

1 **WYOMING WATER AND WASTE ADVISORY BOARD**

2 **RE: Water Quality Division, Water Quality Rules Chapters 1 and 2**

3 Pursuant to notice duly given to all parties, this matter came on for meeting on the 12th day of
4 December, 2024, at the hour of 9:00 a.m., at the Herschler Building Conference Room W054,
5 122 W 25th St, Cheyenne, WY 82002, before the Wyoming Water and Waste Advisory Board,
6 Mr. James Cochran, in attendance; Ms. Lorie Cahn, Chairman, presiding, Mr. Luke Esch, and Ms.
7 Kate Gamble, Attorney for the Board, in attendance virtually; Ms. Jennifer Zygmunt, Water
8 Quality Administrator; Mr. Jason Thomas, WYPDES Section Manager; Mr. David Waterstreet,
9 Watershed Protection Section Manager; Ms. Lindsay Patterson, Emerging Contaminants
10 Coordinator; Mr. Eric Hargett, Watershed Protection Surface Water Quality Standards
11 Supervisor; Ms. Gina Thompson, Water Quality Division in attendance.

12 **Water Quality Division Administrator Jennifer Zygmunt**

13 Thanks for walking us through the housekeeping items. Good morning, everybody. Jennifer
14 Zygmunt Water Quality Administrator. Thank you for being here and I will actually turn it over
15 to our chairwoman to call up the meeting to order and get it started. So Lorie? Lorie, you're on
16 mute.

17 **Water and Waste Advisory Board Lorie Cahn**

18 I'd like to call this meeting to order. And it's our fourth quarter meeting for the Wyoming Water
19 and Waste Advisory Board. I'd first like to introduce the Board. I am Lorie Cahn. I'm the chair of
20 the Board and I represent the public at large.

21 **Water and Waste Advisory Board Luke Esch**

22 Luke Esch, I represent agriculture.

23 **Water and Waste Advisory Board Jim Cochran**

24 Jim Cochran, local government.

25 **Water and Waste Advisory Board Lorie Cahn**

26 Okay. Thank you. So the first thing on the list is to do the election of officers, and I would like to
27 ask if you guys are okay with postponing that until we have a fuller Board. Right now we just
28 have three members. Brian Deurloo was not able to meet with us today because he's in Saudi
29 Arabia, so he's had a big honor. We have a vacancy on the Board, so I don't know if I have to ask
30 for a motion on this or if we just talk about it, but I would like to postpone it until the next
31 meeting, if that's okay with everybody.

32 **Water and Waste Advisory Board Luke Esch**

33 Laurie, I think that's a good idea, given that there's only three of us here today, and I think it'd
34 probably have to be unanimous if we did make any votes. I would make a motion that we
35 postpone Board elections until the first quarter meeting of 2025.

36 **Water and Waste Advisory Board Jim Cochran**

37 Jim Cochran, second.

38 **Water and Waste Advisory Board Lorie Cahn**

39 Okay. Motion on the floor.

40 **Water and Waste Advisory Board Lorie Cahn**

41 All those in favor say aye. Aye.

42 **Water and Waste Advisory Board Luke Esch**

43 Aye.

44 **Water and Waste Advisory Board Lorie Cahn**

45 None opposed? Motion carries.

46 **Water Quality Division Administrator Jennifer Zygmunt**

47 Okay, thank you, Madam Chair. I will note that, as Lorie mentioned, we do have a vacancy. I
48 believe that is for a public representation. We are putting the word out to see if we can get
49 interested parties and we'll continue to work with the Governor 's Office to see if we can get
50 some good applicants for that position. So, Madam Chair, if you do not have any further
51 remarks, I'll go ahead and start with the rule making.

52 **Water and Waste Advisory Board Lorie Cahn**

53 Yes, please do, Jennifer. Thank you.

54 **Water Quality Division Administrator Jennifer Zygmunt**

55 Well, I'll just start with some opening remarks like I usually do and then turn it over to David,
56 Eric and Lindsay to walk the Board through the presentation. But again, we are pleased to be
57 here today to share proposed revisions to Chapter 1 with the Board for a second time. We
58 appreciated the discussion that we had back in June. Prior to that, we have briefed the Board a
59 couple times on this. So I know that we've had lots of discussion with the Board. Appreciate the
60 feedback that we've received so far and again pleased to show you the proposed revisions that
61 we've made for your consideration today. Since we met in June, we did consider comments
62 from the Board that were received during the June twelfth meeting. Comments received during
63 the first public comment period that closed at 5:00 pm on June 12 and comments received
64 during the second public comment period that we held October 15 through November 15. Staff

65 also conducted another informational webinar during that public notice comment period this
66 fall. I think those have been very helpful to make sure that the original stakeholder group and
67 interested parties stay informed on the progress in . So the plan for today is just to walk
68 through and a few sections of Chapter 2 to show the Board revisions that we have made in
69 response to public comments and the Board 's feedback. You do have strike and underline
70 versions- green strike and underline versions of Chapter 1 and Chapter 2, which show those
71 revisions. We've also updated the statement of principle reasons and guidance material, those
72 were available in the binders we provided and also on the website. We've also provided a
73 response to comments for all comments received on the two rules and we are happy to answer
74 questions about those.

75 Gina already walked folks through reminders. I think we have some folks online today who
76 would like to provide verbal comments. So when the Chair gets to that part of the meeting,
77 again, if you need instructions or assistance, put a comment in the chat or raise your hand and
78 Gina will help you out. Again, I think the Board is aware that the proposed revisions to this rule
79 follow many years of work and extensive outreach to the public. I think it's been very successful
80 process so far. I think the facilitated outreach done to the stakeholder group has been very
81 productive in helping get buy in into this rule and to shape the proposed revisions.

82 Just a reminder for folks listening in online that if the Board advises or depending on what the
83 Board advises, if I decide to recommend to the director to move forward with formal
84 rulemaking the steps from here are that it would go to the Environmental Quality Council for
85 hearing, Legislative Services Management reviews, and then it would go to the Governor for
86 approval. Finally, because this is programmed under the Clean Water Act, EPA has an approval
87 step at the end of the process.

88 We're still in informal rulemaking if we proceed from here, we'd start with formal rulemaking.
89 But there will be additional public comment periods associated with the EQC hearing. So that
90 concludes my remarks and I'll turn it over to David next to add anything and introduce staff that
91 will be presenting today.

92 **Water Quality Division David Waterstreet**

93 Welcome everybody. I'm David Waterstreet. Watershed Protection Section Manager working
94 underneath Jennifer Zygmunt as our administrator. And I just wanted to introduce our new
95 water quality standards person that will be taking over for Lindsay. We will be working on a
96 transition as we go into the formal rulemaking. We haven't quite figured out all of the details of
97 handing off the program yet, but Eric will start working with us, as again, Lindsay starts
98 transitioning into her new position. As I think everyone might know, Lindsay has taken a
99 position directly underneath Jennifer as our emerging contaminants program lead. So she will
100 be addressing some of these national contaminants that we're needing to address. And then
101 Eric will be picking up, of course, the water quality rules and regulations. He will also be taking
102 on her responsibilities over the harmful cyanobacteria bloom program and the National

103 Environmental Policy Act functions that we take care of for the Water Quality Division. Really
104 happy to have Eric coming on. He was our assistant supervisor to the monitoring program. He's
105 been responsible for a lot of our modeling efforts, also methods development. He is probably
106 our premier modeler, very familiar with our rules and regulations, will be able to naturally step
107 into this position and pick it up and keep us moving forward, and he's also very familiar with
108 speaking with the public and explaining our rules and regulations. So really glad to have
109 him on. And with that, Lindsay will be walking us through the revisions that we've made based
110 on comments over this last comment period. And Eric, unless you want to say something to
111 open us up, I will turn it over to Lindsay.

112 **Water and Waste Advisory Board Lorie Cahn**

113 Excuse me, David, can you just tell us? Eric 's last name? Don't think I caught it.

114 **Water Quality Division David Waterstreet**

115 It's Eric Hargett. And we'll try to get the website updated as soon as possible. Sometimes that
116 takes a little time.

117 **Water and Waste Advisory Board Lorie Cahn**

118 Can you spell that? Hard to hear.

119 **Water Quality Division David Waterstreet**

120 H A R G E T T.

121 **Water and Waste Advisory Board Lorie Cahn**

122 Okay, thank you.

123 **Water Quality Division Eric Hargett**

124 Well, thank you, David. Yeah, this is Eric Hargett. I'm happy to be here. I'm excited about
125 entering into my new role here as the water quality standards supervisor and I'm looking
126 forward to building on the successes that Lindsay has established in the program. So thank you.

