

1 WYOMING WATER AND WASTE ADVISORY BOARD

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4 RE: VIRTUAL PUBLIC MEETING PROCEEDING

5 WATER QUALITY DIVISION: RULEMAKING: WQR CHAPTER 3

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TRANSCRIPT OF VIRTUAL PUBLIC MEETING PROCEEDINGS

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Pursuant to notice duly given to all parties

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in interest, this matter came on for virtual public

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meeting on the 23rd day of March, 2021, at the hour of

12

9:02 a.m., before the Wyoming Water and Waste Advisory

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Board, Mr. Alan Kirkbride, Chairman, presiding, with

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Mr. Brian Deurloo, Ms. Lorie Cahn, Mr. James Cochran, and

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Mr. Brian Dickson also in attendance virtually.

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Ms. Kelly Shaw, Attorney for the Board;

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Mr. Kevin Frederick, Water Quality Administrator;

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Mr. Rich Cripe, Water/Wastewater Section Manager; and

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Ms. Gina Thompson, Water Quality Division, were in

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attendance virtually, as well as various members of DEQ

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staff and the public.

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

2 (Virtual meeting proceedings commenced
3 9:02 a.m., March 23, 2021.)

4 CHAIRMAN KIRKBRIDE: So this meeting of
5 Water and Waste Advisory Board is now in session. I wonder
6 if the first thing to do would be for the Board to
7 introduce themselves. I don't have a gallery view out to
8 see who's all here. So what I'm going to ask that each of
9 the board members to introduce themselves, check in.

10 I'm Alan Kirkbride. I'm representing agriculture
11 and the chairman of the board at this time.

12 BOARD MEMBER COCHRAN: Jim Cochran for
13 local government.

14 BOARD MEMBER DEURLOO: This is Brian
15 Deurloo in Casper. I represent industry.

16 BOARD MEMBER DICKSON: My name is Brian
17 Dickson. I represent the public from Lovell.

18 BOARD MEMBER CAHN: This is Lorie Cahn. I
19 represent the public at large from Jackson, and I'm the
20 vice chair, I think.

21 MS. THOMPSON: Yeah.

22 CHAIRMAN KIRKBRIDE: I think you are.

23 Now, perhaps it would be good for the significant
24 people from DEQ to introduce themselves. Would that be a
25 good thing?

1 MR. FREDERICK: Thank you, Mr. Chairman.
2 Kevin Frederick, Administrator of the Water Quality
3 Division.

4 MR. CRIPE: Rich Cripe, Water/Wastewater
5 Section Manager.

6 MS. THOMPSON: And then I'm Gina Thompson,
7 also with the Water Quality Division, and I assist with
8 rules and policies for the Division.

9 We will have some Solid and Hazardous Waste staff
10 joining us later, but we'll have them introduce themselves
11 and their program at their point in the agenda, if that's
12 all right, Mr. Chairman.

13 CHAIRMAN KIRKBRIDE: That's perfectly fine.

14 And we -- if we have members of the public, I
15 welcome you. Perhaps when you get involved, why, we'll
16 have you introduce yourself. But, otherwise, why, I think
17 we're -- are we ready to go? Do we have other things we
18 should tend to, Gina?

19 MS. THOMPSON: No, sir. I think we're
20 ready. And the first -- the first item is the Water
21 Quality Division rulemaking for Chapter 3.

22 CHAIRMAN KIRKBRIDE: I want to -- excuse
23 me. I need to step in and say one thing, that I sure will
24 need to leave at 1:00.

25 MS. THOMPSON: Okay.

1 CHAIRMAN KIRKBRIDE: And Brian Deurloo has
2 told me that he needs to leave even 15 minutes before that.
3 So if we get that long, I think the two of us are going to
4 have to vacate ourselves. I hope that we'll still have a
5 quorum left after that. But I think perhaps we'll be done.

6 MS. THOMPSON: Okay.

7 Anyway, I just thought advanced warning was a
8 good idea.

9 Okay. Rich, are you next?

10 MR. CRIPE: I will let Kevin and Gina
11 start, and then I will the third leg of that.

12 CHAIRMAN KIRKBRIDE: Okay. Great.

13 MR. FREDERICK: Thank you, Mr. Chairman,
14 members of the Board. Kevin Frederick, Water Quality
15 Administrator. And I will certainly keep your schedules in
16 mind today and try to be as brief as we can, but also as
17 substantive as we need to be.

18 It's good to see you all again. I imagine
19 several of us were probably up a little late last
20 night catching the Cowgirls in the NCAA tournament.
21 Unfortunately, UCLA was pretty tough, and we didn't become
22 the first Number 14 team to beat a Number 3 team. I found
23 that out. So, anyway, go Pokes.

24 MS. THOMPSON: For the record, that's
25 right.

1 MR. FREDERICK: For the record. Thanks,
2 Gina.

3 So just a little recap on Chapter 3. As you can
4 tell by its early number, it was one of the first rules and
5 regulations that Water Quality Division developed back in
6 the 1970s, which is kind of interesting, because this rule
7 is -- is probably upwards of 40, 45 years old, and has seen
8 very little, if any, change over the past many years.

