

**AQAB Meeting Minutes
Albany County Courthouse
County Commissioners Meeting Room
Laramie, Wyoming
March 30, 2012**

Board Members Present: **Jefferson “Jeff” Snider
Klaus Hanson
Joel “J.D.” Wasserburger
Timothy “Tim” Brown**

Others Present: **Steve Dietrich, Administrator, Air Quality Division
Nancy Vehr, Senior Assistant Attorney General
Tina Anderson, Air Quality Division
Darla Potter, Air Quality Division
Carissa Krey, Air Quality Division
Gina Johnson, Air Quality Division
Kevin Chartier, IML
Angela Aalbers, FMC Corporation
David Hornbeck, McMurry Ready Mix Co.
Bob Spears, Wyoming Machinery Co.
Ted Rasmussen, Wyoming Machinery Co.
Justin Caudill, Wyoming Department of Agriculture
Derek Kamp, Caterpillar
Eric Fierson, Caterpillar
Timothy Carroll, Wyoming Department of Transportation
Dwight Small, El Paso**

I. CALL TO ORDER

Steve Dietrich: First I just want to welcome everybody that’s here. Thanks for coming. We’ve got an agenda—everybody should have all that information from the table. And we’ve got three of five members of the Air Quality Advisory Board here today. Our goal is to try to get out before 3:00 if we can because Mr. Klaus Hanson has to go to a dedication. So we’ll try to do that. So the first thing on the agenda is to approve the meeting minutes.

A. Approval of Meeting Minutes for August 16, 2011 Meeting

Klaus Hanson: So moved.

Tim Brown: Second

Nancy Vehr: You have to approve once you call for the vote.

Steve Dietrich: Okay, so approved?

Klaus Hanson: Aye.

J.D. Wasserburger: So all in favor say aye.

Klaus Hanson, J.D. Wasserburger, Tim Brown: Aye

Steve Dietrich: So that....

J.D. Wasserburger: Should we elect a chairman right now? Or do you want to run the meeting?

B. Discussion on Election of Officers

Steve Dietrich: That's a good point. Which is the next thing on the agenda anyway. Which could be a discussion of the election of officers. Mr. Snider, this is supposedly his last Air Quality Advisory Board, right?

Klaus Hanson: Yes.

Steve Dietrich: And he's also the chairman?

Klaus Hanson: Yes.

Steve Dietrich: So one of the things we need to talk about is how we want to proceed going forward. In other words, one of you gentleman probably need to step into that role. Then when Jeff...

Klaus Hanson: You've been here a while, right?

J.D. Wasserburger: No. I would nominate Tim.

Tim Brown: This is my second meeting. I would nominate Klaus.

Klaus Hanson: It's my second meeting.

Tim Brown: I'm not very familiar with parliamentary procedure.

Tina Anderson: There is training offered...

Tim Brown: And I believe Ralph...

Tina Anderson: He was going to give you a lifetime term.

(Jefferson Snider arrives—brief interruption)

Steve Dietrich: We were just starting to talk about the second item on the agenda, election of officers.

Jefferson Snider: I'm ready.

Steve Dietrich: So the discussion that we just started to have, because this is your last meeting.

Jefferson Snider: Yes.

Steve Dietrich: And the discussion is who needs to take your place in the future. But if you're the chair, can you be the chairman for the day?

Jefferson Snider: Absolutely. I mean now that I'm here.

Steve Dietrich: So we took care of that...

Jefferson Snider: Unless somebody wants to...

Steve Dietrich: But we do need to discuss, for next time, unless we just carry that over. But it might be difficult to do that.

Tim Brown: Ralph is the vice chairman, correct?

Klaus Hanson: Yes.

J.D. Wasserburger: I believe Ralph did discuss at the last meeting...

Tim Brown: He would be the vice chairman.

Steve Dietrich: So we're all still okay with that?

J.D. Wasserburger: He's not here...

