

WWAB SPECIAL MEETING

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WYOMING WATER AND WASTE ADVISORY BOARD

RE: WATER AND WASTE ADVISORY BOARD SPECIAL MEETING

TRANSCRIPT OF SPECIAL MEETING PROCEEDINGS

Pursuant to notice duly given to all parties in interest, this matter came on for special meeting on the 3rd day of May, 2022, at the hour of 9:07 a.m., before the Wyoming Water and Waste Advisory Board, Ms. Lorie Cahn, Acting Chairman, presiding, and Mr. Brian Deurloo and Mr. Brian Dickson in attendance virtually, with Mr. James Cochran in attendance. And Mr. James Peters and Carl Edelman, Attorneys for the Board, also in attendance virtually.

Ms. Nicole Budine, Attorney for the Division;
Ms. Jennifer Zygmunt, Water Quality Administrator;
Mr. Keenan Hendon, Water and Wastewater Section Manager;
Mr. Anthony Rivers, Water/Wastewater Regulatory & Enforcement Engineer; and Ms. Gina Thompson, Water Quality Division; and Mr. Bryce Dorr, Cheyenne BOPU, in attendance; as well as various members of DEQ staff and the public in attendance virtually.

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

2 (Special meeting proceedings commenced
3 9:07 a.m., May 3, 2022.)

4 MS. ZYGMUNT: Good morning, Lori. Thanks
5 for joining us today. Okay. With that, Chairwoman Cahn,
6 I'll let you start the meeting for us this morning.

7 ACTING CHAIR CAHN: Okay. This is a
8 special meeting of the Water and Waste Advisory Board to
9 discuss Chapter 12. And I'll turn it over to DEQ.
10 Actually, let's first introduce everybody who's here. From
11 the Board, I'm Lorie Cahn. I'm the acting chair
12 representing the public at large.

13 BOARD MEMBER DEURLOO: Hi. This is Brian
14 Deurloo -- Brian Deurloo here, and I'm representing
15 industry.

16 BOARD MEMBER DICKSON: I'm Brian Dickson,
17 representing the public at large.

18 BOARD MEMBER COCHRAN: Jim Cochran, just
19 member. The reason I say that is I attended training --
20 board training last week, and they talked about who you're
21 representing, and they said that that's only for the
22 purposes of appointing board members. Once you're
23 appointed, you represent the whole state. So maybe we
24 should just drop who we're representing and assume we're
25 representing the whole state. So with that, I'll turn it

1 back to Lorie.

2 ACTING CHAIR CAHN: Okay. Thank you very
3 much. I appreciate it.

4 And how about DEQ, introduce who you have there.

5 MS. ZYGMUNT: Great. Thank you, Lorie.

6 So my name is Jennifer Zygmunt. I am the Water
7 Quality Division Administrator.

8 MR. HENDON: Keenan Hendon, Water and
9 Wastewater Section Manager.

10 MS. THOMPSON: Gina Thompson, Policy and
11 Planning Analyst for the Water Quality Division.

12 MR. RIVERS: Anthony Rivers. I'm here for
13 Water and Wastewater Section.

14 MS. ZYGMUNT: And I'll turn it over to our
15 Attorney General's Office. We've got a few people from the
16 Attorney General's, so I'll let them introduce themselves,
17 starting with Jim.

18 MR. PETERS: I'm Jim Peters at the Attorney
19 General's Office representing the advisory board. Also
20 joined with by Carl Edelman today, also at the Attorney
21 General's Office. He'll be taking over representing the
22 advisory board after today's meeting, so going forward.
23 But I'll let him introduce himself.

24 MS. ZYGMUNT: Carl, if you're speaking, we
25 can't hear you. You're still on mute. He may have had to

1 step away.

2 So, Nicole, do you want to introduce yourself?

3 MS. BUDINE: Yeah. Sure. Hi. This is
4 Nicole Budine, and I'm at the Attorney General's Office,
5 representing the Water Quality Division of DEQ.

6 MS. ZYGMUNT: Thanks, Nicole.

7 And, Madam Chairwoman, we do have somebody from
8 the public here in the Cheyenne office, if you'd like them
9 to introduce themselves. That's you.

10 MR. DORR: Bryce Dorr with Cheyenne Board
11 of Public Utilities.

12 MS. ZYGMUNT: Great. Thank you.

13 ACTING CHAIR CAHN: I'm sorry. Could you
14 repeat that? I couldn't hear you.

15 MR. DORR: Sure. Bryce Dorr, Cheyenne
16 Board of Public Utilities.

17 ACTING CHAIR CAHN: Thank you.

18 Okay. Administrator Zygmunt, if you want to
19 proceed.

20 MS. ZYGMUNT: Sure. Thank you.

21 So thank you everybody for your time today. As
22 Chairwoman Cahn indicated, this is a special meeting that
23 we have convened to review Chapter 12. I will just give a
24 brief introduction, and then I will turn it over to Keenan
25 to walk us through the revisions.

1 So just as a reminder, this is our Division's
2 third presentation to the WWAB for Chapter 12, Design and
3 Construction Standards for Public Water Systems. This
4 special meeting follows the meeting that we had on
5 March 15th. We have met previously with the Board in
6 December. So two quarterly meetings with the Board. We
7 have had an opportunity to review the entire rule and
8 receive feedback.

9 The purpose, again, of this meeting today is to
10 review the revisions that we made following the discussion
11 and additional comments that we received from both the
12 Board and the public at the March 15th meeting.

13 Again, at that meeting, it was the Board's
14 recommendation that DEQ did not proceed forward with formal
15 rulemaking. So we considered that advice and wanted to
16 honor the Board's request to have another opportunity to
17 review the revisions that we have made to this rule, again
18 following the discussion that we had on March 15th.

19 So, again, thank you for your time today. We're
20 looking forward to showing you the final revisions that we
21 have made to the rule and the response to comments that we
22 have put together, again, per the Board's comments at the
23 March 15th meeting, the additional comments we received
24 from the Wyoming Association of Rural Water Systems at that
25 meeting as well.

1 As a reminder, we did not put the rule back out
2 for public notice with this meeting. That was a decision
3 made given the length of time that we have already had this
4 rule out for public comment. We've had it out for
5 approximately 100 days. Received good feedback during that
6 public comment period and have responded to all comments
7 with personal outreach to each commenter.

8 And before I turn it over to Keenan, I just want
9 to say that we have received a lot of good feedback on this
10 rule during this process. And that's both in the content
11 of the rule as well as our processes. And we feel that we
12 have a good product to present to you today, but I just
13 want to, again, thank the Board for your feedback over the
14 past few meetings, because it's not only informed the rule,
15 but I think it's caused us to reconsider, again, some of
16 our processes associated with rulemaking, how we best do
17 outreach, how we best do scoping, how we respond to
18 comments and how we best present information to you and
19 work efficiently with the Board to get your feedback and
20 recommendations on our rules.

21 I -- you know, both Keenan and I are new --
22 fairly new to the Division still. You know, we took over
23 this chapter midstream and I think we have had some good
24 discussions internally based on your feedback about how we
25 can improve things moving forward.

1 So this is a discussion that I would like to
2 continue with the Board, and one with Administrator Engels
3 at one of our regularly scheduled meetings. Again, we're
4 interested in finding the best way to present information
5 to you, get your advice on these rules, and make the best
6 use of your time, and I think we've had some good insight
7 into how we do that, and how we reach out to the public to
8 get feedback on our rules.

9 So I think it's been a good discussion over the
10 past few meetings. Again, we're looking forward to
11 presenting our revisions to you today. And, again, just
12 know that we are committed to continued conversation on how
13 we improve the process moving forward in the interest of
14 your time as well as staff time here and making sure we get
15 the best public input that we can.

16 So unless there are any questions for me, I will
17 pause there and turn it over to Keenan to walk through the
18 revisions.

19 MR. HENDON: So hearing no further
20 comments, we'll go ahead and get started with reviewing
21 Chapter 12 and the comments that we received from the March
22 WWAB meeting from the board members, as well as the public
23 commenter, Mark Peppers with the Wyoming Association of
24 Rural Water Systems.

25 Just as a reminder, Sections 1 through 9 were

1 reviewed at the December WWAB meeting. They were
2 re-reviewed at the March meeting. And Sections 10 through
3 19 were also reviewed at the March WWAB meeting as well.

4 As we work our way through the comments, for the
5 board members, as well as Mark Peppers with WARWS, we've
6 kind of streamlined those comments, and we'll take those in
7 section order as we work our way through the response to
8 comments document that has been distributed to everyone
9 here today.

10 So with that, we'll just go ahead and get started
11 with our general comments that we received on Chapter 12.
12 And our first comment is from Ms. Cahn, who recommended
13 including a description of what would require a permit
14 modification in the response to comments document as the
15 current response is unclear.

16 DEQ's response -- or the Department response, we
17 plan to provide permittee guidance that identifies
18 frequently asked questions and DEQ's responses to further
19 clarify what activities require permit modifications. DEQ
20 also plans to provide training, outreach, and educational
21 opportunities to reach our stakeholders about revised
22 Chapter 12 once it's promulgated. These events will
23 include information and guidance about applying for and
24 modifying permits.

25 Additionally, DEQ would recommend stakeholders to

1 conduct outreach with our district engineers, as well as
2 reach out to headquarters with any questions or concerns.

3 Our next comment under General Comments from
4 Ms. Cahn, recommended verifying the passages in each
5 section that reference the 10 States Standards and
6 recommends removing redundant language and references that
7 are only titles that do not contain requirements.

8 The Department response, DEQ has reviewed each
9 section that references the 10 States Standards for
10 typographical errors and made additional edits to remove
11 any redundant wording throughout the document.
12 Additionally, DEQ is developing a 10 States Standards
13 crosswalk and additional guidance documents to aid users in
14 the implementation of Chapter 12.

15 ACTING CHAIR CAHN: Keenan, when will that
16 be available?

17 MR. HENDON: Those documents will be
18 available once the rule's promulgated.

19 Had a technical glitch here. Just a moment.

20 Moving on to our next comment, was from Ms. Cahn,
21 who recommended DEQ correct the response to commenter Ty
22 Ross for reference 10(b)(i), as the current answer is
23 incorrect and should be 10(b)(ii).

24 The Department response, DEQ will not revise the
25 response to comment documents, but does note Ms. Cahn's

1 comment for the record. We did discuss this with the
2 commenter during our outreach session, and this comment was
3 addressed to the satisfaction of both parties.

4 Next comment is from Brian Deurloo. Brian
5 recommended that DEQ review the punctuation in the chapter
6 and ensure semicolons and periods are used consistently.

7 DEQ has reviewed the chapter as requested and
8 adjusted the punctuation as appropriate.

9 And that concludes our General Comments. Just in
10 summary, with some of these changes to the document, the
11 formatting of the document has been changed in order and
12 presentation. And as an example, I'd like to draw your
13 attention to page 4 or 5 of the proposed Chapter 12.

14 On page 4 you'll see a new definition for
15 stabilized drawdown. And on the other side you'll see
16 page 5, you can see some formatting changes that just will
17 be -- that shows the section as presented just a bit
18 differently, because there's been no content change.