9 The only modifications I'm aware of really had to
10 do with recognizing water quality management plans and
11 source water protection plans that were adopted by local
12 governments and deferring some permitting authorities
13 consistent with any ordinances they may have passed and
14 approved water quality and source water protection plans.

15 And we first brought our proposed revisions in a
16 much smaller scale than what we're going to be discussing
17 today back before the Board in June of 2019, and at that
18 time, DEQ Solid and Hazardous Waste Division was working on
19 rules and regulations for permitting what we call coal
20 combustion residual impoundments. And these are
21 essentially coal ash impoundments. And we have several of
22 those across the state. And the Solid and Hazardous Waste
23 Division rulemaking essentially was going to incorporate
24 new federal guidelines into a state rule that would then,
25 once adopted, require permitting of those impoundments as

1 well as closure of those impoundments according to the new
2 Solid and Hazardous Waste Division rules.

3 Now, I know you've seen the proposed Solid and
4 Hazardous Waste Division rules I believe at least once,
5 possibly twice. And I think there's going to be more
6 discussion on those later today. But my point here is that
7 initially back in June of '19 we simply wanted to recognize
8 that no permit from Water Quality Division would be
9 required once the Solid and Hazardous Waste rules requiring
10 a permit kicked in. So it was a relatively minor change.

11 I think we also added a definition for coal
12 combustion residual at that time. I think we may have made
13 some recommendations with respect to reducing the number of
14 permit application copies that were required as part of
15 Chapter 3 permits. But the Board heard our proposed
16 revisions at that June 2019 meeting and recommended that we
17 move forward to the Environmental Quality Council, but also
18 wanted us to delay moving to the Council until the Solid
19 and Hazardous Waste Division rules went through the
20 advisory board so we could sync up, essentially, our
21 proposals to the Environmental Quality Council for rule
22 modifications dealing with coal combustion residuals both
23 on Water Quality Division side and Solid and Hazardous
24 Waste Division side at the same time to help eliminate some
25 confusion.

1 So after the Board meeting, we essentially tabled
 2 moving forward to the Environmental Quality Council. And
 3 interestingly enough, there was a change in administration
 4 here in Wyoming, in state government, and there was a new
 5 Attorney General appointed by the new governor of Bridget
 6 Hill, who we work with very closely. And the Attorney
 7 General wanted to take a little different approach to their
 8 review of our rules and regulations, and historically they
 9 have done it. And I think they were primarily interested
 10 in making the rules and regulations more easily understood,
 11 and they essentially found different ways to do that,
 12 moving things around in regulations so that the logic and
 13 the flow of the requirements was perhaps a little bit
 14 easier to understand.

15 They identified areas they felt needed a little
 16 more clarification, there may have been some ambiguity, and
 17 overall the intent was to approve the rule as much as
 18 possible, to streamline it and to eliminate language within
 19 rules that wasn't necessary. For instance, if -- if
 20 requirements were in place in state statutes, the Attorney
 21 General's Office did not like to see those requirements
 22 reiterated in regulation. So we did some modifications
 23 along those lines as well.

24 But once we had tabled our rule and the new AG
 25 review process kicked in, they did their review of Chapter

1 3. And as you can see in the proposed modifications to the
2 regulation, there's quite a bit of redline and strikeout in
3 here, and I don't want that to be alarming. A lot of it is
4 simply reorganization within the chapter, some of it is
5 deleting redundant language that exists in the statute.

6 And then in the -- in the blue that you may be
7 seeing in the post revisions, are essentially revisions
8 that the AG's Office recommended we consider to help
9 clarify or essentially modify to make the rule more clear
10 and more easily understood, at least in their opinion.

11 So that's why, essentially, we're back before the
12 advisory board again. We certainly wanted to have the
13 advisory board provide an opportunity to review and comment
14 on the proposed revisions that we've made here working with
15 the Attorney General's Office. And that said, I think what
16 I'll do now is ask Rich to kind of take us through section
17 by section and briefly capture the suggested revisions here
18 and describe those a little bit for you.

19 Gina, I believe the board members have a copy of
20 Chapter 3 summary?

21 MS. THOMPSON: We did not give them the
22 summary that you guys have.

23 MR. FREDERICK: Okay. Fine. We will just
24 kind of walk through this, then, and go from there.

25 So Rich.

1 MR. CRIPE: Okay. Good morning, Board
2 Member -- Chairman -- Board Members and Chairman Kirkbride.
3 I'll begin by going through Chapter 3 for substantive
4 changes.

5 As Kevin has covered a lot of this I'll go
6 section by section. There's some sections I might group
7 together just because a similar thing was being done in
8 there. The ones that are important, I'll give a little
9 more clarity as to what we did in there.