Steve Dietrich: So we can make that happen.

Tina Anderson: And then you would need to get a new vice chair if you're going to move Ralph into the chair.

Klaus Hanson: Do we have to elect a vice chair too then?

Steve Dietrich: It would be beneficial to do that.

Klaus Hanson: Can I nominate you, Tim?

Tim Brown: Yes, you may.

Klaus Hanson: Okay.

Jefferson Snider: Now it's complicated. We have two motions on the floor.

J.D. Wasserburger: I did make a nomination, but I would strike that nomination for the record and nominate Ralph for the chairman and Tim for the vice chairman at this time.

Jefferson Snider: I'll second that.

Klaus Hanson: If you want to run the meeting, I'll second it I guess.

Jefferson Snider: Okay.

Steve Dietrich: Is that done?

Jefferson Snider: Do we need to discuss that more? All in favor?

Tim Brown, Klaus Hanson, J.D. Wasserburger, Jefferson Snider: Aye.

Jefferson Snider: Opposed? Same sign.

Steve Dietrich: Okay. So ordered.

Jefferson Snider: I don't have an agenda. Or maybe I do...I do have an agenda. Here it is.

Steve Dietrich: So we just took care of section 1, there.

II. OLD BUSINESS

A. Staff Activity

1. Hiring Status

Jefferson Snider: So, old business. Staff activity?

Steve Dietrich: I can cover that.

Jefferson Snider: Okay. Thank you.

Steve Dietrich: Staff activity, when it comes to the Air Division, I think last time I mentioned we had a few vacancies when we met in August. We are basically up to eleven vacancies now. A combination of a couple of things, but I think one of the common themes is that some of our more experienced people are being lured away by industry, consulting. And it's tough to compete with that right now. So we're doing the best we can. There are seven of those 11 vacancies that are actually in our permitting for New Source and Title V. So we're trying to tread water, keep the permits moving. Probably fill vacancies. We are in the midst of interviewing right now. As a matter of fact, we did fill one of the program manager positions yesterday. Chad Schlichtemeier left and so taking his place is Cole Anderson. So that still leaves us with eleven vacancies, because he was already an Air Quality employee. So we're moving as fast as we can on it. The other thing we're trying to do is to try to find more efficient ways to do permitting. And also anticipate some new things that are coming down the pipe, like greenhouse gases, that we'll talk some later on today, as well as the nonattainment rules that are upon us and how that may affect permitting. How to anticipate that kind of workload coming at us. The rest of the vacancies tend to be some in the districts and some in the Air Quality Resource Management group. And so right now there's six of the eleven, if I'm not mistaken, have been advertised. So we're moving forward with those as fast as we can. Try not to impede the service to the public and to industry as best as we can. I guess that's all I have unless there's something else we need to add.

Jefferson Snider: Are most of these in engineering?

Steve Dietrich: Some of them are an engineering classification while others are natural resource. It really does help in the permitting world to have at least a science background if not a permitting background. And depending on how they're classified, sometimes makes it a little more difficult to fill, because those requirements are required to even be considered for the position. So we're hopeful. We're moving as fast as we can. We have seen a lot of interest. One good thing I guess about the economy being slow elsewhere is there's a lot of good talent out there to look at. And they're looking at places like Wyoming, if you can believe that. And so we're trying to take advantage of that any way we can.

Klaus Hanson: The total number of employees in the Division is 200?

Steve Dietrich: In DEQ it's right around between 260 and 270. In the Air Division it's right around 74 I believe.

Klaus Hanson: I just wanted to get an idea of the percentage of positions...

Steve Dietrich: We're better than a ten percent vacancy rate right now.

Klaus Hanson: That's pretty high.

Steve Dietrich: Yes. That's all I have for the update.

Jefferson Snider: Okay. So that covers hiring status too? What you just said?

Steve Dietrich: Yes.

Jefferson Snider: So enforcement activities?