19 So as we work our way through the chapter, you
20 will see some of these highlights in green as we work our
21 way through the document that we won't be covering, but
22 it's just what we did to address some of the punctuation,
23 formatting, and other requests that we have received.

24 MS. ZYGMUNT: Are there any questions from
25 the Board on these General Comments? Otherwise, we'll

1 continue on. Okay. Thumbs up.

2 Go ahead, Keenan.

3 MR. HENDON: All right. So we are on to
4 the next comment. It's located in Section 3, page 1, line
5 30.

6 The comment is from Ms. Cahn, requesting DEQ
7 rename the section to "applicability of these regulations"
8 instead of "timing," since this term is not used in the
9 section.

10 DEQ notes that Section 3 is consistent with other
11 Water Quality Rules, because the timing of compliance with
12 the chapter or grandfathering is an important topic to
13 permittees. DEQ also notes the chapter already contains an
14 applicability section which describes the facilities that
15 are required to comply with the chapter. DEQ has
16 structured both the timing of compliance section and the
17 applicability section in a manner that is consistent with
18 other Water Quality Rules and section title aligns with
19 other DEQ regulations.

20 The section describes timing in relation to
21 permit coverage. DEQ intends to leave the title as
22 written.

23 Our next comment is located in Section 6, on page
24 5, line 194. Comment is from Ms. Cahn. Notes that the
25 title and contents of the section are confusing.

1 DEQ's response, as discussed at the March
2 meeting, DEQ uses the section as written to give the
3 Administrator flexibility in permitting new technologies
4 that are not specifically described in the rule, but which
5 meet the intent of the rule.

6 The title and language aligns with other DEQ
7 regulations and will leave the title as written.

8 Excuse me. Our next comment is located in
9 Section 7. We are looking at Section 7(g)(ii) and
10 7(g)(iii) located on page 6 starting at line 268. The
11 comment is from Ms. Cahn and Mr. Deurloo, who advised DEQ
12 clarify the passage further to ensure active language is
13 used to clarify what the Administrator is authorizing and
14 what is being authorized.

15 The passage in question -- the passage in
16 question is with regards to the two-phase permitting
17 process. And we've corrected the language and cleaned the
18 passage to better identify it to be a two-part
19 authorization process for permitting of wells and storage
20 tanks.

21 Our next comment is located on Section 8. We are
22 looking at Section 8(a), page 7, line 311. Ms. Cahn
23 recommends revising the order of the phrasing in the
24 paragraph and removing part 8(e), if duplicated in the 10
25 States Standards references.

1 DEQ has compared paragraph 8(a) to paragraph 8(e)
2 and incorporated the material and removed the passages that
3 overlap in part 8(e). If you're looking for the
4 information that's located -- 8(a) is located on page 7,
5 line 311. 8(e) starts on page 10, page 427 for the
6 stricken components that overlapped.

7 Our next comments is Section 8. It's located on
8 page 8, line 357. It is Section 8(c)(iv)(A)(I) to (II).
9 Ms. Cahn recommended reviewing the passage and verifying
10 whether "or" or "and" is the correct usage at the end of
11 (A)(I).

12 We reviewed the passage and corrected it to "or"
13 is the correct word usage.

14 Our next comment is located at Section 8(e)(v),
15 line 446, page 10. And Ms. Cahn had noted the paragraph is
16 missing a word after the "total depth of the drilled." DEQ
17 has corrected the passage to "total depth of the drilled
18 borehole."

19 ACTING CHAIR CAHN: Why that doesn't show
20 up as green --

21 MS. THOMPSON: Because I missed a
22 formatting mark.

23 MR. HENDON: Yeah. We probably missed a
24 formatting mark when we were trying to get -- essentially
25 with regards to our green version versus clean version

1 versus tracking all changes with regard to our rule change
2 chapter. Apologize for the confusion.

3 Our next comment is with regards to Section
4 8(e)(vii) to (viii) located on page 10, on lines 452 and
5 454. Ms. Cahn had noted that the well test data may not be
6 available at the time of application and is likely to be
7 available later in the process.

8 We revised the passage as presented for (vii) to
9 include "The location of any blast charges, if available;
10 and," for (viii), "existing well test data, including:" as
11 listed.

12 Moving on to our next section. We're in Section
13 9 now. We're going to discuss two comments we received
14 from Mark Pepper with WARWS. These are located at Section
15 9(a), line 509 on page 12. Mr. Pepper's first comment he
16 notes that the 2018 10 States Standards Part 1.1.5 f
17 discusses high water loss being greater than 20 percent.
18 In arid state such as Wyoming, where some of the systems
19 are facing water shortages, 20 percent water loss seems too
20 high. Mr. Pepper recommended revising it to greater than
21 15 percent for starters, as WARWS advises that water loss
22 above 10 percent should be investigated and leaks may be
23 occurring or lost revenue may be incurred from uncalibrated
24 meters.

25 Part 1.1.5 f reads, For systems with high

1 percentage of unaccounted for water (generally greater than
2 20 percent of water production), a water audit may be
3 required by the reviewing authority.

4 In reviewing the response DEQ has considered it
5 and the recommended change would modify parts of the 2018
6 10 States Standards to reduce the 20 percent water loss
7 down to 15 or 10 percent. DEQ notes that this 2018 TSS
8 passage is discretionary. It provides an example of what
9 high percentage of water loss might be and provides that at
10 20 percent, but does not limit the agency from considering
11 values less than 20 percent as being a high percentage of
12 water loss.

13 Additionally, the water audit is at the
14 Administrator's discretion, and DEQ could require it upon
15 review, and evaluate it on a case-by-case basis. DEQ plans
16 to explore options to provide the additional training and
17 outreach to address system awareness of high water loss and
18 is looking forward to working with WARWS on continued
19 efforts with our community.

20 Our next comment is from Mark Pepper as well.
21 Section 9(a). Again, Mr. Pepper notes that the 2018 TSS
22 Part 1.1.7.1 f was included for surface water protection
23 measures, but 1.1.7.2 h, groundwater source protection
24 measures was omitted. Mr. Pepper notes with 88 percent of
25 systems utilizing groundwater for their drinking water

1 source, we should place value on protecting the
2 groundwater. As an example, in our source water protection
3 planning, we often utilize this concept so that principally
4 county-installed septics or other potential harmful
5 activities are not approved by county boards upgradient
6 from municipal water wells or at least some mitigation
7 measures are taken to lessen potential contamination.

8 DEQ has considered the comment, and has
9 intentionally omitted 1.1.7.2 h, as it references and
10 includes TSS Part 3.2.3.3, wellhead protection plans.
11 Since DEQ intends to continue addressing wellhead
12 protection planning and other source water protection
13 planning on a voluntary basis, 1.1.7.2 h will not be
14 incorporated by reference at this time.

15 However, 1.1.7.2 h also includes a reference to
16 Part 3.2.3.2, for continued sanitary protection of the well
17 site from potential contamination, which DEQ will include
18 and add to Section 11(a).

19 DEQ fully recognizes the importance of
20 groundwater as a source of drinking water in Wyoming, and
21 has many programs, both regulatory and voluntary, in place
22 to protect groundwater quality. We intend to continue and
23 encourage our communities that use groundwater for drinking
24 water to develop wellhead protection plans and look forward
25 to working with WARWS to strengthen our voluntary source

1 water protection program, including our work with WARWS, to
2 provide training and outreach and benefits to our
3 communities.

4 Our next comment is located on Section 9(f)(ii).
5 That was the original reference in the March meeting. It
6 is now located at 9(f)(v), page 15, line 642. Ms. Cahn had
7 recommended adding a reference to the statutory definition
8 of aquifer that DEQ referenced in response to comments.

9 DEQ has considered the recommendation and at this
10 time DEQ's determined that a reference to the statutory
11 definition of aquifer that DEQ referenced in the previous
12 responses to comments is not necessary to clarify this
13 passage. DEQ will provide guidance on this topic, and,
14 again, training, education, and outreach, and plans to
15 conduct following promulgation of the revised Chapter 12.
16 Applicants that are uncertain as to whether they will drill
17 through multiple aquifers should contact the appropriate
18 district engineer or reach out to headquarters for further
19 guidance.

20 Next comment is located at Section 9(f)(iv), line
21 637 on page 14. Ms. Cahn recommended adding "if known" to
22 the passage as the information may not be available at the
23 time of application.

24 DEQ has added "if known" to the passage.

25 Our next comment is located at Section 9(g)(ii)

1 on page 15, line 656. And Ms. Cahn noted that the
 2 cross-reference to paragraph (e) is incorrect and should be
 3 changed to paragraph (f).

4 DEQ has corrected the cross-reference.

5 Our next comment is located at Section 9(j)(ii),
 6 line 710 on page 16. And Ms. Cahn recommended adding "if
 7 required."

8 DEQ looked into the passage and modified it as
 9 presented, and it is now -- now reads as the following:
 10 "Hydraulic analysis that demonstrates how peak hour,
 11 average day, maximum day, and maximum day plus fire flows,
 12 if fire flows are available, will be improved by upsizing;
 13 and"...

14 Okay. Our next comment takes us to Section 11.
 15 We're starting Section 11 on page 20. Ms. Cahn had
 16 recommended revising Section 11 by beginning with the
 17 source and organizing the rest of the section out from the
 18 source.

19 ACTING CHAIR CAHN: Keenan?

20 MR. HENDON: Yes, Lorie.

21 ACTING CHAIR CAHN: I'm just wondering --
 22 I'm worried about the comments that I want to make on the
 23 comment responses are going to get lost if we don't address
 24 them as -- as chapter by chapter. I'm not sure how you
 25 want to do this. If you want to go through everything and

1 then go over board discussion, or if you want us to address
2 them as you get to them.

3 MS. ZYGMUNT: Yeah, Madam Chairwoman, so I
4 recommend if you have questions, that you raise them as we
5 go. And let me just clarify. Are you -- do you have
6 questions about our response to comments or further
7 questions about the rule itself?

8 ACTING CHAIR CAHN: Both. But the first --
9 the first one would be on changes that were made, not in
10 response to a comment.

11 MS. ZYGMUNT: Can you give me an example?
12 I don't know that I'm quite following what feedback you'd
13 like to provide.

14 ACTING CHAIR CAHN: So if we can back up to
15 page 12-4, line 166, back in the definitions.

16 MS. ZYGMUNT: Okay.

17 ACTING CHAIR CAHN: Section 5, you added
18 the definition of stabilized drawdown.

19 MS. ZYGMUNT: That is correct.

20 ACTING CHAIR CAHN: And I want to look at
21 the construction of that. So if you look at line 170,
22 excuse me, "...and plotted measurements that have not shown
23 a trend of decreasing water level." And that follows "The
24 water column is measured from pre-test static water
25 level..." and it really belongs with the first sentence,

1 because it's talking about stable -- the water level not
2 changing over at least a six-hour period of constant
3 pumping flow rate. So I think after flow rate we can say
4 "and plotted measurements have not shown a trend decreasing
5 water level," because I think it's all good information,
6 but it's in the wrong order.

7 MS. ZYGMUNT: Let me turn it back over to
8 Keenan. I know Keenan mentioned this revision.

9 Keenan, can you remind the group again why we
10 added this definition and where it came from.

11 MR. HENDON: This came from a pump test
12 clarification request from I believe a commenter, Ben
13 Jordan, wanting to know what stabilized drawdowns would be
14 for a pump test to make sure that we were consistent across
15 districts in our state. We revised the section per
16 request, and then upon further evaluation, it was
17 determined to include a new definition for stabilized
18 drawdown.