10 Section 1, as you look at it, we removed the
11 passage that was basically a restatement of the Wyoming
12 statute.

13 Is there a question on Section 1?

14 Well, not hearing anything, I'll continue to
15 Section 2.

16 In Section 2, lines 35 through 58, 2(a)(iii)(A)
17 through (F) was reorganized and clarified passages for
18 consistency with Wyoming Statute 35-11-307.

19 Lines 97 through 99, 2(b)(iv) was the addition of
20 the coal combustion residual for consistency with the solid
21 waste rulemaking.

22 Line 1152(b)(iii) was the addition of the Class
23 VI facilities for consistency with other statements in the
24 chapter.

25 Is there any questions on Section 2?

1 Looks like one's got a couple of questions.

2 MS. THOMPSON: Lorie.

3 MR. CRIPE: Does she know how to unmute?

4 CHAIRMAN KIRKBRIDE: Jim? Oh, okay.

5 MR. CRIPE: Or Lorie.

6 CHAIRMAN KIRKBRIDE: Jim has one -- oh,
7 Lorie. Go ahead. You had your hand up first. Go ahead.

8 BOARD MEMBER CAHN: Okay. I wanted -- so a
9 couple of things. I would appreciate next time if you guys
10 do have a summary of the changes, if you would provide
11 those to us so that we can have the rationale and an
12 understanding of what is being done.

13 So I have a question about striking out of the
14 word "regulations." So we have Water Quality Rules in some
15 place, and we have -- like on line 115 we have Water
16 Quality Rules and Regulations. So can you go over the
17 difference between rules and regulations and whether or not
18 you're now striking regulations from Water Quality Rules.
19 So I would just appreciate understanding what's going on
20 there. Thank you.

21 MS. THOMPSON: Sure, Lorie.

22 Mr. Chairman, if I might answer that question. I
23 believe the -- the use of the regulations word on line 116,
24 we put that in as our -- as our advice was becoming more
25 refined. So the position that we've been given from the

1 AG's Office is for -- for efficiency sake, you know,
2 they're kind of advising us to refer to them as the water
3 quality rules, because "and regulations" is a redundant
4 statement. So I believe this was the first chapter we
5 started striking "and regulations." And it looks like I
6 have -- I had a sneaky line come in. So I will go ahead
7 and note that that one needs to come out. But thank you
8 for catching that, because it should be Water Quality Rules
9 throughout this chapter and upcoming chapters as well.

10 BOARD MEMBER CAHN: Thank you for that
11 explanation. I think it's great to get rid of "and
12 regulations," because I never understood the difference
13 between rules and regulations. So I think that's a great
14 change. Thank you.

15 MS. THOMPSON: Yeah.

16 CHAIRMAN KIRKBRIDE: Okay. Thank you,
17 Lorie.

18 Jim.

19 BOARD MEMBER COCHRAN: I had a question on
20 line 122. It exempts confined swine feeding operations
21 because they're covered under Chapter 20. Does CAFOs need
22 to be added as an exception because they have their own set
23 of rules?

24 MS. THOMPSON: So --

25 MR. FREDERICK: I think what we need to

1 recognize here, Mr. Cochran, is the requirement for a
2 Chapter 3 permit to construct, install, modify that applies
3 to -- would have applied to -- prior to Chapter 20 being
4 promulgated, the confined feeding operations. The confined
5 feeding operations actually require a discharge permit as
6 well. That's a separate permitting process under Chapter 2
7 of Water Quality Division rules. So I think what we're
8 recognizing here is that with respect to a Chapter 3
9 permit, these types of facilities will be permitted other
10 than to discharge under Chapter 20. So I think we're good
11 there, Mr. Cochran.

12 MS. THOMPSON: Additionally, Mr. Cochran,
13 Chapter 20 applies to swine operations. So other
14 CAFOs -- other CAFOs don't fall under 20. And we do have
15 quite a few cattle and buffalo and other operations. That
16 gets a little -- that gets a little confusing, I can see.
17 But that particular exemption is just for Chapter 20, which
18 only applies to the swine feeding operations.

19 BOARD MEMBER COCHRAN: That was my
20 question, whether it needed to be expanded. But it sounds
21 like maybe not.

22 I do have one other question on the title. It
23 refers to public water supplies. And it seems like the
24 only public water supply really covered under here is
25 municipal supplies. Is that correct, or is there other

1 public supplies?

2 MR. CRIPE: Board Member Cochran, I guess
3 I'm trying to understand your question.

4 BOARD MEMBER COCHRAN: Well, I think you're
5 exempting public water supplies that are permitted by, you
6 know, municipalities or counties, et cetera. You know,
7 which are typically like 25 people or less that use that
8 water supply. They're still considered public water
9 supply, but they're not permitted under this chapter. I
10 guess my question is are there other public water supplies
11 besides municipalities that are permitted under this
12 chapter?

13 MR. CRIPE: Okay. So a public water
14 supply, which is not addressed by this, but this is the
15 permitting of it, it's 25 people or 15 taps. There's three
16 different types of public water supplies that get
17 permitted. More specifically those type of facilities, I
18 believe, get addressed by other state agencies that address
19 that. So our authority only gets to answer to 25 people or
20 15 taps in those configurations, so anything less than
21 that, we don't have the authority to regulate that.

