity, which is listed as one of  
6 the -- the stipulations of records becoming available is  
7 safeguarded in some fashion.

8           So if that can be incorporated, I would have no  
9 problems with it, because I do see that the problem that  
10 some requests are spurious, some requests are out of line,  
11 et cetera, et cetera, and take a lot of time, et cetera,  
12 that's -- that's, I think, a judgment call where we could  
13 say -- or the agency could say wait a minute, can you  
14 confine this, can you make it briefer, et cetera, et  
15 cetera. But the uniformity issue from different requestors  
16 I think needs to be safeguarded, and I don't know whether  
17 that is particular for this agency because we are dealing  
18 with a lot of public nonprofit organizations that come and  
19 want to make such requests.

20           MR. KASTE: Sure. Mr. Chairman. You said  
21 judgment call in the course of your question, and I think  
22 you're right on. Your concern is perfectly appropriate.  
23 It's been raised by a number of different folks. And that  
24 concern is the judgment call made by A&I about whether or  
25 not to create waivers, whether or not the thresholds for

1 payment are appropriate. The -- the situation that we face  
2 here today is that the wisdom that A&I exercised in the  
3 course of making that judgment call is no longer up for  
4 debate by this board. You know, that's -- that's not  
5 really relevant to the inquiry that you have here today.  
6 That's something that was part of the debate when A&I  
7 promulgated the uniform rule. They made the judgment call  
8 and they did so because the legislature told them to make  
9 the judgment call. They entrusted A&I with the authority  
10 to make that decision and they have. That decision's not  
11 permanent. A&I can change its rule, and it may do so some  
12 day.

13 But everybody else, every other state agency, was  
14 entrusted by the legislature with making that judgment  
15 call. We were told differently. You shall adopt the rule  
16 that they think is wise. And that's where you are here  
17 today. Does that make sense?

18 BOARD MEMBER HANSON: Makes sense, but I  
19 don't like it.

20 MR. KASTE: Well, nobody likes it when  
21 they're not in control of the decision. I understand that.

22 BOARD MEMBER HANSON: That's correct.

23 MR. KASTE: And nobody likes it when  
24 they're told you have a ministerial duty where you just  
25 need to do the act that you are asked to do by the



1 legislature. We all want to have decision-making  
2 authority, but the reality is oftentimes we don't.

3 ATTORNEY GENERAL MICHAEL: James, I would  
4 disagree, Mr. Chairman, with one point. Sometimes it's  
5 great when you don't have to make the judgment call and you  
6 only have one choice.

7 CHAIRMAN BROWN: Right.

8 ATTORNEY GENERAL MICHAEL: That can be a  
9 good thing.

10 BOARD MEMBER HANSON: Could be, that's  
11 true.

12 CHAIRMAN BROWN: Diana?

13 BOARD MEMBER HULME: Nothing further.

14 CHAIRMAN BROWN: John or Doug, any further  
15 comments from you guys?

16 BOARD MEMBER VICKREY: No. I used my  
17 whole --

18 CHAIRMAN BROWN: Well, they're appreciated.

19 So our next step --

20 BOARD MEMBER HEYNEMAN: I understand. And  
21 I appreciate the ministerial explanation. I think that --  
22 I think that's a really interesting legal argument. I  
23 don't know if it's right or not. It would have been nice  
24 to be able to talk to someone about that. That's a very  
25 interesting point. But if we still -- so we're not siding

1 with the -- our ministerial duties still take us in  
2 conflict with -- we still have -- if we have -- if we're  
3 taking umbrage with the A&I rule on which we are supposed  
4 to give advice, seems like it's not quite clear-cut and  
5 just ministerial.

6 MR. KASTE: If you would like me to  
7 respond?

8 CHAIRMAN BROWN: Please.

9 MR. KASTE: You're not here to give advice  
10 to A&I.

11 CHAIRMAN BROWN: Right.

12 MR. KASTE: You're here to make a  
13 recommendation so that this can go through the process.  
14 There was a time to give advice to A&I, and it was when  
15 they were developing their rule. That's over.