127 **Water Quality Division Lindsay Patterson**

128 Great. Thanks Eric. Good morning, Madam Chair members of the Board appreciate the
129 opportunity to talk to you again about proposed revisions to Chapter 1 and Chapter 2. I wanted
130 to just start with a high level overview of recent events related to the proposed revisions. If you
131 recall during our June thirteenth meeting, we received feedback from the Board and the
132 Wyoming Farm Bureau Federation. After the close of the Board meeting, we also received
133 written comments from the Environmental Protection Agency and the Wyoming Outdoor
134 Council. As Jennifer mentioned, we reviewed all of the comments we received, we developed a
135 response to those comments, and made revisions to the proposed rule package based on the

136 comments received. The changes included a number of wording changes, some formatting
137 changes, some clarifications, and in a few cases, the proposed revisions were reverted to the
138 current 2018 version of Chapter 1. We didn't make any changes to Chapter 2 at that time. On
139 October 15th, we released the revised rule package for a 30-day public comment period in
140 preparation for today's meeting. The rule package included a detailed response to comments
141 for those comments that were received at the Board meeting, as well as the written comments
142 that we received after the close of the Board meeting. And the rule package included a strike
143 and underlying version of the changes made to Chapter 1, since the rule was released for public
144 comment in April of 2024. The changes were depicted in a green strike and underline. On
145 October 30th, we held a public webinar where we walked through the changes based on the
146 June 13th Board meeting and the written comments during the 30-day comment period that
147 ended on November 15th, we received two comment letters. One was from the Environmental
148 Protection Agency. And one from three non-governmental organizations: the Wyoming
149 Outdoor Council, Powder River Basin Resource Council and Protect our Water Jackson Hole. We
150 reviewed these additional comments that we received, developed responses to those
151 comments and revised Chapter 1 and Chapter 2 based on those comments. For both Chapter 1
152 and Chapter 2, the changes were added to the strike and underline versions. The changes were
153 primarily formatting clarifications, and some wording changes, so relatively minor changes
154 made since the October 15th release of the package. The Board was provided the responses to
155 the comments and the updated strike and underlined versions, and a clean version of Chapter
156 1, just recently. If the Board 's amendable, we thought we could just walk through that
157 December 2024 green strike and underline version of the rule that we provided earlier this
158 week. We had inadvertently posted an incorrect version. So it's dated December 10th. And it
159 looks like-let me just share my screen. One moment. Can everybody see this version? So again,
160 this document is a strike and underlined version of Chapter 1. All of the changes depict those
161 that we've made since the rules were released in April. And then we did include a narrative
162 description here on the first page of the changes that we've made since the October 15th
163 release of additional materials. So we'll just start here. I'm not gonna go through this, but we'll
164 just go through each section and feel free to stop me if you would like. We didn't make any
165 changes to Section 1, Section 2 and the definitions. We made minor changes, I'm going to keep
166 scrolling until we get there. The definition of "effluent limitation", to remove this concept of
167 point source, since in some cases we'll have effluent limitations from things that are not directly
168 from a point source, such as a storm water discharge, we have a storm water program that
169 develops efficient limits for certain discharges from storm water. We also did updates to the
170 definition of "ephemeral" based on discussion with the Board, and so we clarified that these
171 systems are ordinarily dry, that water is present only in direct response to precipitation or
172 snowmelt, so we would remove that concept of single. And then we remove the concept of "in
173 the immediate watershed", since there may be instances where you have precipitation or snow
174 melt events pretty far upstream that could create water in an ephemeral system. And then we
175 also clarify that the water body bottom is typically above the prevailing water table because
176 there may be certain circumstances where you have a perched water table. We did a change

177 throughout the rule, such as in the definition of “highest attainable condition” to change
178 “effluent limit” to “effluent limitation”. “Effluent limitation” is the defined term in the chapter.
179 We made a change to the fish consumption use based on feedback that we received during the
180 last Board meeting. And that was changed to “human consumption of fish”. We also changed, if
181 you recall, the “effluent-dependent fish consumption use to “human consumption of effluent
182 dependent fish”. So, it's more words, but it's more clear. So, it's one case where we've added
183 words but improved clarity. In the definition of “hydrophytic vegetation”, we did make that
184 change so that the index value less than or equal to three. That's so that any plants that are
185 facultative would-- if a if a wetland system was comprised of all facultative plants, it would be
186 considered hydrophytic vegetation. The definition of “natural,” we reverted that definition to
187 the 2018 version of the current rule, based on comments that the concept of minimal was
188 potentially not consistent with EPA guidance. The definition...

189 **Water and Waste Advisory Board Lorie Cahn**

190 Lindsay, can I ask a question about that term measurable? Is the evidence or always
191 measurable? Or is it something that's kind of observable? Where you can't maybe get a
192 measurement like, you know, like if there's lots of human activity and there's a path there,
193 you're not gonna measure something. So I just was wondering about whether everything you're
194 thinking about is measurable or whether we need a broader term than measurable.

195 **Water Quality Division Lindsay Patterson**

196 Yeah, I think that's a good suggestion and we can think about terminology potentially to use in
197 place of measurable.

198 **Water Quality Division David Waterstreet**

199 Chairman Cahn, one of the things, that I get a little bit concerned about that is typically when
200 we're making decisions, we need some way to measure. So I appreciate that observation. I just
201 know that's something we'd want to take a close look at as to whether or not we can construct
202 a conclusion from using the terminology.

203 **Water Quality Division Lindsay Patterson**

204 We also might be able to just strike the word “measurable”. And without the influence of
205 human activity.

206 **David Waterstreet**

207 That's possible.

208 **Water and Waste Advisory Board Lorie Cahn**

209 Yeah, that would be address my concern, and you know, and if in the end you decide that
210 “measurable”--everything has to be measurable, then that's fine. But it just was asking that

211 question. The other thing I wanted to go back to is where you've changed "effluent limits" to
212 "effluent limitations". And, I have a harder time understanding. I guess I need an explanation as
213 to why "limits" was not acceptable and why "limitation". Because in that case, I think there are
214 measurable limits. Maybe there's something that's a limitation that's not a limit. So if you could
215 explain that to me, I'd appreciate it. Thanks.

216 **Water Quality Division Lindsay Patterson**

217 Yeah. And I was looking at it from a very simplistic standpoint, that "effluent limitation" is the
218 defined term. If you see here in you know, xiv. And so we wanted to make sure that anytime
219 we're using that term, we're pointing back to this definition. And it could include something
220 with numeric limits, but it also might be something that's more narrative. And then we've used
221 this term effluent limitation to potentially capture conditions that we might include in a 401
222 Certification. Then it would get incorporated into 404 Permit. So, it is intended to be a little bit
223 broader.

224 **Water and Waste Advisory Board Lorie Cahn**

225 Thanks for that explanation. I appreciate that--makes sense. Thank you.

226 **Water Quality Division Lindsay Patterson**

227 Great. So we'll keep going here. "Perennial"--the definition we made a minor change just to
228 clarify that these systems are typically have water during the entire calendar year. Again, just to
229 recognize that there may be anomalous conditions such as drought, where a perennial system
230 could, you know, not have water during the entire year. We also renumbered the definitions
231 where we needed to. This change is on line 230 is the change to the use. That's the extent of
232 the changes that we've made to Section 2.

233 **Water and Waste Advisory Board Lorie Cahn**

234 Lindsay, just another question. I was looking through the proposed changes that you made
235 throughout. One of the last ones you mentioned is changing "or" to "and", the comment, let's
236 see the section called "comments and responses", actually has "to add" and I think you meant
237 "and", but just want to make sure that every place where you use "and" rather than "or" you're
238 making sure that all... So you say that the reason is that all to ensure that all elements are
239 considered when implementing the narrative criteria. But my question is, if only one of three,
240 let's say there's three criteria, if only one of three criteria is present, isn't that enough to just to
241 consider one, if they're all equally important. So maybe "or" in some instances is actually the
242 right term.

243 **Water Quality Division Lindsay Patterson**

244 Yes, but when I included that language in the response to comments, it was within the context
245 of the water quality criteria themselves that have multiple elements. So those start I think in
246 Section 15. And so, the way that they were previously phrased with an "or" I think it wasn't

247 clear that you needed to meet all of those requirements. For example, if in a situation you were
248 protecting the odors and colors, right, within the water body as part of that criteria, we would
249 want to make sure that we are protective of both of those elements. If we only had an “or” in
250 there, then you could choose one or the other. And so that that was the intent, was to clean
251 that up.