22 BOARD MEMBER COCHRAN: Yeah, but are 25
23 taps regulated under this chapter?

24 MR. CRIPE: Board Member Cochran, yes and
25 no. This is the permitting aspect of it, but actually

1 Chapter 12 speaks to the design standards of public water
2 systems. So this is the overarching permitting process
3 that goes hand in hand with Chapter 12.

4 BOARD MEMBER COCHRAN: Okay.

5 MR. CRIPE: We have to have both of these
6 chapters to be able to issue a permit for public water
7 systems.

8 BOARD MEMBER COCHRAN: Thank you.

9 CHAIRMAN KIRKBRIDE: Are there any other
10 questions at this point?

11 Yeah, Lorie.

12 BOARD MEMBER CAHN: I have questions on
13 lines 43 through 49 of the redline/strikeout. And so the
14 first group talks about commercial waste treatment storage
15 and disposal facilities are used for more than 10 dried
16 tons of sewage sludge per day, and lines 47 says commercial
17 waste treatment storage and disposal facilities are used
18 for less than 10 dried tons of sewage sludge per day. And
19 so my question is what happens to the 10 tons? So why
20 specify more than 10 and less than 10? So it only doesn't
21 apply to exactly 10 dried tons per day? So I'm confused as
22 to why -- where 10 tons falls in, and why aren't they just
23 combined? So I'm confused. If you could explain that.
24 Thank you.

25 MS. THOMPSON: Sure. So we believe that

1 you have found a blind spot in our -- in our proposal that
 2 we realized we may have yesterday. So that original
 3 passage -- that original passage was, if you can imagine,
 4 even more confusing than what our current proposal is.
 5 and -- so basically we were -- when those passages were
 6 first put in, they were trying to make sure that -- that
 7 they were covering some things that were mentioned in the
 8 statute, and that they were also calling out some things
 9 that would require permit that weren't subject to the
 10 statute. And it was very confusing.

11 So we worked through it, and we came up with the
 12 draft language that you see before you. And as we were
 13 reviewing this in preparation for you all, you know, we
 14 were reviewing this yesterday, Kevin came to the same
 15 conclusion you're coming to, Lorie, which is that's not
 16 very clear. Why are they broken out?

17 So in our discussion through that -- through that
 18 confusion -- those confusing passages, we realized that
 19 because the chapter isn't -- the chapter isn't covering
 20 permitting that -- so that the chapter covers permitting,
 21 but it doesn't cover the obligations covered by the
 22 statute, which are financial assurance and setbacks. Those
 23 would be covered in a design standard or in the financial
 24 assurance chapter.

25 So because we're not really referencing the

1 things that pertain to that statute, we would propose a
2 revised passage where instead of differentiating between
3 what is that row -- like (B) and (C), we would just say
4 commercial facilities. And then -- I have a draft prepared
5 here where I can switch my screen so you can see
6 potentially what we were thinking would fix this.

7 Oh, okay. So we're still following under those
8 biosolids facilities, but instead of having commercial --
9 you know, more than 10 and commercial less than 10, that 10
10 is very specifically stated in the statute. We would trim
11 out one of them and just say, you know, commercial waste
12 treatment storage and disposal facilities are used.

13 And then we also wanted to make sure that
14 noncommercial facilities are stated -- that they would be
15 required to apply for a permit as well. And then we would
16 trim out that differentiation.

17 Does that -- does that kind of clear up the point
18 that you were -- you were noticing? We're feeling like if
19 we -- if we just trimmed out the differentiation and just
20 left it as commercial, that we aren't -- you know, that we
21 aren't interrupting anything and that we're not making a
22 problem by not referencing the statute.

23 BOARD MEMBER CAHN: I'm having a hard time
24 figuring out how to get to full screen again so I can see
25 what you've proposed. It's so tiny I can't see it.

1 MS. THOMPSON: Let me try to blow -- oh,
2 that's too big. Sorry.

3 BOARD MEMBER CAHN: I think the problem is
4 operator error on mine, because I've got my screen up that
5 shows your language -- not your language. Sorry. The
6 original language that we reviewed. And I'm not sure how
7 to get back to full screen. It's just operator error here,
8 I'm sorry. It's -- shoot. So I've got you big and your
9 writing tiny.

10 MS. THOMPSON: Okay.

11 BOARD MEMBER CAHN: Whoops. I'm sorry.
12 It's just not understanding how to -- how to do this.

13 MS. THOMPSON: Okay. Can you go up -- if
14 you go -- hover your mouse towards the top of the screen,
15 do you have like a little Zoom window that appears?

16 BOARD MEMBER CAHN: No. I have a view and
17 it says standard side-by-side speaker, side-by-side
18 gallery, and exit full screen. Let me just -- oh, okay. I
19 can just blow it up by hand. Let me just do that. So bear
20 with me, I'm sorry.