19 With regards to Lorie's comment, we can move the
20 plotted measurements to the first sentence.

21 MS. ZYGMUNT: Madam Chairwoman, can you
22 read the revised definition as you're proposing?

23 ACTING CHAIR CAHN: Yeah. Stabilized
24 drawdown means a water level that is not fluctuated by more
25 than plus or minus 0.5 foot for each 100 feet of water in

1 the well over at least a six-hour period of constant
2 pumping flow rate. And plotted measurements that have not
3 shown a trend of decreasing water level. I know it's a
4 long sentence, but...

5 And then the next sentence would be the water
6 column is pressured from pre-test, and it would just stay
7 the same as it is through pre-test static water level to
8 the top of the deepest water-bearing fracture that
9 contributes at least 10 percent of total well yield.

10 MS. ZYGMUNT: Okay. Thank you. We can
11 make that revision.

12 ACTING CHAIR CAHN: Okay. Thank you.

13 MS. ZYGMUNT: Okay. Madam Chairwoman, I
14 would like to turn it back over to Keenan, unless there
15 were further comments you had on these sections that we
16 have already reviewed the revisions for.

17 ACTING CHAIR CAHN: Okay. Just give me a
18 second to cross-check here. I'm good.

19 And I would just ask the other board members if
20 you have any comments, please feel free to ask to be
21 recognized. Thank you.

22 MS. ZYGMUNT: Great. Thank you, Madam
23 Chairwoman.

24 Keenan, turn it back to you.

25 MR. HENDON: Sure. So we were in Section

1 11. We'll just go ahead and start I think where we left
2 off. We were looking at page 20 on Section 11. And
3 Ms. Cahn had recommended revising Section 11 by beginning
4 with the source and organizing the rest of the section out
5 from the source.

6 DEQ has evaluated and researched the comment, and
7 during drafting of the rule, district engineers laid out
8 the content of Section 11 in the order of the events they
9 thought were the most logical from an engineering
10 standpoint.

11 Additionally, Section 11 also follows the order
12 of events of the 10 States Standards. And at this time the
13 order of items in Section 11 will remain unchanged.

14 Our next comment is located on Section 11(a),
15 line 870 to line 904 on page 20. Ms. Cahn recommended
16 removing the references to TSS 3.2.7 as all of these 3.2.7
17 is not incorporated.

18 DEQ has removed 3.2.7 from 11(a).

19 Our next comment takes us to Tables 1 and 2 in
20 Section 11. These start on page 23 at line 1033. Ms. Cahn
21 and Mr. Cochran noted the setbacks in the table sections
22 are inconsistent with the setbacks in the Water Quality
23 Rules Chapter 25. Mr. Cochran recommended making the two
24 chapters consistent or obtain agreements from landowners
25 related to permit applications to ensure citing conflicts

1 do not occur.

2 DEQ has reviewed both the setback tables in
3 Chapter 12 and 25 and has revised the setback distances for
4 public water supply wells and septic tanks to 100 feet for
5 consistency with Chapter 25.

6 Our next comment is located in Section 11(e)(i),
7 line 1013 on page 23. Ms. Cahn notes there are several --
8 there are lots of very small water systems, campgrounds,
9 rest stops, little parks. Ms. Cahn wondered if there is a
10 way of having some kind of de minimis that allow facilities
11 that serve less than a certain number of households, people
12 or size systems to have an exemption from some of the
13 regulations. For instance, if a small system such as a
14 campground, rest stop, little park, are required to have a
15 second well or storage tank, they have to have twice as
16 much the daily demand. Since these are seasonal, there can
17 be water aging problems. Ms. Cahn is concerned that a
18 one-size-fits-all doesn't seem to work and concerned about
19 oversizing systems and making them too expensive.

20 Ms. Cahn also wondered if using the definition
21 for small water systems would be a good starting point for
22 assisting small public water systems.

23 Ms. Cahn also noted the current passage seems to
24 indicate each well has to supply twice the maximum daily
25 demand. The passage does not seem to make sense, alongside

1 the passage that follows that requires one well in storage.

2 DEQ response, after reviewing the comment, doing
3 some research, looking into what other states provide, DEQ
4 has revised the paragraph and has added a new passage at
5 section (C). We think we've got a good solution that will
6 target our full suite of public water systems we see in the
7 state of Wyoming with this solution. And we've proposed to
8 read the new passage. Proposed design shall include a
9 minimum of: (A) Two wells that are each capable of
10 supplying the maximum average daily demand with the largest
11 producing well out of service; or (B) One well and
12 finished water storage that together equal twice the
13 maximum daily demand; or (C) for public water supplies that
14 are not community water systems or noncommunity trans --
15 nontransient water systems, as determined by the
16 Administrator, one well that is capable of supplying the
17 max daily demand.

18 ACTING CHAIR CAHN: Keenan, I appreciate
19 the changes and appreciate you guys looking into this. I
20 mean, it's very important changes.

21 I'm confused about the wording on line 1023 and
22 1024. I don't understand the intent, because there's non
23 and non and not all in the same sentence. So I get the
24 first part, for public water supplies that are not
25 community water systems, I get that. But the second part,

1 or noncommunity nontransient water systems, is that water
2 supplies that are not noncommunity nontransient water
3 systems?

4 MR. HENDON: Sure.

5 ACTING CHAIR CAHN: So there's too many
6 "nots" and "nons" for me to understand it. So if you could
7 explain it, and maybe we can reword it to make it more
8 clear.

9 MR. HENDON: Sure. Essentially what our
10 solution is kind of addition by subtraction method. The
11 community water systems are defined by statute.
12 Noncommunity nontransient water systems are also defined by
13 statute. So both of those systems would qualify in (A) and
14 (B).

15 We do not have a definition to fit a nontransient
16 noncommunity system, which is what we're looking to find a
17 solution for for our campgrounds and RVs, single gas
18 station-type situations.

19 MS. ZYGMUNT: So, Madam Chairwoman, let me
20 just add to that. So we are using established definitions
21 in our statutes. And as Keenan indicated, we're using the
22 two that are defined to -- by inference, to find the third,
23 which is not defined in statute. And so it does a nice
24 job, though, of explaining that if you're not a community
25 water system, or if you're not one of these noncommunity

1 nontransient water systems as defined in statute then item
 2 (C) would apply to you.

3 So it's a simple way of targeting that third
 4 category, which is not defined in statute, but which are
 5 the systems that you pointed out in your comment. So it
 6 gets to what we're trying to do, which is to give that
 7 flexibility for these small transient noncommunity systems,
 8 but it's the most elegant, simple way we can do it right
 9 now without having that third definition in our statutes.

10 ACTING CHAIR CAHN: Okay.

11 MS. ZYGMUNT: I know it's not the best
 12 wording, but if you refer back to the definitions in our
 13 statutes, it does -- it is clear.

14 ACTING CHAIR CAHN: Okay. So do we need to
 15 add the word after "or," should we add "not" noncommunity
 16 nontransient water systems and maybe give an example such
 17 as?

18 MS. ZYGMUNT: I think we can add the word
 19 "not" in after "or," but for the purposes of our rules, I
 20 would not want to add an example. We could further clarify
 21 some examples in guidance, as we work with people, but I
 22 would hesitate to put examples into our rules.

23 ACTING CHAIR CAHN: Okay.

24 MS. ZYGMUNT: And, Keenan, I believe I
 25 interrupted you.

1 MR. HENDON: Yeah. I was just going to
 2 echo Jennifer's comment, that we could address this in
 3 "frequently asked questions" and perhaps write a waterfall
 4 for an example in that situation.

5 ACTING CHAIR CAHN: So I think I'm a little
 6 bit confused about being not nontransient water systems.
 7 So a lot of the -- I guess maybe I don't understand the
 8 transient and nontransient. If you can explain that,
 9 because I guess from -- well, go ahead and explain what
 10 nontransient is.

11 MS. ZYGMUNT: Maybe provide an example,
 12 Keenan, if you can.

13 MR. HENDON: Sure. So the community water
 14 system definition means a public water supply that has at
 15 least 15 service connections used year-round, year-round by
 16 residents, or that regularly provide water to at least 25
 17 residents year-round, including but not limited to
 18 municipalities and water districts. A nontransient
 19 noncommunity water system means a public water supply,
 20 which is not a community water system and which regularly
 21 provides service to at least 25 of the same persons for
 22 more than six months of the year, where those persons are
 23 not full-time residents, including but not limited to
 24 schools, factories, and office buildings.

25 So what we are saying is if you are not a

1 community water system or if you are not a nontransient
2 noncommunity water system, then you can qualify -- which
3 typically an RV, a campground, a single gas station,
4 perhaps a single restaurant, would qualify in our section
5 (C) --

6 ACTING CHAIR CAHN: Okay.

7 MR. HENDON: -- category, and it would
8 provide that solution to them.

9 ACTING CHAIR CAHN: Okay. Great. Then I
10 would suggest we add the word "or not," like we've
11 discussed. But I would reverse noncommunity nontransient
12 to be nontransient noncommunity, which is what you just
13 read out of the statute.

14 MR. HENDON: Sure. We can do that too.

15 ACTING CHAIR CAHN: Okay. So I think, even
16 though I had a hard time understanding the language --

17 MR. HENDON: Sure.

18 ACTING CHAIR CAHN: -- I think this
19 addresses my concern that a campground that only has
20 needs -- you know, has water supply well for six months or
21 something and it's closed the rest of the year, they don't
22 have -- they can get by with -- they can just supply the
23 maximum daily demand.

24 MR. HENDON: Correct.

25 ACTING CHAIR CAHN: Okay. Great. Okay.

1 Thank you very much. I appreciate that.

2 MR. HENDON: Sure. We're quite pleased as
3 well to find a solution to that one.

4 MS. ZYGMUNT: Do you want to talk briefly
5 about what other states do? Okay. No?

6 MR. HENDON: No.

7 Section -- our next comment is on 11(e)(ii)(C).
8 We are looking at page 24, line 1042. Ms. Cahn notes the
9 paragraph requires compliance with Water Quality Rules
10 Chapter 3, Section 17(b), but Chapter 3, Section 17(a)
11 seems to exclude public water supplies from requirements of
12 the section.

13 DEQ's response, we did discuss this at the March
14 meeting and we set to confirm with our Attorney General's
15 Office the requirements of this passage. And the passages
16 of Chapter 3, Section 17(b) are the steps that will be
17 required for the subsurface study. But the reference to
18 this paragraph does not mean all of Chapter 3, Section 17
19 would apply.

20 Our next comment is on page 24, 11(e)(iii)(C).
21 It kind of ties back into our previous comments on
22 setbacks, that Mr. Cochran noted the 10-foot setback is
23 inconsistent with the other setbacks in the section, and it
24 may be impractical for landowners and future landowners.

25 DEQ has reviewed the passage, did some research,

1 looked at what our surrounding regions eight states have
2 done and have modified the passage to the following: Wells
3 shall be located at least 50 feet from any property line.