252 **Water and Waste Advisory Board Lorie Cahn**

253 Okay great. Thank you. I appreciate it.

254 **Water Quality Division Lindsay Patterson**

255 We didn't have any changes within Section 3 or Section 4. There was minor changes made just
256 to the word “utilized”-- changed that to “used” in Section 5. We didn't make any changes to
257 Section 6 or Section 7.

258 **Water and Waste Advisory Board Lorie Cahn**

259 Lindsay, if I could just ask the Board, since I'm not there, I can't see and I'm raising a hand or
260 anything if anybody on the Board has a question or comment, could you please ask to be
261 recognized and then we can hear from you as well. Thank you. Okay, hearing none please go
262 ahead, Lindsay.

263 **Water Quality Division Lindsay Patterson**

264 Thank you. In Section 8, we made a number of relatively minor changes. We did strike the
265 phrase in the opening clause Section A that applied this, essentially, it's a clause that allows us
266 to not enforce the water quality standards in certain circumstances when they're below low
267 flow. We had added “or low water levels” so that the clause could apply to lakes and reservoirs.
268 There was some concern that this is potentially not protective of lakes and reservoirs because
269 water quality criteria already have some elements, some frequency excursion elements to
270 them. And so, we decided just to strike the proposed phrase and just retain what we currently
271 have in the standards. We also made changes, we struck the term “stream” so that the phrase
272 that was throughout this section, so that “low flows” were applicable to any flowing water
273 systems. We also changed, we also added the word “conditions”, so, you know, so mostly just
274 clarifications. We added the clause “in its sole discretion” to line 338 based on a comment to
275 clarify that the Department has the discretion for determining which of the low flow or low
276 water level methods are used to develop water quality based effluent limits. And then we also
277 did some clarifications to Table 1 by removing the phrase “or water level”. Most of the methods
278 that are in Table 1 are used for driving low flows for streams and rivers. We do want them to be
279 able to be applicable to lakes and reservoirs, but it was more confusing, the way that we had it.
280 And so, we just essentially created this new sentence in line 339 and 340, to clarify that you can
281 use these methods for calculating low flow, but you just essentially would put the water level
282 instead of flow. And we had, you know, some minor revisions to the table header and then
283 some minor revisions by adding “on average” to the end of each of the footnotes. Does

284 anybody have any questions on Section 8? Hearing none, I will move on to Section 9. So, in the
285 dilution allowances complete mixing scenario section, we added a phrase “dilution allowance
286 cannot be used to comply with full effluent toxicity requirements” as a concept that is currently
287 in our dilution allowances and mixing zones policy that wasn't carried over to the rule. And
288 that's the only change that was made. In Section 10, mixing zones, incomplete mixing, we
289 essentially struck the term “dilution allowances” from the section to be more consistent with
290 EPA guidance on mixing zones. And then we added a clause “a” here that says “the low flow
291 and low water level for the mixing zone of the receiving water are determined using the
292 methods in Section 8”. Just a clarification, essentially pointing the permit writers back to
293 section eight, which is section four, deriving low flows or low water levels. There's a minor error
294 in clause now D on line 402--we had used the wrong term. So instead of zoning dilution, now
295 it's the initial dilution. And then we added permitted to point source discharge just to clarify
296 that these aren't just any point source discharges, they're the ones we're permitting. And then
297 we just clarified in Paragraph (ii) under subsection (d) that there's basically, for streams and
298 rivers, the mixing zone is limited to no more than one-half of the narrowest wetted cross-
299 sectional area at low flow or a length 10 times the narrowest wetted width at low flow,
300 whichever is more limiting, to clarify that the permit writers to look at you know, the
301 dimensions of the channel at low flow. That's the most conservative place that we're protecting
302 when they're developing effluent limits. And then there was a few additional minor changes
303 made clarifications to this paragraph (e)(i). The mixing zone cannot be used to comply with full
304 effluent toxicity. So essentially, we're just rephrasing that providing additional clarification that
305 effluent limits for acute whole effluent toxicity requirements must be met at the end of pipe.
306 Basically, means you can't give them, you know, provision to allow time for mixing. And an
307 additional clause mixing zone may be limited or denied for pollutants where acute effects may
308 occur at concentrations similar to chronic effects. This is a concept that is in the current dilution
309 allowances and mixing zones policy that wasn't carried over as well. And then the 459 and 460
310 again is just a change to the designated use. Does the Board have any questions about the
311 changes to Section 10?

312 **Water Quality Division Lindsay Patterson**

313 Section 11, the designated uses I described previously that we made a minor change to the fish
314 consumption effluent-dependent fish consumption uses to help clarify what those uses are
315 intended to protect. We just made a minor wording change to the description of the recreation
316 uses. That's on line 533, and then here on line 547, we had inadvertently used full body contact
317 rather than the summer when describing the water recreation season. And then finally, in
318 Section 11, we made an update to the description of the terrestrial wildlife use, changing
319 wildlife to wild fauna to clarify that we're intending through this use to protect any, you know,
320 wild organisms essentially. Because it wasn't clear from what we had previously, whether it was
321 game animals or non-game animals. Does anyone have any questions about the proposed
322 revisions to Section 11?

323 **Water and Waste Advisory Board Lorie Cahn**

324 Lindsay, I had a question about why we're not changing wildlife to wild fauna from terrestrial
325 wildlife, why that's not being changed everywhere, it's just in this one part.

326 **Water Quality Division Lindsay Patterson**

327 Oh, I see. Why we wouldn't change it to a terrestrial fauna designated use?

328 **Water and Waste Advisory Board Lorie Cahn**

329 Yes.

330 **Water Quality Division Lindsay Patterson**

331 That is a good question. We had not discussed that actually. We can think about it. We have
332 had a wildlife use for a very long time. If you recall during these revisions, we've moved most of
333 the aquatic right fauna or clarified that the aquatic fauna are under the aquatic life uses. So the
334 addition of terrestrial was new to the wildlife use. So we can consider changing it to terrestrial
335 fauna.

336 **Water Quality Division David Waterstreet**

337 Chairman Cahn. I'm just going to think out loud here real quickly. So when you think about our
338 protections, terrestrial wildlife, and my staff and Jennifer can correct me if I'm wrong, but I
339 believe it's in the context of how they will be impacted by that water quality and those
340 associated wetlands. Typically, in a wetland, you're gonna have predominantly aquatic
341 vegetation. So I just don't know that we need to reach up that far in the landscape. That's just a
342 thought, not a final answer, just something that comes to mind when I'm trying to think that
343 one through.

344 **Water Quality Division Administrator Jennifer Zygmunt**

345 Yeah, I'll just add some perspectives in that I, you know, I think it's good clarification to the
346 definition of the use. One of the things that we heard from stakeholders was to make a
347 designated use terms more intuitive. We can certainly think about that Chairwoman, to see if
348 we want to change the title of the use throughout the document. My immediate reaction
349 against what David said, just talking off the top of my head is I think wildlife is just a little bit
350 more intuitive and resonates with more people. Again, I think it's good if we clarify the
351 definition. We'll think about whether we need to global changes. But I again, sticking with
352 wildlife might be more intuitive for readers.

353 **Water and Waste Advisory Board Lorie Cahn**

354 Yeah, I appreciate you just guys taking a look at it and making a decision based on, you know,
355 thinking about that comment. So whatever you decide is okay will work.

356 **Water Quality Division Administrator Jennifer Zygmunt**

357 So we will definitely consider that.

358 **Water Quality Division Lindsay Patterson**

359 Are there any other questions about Section 11? None? In Section 12, we just made some
360 minor changes we had left out the word life with aquatic there in line 577 and then the other
361 change was to again that fish consumption use changing it to human consumption of fish. In
362 Section 13, anti-degradation we made a change to the uses that are high quality water
363 protections are applicable to, that's on line 620 and then line 627 and 628. We had proposed
364 just applying these protections to the Clean Water Act Section 101-A2 uses, which is what the
365 requirement is in the federal regulations. However, upon further reflection, we thought that we
366 wanted to retain more similar provisions to what we have now, which is that these protections
367 are applicable to all of the uses. So we thought that that was a good reversion back to the
368 current water quality standards. In line 634, we had a minor change to be more consistent with
369 the federal regulations about the requirements for point source discharges and best
370 management practices. When we're determining whether to allow a lowering of water quality
371 in these waters. And so the federal regulations essentially just require that these protections be
372 in place, not that they have been achieved. And so that was, again, very helpful clarification to
373 change "have been" to "shall be". Again, that minor change to effluent limitations in line 659.
374 And that is all the changes that we made to Section 13. Does the any members of the Board
375 have any questions about the changes to Section 13? Hearing none, in Section 14 we added the
376 clause "and the environment" to the list of factors that the department will consider when
377 designating a water as an outstanding aquatic resource water. We thought about this and
378 figured that this adding this clause is more consistent with the language in the Environmental
379 Quality Act and with the provisions that already exist related to the factors that should be
380 considered. That was the only change that we made to Section 14. In Section 15.