21 MS. THOMPSON: That's okay. I'm new to one
22 too. I've only been using this one for about a month. We
23 were Google addicts the rest of the year, but this one had
24 some bells and whistles that come in handy.

25 BOARD MEMBER CAHN: Could you just read --

1 so could you just read the language?

2 MS. THOMPSON: Sure.

3 BOARD MEMBER CAHN: Sorry.

4 MS. THOMPSON: Okay. So what we would
5 propose is we would shift to in paragraph B, we would say
6 commercial waste treatment storage and disposal facilities
7 are used, and we would trim out for more than 10 tons of
8 dried sewage sludge per day in accordance with the statute
9 at 307. And we would also trim out the old paragraph C,
10 where commercial waste treatment storage facilities are
11 used for less than 10 tons of sewage sludge per day in
12 accordance with the statute at 307. And then we would
13 renumber the remaining subparagraphs in that group. So it
14 would just be commercial waste treatment and disposal
15 facilities are used.

16 BOARD MEMBER CAHN: Great. That looks
17 wonderful. Thank you. Sorry -- and -- good. I've just
18 got to figure out now how to exit from the big screen so I
19 can see my stuff. Sorry.

20 Great. I'm in -- well, now I've lost you guys.
21 Sorry. Oh, dear.

22 MR. CRIPE: Chairman Kirkbride, are there
23 any more questions?

24 CHAIRMAN KIRKBRIDE: I don't hear any.

25 MR. CRIPE: Okay. I'll proceed to Section

1 3. In Section 3, on line 199, Section 3(c), definition of
2 coal combustion residuals from the Environmental Protection
3 Agency discrimination we have in there.

4 Lines 230 to 233, 3(g), revised noncommercial
5 pits and wells for consistency with the definition of
6 commercial oilfield waste disposal facilities.

7 On line 267 to 273, 3(l), added a passage for
8 consistency with the passage in Section 7.

9 Line 283 through 290, 3(o), revised treatment
10 works for consistency with reorganizations to the passage
11 in 2(b).

12 In Section 3 are there any questions?

13 Not seeing any, I'll continue to Section 4.

14 Individual permits, line 329 through 335, 4(a)(i), revised
15 application copies for format requirements to provide more
16 flexibility and maintain legal force of signed documents.

17 Line 363 through 366, (b)(i) and 4(b)(ii) added a
18 passage to clarify division permitting review practices.

19 Are there any questions on Section 4?

20 BOARD MEMBER DEURLOO: This is Brian
21 Deurloo. The line 366 reads just a little bit unusual, I
22 believe. It reads "A determination that an application is
23 incomplete is a permit denial." Would it not be more
24 accurate to say an application will be denied if the -- if
25 it is incomplete? Kind of switch it around a little bit.

1 MR. CRIPE: Board Member Deurloo, I'm fine
2 with that. We can make that change.

3 MR. FREDERICK: Did you catch it, Gina?

4 MS. THOMPSON: I'm going to read back what
5 I heard, and then Lorie has a question.

6 Okay. So what I heard was an application will be
7 denied if it is -- it is determined incomplete. Is that --

8 BOARD MEMBER DEURLOO: Yes. Something like
9 that.

10 MS. THOMPSON: Okay.

11 BOARD MEMBER DEURLOO: The way it reads
12 now --

13 MR. FREDERICK: Notification the permit is
14 denied --

15 MS. THOMPSON: Okay.

16 MR. FREDERICK: -- if the application is
17 incomplete.

18 BOARD MEMBER CAHN: Which line are we on?

19 BOARD MEMBER DEURLOO: 366.

20 CHAIRMAN KIRKBRIDE: Does anyone have a
21 problem with that -- with Brian's suggestion there? If
22 not, perhaps that can be written to comport to that.

23 MS. THOMPSON: Yeah. Yes, sir.

24 CHAIRMAN KIRKBRIDE: Okay. Brian, did you
25 have anything else right now?

1 BOARD MEMBER DEURLOO: No, Mr. Chairman.

2 Thank you.

3 CHAIRMAN KIRKBRIDE: Okay. Lorie?

4 BOARD MEMBER CAHN: On line 390, we talked
5 about the minimum design standards of these regulations.
6 Do we want to change that to "of these rules"?

7 MR. CRIPE: 393.

8 MS. THOMPSON: Okay.

9 MR. CRIPE: I would agree with that so
10 we're consistent.

11 MS. THOMPSON: Okay. I see.

12 BOARD MEMBER CAHN: And my next comment is
13 on line 428. I thought for clarity we should restructure
14 the sentence, because I think it's confusing as written.
15 The -- so I would -- well, it's written as "The Director
16 shall not issue a permit to operate, or renew or transfer a
17 permit to operate..." and I think we can just change it to
18 the Director shall not issue, renew, or transfer a permit
19 to operate to any facility that does not meet, et cetera.