4 Our next comment is located at 11(e)(v), line
5 1091, page 25. Ms. Cahn noted that the new requirements
6 for acidizing seemed to be regulating for an infrequent
7 event or an event that has not happened yet. Ms. Cahn
8 recalled that in the comment response DEQ had declined to
9 make a revision due to a situation not happening in
10 Wyoming. Ms. Cahn recommended striking the acidization
11 requirements and doing a policy instead of -- instead for
12 consistency with the comment response.

13 DEQ is unable to determine at which part or
14 section Ms. Cahn was referring to with regards to the
15 acidization. The WWAB had previously approved the proposed
16 acidization passages of the October 17, 2019, meeting. As
17 the requirements allow DEQ to collect information that is
18 needed for DEQ to ensure acidization activities do not
19 negatively impact underground sources of drinking water,
20 DEQ will leave the acidization packages as part of the
21 rule.

22 Our next comment is located on page 26, Section
23 11(e)(vii)(C)(II). Ms. Cahn wondered if the TSS 3.2.6.5
24 conflicts with line 1164, 11(e)(vii)(C)(I).

25 DEQ's reviewed the comment, TSS 3.2.6.5 covers

1 limestone or sandstone wells. However, the passage on line
2 1164 falls under gravel packed or artificial packed wells.
3 There is no conflict.

4 Additionally, with this review, as noted at the
5 March 15, 2022, addendum to analysis of comments, DEQ will
6 leave the casing requirements in at the 11(e)(vii)(C)(I)
7 and (II) as written as the current requirements provides
8 stability and cross-protection.

9 Additionally, on line 1172, page 26,
10 11(e)(vii)(D), DEQ committed to revising the casing
11 requirements for wells that encounter naturally flowing
12 water for consistency with the state engineer's office for
13 casing requirements, and that portion has been corrected.

14 Our next comment is with regards to
15 11(e)(vii)(D)(I), page 27, line 1183. Ms. Cahn wondered if
16 water is not flowing back into the well, why couldn't DEQ
17 allow a below-ground vault or some additional way to keep
18 the vault from freezing.

19 This section is in regards to discussing artesian
20 wells. Buried well, discharge lines, or below-ground
21 vaults with well discharge have demonstrated contamination
22 when the below-grade discharge lines become submerged by
23 groundwater. Freezing considerations have been addressed
24 previously in the section. The paragraph has been revised
25 to include the following:

1 For an overflow on an artesian well, the well
2 discharge or overflow line, installations must connect to
3 the well casing at least 12 inches above ground and be
4 valved. The size of the air gap between the overflow line
5 from the well to drainage structures shall be twice the
6 diameter of the well overflow pipe. Overflow water must be
7 drained and diverted to prevent ponding around the well
8 casing.

9 This information is similar to what you would see
10 for the state of Idaho or Utah.

11 Our next comment is located on page 27, Section
12 11(e) (vii) (E) and 11(e) (vii) (E) (II). Ms. Cahn noted that
13 for mineralized water, one of the commenters wanted 1,000
14 per milliliter TDS. Ms. Cahn -- for TDS. Ms. Cahn
15 explained that total dissolved solids and a secondary
16 drinking water standard and EPA considers anything over
17 1,000 unfit for human consumption. Ms. Cahn recommended
18 that DEQ revise the language referring to 40 CFR 141,
19 drinking water standards, as this reference contains both
20 secondary and primary standards. Ms. Cahn recommended
21 rewording the reference to only refer to primary drinking
22 water standards and to remove the implication that
23 applicants be required to treat mineralized water.

24 DEQ has looked into the comment. The intent
25 behind the passage at Section 11(e) (vii) (E) (II) is to

1 ensure that if the applicant proposes to use water that
2 meets the definition of mineralized, then the proposed
3 design will produce water that complies with the applicable
4 standards in Part 141 of the CFR.

5 The mineralized water is a trigger that will
6 require DEQ to review any treatment design options EPA
7 might require to be installed and operated so that the
8 resulting water system meets the drinking water standards
9 that EPA will enforce. The passage does not require
10 systems to comply with specific primary or secondary
11 standards, which falls under the authority of EPA.

12 DEQ has clarified the passage as follows:
13 Applicants that propose to use mineralized water as a
14 public water supply shall demonstrate that any necessary
15 treatment will comply with the drinking water quality
16 standards required by 40 CFR 141.

17 ACTING CHAIR CAHN: Thank you for that
18 clarification. And I'll also clarify that I misspoke in
19 that comment, because 141 just has the primary drinking
20 water standards, and my concern was about the secondary in
21 there in 143. So thank you for your changes.

22 MR. HENDON: Sure. Okay. Our next comment
23 is located on 11(e)(viii), page 27, line 1215. Ms. Cahn
24 recommended clarifying the passage to indicate diameter and
25 recommends removing extra "shall" or "shalls." Ms. Cahn

1 also recommended incorporating all 3.2.4 and removing all
2 of (e)(viii) and (ix) per Mr. Jordan's comment.

3 DEQ has reviewed the 2018 TSS Part 3.2.4 against
4 11(e)(viii) and (ix). Part 3.2.4 will be added to 11(a)
5 with the subparts stricken from the paragraph. And
6 11(e)(vii) and (ix) will be stricken as well. With
7 removing of these parts, it makes the concerns with regard
8 to diameter and the use of "shall" obsolete.

9 DEQ has reviewed all formal public comments that
10 we have received including those from Mr. Jordan. We did
11 not receive a specific request to incorporate the 2018 TSS
12 3.2.4 prior to the recommendation being made at the
13 March 15, 2022, meeting. Just as a reminder, in order for
14 DEQ to adhere to rulemaking procedures, all public comments
15 must be received by DEQ according to the instructions
16 provided in each public notice or the public may read
17 comments into the record during the meetings when public
18 comments are being accepted. Executive order number
19 1981-12 outlines actions to take should the board members
20 receive additional comments directly from interested
21 parties.

22 ACTING CHAIR CAHN: I would just like to
23 clarify the comment that I made. Because Mr. Jordan
24 made -- I had notice in the margin of my document and I
25 had -- that Mr. Jordan had made comments on section

1 (viii) -- (viii) and (ix), and then I also had my own
2 comment about removing -- or incorporating 3.2.4. And so
3 in response to Mr. Jordan's comment that he made in the --
4 on the record, I had scribbled some notes of my own about
5 how we could resolve his comment and also incorporate. So
6 I think in the end everything has ended up the way it
7 should be. We're in agreement.

8 I apologize for any confusion on the way I might
9 have worded it, because when I had notes, it sometimes it
10 was hard to tell -- so --

11 MR. HENDON: Sounds good.

12 ACTING CHAIR CAHN: -- what was my note and
13 what was Mr. Jordan's comments. So they got muddled, I
14 think, in this response. So I just wanted to clarify there
15 were two different things, and the resolution that you have
16 proposed works for me, and I would assume that you've
17 talked to Mr. Jordan and it probably works for him. But
18 anyways, thank you.

19 MR. HENDON: Thank you. Thank you, Lorie,
20 for the additional information.

21 Moving on to our next comment. We're located in
22 Section 11(e)(x), line 1282, page 29. This used to be
23 11(e)(xii). And Ms. Cahn had noted the response to comment
24 document indicates DEQ would revise this statement, but the
25 revision is not incorporated into the draft chapter.

1 DEQ did look into the passage, and it is the
2 language proposed in response to comments document.

3 ACTING CHAIR CAHN: So where -- so where is
4 the green --

5 MR. HENDON: Unfortunately, we do have a
6 couple of glitches with regard to green versus not green
7 within the greenline version. And, again, we apologize for
8 that.

9 MS. ZYGMUNT: Keenan, can you remind what
10 the wording change was there.

11 MS. THOMPSON: There was an apron in here.

12 MR. HENDON: The original comment from the
13 commenter had concerns about a concrete apron being placed.
14 There's probably debate in the engineering community as to
15 whether to use the word "apron" or not use the word
16 "apron," so we use the terminology "concrete floor."

17 MS. ZYGMUNT: Madam Chairwoman, does that
18 help answer your question?

19 ACTING CHAIR CAHN: I'm lost on what line
20 we're on now.

21 MR. HENDON: 1282.

22 ACTING CHAIR CAHN: Excuse me.

23 MR. HENDON: We're on line 1282. I believe
24 Gina has it up on the presentation screen.

25 ACTING CHAIR CAHN: Okay. Thank you.

1 MR. HENDON: Okay. Our next comment is
2 located on page 29, Section 11(e)(xvi), line 1304. And
3 Ms. Cahn wondered why the passage requires each well to
4 measure total discharge from the whole field and why the
5 applicant couldn't just add the additional well information
6 together. And Mr. Cochran also noted the chapter requires
7 -- already requires a meter.

8 And DEQ has looked into the request and the
9 passage and modified it as follows. An instantaneous
10 totalizing flow meter equipped with nonvolatile memory
11 shall be installed on the discharge line of each well in
12 accordance with the manufacturer's specifications. Meters
13 installed on systems with variable frequency drives shall
14 be capable of accurately reading full range of flow rates.

15 With this revision we also revised 11(e)(xiv) to
16 the following: An accessible check valve, which is not
17 located in the pump column, shall be installed in the
18 discharge line of each well between the pump and shutoff
19 valve. Additional check valves shall be located in the
20 pump column as necessary to prevent negative pressures on
21 the discharge piping.

22 Our next comment is located on page 30, Section
23 11(f)(v)(B). Ms. Cahn had noted the response to comment
24 document indicates DEQ would revise the statement, but the
25 revision did not get incorporated into the draft chapter.

1 DEQ reviewed the passage and proposed in response
2 to comments and revised the chapters as follows: Made of
3 concrete or other material that meets the requirement of
4 Section 15(b)(ii) of this chapter. And this is in regards
5 to spring walls.

6 And it's a nice tie-in to our next comment. On
7 11(f)(xiii) page 31, line 1396. Ms. Cahn noted the
8 reference to Section 14 is incorrect, and the correct
9 reference is Section 15. This reference has been
10 corrected. Ms. Cahn also wondered if springs need to be
11 subject to all the requirements in Section 15 if they're
12 not providing fire water.

13 DEQ looked into it, and we've revised the passage
14 as follows: Spring box design shall comply with Section 15
15 (a), (b), (f) through (j) and (l) of this chapter.
16 Combined spring box and finished water storage design shall
17 comply with Section 15 of this chapter.

18 So we think that --

19 ACTING CHAIR CAHN: So --

20 MR. HENDON: -- that provides a good
21 off-ramp between the two.

22 ACTING CHAIR CAHN: So, Keenan, does that
23 mean that if they're not -- I mean, the word "not providing
24 fire water" is not included. So can you explain to me --
25 there's --

1 MR. HENDON: Yeah, I think -- if I recall
2 correctly, in our discussion back in March, you had
3 concerns that if -- if we reference a spring box to the
4 full requirements of Section 15, which was finished water
5 storage, that they would have to meet all those
6 requirements with regards to water age, tank turnover,
7 mixing, as well as their additional fire storage that they
8 might provide. And so what we've done is excluded -- if
9 it's just a small -- small spring box to collect the water
10 that then gets dispersed to a storage tank at a later
11 destination, then that storage tank at a later destination
12 would have to meet Section 15.