381 **Water and Waste Advisory Board Lorie Cahn**

382 Lindsay, can we go back to Section 14?

383 **Water Quality Division Lindsay Patterson**

384 Absolutely.

385 **Water and Waste Advisory Board Lorie Cahn**

386 I this is, I'm not sure if you're going to be going over responses to comments or you're going to
387 be going over those as well or not.

388 **Water Quality Division Lindsay Patterson**

389 We weren't planning to go through them in detail, but we certainly can.

390 **Water and Waste Advisory Board Lorie Cahn**

391 Okay, so this brings up a comment that we heard from Protect Our Waters Jackson Hole, the
392 Powder River Basin Resource Council and Wyoming Outdoor Council that they, it wasn't right
393 here, but I just remembered it and it was that they were confused about the wording about
394 saying going on the main stem of some river through its entire length going from the
395 confluence and then going upstream to something rather than thinking about it from up to
396 downstream. And I understand why you did what you did, and I think it's because that huge,
397 you know, 400 page list of all of the rivers and streams is organized starting with the
398 downstream and working its way upstream, and so the way you've worded everything is
399 consistent with that. So I agree with it, but I feel like when you respond to comments that...
400 First of all, see how do I put this? The first thing I would like to see and would be something
401 that either says you accept a comment or you disagree. So either agree or disagree, because it's
402 not always clear in the response to comments whether you're agreeing or not with a
403 commenter. And so I think it would be nice to have an upfront statement that says, accept or,
404 you know, disagree or something, then the reason why. And I think in that response to
405 comments it would have been, I think it would have been very nice to just mention that that's
406 the way going from downstream to upstream is the way everything is set up and so that's why
407 you're sticking with it, as opposed to no, we're not changing the wording. At least it gives some
408 reason for doing it. So that's just a general comment from me, but thank you.

409 **Water Quality Division Lindsay Patterson**

410 Thank you, Madam Chair. In Section 15, moving through all of the water quality criteria, we did
411 revise any of the terminology that was suggestive or like a double negative, essentially, that we
412 talked about previously. So “would not support” was changing to “impair” and that was made
413 throughout the criteria. We made some minor changes to the floating, suspended, and
414 dissolved materials narrative criteria, essentially, to incorporate the concept of turbidity. That
415 was a request from the commenters, just to clarify, as we move away from our numeric
416 turbidity criteria to the narrative. We did include a provision under our drinking water criteria.
417 But we didn't include a similar narrative for aquatic life. Because the aquatic life criteria is very
418 general, it doesn't call out any specific pollutants. So, we decided to include turbidity here in
419 Section 15 and so just to clarify, turbidity is a potential pollutant under the umbrella of floating,
420 suspended and dissolved materials. It's going to protect all surface waters, any of the
421 designated uses from excess turbidity. We also made some wording changes to odors and
422 colors to hopefully improve readability. We did end up breaking it into two separate sentences
423 because it was not really possible to get it to sound correct without doing that. Again, the
424 changes here in 785 and 786 are just changing that so we don't have that double negative
425 concept throughout. I did end up deleting some of the abbreviations for the units, so we can be
426 consistent throughout since we weren't being consistent throughout.

427 **Water and Waste Advisory Board Lorie Cahn**

428 Lindsay, can we go back to the odors and colors?

429 **Water Quality Division Lindsay Patterson**

430 Yeah.

431 **Water and Waste Advisory Board Lorie Cahn**

432 On line 780. It seems like that last sentence, “substances shall not result in odors,” I would think
433 “or colors that impair designated uses” would be appropriate there rather than “and” because
434 if you have an odor that impairs the designated use, that sufficient to be a problem, and or if
435 you just have a color that's also sufficient. So I'm wondering if in that particular case, “or” is the
436 appropriate wording. Because we're looking for either one of those can impair the designated
437 use.

438 **Water Quality Division Lindsay Patterson**

439 Yeah, I think this is where I did change them to “and” because my interpretation was that we
440 needed to protect both of them. If you're determining attainment of the criteria, you want both
441 elements to be met, not one or the other.

442 **Water and Waste Advisory Board Lorie Cahn**

443 Okay, so this is attainment. Let me go back up. Can you scroll back up to where (a) starts so I get
444 the context? Okay, go. Little bit higher. Okay, I'm all right with that.

445 **Water Quality Division Lindsay Patterson**

446 And we can look at it again to make sure that we got it right and that everybody interpreted it
447 the same way.

448 **Water and Waste Advisory Board Lorie Cahn**

449 Yeah, I still when I look at (f) I still see it as “or” because you're trying to say either one or the
450 other is enough to be a problem. Doesn't have to be both. So if you have something where it's
451 just the odor. Or just the color. We still want this to apply the protections to apply. I don't see it
452 as “and” I see it as “or”, but I'll leave that up to you guys.

453 **Water Quality Division Lindsay Patterson**

454 We will absolutely take a look at all of that and hopefully some new eyes such as Eric can take a
455 look.

456 **Water and Waste Advisory Board Lorie Cahn**

457 Okay. Thanks.

458 **Water Quality Division Lindsay Patterson**

459 The other changes are again just to “would not support” changing to “impair”. Does anybody
460 have additional questions or comments about Section 15?

461 **Jill Morrison**

462 This is Jill Morrison. Going off of Lorie 's comment. You could say “and/or” in terms of trying to
463 incorporate a broader understanding.

464 **Water and Waste Advisory Board Lorie Cahn**

465 And Jill, my understanding is a previous a AG’s office did not want “and/or”. I agree with you
466 that it's a better a better thing. Can I think we've got somebody from the AGs Office? Maybe
467 they could address that.

468 **Attorney General’s Office Kate Gamble**

469 Yeah. My name is Kate Gamble, and I am sitting in for Alicia today for you guys from the
470 Attorney General 's office. The “and/or” language. I've been listening to what you guys are
471 saying. And it's hard to determine because, yeah, just in terms of what you guys are trying to
472 achieve with it, would you mind being able to give me about another 10 minutes so I can keep
473 kind of brainstorming and I can get back to you on this one?

474 **Water Quality Division Administrator Jennifer Zygmunt**

475 Madam Chair, this is Jennifer. I’ll also comment. So like Lindsay said we can certainly look at it. I
476 think we're on the same page with the intent. If there's an odor problem, we would evaluate it.
477 If there's a color problem, we would evaluate. It doesn't have to be both. So, the comment is
478 understood, we will consider that. We will also work with, in addition to Kate, will work with
479 the attorney who's been reviewing this rule with us, Abigail Boudewyns. So, I think we can look
480 at that. I will state, as the Administrator, that I'm not in favor of the “and/or” construction. I
481 understand that they're used. As a Division and as an agency we're trying to get away from
482 those because they can introduce ambiguity. I appreciate the comment. But we will go with
483 either “and” or “or” after we have some time to consider that.

484 **Water Quality Division Eric Hargett**

485 Yes, this is Eric. I would actually like to make a comment just for consideration. I mean, if we get
486 back to the title of Section 15. This basically states that water quality criteria that are applicable
487 to all Waters of the State. So what this implies is that all criteria that are listed under Section 15
488 will apply to all Waters of the State. If we inserted an “or” into that, then it gives some
489 discretion, basically, as far as whether odor or color would apply to all Waters of the State. So,
490 it would introduce some level of ambiguity and perhaps some inconsistency with the intent of
491 Section 15. Something for consideration.

492 **Water Quality Division Administrator Jennifer Zygmunt**

493 Yeah, I think that's good perspective, Eric. Madam Chair, if you're good with that, again, our
494 commitment is that we'll take a look at that feedback and decide to go with either “and” or
495 “or”, and we'll consult with Kate and Abby as well.

496 **Water and Waste Advisory Board Lorie Cahn**

497 Yeah, I think I agree with Eric putting in that context. Yes. I think then in that case “and” is
498 probably appropriate so. And and also I don't think that Kate, you would need to leave the
499 meeting in order to go get a 10-minute response. I think that it's stuff that you guys can work
500 through after the Board meeting, Where “and” or “or” is appropriate.