20 MS. THOMPSON: We agree with that
21 recommendation. We'll go ahead and make that.

22 BOARD MEMBER CAHN: On line 485, there's a
23 spacing problem after -- after one-quarter -- as 1/4,
24 there's an extra space, and then there's not a space before
25 mile. So it's just editorial spacing.

1 MS. THOMPSON: Okay.

2 BOARD MEMBER CAHN: On line 488, it's just
3 kind of a general question about writing out one-quarter
4 and then parentheses one-quarter and one, parentheses and
5 one. To be consistent with the SWR rules that we're
6 looking at in the same day, they have gone to taking out
7 the duplication where it's not both spelled out and the
8 number, and I like that. I've always liked that. So I'm
9 just wondering about why we're looking at two rules from
10 two different divisions that are doing the complete
11 opposite, so -- thank you.

12 MS. THOMPSON: The short answer to that is
13 still that the two divisions -- we do not have a unified
14 style guide. And we have different attorneys reviewing
15 different rules. And so our current water quality style
16 guide still has that in there, and so we -- you know, when
17 we were preparing this draft, that's how we -- that's what
18 we followed to prepare.

19 And so I guess I'll leave it up to Kevin as to,
20 you know, his opinion on making that change, you know,
21 removing the numbers out of the parentheses.

22 BOARD MEMBER CAHN: I would just give my
23 plea to Kevin. Nobody misunderstands the -- when you write
24 out a number or see the number, you know, it's just not
25 something that needs clarity in my opinion, and I think it

1 makes it more difficult to read. That's just my opinion.

2 And if we're trying to make -- streamline these
3 rules and make them easier to comprehend, that certainly
4 makes for better reading if you don't have both. But
5 that's my personal opinion. I don't -- it's -- it doesn't
6 matter to me which way you choose, but I would just love it
7 if you -- I'm not going to die on my sword. Thank you.

8 MR. FREDERICK: Thanks for the comment,
9 Ms. Cahn.

10 I think as Gina kind of indicated, and as you
11 suggested, there isn't a universal style guide that's been
12 applied to DEQ rules and regulations. I suspect at some
13 point in time that will likely happen, and I guess my
14 recommendation, at least to Water Quality Division, would
15 be for us to try and maintain consistency with Water
16 Quality Division rules and regulations that I think apply
17 the same style we're seeing here, rather than going back
18 and doing a relatively large-scale mass group modification,
19 which, as I suggest, would probably happen at some point in
20 the future when there is a universal style guide for DEQ
21 rules and regulations. I understand your point. But I
22 think my recommendation would be to not deal with it now,
23 and over time I suspect it will be addressed.

24 BOARD MEMBER CAHN: Fair enough. Thank
25 you.

1 MR. CRIPE: Chairman Kirkbride, is there
2 any more questions? If not, I will proceed.

3 CHAIRMAN KIRKBRIDE: All right. Go right
4 ahead.

5 MR. CRIPE: Continuing on, Section 5,
6 general permits, line 650, Section 5(d). Updated
7 application formatting and copy requirements for
8 consistency with Division practices.

9 Is there any questions on Section 5?
10 Board Member Cahn.

11 BOARD MEMBER CAHN: Just on line 652,
12 you've got -- and 651 -- the word "shall" appears twice,
13 and I think the second "shall" on line 652 is unnecessary.
14 So it would be -- would read "shall be submitted to the
15 Division in a format required by the Administrator and
16 include the application form," et cetera.

17 In other words, the "shall" already implies to
18 include without saying it twice.

19 MS. THOMPSON: There it is.

20 MR. CRIPE: Board Member Cahn, I had to
21 grab the most current one. Could you repeat that, please?

22 MR. FREDERICK: Line 652, eliminate the
23 shall.

24 MR. CRIPE: Which? The first one or the --

25 MS. THOMPSON: The second one.

1 MR. CRIPE: The second one. Okay.

2 MR. FREDERICK: Line 652.

3 MR. CRIPE: Okay. Board Member Cahn, I
4 found my place. I'm good with that change.

5 Are there any more questions? Seeing none, I
6 will continue on to Section 6. Permit by Rule. Line 732
7 through 743, section (b) -- Section 6(b) and 6(c) added
8 passage for consistency with Water Quality Rules Chapter 25
9 Permit by Rule requirements.

10 Are there any questions on Section 6?

11 Not seeing any, I will cover Section 7. In this
12 section we reorganized and edited for clarity. Are there
13 any questions on Section 7?

14 Not seeing any -- oh, Board Member Cahn.

15 BOARD MEMBER CAHN: On line 921, I would --
16 922, I would delete the word "plan," because we're talking
17 about a plan view of the plan. And that doesn't make any
18 sense to me. Plan's already implied. So it would read
19 plan view indicating all areas to be covered by the
20 sedimentation control structure and the topography of the
21 area. So we don't need a plan of the plan -- plan view of
22 the plan.