13 ACTING CHAIR CAHN: Can you be a little
14 more specific with regards to fire water?

15 MR. HENDON: Sure.

16 ACTING CHAIR CAHN: I'm not following,
17 so...

18 MR. HENDON: Sure. So, again, a spring box
19 needs to comply with Sections 15(a), (b), (f) through (j)
20 and (l). Your question and concern is with regards to
21 section (c), storage facility design shall demonstrate.
22 And in that section is when fire water is required for the
23 storage tank under Section 15. So, again, 15(c) does not
24 apply to a spring box.

25 ACTING CHAIR CAHN: Okay. Thank you.

1 MR. HENDON: With regards to -- okay.

2 ACTING CHAIR CAHN: Go ahead. Finish your
3 thought.

4 MR. HENDON: It came and went as fast as --

5 MS. ZYGMUNT: Madam Chairwoman, does that
6 explanation answer your question?

7 ACTING CHAIR CAHN: Yes.

8 MS. ZYGMUNT: Okay. Great. Thank you.

9 MR. HENDON: We're into Section 12 now,
10 we're looking at 12(a), page 32, line 1406. Ms. Cahn notes
11 the incorporated material is listed out of order, and that
12 "through" is inconsistently used, which leads to confusion
13 as to what applies.

14 DEQ reviewed the incorporations of TSS 2018 and
15 corrected the necessary parts of the passage as discussed.

16 Our next comment is --

17 ACTING CHAIR CAHN: Oh, excuse me. I have
18 a lot of comments on section (a). I would suggest we take
19 a five-minute break. It's basically -- come back at 20
20 after, and we can go over my comments on section (a),
21 12(a). Thank you.

22 MR. HENDON: Okay.

23 ACTING CHAIR CAHN: So we're --

24 (Special meeting proceedings recessed
25 10:14 a.m. to 10:23 a.m.)

1 MS. ZYGMUNT: Madam Chairwoman, are you
2 ready to get going?

3 ACTING CHAIR CAHN: Yes. Let's reconvene.

4 MS. ZYGMUNT: So, Madam Chairwoman, it
5 sounded like you had further feedback on 12(a). Let's go
6 ahead and take any further comments there.

7 ACTING CHAIR CAHN: That's correct.

8 MS. ZYGMUNT: Okay.

9 ACTING CHAIR CAHN: Again, there is out of
10 order things on here. So, for instance, 4.4.1 comes after
11 4.4.3, and 4.3.4.2 on line 1408, 4.3.4.4, et cetera, that
12 comes before 4.3.1.1. So things are -- for one, things are
13 out of order, and I think that makes it very confusing for
14 anybody who is trying to go back and forth between what's
15 in the rule and what's in the 10 States Standards.

16 So first of all, it's out of order. Second --
17 let's take individual things. So -- so first of all, did
18 you follow the out of order? So on line 1408, 4.3.4.2
19 number through 4.3.4.9(b)(e)(f), the design of sand
20 filters, that's in the wrong place.

21 MR. HENDON: So noted.

22 ACTING CHAIR CAHN: Also on line 1415,
23 4.4.1(a), (b), contact time, CT, and points of application,
24 those are also out of order, so...

25 MS. ZYGMUNT: Yes, Madam Chairwoman. Good

1 comment. We will review this entire section and make sure
2 things are in order.

3 ACTING CHAIR CAHN: Okay. The next
4 issue -- I'm going have to flip -- okay. It's 4.4,
5 disinfection on line 1414, it's still confusing to me as to
6 what's included. And so if we flip back to the 10 States
7 Standards to 4.4.4 -- sorry, 4.4, disinfection is on
8 line -- page 62.

9 Maybe, Gina, you can pull that up. It's page 62.

10 MS. THOMPSON: Uh-huh. Right there.

11 ACTING CHAIR CAHN: Okay. So by including
12 4.4, disinfection, it's unclear -- to me that would mean
13 all of Section 4.4, disinfection. But you don't intend to
14 include 4.4.2, and so -- and then it kind of picks and
15 chooses 4.4.1 is in there in a different section, 4.4.3(a)
16 and (d) are in there, and 4.4.4.3 is in there. So I think
17 it's really ambiguous, because -- maybe you need to specify
18 4.4 only par -- first two paragraphs, or something, because
19 4.4, disinfection, is the entire Section 4.4. It's all
20 about disinfection. But that's not your intent.

21 MS. ZYGMUNT: Yeah.

22 ACTING CHAIR CAHN: You've excluded
23 sections.

24 MS. ZYGMUNT: Yeah. Good comment. I think
25 we're considering here.

1 Keenan, do you have any thoughts?

2 MR. HENDON: Yeah we can review the 4.4 to
 3 include -- I can check with Gina to check with the AG's
 4 folks to see what we can do to just capture the first two
 5 paragraphs so that we're clear we're not capturing the
 6 entire section. And then we can clarify 4.4.3 to identify
 7 that we're just capturing (a), (b) and (d).

8 ACTING CHAIR CAHN: Yeah, which I think --
 9 yeah. And then it goes on, because you've got automatic
 10 switch-over and cross-connection, protection, pipe
 11 material, chloramines.

12 MR. HENDON: Yeah. So we have specific
 13 components that we've selected out of that section.

14 ACTING CHAIR CAHN: Yeah.

15 MR. HENDON: So we can -- we'll work to
 16 find the solution to make it clear that we're just
 17 targeting the first two paragraphs of 4.4.

18 ACTING CHAIR CAHN: Okay. All right. And
 19 then the next question I have is on 4.5.2.19. So it's on
 20 line 1418. Let's see. 4 -- 4.5.2.19. 4 -- okay.
 21 4.5.2.19 is on page 78, Gina. Okay. And the title that
 22 you have is 4.5.2.19, and then on the next line it says
 23 "softening," but softening is not part of the title for
 24 construction materials and housing. So if you look back at
 25 line 417 -- no, sorry -- 1419, it has a list, 4.5.2.13(a)

1 through (f), which has to do with brine and salt storage
2 tanks. And then 4.5.2.14, which is salt and brine storage
3 capacity. And then --

4 MR. HENDON: Yep. It looks as though we
5 need to include the named descriptions for each of these.

6 ACTING CHAIR CAHN: Okay. And then when
7 you look at 4.1 -- so 4.6, line 1419, starting with 4.6,
8 through 4.6.14, anion exchange treatment. In that case,
9 all of 4.6 is included? I don't see anything that's
10 omitted. So I think we could delete the through 4.6.14,
11 because it just -- we're including all the 4.6, anion
12 exchange treatment.

13 MR. HENDON: So noted.

14 MS. ZYGMUNT: We can make that correction.

15 ACTING CHAIR CAHN: And then 9.5, this is
16 now on line 1425, on "red water" waste. Again, it's
17 confusing to say you're going 9.5 to 9.5.3, because you're
18 not including all of 9.5. You're excluding everything
19 after 9.5.3.

20 MR. HENDON: So we can -- so we can address
21 that to do what we've done with the previous sections and
22 just address 9.5, 9.5.1, 9.5.2 and 9.5.3.

23 ACTING CHAIR CAHN: Yeah. So I have more
24 comments in other places. Maybe when we get through all
25 the comments we can then go through the situations like

1 that in the TSS. So, okay, that's it for Section 12(a) for
2 me.

3 MR. HENDON: Okay. We are back in Section
4 12. We are looking at comment from Brian Deurloo located
5 on page 36, line 1587, located in Section 12(k)(ii)(G)(II).
6 Mr. Deurloo recommends revising the passage from identical
7 to equivalent.

8 DEQ has revised the passage as requested.

9 MS. THOMPSON: I will note on the record
10 that it looks like the formatting mark got missed. I
11 believe my helpful Word Wizard didn't help -- it didn't
12 catch everything to point out changes, so...

13 MR. HENDON: Unfortunately, it's not green.

14 MS. THOMPSON: But it is "equivalent."

15 ACTING CHAIR CAHN: What line number is
16 that?

17 MR. HENDON: 1587, page 36.

18 Moving on to the next comment we are looking --
19 the original comment and reference was Section 12(j)(i)(C).
20 It is now located in Section 12(l)(i)(D)(II), page 39, line
21 1734. Ms. Cahn recommended revising the passage to the
22 maximum fee point back pressure shall not exceed 100 psi
23 unless the chlorine solution pump is used.

24 The DEQ has revised the passage as requested.

25 Our next comment is located on page 44, line

1 1978, Section 12(n). Ms. Cahn notes the term hydrofluo --
2 hydrofluosilic acid is misspelled and should be
3 hydrofluorosilicic.

4 DEQ's corrected the term as recommended.

5 Page -- our next comment is located at page
6 12(o)(i), line 2052, page 46. Ms. Cahn notes the term
7 absorb is used in the passage, but granulated activated
8 carbon adsorbs.

9 The DEQ has corrected the passage as suggested.

10 Our next comment is located at Section 12(q)(i)
11 and (ii). Ms. Cahn's requested the incorporated manual
12 include the phrase "US EPA."

13 DEQ's revised the references as requested.

14 Our next comment is located at Section 12(r),
15 page 48, line 2139. Ms. Cahn recommended removing
16 redundancy in paragraph (r) and (r)(i).

17 DEQ has combined the passages and renumbered the
18 section as recommended.

19 Our next --

20 ACTING CHAIR CAHN: Again -- again we're
21 not seeing the red line -- the green.

22 MS. THOMPSON: Right. So I'm going to pull
23 up the previous one and I'll read to you what it says. I
24 used a wizard in Microsoft Word that was supposed to show
25 me changes, and it didn't do it as consistently as I would

1 have hoped. So that I could make those formatting marks in
2 this version.

3 MR. HENDON: Dang wizards.

4 MS. THOMPSON: Okay. So previously the
5 paragraph led in with bag and cartridge filters shall
6 comply with the following requirements: Paragraph (i),
7 facilities that propose bag or cartridge filters shall
8 comply with the procedures identified in Section 6 of this
9 chapter.

10 And then (A), filter performance will be based on
11 cryptosporidium oocyst removal. So we took out the
12 additional language -- we took out bag and cartridge
13 filters shall comply with the following requirements. Here
14 at P, and then renumbering this based on other renumbering
15 that needed to happen in the section.

16 MS. ZYGMUNT: Madam Chairwoman, does that
17 address your comment?

18 ACTING CHAIR CAHN: Yeah. It's just been
19 confusing not having the green so --

20 MS. ZYGMUNT: Understood. And I will just
21 reiterate that Gina has to manage three different versions.
22 Obviously sometimes we do miss some of the formatting
23 changes. We do our very best to not do that, and we will
24 continue to do so moving forward. So we apologize for the
25 confusion today, but again, the main take-home message for

1 your comment there is we made the proposed edits, took out
2 the redundancy and streamlined that passage, but did not
3 change any of the meaning.

4 ACTING CHAIR CAHN: Yeah. Thank you.

5 MS. ZYGMUNT: Sure.

6 MR. HENDON: Our next comment is located at
7 12(r)(xii), line 2176 on page 49. Ms. Cahn noted that the
8 response to comment document indicates DEQ would revise the
9 statement, but the revision is not incorporated into the
10 draft of the chapter.

11 DEQ has corrected the passage to include the
12 language proposed in the response to comments. The missing
13 language was the following: Or shall demonstrate that
14 combined filtration and disinfection will provide 3-log
15 removal.