501 **Attorney General’s Office Kate Gamble**

502 Certainly. Thank you, Madam Chair.

503 **Water Quality Division Lindsay Patterson**

504 Do any other members of the Board have any questions or comments about Section 15? Okay,
505 Section 16. We made similar revisions just to the wording to remove any double negatives, to
506 update the “or”s to “ands,” which we will take a look at. Changing effluent limits, in line 830
507 and 831, we revised the text from “maximum allowable concentrations” to “effluent limitations
508 for permitted discharges of pollution”. This was a clarification. The proposed text had been
509 carried over from the previous version of the rule from the current version of the rule. But it
510 was not clear that these references that are listed after Section (b) are intended to guide
511 development of water quality-based effluent limits for permitted discharges. So that that was
512 definitely a helpful clarification. We also had included incorrect reference there in paragraph (ii)
513 under Subsection (b) and then so we replace that reference with what's in (iv), which is a new
514 guidance manual that EPA released this summer to provide information on how permit writers
515 can use that whole effluent toxicity information to drive effluent limits. We renumbered things.
516 So under Subsection (f), we just moved this phrase up from below the table. So we did make
517 changes to Table 2 and all of the other tables to help bring consistency amongst the tables. So
518 we included the units in the table description and then removed any titles from the table, the
519 first row of the table. We also added a clarification to line 887 and 888. For instances where the
520 one and three-year exceedance frequency for the dissolved oxygen criteria doesn't apply. So
521 that's for the minima that are included in Table 3. We also added where what's appropriate to
522 remove the “none” from Table 3 to be similar to the other tables with water quality criteria and
523 then added a phrase that blank cells indicate there's no value for the criteria element. And
524 similar, you know updates to the table title. For consistency, we also added some clarifications
525 to Table 4 that the T and the formulas represent temperature in degrees Celsius and then the
526 pH represents pH in standard units. Similar updates to Table 5--some clarifications about the
527 units and then rephrasing of Footnote B. Similar changes to Table 6, just some additional
528 changes to the titles and units to help be consistent throughout. Similar changes to Table 7.
529 And then we did some unit updating to ensure that the units used in the footnotes of 7 are
530 consistent with the same units as the criteria that are in the table themselves. We also removed

531 the proposed site-specific selenium criteria for lower Murphy Creek. This was a concern raised
532 in the comments about the protectiveness of the proposed criteria since there was some
533 concerns about anthropogenic activities in the watershed that potentially were contributing to
534 the selenium concentration that were observed. And then also some concern that there wasn't
535 a demonstration that the criteria would be protective of a chronic life uses in Lower Murphy
536 Creek. So we did consult with the Powder River Conservation District, who had originally
537 proposed this criteria, about you know what they were interested in doing with the proposed
538 criteria. And they were, you know, amenable to removing the criteria for now and then
539 determining a path forward with that segment of the creek. Do any members of the Board have
540 any questions about the proposed revisions to Section 16?

541 **Water and Waste Advisory Board Lorie Cahn**

542 Lindsay, I do again, if you can go back to line 817 through 824 and it's this issue again of "and"
543 or "or" and I hate to keep harping on it, but I know we all mean the same thing and we all know
544 what it's supposed to be, but it's how you say it, that's important. So in this case, says
545 "Department shall implement the water quality criteria in this Section to ensure that surface
546 waters of the State designated for aquatic life are protected from pollution. And then narrative.
547 Let's see. Okay. Narrative criteria. Pollution shall not impair aquatic life uses result in adverse
548 acute, and here's where I question with "and" "or" chronic effects to aquatic communities. In
549 that case we're saying pollution shall not result in an acute effect and a chronic effect, but I
550 think we mean "or" there, because if you have just an adverse acute effect or just an adverse
551 chronic effect, either one of those, we're gonna not--we don't want pollution to do that. So I'm
552 still having in this particular case, I think "or" is the appropriate meaning.

553 **Water Quality Division Lindsay Patterson**

554 Yes, I can see that. Yeah. Again, with these, I think we'll take a very hard look at all the "and"
555 "ors" in the criteria and determine you know, what is the most appropriate so that we can have
556 a consistent interpretation.

557 **Water and Waste Advisory Board Lorie Cahn**

558 And then the other thing that I had was it's on line 865 and 866. And this is based on a
559 comment that EPA made. So, in all surface waters of state designated for aquatic life, pollution
560 shall not result in pH levels that are less than 6.5 or more than 9.0 standard units more than
561 once every 3 years. And the EPA was asking questions about why give exceptions, that that's
562 being less stringent than all other uses. And I just didn't see in the response to comments why
563 you disagreed with EPA on that.

564 **Water Quality Division Lindsay Patterson**

565 Yeah, EPA 's comment was related to the fact that we have this one in three-year exceedance
566 frequency for pH for aquatic life. And then we also have a pH criteria in Section 15 that's the
567 same numeric range, but it doesn't have the same exceedance frequency. And so this is, you

568 know what we have in the current version of the rule and where we have an exceedance
569 frequency for the aquatic life criteria, but we don't for the other pH criteria that apply to all
570 waters and all uses or all waters. And so, we wanted to retain the one in three-year exceedance
571 frequency for the aquatic life pH criteria. That's how we've been implementing it. We think that
572 that's useful because it's more consistent with the other aquatic life criteria that we have in the
573 exceedance frequencies. And then we decided to just leave, you know the other pH criteria
574 alone.

575 **Water and Waste Advisory Board Lorie Cahn**

576 Okay. I have no further comments on Section 16. Is anyone on the Board?

577 **Water Quality Division Lindsay Patterson**

578 OK, moving on to Section 17. Water quality criteria for protection of drinking water use. Again,
579 some changes to the verbiage to remove the double negatives. We have some "ands" and "ors"
580 in there that were revised that we will take a look at. And then we re-ordered some things. So
581 the line 940, 941-- is just it's just been moved up to help improve readability of that Section. Do
582 any members of the Board have questions about Section 17? So in Section 18, 19, 20 and 21,
583 there were just similar changes made to remove double negatives. We also updated in Section
584 17, I didn't mention the formatting of the tables.

585 **Water Quality Division Lindsay Patterson**

586 We updated this these units here--the superscripts or subscripts. Do any members of the Board
587 have comments about Section 18 through 21? In Section 22, water quality criteria for
588 protection of recreation uses, we did similar changes to you know, to the criteria. We removed
589 that subsection (a) to be more similar to the other sections where we have opening text and
590 then we start with the lettering of the subsections. And we also created a separate E coli
591 subsection similar to what we've done in the aquatic life criteria. For clarity, we did end up re-
592 adding our single sample maxima concentrations, based on comments that were concerned
593 with us removing these concentrations. We do only use these concentrations for deriving
594 maximum effluent concentrations for permitted point source discharges. And so, we had
595 contemplated adopting EPAs revised recommendations from their 2012 criteria, which include
596 statistical value of 410 organisms per 100 mL. However, we decided that it would be more
597 appropriate to wait until a future triennial review when we would have additional time to
598 review the potential implications and have stakeholders weigh in on that. So, we did determine
599 or propose to just add these single-sample maximum back in from what we have currently. Do
600 any members of the Board have questions about the proposed changes to Section 22? Section
601 23 and 24. They were updated similar...

602 **Water and Waste Advisory Board Lorie Cahn**

603 I guess I just sort of need to understand this was a triennial review and there wasn't time to do
604 this now. There's the time to do it next time and just sort of need an explanation of that.

605 **Water Quality Division Lindsay Patterson**

606 Of yeah, I mean the triennial review process is to identify, right, whether you need to make
607 proposed, you know whether you need to make revisions and allows the right department to
608 prioritize which revisions we're gonna move forward with. And so, in a number of instances, we
609 could have made additional changes to our water quality criteria. However, we determined that
610 there's so many changes with the rule package as it is now that it would be more appropriate to
611 take additional time during a subsequent triennial review to review our water quality criteria,
612 identify priorities, and then move forward with proposed revisions to the criteria.

613 **Water Quality Division Administrator Jennifer Zygmunt**

614 Madam Chair, I'll add that you know, we have had some critical thinking about the single
615 sample maximum values as part of this triennial review. It is something that we have looked at.
616 Based on our review and the process so far, we had originally proposed to remove those as we
617 felt that the geometric mean of 126 was the appropriate standard for purposes of protecting
618 water quality for recreation use. There is some disagreement with EPA. They have commented
619 on this several times. We've had some good conversations with them and we've arrived at the
620 best process for now is to keep the single sample maxima that we're currently identified in the
621 2018 version of Chapter 1. Like Lindsay said, we're not opposed to considering the 410, but we
622 need more time to do that to make sure that all stakeholders can weigh in on that. So again, I
623 don't wanna make it sound like we didn't evaluate this part of the rule. We have, very
624 thoroughly, and there's been a lot of back and forth with EPA. So, the solution that we have for
625 now is to keep what we currently have. During the next triennial review, we would then take a
626 look at the numbers. Do we stick with what we have now? We move to the 410? That's a
627 conversation that we need to have with interested parties, including the regulated community.
628 As Lindsay indicated these numbers are solely used for effluent limit determinations. 126
629 geometric mean is what applies to all primary contact recreation uses for its protection for
630 recreation use. So that helps clarify. Those are my thoughts. Again, this is an issue we have
631 taken a hard look at this triennial review. It just needs more review during the next one, before
632 we change numbers.