23 MR. CRIPE: I agree with that correction.

24 We will make that correction.

25 Are there any more questions?

1 BOARD MEMBER DEURLOO: Brian Deurloo here.
2 I don't know if it's from the tracked changes or something
3 else, but seems like after all the romanettes -- (i),
4 (ii) -- whether it be line 916, 918 or 921, they just seem
5 to have some spacing errors. I figured you'd probably pick
6 those up when you do the final pass-through --

7 MS. THOMPSON: Yes.

8 BOARD MEMBER DEURLOO: -- but while we're
9 here...

10 MS. THOMPSON: I think what happened -- I
11 think by adding that helper language in front of the -- of
12 the lettering, we interrupted the tabs. And so if we don't
13 add the extra space, then they -- it looks like there's no
14 tab between them. So we added an extra tab, but it makes
15 it look very large. However, when we clean it up -- when
16 it goes through in the clean version, it should be just
17 five spaces -- or five point space. But thank you for
18 noting that.

19 BOARD MEMBER DEURLOO: Thank you, Gina.

20 Thanks, Mr. Chairman.

21 MR. CRIPE: Are there any more questions?

22 Seeing none, I will proceed to Section 8. Permit
23 Duration. Line 1004 through 1020, Section 8(a)(i) and 8(c)
24 added passage to clarify Division permitting the review
25 practices.

1 Are there any questions on Section 8?

2 Not seeing any, I will proceed -- I will do these
3 three sections in a group, because the same thing's
4 happened, so if you have a question we can go to whatever
5 section that is. But for Sections 9, 10 and 11, we
6 rearranged the information in these sections.

7 Is there any questions on the Sections 9, 10 or
8 11?

9 Board Member Cahn.

10 BOARD MEMBER CAHN: I have a question on
11 line 1241. The -- the Section 18 is struck out, but no new
12 section is put in, so it just says as required by section
13 of this chapter, and it doesn't tell us which section.

14 MS. THOMPSON: That is an error, and I
15 will --

16 MR. CRIPE: That's 15.

17 MS. THOMPSON: It should be Section 15.

18 MR. CRIPE: Thank you, Board Member Cahn,
19 for catching that. That should be Section 15.

20 Excuse me. Are there any other questions?

21 Not seeing any, I will proceed to Section 12,
22 Amending Permits. Line 1345 through 1366, Section
23 12(d)(ii) through 12(f)(ii) added passage to clarify
24 division permitting review practices.

25 Is there any questions on Section 12?

1 Not seeing any, I will proceed on. I have a
2 couple of sections that are having the same thing going on.
3 It's Section 13 and 14. And basically this in these two
4 sections we reorganized and edited for clarity. Are there
5 any questions on Section 13 and 14?

6 Board Member Cahn.

7 BOARD MEMBER CAHN: On line 1410, I would
8 delete the first "or." So we don't need "the suspension,
9 or revocation, or termination." I think it could just
10 state the suspension, revocation, or termination is
11 effective.

12 MS. THOMPSON: We agree.

13 MR. CRIPE: We agree with that change, and
14 we will make that change, Board Member Cahn.

15 Are there any more questions? Seeing none, I
16 will go to Section 15, Compliance With State and Local
17 Water Quality Management Plans. Line 1583 through 1593,
18 Section 15(a) and 16(b) added clarifications that provide
19 the federal regulatory context for the types of plans
20 discussed in this section.

21 Are there any questions on Section 15?

22 Seeing none, that is -- we covered the rule.

23 CHAIRMAN KIRKBRIDE: Thank you, Mr. Cripe.

24 It would appear to me that this has been
25 dramatically shortened.

1 MS. THOMPSON: Yeah.

2 CHAIRMAN KIRKBRIDE: And would still
3 covers -- I assume we feel it still covers the necessary
4 material?

5 MR. FREDERICK: Mr. Chairman, yes. We --
6 we didn't make any substantive revisions along those lines
7 with the exception of eliminating the permit requirement
8 for the coal combustion residual impoundments that I
9 mentioned earlier. Other than that, the rule is -- is
10 essentially as comprehensive as it -- as it was before the
11 changes were proposed.

12 CHAIRMAN KIRKBRIDE: Any board member or
13 member of the staff have any further comment on this rule
14 as proposed?

15 Board Member Cahn.

16 BOARD MEMBER CAHN: So I just have a
17 question about the title. Where -- the title starts with
18 the word "regulations," but it's now going to be a rule.
19 So do we need to change the title to be rules for permit to
20 construct?

21 MR. FREDERICK: I would --

22 MS. SHAW: Kelly Shaw, Advising Attorney
23 General. Can I jump in real quick?

24 MR. FREDERICK: Yeah. Thanks, Kelly.

25 MS. SHAW: The Secretary of State will not

1 allow us to make any changes to the title of the chapter.
2 So if we were to do that, we would have to make this an
3 entirely new chapter, just because the Secretary of State
4 would reject it.

5 MR. FREDERICK: Thanks, Kelly.

6 BOARD MEMBER CAHN: Thank you.

7 Okay. So if I just do a search for the word
8 "regulation," which I apologize I should have done before.
9 So we can't change the title. Just want to make sure -- so
10 did we catch page -- did you catch line 72? I'm now
11 looking at the clean version. Did we catch rules and
12 regulations Chapter 24 on line 72?