16 Our next -- our next comment is located at
17 Section 12(t)(i), line 2202, page 49. Ms. Cahn notes the
18 phrase simple well system is used in the passage, and
19 wonders where is the definition of this term and what the
20 requirements would be for a nonsimple well system.

21 When the chapter was being proposed, Chapter 12,
22 at one time there was a -- two types of well systems I
23 think had been identified. One was for a -- what was the
24 word --

25 MS. THOMPSON: Complex.

1 MR. HENDON: -- complex well. We had a
2 complex well and a simple well. Based on the revisions,
3 complex well was removed, which left simple well. This
4 cleans it up. We are removing the word "simple." And it
5 will now just read "well system." Please note that the
6 document you have does not reflect the change in removal of
7 the word "simple," but we will have that corrected.

8 Our next comment is located in Section 13. We're
9 looking at Section 13(a), line 2271, page 51. Ms. Cahn had
10 identified that "are herein incorporated by reference" was
11 used repeatedly in the passage and recommended striking
12 unnecessary uses.

13 DEQ has gone through and revised the passage as
14 requested.

15 ACTING CHAIR CAHN: Again, I'm not seeing
16 green.

17 MS. THOMPSON: So at line -- at the
18 reference to 5.4.1(d) (7 through 10), 5.4.1(f) and (h), we
19 used "are herein incorporated by reference" after every
20 reference at the end of that paragraph. So we've stricken
21 those. And so we only have it once now. It used to appear
22 multiple times, but now we only have it here.

23 ACTING CHAIR CAHN: Okay. Thanks.

24 MR. HENDON: So it's now a capstone at the
25 end of the section.

1 Our next comment is with regard to Section 14.
2 We're looking at Section 14(g) (iv), line 2346, on page 52.
3 Ms. Cahn noted the passage seems unnecessarily prescriptive
4 and does not seem necessary.

5 DEQ would like to note the passage has been in
6 the rule since 1985 and is part of common engineering
7 design practices to determine head loss in a system. DEQ
8 has not received comments or feedback from applicants or
9 engineers that would indicate the passage is unnecessary or
10 burdensome.

11 DEQ uses the submitted information to verify the
12 proposed design will meet the requirements of paragraphs
13 (g) (i) to (iii), to ensure the overall design will meet the
14 intent of the Environmental Quality Act to ensure that we
15 have adequate pressures within our water system. We intend
16 to leave the passage as written.

17 Our next comment is located with -- in Section
18 14. It's located at (i) (ii), line 2390, 3553. Ms. Cahn
19 has noted the revision does not clarify the requirement.

20 This was a response to an initial request at the
21 December meeting. DEQ has reviewed and re-reviewed the
22 section, done some additional research, determined the
23 section will revert to the original language which includes
24 the term "manifolded." The original term and language is
25 common in the industry. It's language used also by

1 numerous surrounding Region 8 and 9 states. And we intend
2 to restore the paragraph to the following: Each pump shall
3 either have an individual suction line or the suction lines
4 shall be manifolded such they demonstrate similar hydraulic
5 operating conditions.

6 Our next comment is in Section 15. This is a
7 comment from Mark Pepper with WARWS. It's located in
8 Section 15(a), line 2398, page 54. Mr. Pepper noted that
9 the 2018 TSS Part 7.0.6, water storage age, was omitted.
10 We know that with many upcoming regulations (lead and
11 copper revision, disinfection byproducts review), water age
12 is paramount. The TSS 2018 recommends no longer than five
13 days on water storage. We believe this to be in agreement
14 with AWWA recommendations.

15 DEQ has considered the comment. Water age is
16 included in Chapter 12, in Sections 15(c) and 15 (e). The
17 draft chapter does not address a maximum day exceedance for
18 water storage. Based on further review and research, DEQ
19 will include the 2018 TSS Part 7.0.6 in Section 15(a) in
20 Chapter 12.

21 Section 16 is our next comment. This is a
22 comment, again, from Mark Pepper. Mark Pepper -- the
23 comment is in request to Section 16(a), line 2529 to 30,
24 page 56. Mr. Pepper had noted the 2018 TSS Part 8.7.9,
25 separation from other utilities, was omitted. Again while

1 you assume design engineers would consider maintenance of
2 distribution pipes and ability to be important, sometimes
3 that's not the case.

4 DEQ considered the comment and will revise
5 Section 16(a) to include 2018 TSS 8.7.8 and 8.7.9 for
6 clarity on aggressive soil provision and ideal utilities
7 separation distances.

8 Our next comment is located in the Section 16,
9 16(a), page 56, line 2597 on page 58. Comment is from
10 Mr. Pepper. Mr. Pepper noted the 2018 TSS Part 8.7.2,
11 bedding was omitted. It's important to protect the
12 investments of the State and the system by ensuring quality
13 bedding material is used, and this isn't the case on some
14 projects.

15 DEQ's considered the comment. We agree pipe
16 bedding requirements are important, and they are provided
17 in Chapter 12, Section 16(i), which describes that
18 distribution system bedding shall be in accordance with
19 ASTM C12 Classes A, B, C for rigid pipe. And flexible pipe
20 bedding shall be designed in accordance with ASTM D2321
21 Class I, II, or III.

22 We are to our next comment. It is comment 16(g).
23 Ms. Cahn noted that DEQ's response to the public comment on
24 the passage is insufficient. Ms. Cahn notes that manholes
25 are difficult to keep water out -- coatings leak,

1 fiberglass can flood, flooding can cause rust/ difficult to
2 use safety issues. Ms. Cahn asked DEQ to look at valve
3 boxes and the wording on "chambers" to clarify these are
4 synonymous.

5 So I think this is -- this is kind of a -- I
6 think there's multiple parts to this comment and question.
7 16(g) was in relation to air relief valves and automatic
8 air relief valves. We have incorporated the TSS 2018 8.5,
9 which would remove Section 16(g). However, chambers,
10 vaults, and manholes would not be synonymous with a valve
11 box. And for an automatic air relief valve, that would
12 need to be installed in a chamber vault or manhole for
13 maintenance, access, and operations of that automatic air
14 relief valve.

15 For a valve, I think the second part of this
16 question was in relation to a river crossing that was
17 proposed by one of the commenters. And, again, this part
18 is covered in the 10 States Standards under Section 8.9.2
19 underwater crossings. And with regards to underwater
20 crossing, we would require valves on either side. And
21 valves should be easily accessible and not subject to
22 flooding. So they could be placed in a chamber, vault,
23 manhole or valve box or other provided solution.

24 And with that, that takes us through the comments
25 that we had received from the WWAB board members at the

1 March 15th board meeting. That also includes the comments
2 we had received from public comment through Mark Pepper
3 with WARWS.

4 And with that, I'll turn it back over to
5 Jennifer.

6 ACTING CHAIR CAHN: Excuse me. I want to
7 go back to that last comment.

8 MR. HENDON: Sure.

9 ACTING CHAIR CAHN: It says that 16 --
10 16(g) has been struck. But I don't -- can we go to page
11 12-58.

12 MS. THOMPSON: Yeah. Let me read in what
13 was stricken and didn't appear in my review. So what had
14 previously been in there was a passage numbered as (g) that
15 stated manholes or chambers for automatic air relief valves
16 shall be designed to prevent submerging the valve with
17 groundwater or surface water. And so we have stricken that
18 because it is redundant with 8.5 in the 10 States Standards
19 which covers air relief valves.

20 ACTING CHAIR CAHN: So that -- the big red
21 line -- the green line/strikeout should have been included.

22 MS. THOMPSON: It should have appeared
23 there when I looked for it, but it didn't, yes.

24 MR. HENDON: We forgot to send you guys the
25 invisible ink to make it show back up.

1 MS. THOMPSON: Right.

2 ACTING CHAIR CAHN: Yeah. Okay.

3 MS. ZYGMUNT: So, again, Madam Chairwoman,
4 members of the Board, that does conclude our presentation
5 to review the revisions that we have made since March 15th.
6 If there are no further questions -- well, let me first
7 ask. Are there any further questions about the revisions
8 we have made or further discussion you'd like to have?

9 ACTING CHAIR CAHN: I probably have some
10 questions on the TSS. What's included, what's not, and
11 why. So you'll have to bear with me.

12 MS. ZYGMUNT: Does that go back to 12(a)?

13 ACTING CHAIR CAHN: No. It's probably --
14 I'm starting at the beginning of the TSS. So the first
15 section that we incorporate is the engineer's report,
16 1.1.1. And the part that precedes that, if you -- under
17 1.1 says where pertinent presents the following
18 information. And I think we need to include that
19 "where pertinent." So if you look at the TSS, page 2.

20 MS. ZYGMUNT: Madam Chairman, can you
21 repeat the comment? I'm not understanding what your
22 suggestion is.

23 ACTING CHAIR CAHN: Okay. I think it would
24 be clear -- so the section -- the engineering design report
25 in the TSS has an introductory paragraph that says the

1 engineer's report for waterworks improvements shall, where
2 pertinent, present the following information. And then it
3 starts out with 1.1.1. And we -- so do you see that above
4 it, the -- the four -- the line right above -- the second
5 line?

6 MS. ZYGMUNT: Yes.

7 ACTING CHAIR CAHN: And it says "...where
8 pertinent, present the following information." And what
9 we're doing is starting to incorporate in the engineer's
10 report starting at 1.1.1, and we're missing the "where
11 pertinent." So I think that that's a really important part
12 of the engineering design report. That's a lot of the
13 problems I have with the engineering design report, is
14 things are not always pertinent that are -- and so I think
15 we're miss -- I think that needs to be included somehow.

16 MS. ZYGMUNT: Yeah. Yes, Madam Chairwoman,
17 understanding your comment, I think I would disagree and
18 push back in that we have already reviewed the sections of
19 the 10 States Standards that we feel are applicable to the
20 engineering design reports that we need. And I know we've
21 discussed specific aspects of those reports that are
22 applicable. And I think I would disagree -- and I'm going
23 to ask Keenan to speak up next -- that we need to further
24 clarify by adding language "where pertinent." I think we
25 have already incorporated the sections that we feel are

1 needed for the engineering design report.

2 MR. HENDON: I think -- if we include the
3 word "pertinent," we open ourselves up to go down a rabbit
4 hole to argue with our engineers or the applicants as far
5 as what is and what isn't pertinent. So we are requesting
6 the information we want to receive in order to review their
7 permit application so that we can ensure that they are
8 complying with the necessary parts of the DEQ regulations,
9 as well as meeting the drinking water quality requirements.

10 ACTING CHAIR CAHN: Okay. So then if we go
11 down to 1.1.7, sources of water supply, that two little
12 lines is not included, and so to me I don't understand why
13 we're parsing out -- it just says describe the proposed
14 sources or sources of water supply to be developed, the
15 reason for their selection, and provide information as
16 follows. And I don't understand why a little two sent --
17 you know, sentence like that is parsed -- is cut out.