633 **Water and Waste Advisory Board Lorie Cahn**

634 Thank you. And I so I'm taking this my understanding of what you're saying is that at the next
635 triennial review, this will be a priority to look at this. This is that correct or am I not
636 understanding that correctly?

637 **Water Quality Division Administrator Jennifer Zygmunt**

638 It's certainly on the list. We have quite a workload ahead of us for the next triennial review and
639 we'll speak more about that, I think, as Lindsay goes through further sections. But in this issue,
640 it's certainly one that I think we need to take another look at given the comments so far both
641 from EPA and other interested parties. So I just can't commit to what that triennial review

642 process looks like. That's going to be something that Eric, David and I will have to sit down and
643 look at everything on the "To Do" List and prioritize what we have. But I do anticipate that this
644 will remain a priority.

645 **Water and Waste Advisory Board Lorie Cahn**

646 But just to answer my question, it is a possibility that it will fall off the priority list and not make
647 it on the priority list for the next triennial review, just depending on what you have on your
648 plate.

649 **Water Quality Division Administrator Jennifer Zygmunt**

650 I think there's that potential, Lorie, and I'm just saying that given we don't know what's going to
651 happen at federal levels, I would say with what we envision tackling in the next triennial review,
652 this would be on the priority list. We just sometimes never know what's gonna come down the
653 pike on the federal level. There could be a new emerging hot topic issue that takes precedence.
654 So that's why I'm just not willing to give an absolute definitive answer. But with what workload
655 we envision right now, yes, this would stay on the priority list.

656 **Water and Waste Advisory Board Lorie Cahn**

657 Thank you for the clarification because that's what I thought could possibly happen either way.
658 So, I just wanted to make it clear that that's what this response means. So thank you.

659 **01:06:44 Water Quality Division Lindsay Patterson**

660 Yeah. Any other questions or comments from the Board about Section 22? Okay, Section 23
661 and 24, similar updates were made to those to remove the double negatives. Section 25, we
662 just made some minor grammatical changes there to line 1107, updated the human
663 consumption of effluent dependent fish use. Some just minor grammatical changes to line
664 1126. An additional change to that use in line 1141 and 1142. Any questions or comments
665 about Section 25? Section 26, we just made some minor changes to the term effluent
666 limitations, again, and then we also reworded the public notice provisions. If I scroll down here
667 in lines 1219 and 1220. That's again just to improve readability. Do members of the Board have
668 any questions about Section 26?

669 **Water and Waste Advisory Board Lorie Cahn**

670 Lindsay, just a comment on comment responses. And the comment response, the department
671 didn't say whether they were gonna go with the thirty-day or the forty-five-day period, and this
672 was a comment from Wyoming Outdoor Council. So, it's obvious that you're going with the
673 thirty-day rather than the forty-five, but I just again, it's the kind of thing where I think it would
674 be helpful on comment responses just to state that you went with a thirty-day and why? But
675 you know for future comments. Or responses to comments. Thank you.

676 **Water Quality Division Lindsay Patterson**

677 Yes, and my interpretation of the comment was a clarification as to whether or not we needed
678 to do an entire rulemaking as part of the re-evaluation and whether we were, you know,
679 removing the need to have an additional public comment period, not necessarily on this
680 specific provision, which is a comment period on the reevaluation of the discharger-specific
681 variance. So it wasn't that I was ignoring that piece of the comment. It was my understanding it
682 was that they were asking for kind of clarification, because it appeared as though we were
683 removing, you know another opportunity to comment on the discharger-specific variance itself.
684 So, it probably is easier if we had the full text of, you know, what's in the current rules to
685 compare. But there was, if you recall in the previous version of the current version of Chapter 1,
686 there was the process for the Administrator to adopt a discharger-specific variance. And so we
687 had a 45-day public comment period associated with that. But in this revision of the chapter,
688 we removed all of the Administrator 's authority to revise the rules outside of the process. So
689 that that was the comment was just to clarify, no, we're not losing a comment period because
690 all of the discharge or specific variances now will be adopted through the rulemaking process
691 and then this reevaluation process will also occur. There'll be a 30-day public comment period
692 associated with the reevaluation.

693 **Water and Waste Advisory Board Lorie Cahn**

694 Thank you for the clarification, Lindsay. Appreciate it.

695 **Water Quality Division Lindsay Patterson**

696 Any additional questions or comments about Section 26? In Section 27, there was a minor
697 change made to line 1243. "Naturally occurring" was changed to "natural wetlands". That's the
698 defined term in the chapter. Any questions or comments about that revision? And then in
699 Section 28, Incorporation by Reference, we updated the dates of the references based on
700 advice from the Attorney General 's Office and EPA. And then we added a new incorporation by
701 reference for the Wyoming Game and Fish Stream and Lake Database that's currently referred
702 to in our Wyoming Surface Water Designations and hadn't been brought into the references.
703 We also updated the, let's see, the incorporation by reference date of the Colorado River Basin
704 Salinity Standards to the date that those salinity standards were adopted. Trying to find where
705 that one is. Oh, I guess here. October 24 of 2023, in line 1269 and 1270. So that was a
706 document that actually has a specific date associated with them. The rest of the references are
707 essentially, you know, kind of the most recent version. So, we'll continue to update these as we
708 go through the rule revision process, so we're capturing the most updated version of the
709 regulations at the time. Do any members of the Board have any questions or comments about
710 Section 28? Okay. So that concludes the changes that we've made to Chapter 1. We also made
711 some changes, minor changes to Chapter 2 based on the comments that we received during
712 this most recent comment period, these are very minor. There was a change to line 162. If you
713 see here 162 "insure" was changed to "ensure". And then in line 1260 the word "active" was
714 removed. So now, permittees who receive a permit to discharge pesticides, they have to report
715 all ingredients to the Department rather than how it was previously worded, just the active

716 ingredients. We can scroll to those Sections if the Board would like to see those changes, but
717 again, they're relatively minor.

718 **Water and Waste Advisory Board Lorie Cahn**

719 I personally don't feel like we need to see those changes.

720 **Water and Waste Advisory Board Luke Esch**

721 I would agree.

722 **Water Quality Division Administrator Jennifer Zygmunt**

723 Okay, so Madam Chair that concludes our walkthrough of the proposed revisions to the rule.
724 Eric, did you have anything else that you wanted to add or are you ready to go to any further
725 questions?

726 **Water Quality Division Eric Hargett**

727 I have nothing further to add.

728 **Water Quality Division Administrator Jennifer Zygmunt**

729 Thank you. Madam Chair, at this point, we would take any further questions from the Board
730 about the proposed revisions or the responses to comments.

731 **Water and Waste Advisory Board Lorie Cahn**

732 I would like to take a ten minute break and can reconvene at, it's ten nineteen, if we could just
733 reconvene at ten thirty. I would appreciate that. So, we're just going on a break. Thanks.

734 **Water Quality Division Gina Thompson**

735 Madam Chair, I'd like to note that Kate Gamble from the AGs Office has raised her hand.

736 **Water and Waste Advisory Board Lorie Cahn**

737 Go ahead, Kate.

738 **Attorney Generals Office Kate Gamble**

739 Hey everybody. I don't want to take the Board too much of the Board 's time on this topic, but I
740 did just want to note before we move on too much. I have been looking into the use of
741 "and/or" and based on all of the different dictionary definitions I've seen and the use of it in
742 bills and whatnot. It looks like "or" is the preferred word when it comes to linking possibilities.
743 It seems that "and" is more so used when two things are happening simultaneously. So if the
744 color and the odor was changing, I think that would maybe be the preferred word. However, in
745 this situation where the odor could change but the color could not change and vice versa, or

746 both could happen at the same time, based on what I'm seeing it, "or" maybe the preferred
747 word, just for the Board 's consideration.

748 **Water and Waste Advisory Board Lorie Cahn**

749 I appreciate that and that that would be my assessment as well of the proper use of them. If
750 DEQ would go through and look at each instance, like they've said they're going to then look at
751 each instance and decide whether "and" is appropriate or "or" is appropriate and change them
752 as appropriate.

753 **Water Quality Division Administrator Jennifer Zygmunt**

754 And Madam Chair, we are committed to doing that.

755 **Water and Waste Advisory Board Lorie Cahn**

756 Thank you. Thank you, Kate. Lindsay, I do have a question about responses to comments on
757 general comments and that was I EPA wanted to see the written explanations of why DEQ is not
758 adopting any of EPAs nationally recommended CWA Section 304a criteria that have come
759 available since its last triennial review, and I noted in your response to comments that you'll
760 submit the written required written explanation to EPA with the final rule package. Will you
761 also send that to the Board as well?