16 CHAIRMAN BROWN: Understood.

17 BOARD MEMBER HULME: Uh-huh.

18 CHAIRMAN BROWN: I think now -- I think we  
19 should put this before the board. Okay. I think we should  
20 entertain a motion from some member.

21 BOARD MEMBER HULME: I will make a motion.  
22 I'll throw it out there. So the Air Quality Advisory Board  
23 recommends adoption of the proposed revisions to advance  
24 the DEQ's rules of practice and procedure Chapter 1,  
25 General Rules, Section 11, public records to the

1 Environmental Quality Council.

2 CHAIRMAN BROWN: I have a motion. Do we  
3 have a second?

4 BOARD MEMBER HEYNEMAN: Second the motion.  
5 John Heyneman.

6 CHAIRMAN BROWN: Okay. It's been moved and  
7 seconded. All those in favor?

8 BOARD MEMBER HULME: Aye.

9 CHAIRMAN BROWN: Aye.

10 BOARD MEMBER VICKREY: Aye.

11 CHAIRMAN BROWN: All those opposed?

12 BOARD MEMBER HEYNEMAN: Aye.

13 BOARD MEMBER HANSON: Aye.

14 CHAIRMAN BROWN: So three in favor, two  
15 opposed. It has passed.

16 Move forward to recommend Air Quality Advisory  
17 Board to adoption of the proposed revisions to advance the  
18 DEQ's rules of practice and procedure, Chapter 1, General  
19 Rules, Section 11, public records to the Environmental  
20 Quality Council. Thank you.

21 Nancy?

22 MS. VEHR: There's just one item left in  
23 terms of the board as a reminder. Amber -- or team rules  
24 had sent out -- might have been Bobby, I think. So the Air  
25 Quality Division had sent out a Doodle Poll for the next

1 meeting. And if you all could respond to that Doodle Poll  
2 as soon as possible. We have to publicly notice a couple  
3 of items, and we need that date in order to prepare those  
4 public notices. So if you can just, as a reminder, respond  
5 to that Doodle Poll. We'll get the next Air Quality  
6 Advisory Board meeting set.

7 BOARD MEMBER HANSON: And that's in --

8 CHAIRMAN BROWN: August?

9 BOARD MEMBER HANSON: -- August, right? In  
10 August.

11 CHAIRMAN BROWN: I didn't have my dates  
12 yet, so that's --

13 MS. VEHR: Okay. No worries. Just as a  
14 reminder so we can get the next public notices out for that  
15 meeting and agenda.

16 CHAIRMAN BROWN: Okay. So that was  
17 scheduling?

18 MS. VEHR: Yep.

19 CHAIRMAN BROWN: Oil & Gas? We don't know  
20 where it's going to be, or do we?

21 MS. VEHR: Not -- Casper.

22 CHAIRMAN BROWN: Oh, Casper. Okay. All  
23 right.

24 Any other comments from the board? I mean, we're  
25 done with the --

1 MS. VEHR: That was the only matter in  
2 terms of the special meeting as the continued  
3 deliberations. So that's the -- all the -- to the extent  
4 of the special meeting. So you can --

5 CHAIRMAN BROWN: Thank you for your input.

6 BOARD MEMBER HANSON: Mr. Chair, one  
7 comment.

8 Thank you for coming and explaining things. And  
9 sometimes one has to be disagreed. I'm sorry.

10 CHAIRMAN BROWN: That's okay. That's what  
11 we do. All right.

12 BOARD MEMBER HANSON: Thank you very much.

13 CHAIRMAN BROWN: You have any other  
14 comments? Thank you.

15 Let's move to adjourn.

16 BOARD MEMBER HULME: I'll move to adjourn.

17 BOARD MEMBER HANSON: Second.

18 CHAIRMAN BROWN: Moved and seconded. These  
19 proceedings are adjourned.

20 (Special meeting proceedings concluded

21 2:05 p.m., July 12, 2018.)

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C E R T I F I C A T E

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

Dated this 30th day of July, 2018.

  
KATHY J. KENDRICK  
Registered Professional Reporter