18 MS. ZYGMUNT: Again, Madam Chairwoman, we
19 are incorporating by reference specific sections of the 10
20 States Standards. We're not taking the whole manual. So
21 again, in our review and development of this chapter, we
22 have already vetted what sections we feel we need to pull
23 into our rule to be regulatory requirements for our
24 design and construction standards. I am a bit concerned
25 about going through the whole 10 States Standards -- and

1 I appreciate your comments and I appreciate your
2 perspective -- but, again, I think we've already vetted
3 what we are and are not including through what we have
4 pulled into our rule and what we've already reviewed under
5 the past two meetings.

6 MR. HENDON: And in addition to kind of
7 support that, the district engineers have gone through this
8 document. We've had over 20 meetings with regard to the
9 10 States Standards, the incorporation by reference,
10 revisions to Chapter 12. So we've taken into consideration
11 their comments, direction and insight.

12 Your comment with regards to 1.1.7, sources of
13 water, we do address those specifically in the chapter, for
14 source water sources, groundwater sources, and so forth.

15 MS. ZYGMUNT: So let me just interject
16 here, Madam Chairwoman. We are at 11:00, which is the end
17 of the time I had allotted for this special meeting.
18 Again, recognizing that it sounds like you have further
19 thoughts on the 10 States Standards, again, I'll just make
20 the general comment that I feel we have already reviewed
21 the specific sections that are appropriate to include or
22 not include.

23 In the interest of time and making good use of
24 everybody's time today, I would ask if we can, rather than
25 going item by item through the 10 States Standards, are

1 there broader questions -- or comments that you can provide
2 to us to consider for future rule packages in terms of how
3 we incorporate by reference? We'd be happy to hear that
4 feedback. But I've not incorporated time into the meeting
5 today to go through the 10 States Standards in detail.

6 However, I would be interested in hearing from
7 board members how you would like to proceed. I think as
8 you're probably aware, I am looking for a recommendation
9 from the Board, your advice to move forward with formal
10 ruling making before the close of the meeting today. Or if
11 that is not the advice the Board, I would like to know what
12 your advice is so we can take that into consideration with
13 the director and decide how we would like to proceed
14 forward.

15 So since we're at the end of the allotted time
16 for the meeting today, I would like to get, Madam
17 Chairwoman, your thoughts how to proceed forward, along
18 with feedback from the other board members.

19 ACTING CHAIR CAHN: Okay. Does any board
20 member want to say something before I do?

21 BOARD MEMBER DEURLOO: No. I'll wait to
22 hear your comments, Madam Chairwoman.

23 ACTING CHAIR CAHN: Okay. I still have
24 some comments that I think are important regarding the 10
25 States Standards, and we obviously don't have enough time

1 allotted for it. I did -- I have some concerns right off
2 the bat about this meeting. And I'll say that according to
3 the -- let me just grab my sources here. According to the
4 Public Meetings Act that the boards are required to comply
5 by, and does not -- that doesn't apply to directors and
6 administrators. Special meetings are called by the
7 presiding officer of the Board of the -- and so I'm a
8 little bit concerned about a couple of things. One is the
9 fact that this meeting was not called by the Board, and it
10 was called by DEQ. So I'm a little bit concerned about
11 some of the things that we do today being null and void.
12 So that -- I'll just say that.

13 I have some concerns about not incorporating
14 enough time to discuss comments, when I did let DEQ know in
15 email that -- I had Brian's email, and I asked DEQ to
16 please forward it on to the -- to Jim Cochran and Brian
17 Dickson. And I don't know if that was actually forwarded
18 to them.

19 That said, that I did have some concerns that we
20 hadn't gone over in the other meeting. So I'm just -- I
21 also mentioned in that email that I was going to be out of
22 cell phone range and internet range for quite a long time
23 before the meeting. So I have just seen this stuff
24 basically late last night, and at 5:30 this morning.

25 So I'm also -- I have a lot of concerns. I have

1 another concern about the fact that in the email that I
2 sent out, I mentioned that I was not going to be
3 available -- you guys -- I was presented with two weeks of
4 which we could have this meeting, and of those two weeks,
5 up until yesterday, the whole first week and up until
6 yesterday, I was not available and I said I was not
7 available, and yet, even though this meeting's supposed to
8 be called by the chair of the meeting, the Doodle poll went
9 out asking everybody if they could meet last week, and
10 during days I said I could not meet. So I have concerns
11 about that, we'll just -- then --

12 So, basically, since I haven't had a lot of time
13 to look at these changes -- and every time I look at this
14 document, it's complicated, particularly because we are
15 bouncing back and forth between the 10 States Standards and
16 the proposed rule. And to do a thorough review, all of us
17 have to really -- to do our jobs, we have to look at both.
18 And it's time consuming to do that, and it's confusing.
19 And every time I look at this, I see something new. Maybe
20 less and less as time goes on, because we're catching a lot
21 of these things, but I still do see new things.

22 And so with the volume of public comments that we
23 received and for new board members, it was a significant
24 volume of public comments compared to other regulations
25 we've looked at on this board. And the amount of changes

1 that -- which is good. You know, I'm really pleased to see
2 all the changes. And I really appreciate all the work that
3 DEQ and the board and the public have done to bring this
4 rule, I think it would be prudent to have one more public
5 comment period and consider it at our next regularly
6 scheduled board meeting, quarterly board meeting, which is
7 coming up here pretty quick, have a public comment period,
8 including comments at the meeting.

9 And I know that, you know, Jennifer and Keenan,
10 you mentioned you're new to this. And, you know, I'm --
11 I've been on the board for over 20 years, and we often have
12 brought back a proposed rule again to the public in these
13 types of circumstances. And this has happened many times
14 in the past. And during my tenure on the board -- and I
15 don't think it's unreasonable to do this one more time.
16 And I just think it's -- it's a big change to the rule and
17 it just -- to make the changes to the rule just takes time
18 to try to get it right. So that's my 2 cents, and I'll
19 open it up for Board discussion.

20 MS. ZYGMUNT: Thank you, Madam Chairwoman.
21 Before we hear from other board members, let me just
22 respond to a few logistic questions there.

23 First, in terms of appropriate procedures, I'll
24 just remind the Board that the Water Quality Division
25 Administrator is the executive secretary for the Board. So

1 I -- I feel it is appropriate for me to have called the
2 meeting. We can double-check with the Attorney Generals,
3 but I feel we're in accordance with proper procedures in
4 order to call this meeting. So I'm not concerned about the
5 proceedings being null and void. But thank you for raising
6 that issue.

7 Good comments, Madam Chairwoman. Let me stop
8 there and give the other board members chance to provide
9 feedback.

10 BOARD MEMBER DEURLOO: Well, if nobody else
11 is going to say anything, I guess I will. That's a tough
12 one. I have a -- I said this at the last meeting too. Do
13 we want the rule done right or do we want the rule done
14 right now? I have a lot of faith in both -- the whole team
15 around the table.

16 Jennifer, you and your team have done an
17 excellent job of updating the -- and capturing what the
18 comments -- mainly from Lorie's camp, but from the rest of
19 the Board as well. So congratulations. Good job on that.

20 I would have a difficult time veering away from
21 Chairman Cahn's recommendation, just because of her tenure
22 on the board over 20 years. And I really defer a lot to
23 her decision-making process on this, because I don't know
24 how many times she's seen Section 12, but I'll bet you this
25 isn't the first time. Probably the third or fourth or

1 fifth time.

2 So I don't know -- I will follow Chairwoman
3 Cahn's recommendation on this and go from there. Thank
4 you.

5 MS. ZYGMUNT: Thanks, Brian.

6 ACTING CHAIR CAHN: Are there other board
7 members that would like to comment?

8 BOARD MEMBER COCHRAN: Madam Chair, this is
9 Jim Cochran. I guess the only thing I would add is that
10 there's been several opportunities for public comment, and
11 it seems like that's kind of dried up and they're no longer
12 commenting. And I don't know if that's wrong, they've got
13 all their comments in, they're just tired of looking at
14 this, or -- so I don't know, maybe it's time -- time to at
15 least consider moving on.

16 We're not the final say on this chapter. It
17 still has to go to the EQC for final comments and changes.
18 I'm sure we're welcome to comment at their meetings. So
19 if -- if the public's ready and the staff's ready to move
20 on, I think I'm ready too. So that would be the only thing
21 I would add.

22 ACTING CHAIR CAHN: Okay. Thank you, Jim.
23 And I would just like to add that we specifically did not
24 request public comments -- or did not allow public comments
25 for this meeting. And I think the recommendation probably

1 came from me. And I think that the reason for that was
2 that we were still going through comments -- we were still
3 going through board comments on them, so I guess I felt
4 like we still had some words to work on before we would go
5 back out to the public for comments. So I'll just leave it
6 at that.

7 MS. ZYGMUNT: Let me add in a few more
8 thoughts procedurally based on Jim's comments. So from
9 here, before we can proceed to formal rulemaking before I
10 make -- well, first, I, as the administrator, will make
11 recommendation to the Director. If the Director decides to
12 proceed forward, we first go to governor's office to get
13 approval to move forward. Advisory board feedback would be
14 communicated to the governor's office at that time, and
15 then if we go forward to the EQC, the advisory board's
16 comments are provided to the Council as part of the
17 information package.

18 So I think, Jim, it is a fair comment, just to
19 support what you said, any advisory board feedback and
20 discussion is included with the packet that goes to the
21 Council, and we would discuss that with the governor's
22 office as well. So I just want to make sure that the Board
23 knows that your feedback is not lost. And, again, the --
24 the Board's role as per statutes is to advise the
25 administrator on the content of the rule before I make a

1 formal recommendation to the Director to move forward.

2 To the public notice, I would question the need
3 to have another public comment opportunity. The board
4 seemed pretty clear in our March meeting that we had done
5 extensive public comment opportunity. Again, the rule was
6 out for approximately 100 days. We did get some
7 substantial feedback. But, again, my team here reached out
8 personally to all of those commenters. And to our
9 knowledge, everybody, you know, was -- was -- felt their
10 comments had been heard and resolved with the responses
11 that we provided.

12 It was the Board's direction not to do public
13 comment with this meeting. I would be hesitant to say that
14 I feel the need to do another public comment opportunity if
15 we decided to bring this back to the advisory board one
16 more time. Furthermore, there will be a public comment
17 opportunity associated with the EQC meeting.

18 ACTING CHAIR CAHN: And, you know, I would
19 just say it's not unusual to go back out, once -- you know,
20 once we have most of the comments incorporated, to go back
21 out for one last time. And the hope would be that we
22 wouldn't get a lot of comments, but I think because
23 typically with the extent of changes that are made, that's
24 kind of how, as a board, we weigh whether or not we think
25 we should have additional public comments. And there have

1 been, you know, significant substantial and significant
2 changes, which is good. And hopefully, you know, the
3 public will say, hey, I like this now, you know. And I
4 think we'd have a lot more confidence going forward if we
5 just get one more chance to look at this, and, you know,
6 catch -- there's always something that we can catch to make
7 it a better rule.

8 And I think, you know, if it had been minor
9 changes since the public had last seen it and made their
10 comments, that would be a way to say, no, we don't need to
11 go back out. But they're significant changes, and, you
12 know, we want this rule to be as good as we can get it.

13 MS. ZYGMUNT: Absolutely. We are all
14 interested in a good product. And, again, I'm going to
15 speak for the work that my team has done. I do think we
16 have that good product. I think I would disagree that the
17 revisions made since the last time the public comment --
18 public has seen this are substantial. Again, I think these
19 are all revisions that the public could comment on prior to
20 the EQC meeting if appropriate.