762 **Water Quality Division Lindsay Patterson**

763 Yes, we can send that to the Board.

764 **Water and Waste Advisory Board Lorie Cahn**

765 Thank you. I guess at this point we could have a general Board discussion if anybody has more
766 questions based on the presentation. And then I turn it over to public comments. And after
767 public comments and the Board would, after considering public comments, the Board will have
768 another comment time. So does anybody on the Board have anything to ask of Lindsay or DEQ
769 or Jennifer before we move on to public comments?

770 **Water and Waste Advisory Board Luke Esch**

771 I do not have anything additional to ask at this time.

772 **Water and Waste Advisory Board Jim Cochran**

773 This is Jim Cochran. I have no comments at this time.

774 **Water and Waste Advisory Board Lorie Cahn**

775 OK. Then if that's OK with DEQ, I'd like to open it up now to public comments and please state
776 your name and who you represent and proceed. Thank you.

777 **Water Quality Division Gina Thompson**

778 So, Madam Chair Joseph Meyer has raised a hand.

779 **Water and Waste Advisory Board Lorie Cahn**

780 Go ahead, Joseph.

781 **Joe Meyer**

782 Thank you. I'm Joe Meyer. A retired professor from the University of Wyoming. And an expert
783 in water pollution and applied limnology. And I live in Pinedale. And I'd like to thank DEQ for the
784 large amount of time and thought that's obvious that they invested in revising the water quality
785 rules and regulations. But despite this considerable effort on style formatting and
786 rearrangement, the DEQ has missed an opportunity to also update the state's water quality
787 criteria, which are a major component of the water quality standards. So I support USEPAs
788 comment on question of why DEQ has not considered adopting updated criteria that USEPA has
789 developed, putting a lot of time and effort into it. And these are based on new data sets as well
790 as new criteria derivation methods. And just as an example, we've been talking about the
791 Section 22 single sample maximum values for *E. coli* concentrations and the EPA changed to the
792 410 organisms per 100 mL. Or the single sample, one single sample maximum value instead of
793 four. They made that change back in 2012. So we're now twelve years out from that. And this
794 current triennial review is actually heading into its seventh year, and if that's the trend that
795 happens across the country, it appears we're going to have a long time until the next triennial
796 review. So, I think there is a big, missed opportunity here. And there are several already
797 available and will be available by the next triennial review. There are several water quality
798 criteria revisions at EPA that are relatively major, but I think the DEQ should be definitely
799 considering. And if we step back and take a wider view, this all begs the question for this
800 current triennial review. You know, what is it doing to improve protection of humans and
801 aquatic life against pollutants? If it retains the approaches, science and data sets of many
802 decades ago. And that's the end of my comments.

803 **Water and Waste Advisory Board Lorie Cahn**

804 Thank you, Joseph, for your comment. Does DEQ--would you care to please respond?

805 **Water Quality Division Lindsay Patterson**

806 Yes, we have considered a lot of the criteria as part of the triennial review. We had identified
807 no human health criteria, for example, as part of this triennial review. We identified those
808 single sample maximum as something we would want to address. Through the stakeholder
809 process, we did get feedback from stakeholders that given the extent of the changes that we
810 were contemplating that trying to minimize the potential impacts of the changes on the ground
811 would help to facilitate, you know, adoption of the changes. If you remember as part of this
812 rule revision, you know we're essentially dissolving our entire classification system. That's a
813 pretty significant change, but it will allow us in the future to provide more flexibility to apply
814 uses and then adopt potentially sub-categories of water quality criteria. So, we do anticipate

815 going through EPAs recommended criteria in addition to what we've already done since we
816 started the process of going through some of those criteria to evaluate them for potential
817 adoption. We will be prioritizing those and then proposing potential revisions after we've had a
818 chance to work collaboratively with stakeholders to identify, you know, what proposed
819 revisions, we want to make during the next turning review.

820 **Water and Waste Advisory Board Lorie Cahn**

821 Lindsay, is there any risk that EPA will not approve, or go along with this triennial review?

822 **Water Quality Division Lindsay Patterson**

823 EPA has authority to promulgate water quality standards, in the event that you know a state,
824 they determine that states water quality standards aren't consistent with the Clean Water Act.
825 The indication that we've gotten from EPA is that they're supportive of the proposed revisions.
826 The nationally recommended criteria are just that, they're recommendations. There isn't a
827 requirement that states adopt those. States do need to review them as part of the triennial
828 reviews and then determine right through this process whether they're going to adopt them,
829 where they're potentially going to modify them through the adoption process. So in some
830 cases, states take EPAs recommended criteria, in other instances they choose to go a different
831 direction. And so, the actual process of reviewing the recommendations is extensive. You know,
832 we need to understand, you know, how EPA derived the criteria, what the applicability of those
833 criteria are to our surface waters, are the potential modifications that we want to make based
834 on the specific organisms that we have, or you know the consumption rates that we have in
835 Wyoming, you know, for fish or for drinking water. So there is, you know, quite an extensive
836 process that will go into review of the criteria before we propose adoption. So, but again, to
837 answer your question, I don't think that we are vulnerable to EPA not accepting our water
838 quality standards. You know they've been very involved in this triennial review and have been
839 supportive, you know, of the kind of structural changes that we're making. We've had lots and
840 lots of conversations with them, you know, over the last decade, you know about this, moving
841 away from our current bundled classification system and they're supportive of that. So I think
842 we're in a very good place with EPA with the proposed revisions and understand from them in
843 our communications that they'll be looking to work with us on potential revisions to criteria
844 during a subsequent training review.

845 **Water Quality Division Administrator Jennifer Zygmunt**

846 And I'll add to that, that Lindsay gave a great explanation between that explanation and what
847 we have in a written response to comments. We certainly appreciate the feedback, understand
848 the concerns. But adopting the nationally recommended criteria is a big lift. Like Lindsay said,
849 we have to understand factors specific to Wyoming to make sure that we're being protective
850 enough, but also understand the implication of this decision and make sure that all parties have
851 the opportunity to weigh in on those changes. Those are significant decisions. Again, the
852 changes that we are proposing were scoped with extensive outreach with very wide group of

853 stakeholders, and this is what it was determined on that we needed to focus on now. But I do
854 feel that the changes that we are proposing are impactful for protecting water quality in
855 Wyoming and it gives us a solid framework from which we can then say we are, looking at Eric
856 here, and that his next big workload is then tackling those criteria and proposing changes to
857 those criteria. We do understand the need for timeliness do understand the need, the concerns
858 with the triennial review being a three-year period, I would say that's a very lofty goal to
859 undertake rule revisions every three years. But we are committed to staying on track with that
860 schedule. But we do feel that we need to get these good revisions that we have proposed
861 moved forward so that we can then have the framework that we need to tackle the next step,
862 which is further evaluating criteria and deciding which we are going to take and which we're
863 not. This is not uncommon. I would say many or most states don't automatically take the
864 nationally recommended criteria. Again, it is a very significant decision for a state and does
865 require quite a bit of scientific analysis to look at state-specific factors. And again understand
866 implications to all parties within the state.

867 **Water and Waste Advisory Board Lorie Cahn**

868 Thank you. Are there any more members of the public that would like to speak, provide
869 comment?

870 **Water Quality Division Gina Thompson**

871 Jill Morrison has raised her hand.

872 **Water and Waste Advisory Board Lorie Cahn**

873 Jill, go ahead.

874 **Jill Morrison**

875 Thank you. I just wanted to first of all thank the DEQ. I was on the stakeholder taskforce. There
876 was a lot of effort put in and time put into these rule revisions. I'm retired from Powder River
877 Basin Resource Council at this point, retired in in the whole lengthy process, but remained
878 involved and still remain involved as a volunteer on issues of water quality. And I agree with the
879 experts we've hired, Joe Meyer and Harold Bergman, in terms of the importance of really
880 putting forth science. And we have seen, I know I have seen over the last thirty plus years
881 working on water quality issues, that the burden was often put on the public to expose the
882 problems of pollutants in our streams and to push DEQ to protect those streams. Often a lot of
883 exceedances, and to get DEQ to enforce the water quality rules and regs, and I think I agree
884 with Joe that we are missing an opportunity here, to raise the bar in Wyoming. And it's not just
885 on the *E. coli*, but there was the pH, the ammonia criteria, the aluminum toxicity. There are
886 other standards that DEQ could do a better job of. There's some extensive pollution cleanup
887 that needs to happen in Alkali and Bad Water Creek flowing into Boysen Reservoir that we've
888 been concerned about that is flowing into Class I water. Probably one of the best fisheries
889 people have said in the potentially world, definitely, high-class US in the Wind River flowing into

890 Thermopolis. Used as public drinking water system, but I think the DEQ can do a better job. I
891 know there are pressures from industry that seem to outweigh the public interest, but I think
892 it's time to raise the public interest concerns here and follow the science. Thank you.