13 MS. THOMPSON: Yes.

14 BOARD MEMBER CAHN: So that's one place.
15 I apologize for all the banging in the background. Our
16 roof is getting -- we're getting new shingles on the roof.
17 So sorry for the noise.

18 Anyway, so line 72 is one. Line 226 is another.
19 Line 248 is another. So those are the ones I'm finding in
20 the clean version. Did we catch all of those except we're
21 not going to change the title.

22 MS. THOMPSON: Yes, I agree. It looks like
23 there are two -- there are two uses of regulations in the
24 Chapter that we will change to rules, and we'll change it
25 in both the clean and the strike and underline.

1 BOARD MEMBER CAHN: Okay. Thank you.

2 CHAIRMAN KIRKBRIDE: Is the Board at a
3 point where we -- we would be ready to approve this? I
4 assume that's -- I assume that's what's before us, is that
5 not -- yes, Lorie.

6 BOARD MEMBER CAHN: I just don't remember
7 whether or not we're taking public comments today.

8 CHAIRMAN KIRKBRIDE: What about that?

9 MS. THOMPSON: I believe that we are. I
10 will note for the record that we had a written comment
11 period open for 30 days. We have not received any of
12 written comments, but if any of the members of the public
13 that are, you know, with us today, if they wish to make a
14 comment.

15 CHAIRMAN KIRKBRIDE: Yes. So that's open
16 before us. Is there is anyone who would like to step
17 forward and do that?

18 MS. THOMPSON: It could be, Mr. Chairman,
19 that the number of public participants may be attending for
20 the additional rulemaking by our sister division today, so
21 none of them has a comment, it -- I'm not seeing any raised
22 hands or anything on my side.

23 CHAIRMAN KIRKBRIDE: Neither am I.

24 Yes, Ms. Cahn.

25 BOARD MEMBER CAHN: I would like to -- or I

1 would propose a motion. I move that we recommend Chapter 3
2 of the water quality rules -- we advise, excuse me, that
3 DEQ pass these -- as amended today, these -- this rule to
4 the EQC.

5 CHAIRMAN KIRKBRIDE: Is there a second?

6 BOARD MEMBER DEURLOO: I would second that
7 motion. Brian Deurloo.

8 CHAIRMAN KIRKBRIDE: All right. Is there
9 any discussion upon this motion? We'll proceed to vote.

10 All in favor say aye.

11 BOARD MEMBER DEURLOO: Aye.

12 BOARD MEMBER DICKSON: Aye.

13 BOARD MEMBER CAHN: Aye.

14 BOARD MEMBER COCHRAN: Aye.

15 CHAIRMAN KIRKBRIDE: Opposed?

16 It carries. The motion carries.

17 MR. FREDERICK: Very good. Thank you,
18 Mr. Chairman, members of the Board. I wish you well and we
19 will remove ourselves, Water Quality Division, from the
20 conference room here and let you continue on with the Solid
21 and Hazardous Waste Division.

22 MS. THOMPSON: And, Mr. Chairman, if we
23 might take a 5- to 10-minute break, since we're switching
24 out staff and switching out presentations, you know, the
25 DEQ folks would really appreciate a pause so we can switch

1 out the staff and whatnot.

2 CHAIRMAN KIRKBRIDE: Well, I think that's a
3 good idea anyway.

4 By the way, Mr. Deurloo reminded me that perhaps
5 we should be sort of -- approve the minutes of the last
6 meeting. Is that not so?

7 MS. THOMPSON: As I recall, the advising
8 attorney -- since we're just doing transcripts and not
9 minutes, I believe that Mr. Kuhlmann had advised that we
10 didn't -- it wasn't necessary, but if you would like to,
11 you can -- you can take care of that. I think that there's
12 no statutory requirement either way. But if that's
13 something that the Board wishes to do, we can do that.

14 CHAIRMAN KIRKBRIDE: Any member of the
15 Board prefer to do that?

16 BOARD MEMBER DEURLOO: That's okay. If
17 it's not necessary, no need to do it. Thank you.

18 CHAIRMAN KIRKBRIDE: All right. Well,
19 let's have a recess. And, in fact, could we go to 9:15
20 here?

21 MS. THOMPSON: Okay.

22 CHAIRMAN KIRKBRIDE: Or 10:15. We got a
23 clock here that hasn't changed.

24 MS. THOMPSON: Oh, we have one as well.

25 CHAIRMAN KIRKBRIDE: Ours will be changed

1 by 9:15, I can tell you.

2 MR. CRIPE: Thanks, Gina.

3 MS. THOMPSON: Thank you. And thanks,
4 Kevin and Rich.

5 (Meeting proceedings recessed
6 10:04 a.m., March 23, 2021.)

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C E R T I F I C A T E

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

Dated this 11th day of April, 2021.


KATHY J. KENDRICK
Registered Professional Reporter