21 Again, recognizing that Keenan and I are new to
22 the position, neither of us are new to public comment
23 opportunities such as this, and we do understand the
24 importance of public transparency, but I do feel we have
25 achieved that with this rule package.

1 BOARD MEMBER DEURLOO: Madam Chairman,
 2 question for Ms. Zygmunt. Has it ever been where a Board
 3 Member of the -- from our advisory board makes a public
 4 comment to the EQC?

5 MS. THOMPSON: Yes, sir.

6 BOARD MEMBER DEURLOO: For example, I know
 7 we're commenting on it right now, but if there's some other
 8 things that are stuck in people's craw or something like
 9 that, that we make a -- an overall comment to the EQC for
 10 their review?

11 MS. ZYGMUNT: Yeah, thanks for the
 12 question. Brian, I may ask Jim Peters to speak to that
 13 issue in terms of the advisory board's role here and the
 14 mission to advise the administrator versus role of the EQC.

15 Jim, would you help us out with that.

16 MR. PETERS: Yeah. Happy to jump in. So I
 17 guess my first -- first piece -- or first answer is I'm not
 18 aware of that has occurred before. As the administrator
 19 mentioned, obviously, the Board's duty and role is to
 20 consult with and advise the Administrator and the Director
 21 on the adoption of rules. The statutes don't reference
 22 advising, consulting, commenting, EQC. So as I would read
 23 the statutes on the advisory board, the main duty of the
 24 board is advising the Administrator and the Director on the
 25 rules.

1 Does that help answer your question, Brian?

2 ACTING CHAIR CAHN: I know --

3 BOARD MEMBER DEURLOO: Yeah.

4 ACTING CHAIR CAHN: -- from experience

5 there was an example where somebody from the Board went to
6 EQC. It has happened. And EQC did not move forward with
7 that rule.

8 MS. THOMPSON: Yes, I'd like to clarify
9 also that at that time, when that board member discussed it
10 with the EQC, that board member was encouraged to note that
11 they were representing themselves as a private individual,
12 and that they were not representing the Board. So when --
13 when that happened, they were not representing the Board in
14 front of the EQC. They were representing themselves.

15 And it is correct that that rulemaking was
16 returned to the agency to do additional work.

17 MS. ZYGMUNT: So, again, you know, what --
18 as I would put it, you know, this -- these meetings are the
19 Board's opportunity to advise me before I go to the
20 director with my recommendation. Again, the packet that we
21 put together for the Environmental Quality Council will
22 include all of the transcripts from the meetings, and it
23 will provide a summary of the Board's feedback. And, in
24 this case, there will be, you know, fairly lengthy summary
25 because we've had, you know, three meetings. And so it

1 will -- we will capture the Board's feedback and final
2 recommendation and advice on the rule. So that is
3 communicated to the EQC. But, again, I would say in terms
4 of your role in advising me on how I move forward, these
5 meetings are the place to do that. It does not preclude
6 anybody going to the EQC outside of the role as the
7 advisory board to provide comments on a rule package,
8 though.

9 ACTING CHAIR CAHN: Are there other Board
10 comments?

11 BOARD MEMBER DEURLOO: I don't know. I see
12 both sides.

13 Lorie, how -- how -- I get your -- I get your
14 point on this, and your -- I'm so thankful for your
15 thoroughness and dedication to this. What are your
16 feelings about just moving this forward to the EQC?

17 ACTING CHAIR CAHN: I'm not in favor at
18 this time, but I'm optimistic that with one more go at it,
19 with time to go over additional comments, that we can move
20 forward. I'm optimistic.

21 BOARD MEMBER DEURLOO: Do we -- okay. To
22 Jim's -- Board Member Jim's comments where -- I don't
23 disagree with you. It seems like some of the public
24 comments have kind of dried up, and we've given them a lot.
25 Is the -- is the main issue -- you're doing the

1 cross-reference with the 10 States Standards, like more
2 picking up your comments, Lorie? And maybe I didn't hear
3 you. You probably voiced it, but I didn't pick up on it.
4 Is the concern mainly with getting more comments from the
5 public or addressing your cross-references and comments?

6 ACTING CHAIR CAHN: I think both. Both.
7 You know, I would like to know how the public sees the
8 changes that we've made. And, you know, and hopefully it
9 sits better with them. I don't think it sits -- you know,
10 there was some significant issues that the public brought
11 up. And I'm hoping that, you know, we addressed most of
12 their comments. But just because we've -- they've had a
13 response to the comments doesn't mean that they would
14 necessarily not still have issues.

15 MS. ZYGMUNT: Madam Chairwoman, can you
16 explain why the public notice before the EQC meeting would
17 not serve the same purpose to gather the final feedback on
18 the rule that the Board has advised us on?

19 ACTING CHAIR CAHN: I think that our board
20 tends to play a more technical role than EQC. And
21 typically I think EQC relies on the advisory boards to
22 really work out a lot of the technical issues so that when
23 it comes up to them, it's really ready for their review and
24 signature, you know, passing on to the governor for
25 signature. So I think that I see our board as a -- as a --

1 the board that really gets into the nitty-gritty details.

2 MS. ZYGMUNT: Sure. Sure. And I would
3 agree with that overall assessment. I will, you know,
4 again state that I think we have accomplished that. I
5 think you guys have given us a very thorough review of this
6 rule. I also feel that my staff have done a very thorough
7 review of the 10 States Standards and a very thorough job
8 in preparing this rule.

9 You know, there's -- this is a big rule. It is
10 detailed. There's a lot that goes into it, but I feel like
11 we have done our due diligence in updating the rule
12 accurately and reviewing the technical standards that are
13 appropriate for this rule. And, again, with the feedback
14 that you have already given us, I feel that we have the
15 product that we need to move forward competently to the EQC
16 so that they know they have a vetted product between DEQ's
17 extensive work over the past five, six plus years, in
18 addition to the Board's advice through these past three
19 meetings.

20 MR. HENDON: And to add onto that, heading
21 into the March meeting, staff here at DEQ reached out to
22 each and every commenter that provided us comments to
23 address those comments one by one. We went through those
24 comments, provided them with our response, and came to a
25 mutual understanding, either on their side or our side.

1 So with regards to additional public comments
2 with regards to the chapter, I'm curious, is there feedback
3 that you're getting, Ms. Cahn, that we are unaware of here
4 in Cheyenne?

5 ACTING CHAIR CAHN: No. Not at all. I
6 just -- you know, when I look at cross-walking between the,
7 you know, proposed regulation and the TSS, I'm still
8 finding issues. For instance, you know, I'm looking at my
9 notes, there's some rapid mix disconnects between the two.
10 And so it just gives me pause that, you know, we didn't get
11 a lot -- I didn't get a lot of time for this meeting, a lot
12 of notice for it, a lot of -- and so I just -- I'm still
13 seeing things that are disconnect, and even with not a lot
14 of time looking at it.

15 So -- and it's just not -- in my tenure, it's not
16 at all unusual to go out, you know, one more time when you
17 make changes like this to go to the public again. So --
18 and I think that -- that would be -- give me a whole lot
19 more assurance that -- I mean, I don't know what the public
20 thinks. I have no idea. But I know that --

21 MS. ZYGMUNT: And Lorie --

22 ACTING CHAIR CAHN: -- from the volume of
23 comments that we did get, that there was a lot of concern,
24 and I think we should give the public, you know, one more
25 opportunity to look at the whole thing with all the

1 changes. And I think they deserve that. You know, this
2 rule hasn't changed for 40 years. If we wait two or three
3 more months -- you know, when's our next meeting? I think
4 it's in June. You know, if we -- it's May now. So, you
5 know, we're not talking about a huge delay. And I think
6 that the -- the ability to -- for EQC to have confidence in
7 it, I think the Board support, and, you know, seeing there
8 are no more public comments, I think that would really help
9 this rule when it goes to EQC.

10 So I think our probability of success is much
11 greater if we go -- if we do this one more time.

12 MS. ZYGMUNT: Yeah. Thank you, Madam
13 Chairwoman. And I appreciate your perspective. I would
14 still voice my disagreement that, again, in my 18 years
15 here at DEQ, I think we've gone above and beyond what we
16 need to do for public notice with the recognition that the
17 public again will have another 45-day public comment period
18 prior to the Environmental Quality Council meeting to
19 review the final rule.

20 As we do outreach events around the state, we
21 continue to remind people about Chapter 12, and we will
22 continue to do so to let them know it will be going to the
23 Council, and there will be another opportunity to provide
24 public comment. So we will continue to push that public
25 transparency and encourage people, if they have further

1 comments on the chapter, to do so prior to the EQC.

2 So I don't think we're sacrificing public
3 transparency. And, again, I think my staff have done --
4 again, they've gone above and beyond to respond to the
5 public comments that we received on this, and it's giving
6 me some ideas on how we move forward and how to standardize
7 some ways that we respond to public comments. So I think
8 we've learned a lot from this process, but I think we have
9 fully vetted public input at this step with, again, the
10 recognition that there is still public opportunity to
11 comment before the EQC.

12 So I am not hearing any further feedback. I will
13 leave it to the Board if you would like to provide me any
14 more specific advice to capture in our notes, or if you
15 would like to voice a formal recommendation through a
16 motion.

17 BOARD MEMBER DICKSON: This is Brian
18 Dickson. I'm hearing two very compelling arguments,
19 because I agree with both of them. But I think that with
20 the work that this staff has done and the work that this
21 Board has done, I think we're ready to move on. I would
22 move that we -- we -- we approve the changes that have been
23 made in Chapters 12 that we have reviewed at our last
24 meetings and today.

25 ACTING CHAIR CAHN: We have a motion on the

1 floor. Do I have a second?

2 BOARD MEMBER COCHRAN: Madam Chair, this is
3 Jim Cochran. I would second.

4 ACTING CHAIR CAHN: Board discussion?

5 Okay. Hearing none. All in favor say aye.

6 BOARD MEMBER COCHRAN: Aye.

7 BOARD MEMBER DICKSON: Aye.

8 ACTING CHAIR CAHN: We're going to have to
9 do it one at a time. I can't tell who says aye.

10 BOARD MEMBER COCHRAN: Jim Cochran, aye.

11 BOARD MEMBER DICKSON: Brian Dickson, aye.

12 ACTING CHAIR CAHN: All opposed, nay.

13 BOARD MEMBER DEURLOO: Nay.

14 ACTING CHAIR CAHN: Okay. Motion does not
15 carry.

16 So I think that is time to adjourn our meeting.

17 MS. ZYGMUNT: Great. Thank you very much.

18 Appreciate the discussion. I will take the advice and
19 the -- that failed motion into consideration and talk with
20 our director, and we will be in touch and let you know how
21 we decide to move forward.

22 ACTING CHAIR CAHN: Okay. Thank you very
23 much.

24 MS. ZYGMUNT: All right. Thank you,
25 everyone.

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ACTING CHAIR CAHN: Meeting adjourned.

BOARD MEMBER DEURLOO: Thank you.

(Special meeting proceedings concluded
11:31 a.m., May 3, 2022.)

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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 27th day of May, 2022.


KATHY J. KENDRICK
Registered Professional Reporter