893 **Water and Waste Advisory Board Lorie Cahn**

894 Thank you, Jill. DEQ I don't know if you want to respond.

895 **Water Quality Division Administrator Jennifer Zygmunt**

896 Madam Chair, I'd reiterate the response that we gave to the previous commenter.

897 **Water and Waste Advisory Board Lorie Cahn**

898 Are there other members of the public that would like to make comment?

899 **Water Quality Division Gina Thompson**

900 Madam Chair, at this time I don't see any other raised hands.

901 **Water and Waste Advisory Board Lorie Cahn**

902 Okay. Then I think we'll move on to Board discussion. Does any members of the Board have
903 some comments, questions?

904 **Water and Waste Advisory Board Luke Esch**

905 You know, Lorie, this is Luke. I really don't have any comments on the rules. I think DEQ has
906 done a good job in working with the public and working with the regulated community on this
907 rulemaking. And, you know, I think that at this point, I think it's ready to for the next level of
908 consideration at the EQC, so, I'll let, you know, Jim, say something if he wants to, but otherwise
909 I'll be making a motion to approve these rules and move them on towards the EQC.

910 **Water and Waste Advisory Board Jim Cochran**

911 This is Jim Cochran. I really don't have any further comments at this time. So I'll give it back to
912 Luke.

913 **Water and Waste Advisory Board Lorie Cahn**

914 I would just like to kind of reiterate a little bit about what our role is based on what the
915 legislature did quite a few years ago. We no longer approve, proposed regulations or rules to go
916 on to EQC, we just make a recommendation whether they should go on to EQC or not and then
917 EQC is the decision body for whether it goes on to the Governor or not for signature. So, I just
918 want to, in the motion, I think it's important that we say whether we are recommending. DEQ
919 go forward to EQC. Thank you.

920 **Water and Waste Advisory Board Luke Esch**

921 Umm. Well, I mean, is there anything else you'd like to add, Lorie, before the motion?

922 **Water and Waste Advisory Board Lorie Cahn**

923 Well, I mean, I do have to say that I share Jill and Joe 's concern. But I also, you know,
924 acknowledge the fact that this triennial review is always a really huge undertaking. But it would
925 be, I guess I would like to see Wyoming be a leader in this, you know. But I, you know, I
926 recognize that really in the end, EPA has the ultimate say in this in the Governor. I'll leave it at
927 that, I guess.

928 **Water Quality Division Administrator Jennifer Zygmunt**

929 Okay.

930 **Water and Waste Advisory Board Luke Esch**

931 Well, if if the comment from the Board is is done, I would recommend that the rules put forth
932 by the DEQ be moved forward to the Environmental Quality Council.

933 **Water and Waste Advisory Board Jim Cochran**

934 Jim Cochran, second.

935 **Water and Waste Advisory Board Lorie Cahn**

936 Yeah. And I would like to propose a change to that, an amendment to say, as with changes that
937 have come up at this meeting, at the discretion of DEQ to make the changes that have come up
938 at this meeting, that would be an amendment to the motion.

939 **Water and Waste Advisory Board Luke Esch**

940 With the changes that have been brought up at this meeting. From what I've heard, the DEQ
941 said they would kind of consider all those things that we discussed today moving forward. So, I
942 mean I guess, yeah, I would consider that a friendly amendment.

943 **Water and Waste Advisory Board Jim Cochran**

944 Jim Cochran, I would agree.

945 **Water and Waste Advisory Board Lorie Cahn**

946 Anymore discussion from the Board? Yeah. Okay, we have an amendment on the floor ready
947 for a vote. All in favor say aye. All right. Aye, hearing none opposed, motion carries.

948 **Water and Waste Advisory Board Luke Esch**

949 Just I want to say thanks to Lindsay for all her hard work on this and best of luck in the in the
950 new position.

951 **Water Quality Division Lindsay Patterson**

952 Thanks. You'll probably be hearing more from me about emerging contaminants.

953 **Water Quality Division Administrator Jennifer Zygmunt**

954 On that note, in all seriousness, I know the Board has had interest in PFAS. Again, Lindsay will
955 be dealing with many emerging contaminants but a focus on PFAS right now, given that being a
956 priority issue. So, certainly more to come and very grateful to have her taking on that new
957 challenge and standing up a new program for us. I think she'll be a great resource to the Board
958 to help understand PFAS issues both on water quality and Solid and Hazardous Waste as we
959 move forward. So just know that she's there as a resource and a lot more to come with
960 emerging containments. Madam Chair, members of the Board, I just again want to thank you
961 for the discussion today and for the motion. I will take that recommendation and discuss the
962 rules, the proposed revisions with Director Parfitt and make a final decision about moving on to
963 formal rulemaking with the EQC. So thank you very much for your time. As you know that this
964 rule prompted significant briefings and discussion with the Board and appreciate your time and
965 expertise and input throughout the process.

966 **Water and Waste Advisory Board Lorie Cahn**

967 And I also want to thank Lindsay for her work on this over the years. And we've worked
968 together a lot over the years and look forward to working with you in the future on emerging
969 contaminants, a very important issue, one that the Board has been concerned about for a long
970 time. So, appreciate it. The next thing on the agenda is the scheduling and location of the next
971 meeting.

972 **Water and Waste Advisory Board Lorie Cahn**

973 I don't know if we need to do this on record, or if we can adjourn the meeting and then...

974 **Water and Waste Advisory Board Luke Esch**

975 Lorie I, I'd suggest we kind of get past the holidays and see how things look in the first quarter. I
976 don't know if Jennifer knows what the next package might be coming from, or if it's going to be
977 coming from Solid and Hazardous Waste. Can you comment, Jennifer about what we might be
978 seeing in the in the new Year?

979 **Water Quality Division Administrator Jennifer Zygmunt**

980 Yeah, absolutely. And thank you for the question. We do have for water quality, two additional
981 rules packages that we are currently in scoping for. We have put out some minor revisions to
982 Chapter 28, Commercial Oilfield Waste Disposal Facilities that just finished scoping. So
983 potentially that rule may be ready for a presentation to the Board in the first quarter. We are
984 also currently going out to scoping for revisions to Chapter 4, our spills reporting rule. That rule
985 has not been revised since 1987, so no major changes, it's just due for some upgrades. Those
986 are the two rules packages that we are working on for water quality. I do believe one of those
987 we could have teed up for the Board first quarter. I cannot speak for Suzanne and SHWD as to

988 whether or not they have any rules or other matters to bring before the Board. I will certainly
989 touch base with her after this meeting. And then we can come up with some further definition
990 for the first quarter meeting. I do think we can have a little for your consideration first quarter. I
991 will also mention, though, that we are heading into Legislature. It is a long session, so if we have
992 a first quarter meeting, my request is that we look toward the end of the quarter when
993 legislature still may be going on. And you know, Gina just passed me some potential dates here.
994 We'll be looking at March 17 through the 21st or March 24th through the 28th.

995 **Water and Waste Advisory Board Luke Esch**

996 Yeah. March 17 through the 21st is spring break up here, so I'd prefer it not be that week.

997 **Water Quality Division Administrator Jennifer Zygmunt**

998 OK, so, Madam Chair, what I propose is if you can give water quality a little bit more time to
999 finalize a path forward for Chapter 28, I can talk with Suzanne about any SHWD topics. And
1000 then Gina can send out a notice to the Board members with potential dates that March 24
1001 through 28th range to see if we can identify a date during that week.

1002 **Water and Waste Advisory Board Lorie Cahn**

1003 That works for me.

1004 **Water and Waste Advisory Board Luke Esch**

1005 Yeah, it might give Brian a chance to get back from overseas so he can weigh in on that too.

1006 **Water and Waste Advisory Board Lorie Cahn**

1007 And hopefully by then we may have a new Board member.

1008 **Water and Waste Advisory Board Luke Esch**

1009 Fingers crossed.

1010 **Water and Waste Advisory Board Lorie Cahn**

1011 Well, if there's nothing else, then I'll adjourn the meeting at basically eleven o'clock. Thanks
1012 everyone for your participation. Thank you everyone.

1013 (Meeting proceedings recessed)

1014

1015 Transcribed by Gina Thompson, Water Quality Division