B. Enforcement Activities Report

Nancy Vehr: So this is Nancy Vehr from the Wyoming Attorney General's office. And I can either speak from here or from the podium, whatever you guys want...

Jefferson Snider: You might be more comfortable at the podium, if you've got things you're reading from.

Nancy Vehr: On the enforcement update, typically I cover our enforcement cases, but also go into some of the other litigation that's not enforcement related for the Division. And if you have any questions as I go along, feel free to interrupt me. In our last meeting in August, we had fifty open enforcement cases. And that's plus or minus a few, because some of them we have under consent decrees and it might cover more than a couple. Some of the consent decrees we have, the Division didn't initiate the enforcement, but we're joint partners with EPA on those cases. So some of them don't have separate enforcement. So the numbers don't always add up when you're doing the math. And the last time when I gave the report, it had been awhile since we'd had an Air Quality Advisory Board meeting so we covered 17 months. This report covers eight months. And since August we've opened 48 new cases; 21 of those have been since the first of the year. We closed 41 cases and 28 of those have been since the first of the year. So we right now have about 68 open enforcement cases. And they cover everything from asbestos violations, oil and gas reporting, emissions, refineries, dust, odor—there's a wide range. Some of them are permit violations.

Some of them are regulatory violations. Most of the cases are in settlement negotiations. There's a couple that are a little bit old. But most are in settlement negotiations, currently or the companies have agreed to settle and we're in the process of drafting those particular documents.

Klaus Hanson: Are those usually self-reported cases? Are we having inspectors out there who find these violations?

Nancy Vehr: Most are based on inspections—the Division has inspectors and engineers in the area. Some are company self-reported. So they're a mixture of both but the majority are inspections. We also have seven consent decrees on various entities are operating under. And typically with consent decrees, there's additional requirements that a company has to do, so they may take several years before they get all the requirements done. So those cases move a little bit slower. Last time we had the report, we had some permit appeal cases that had just recently been resolved. There's two that are still open. Those are for our best available retrofit technology permits that deal with regional haze. And the company and the State reached settlement on those and they are closed, pending EPA action on our regional haze SIP. So they're kind of out there and if EPA approves our regional haze SIP, those cases go away. If EPA disapproves on those particular facilities, they may reactivate it. So it's still on the EQC docket. Some other cases we track. EPA promulgates national rules. And then they roll down through the State and we come before you to promulgate rules. And the EPA does national rulemaking for ambient air quality standards. So they currently have national litigation challenges on sulfur dioxide, particulate matter, ozone. As EPA rolls these out they'll be challenged on both sides. And we just track those. And they're in various stages—usually take several years to work their way through. Greenhouse gases is another big one. And there's challenges to greenhouse gases at the national level. And they kind of break them down into two categories: the national rules, which include the endangerment finding that found that greenhouse gases endanger and cause and contribute to global warming, the tail pipe emissions rule, which was for light-duty vehicles that was promulgated in 2010, the decision that established the date for when greenhouse gases would be regulated. And then the tailoring rule, which took the Clean Air Act's thresholds of 100 and 250 tons per year of regulated pollutant and raised that threshold to the 75,000 and 100,000 tons per year. The case is finished briefing in December of 2011 and at the end of February of 2012, the DC Circuit Court of Appeals heard two days' worth of oral arguments. They're anticipating decisions sometime this summer on those particular cases. Also at the same time, EPA had, after it promulgated this Tailoring Rule, they promulgated a series of three rules, referred to as the Implementation Rules. And that was the greenhouse gas, state implementation plan call rule. So they called the state implementation plans for states that didn't have authority to administer greenhouse gas. Then they did a finding of failure for certain states that didn't submit plans in time. And then they implemented a federal implementation plan for those states so that EPA would come into those states and regulate greenhouse gas emissions. That occurred in Wyoming. And Wyoming challenged those rules. We first filed our challenge in February of 2011 in the 10th Circuit Court of Appeals. We got through filing a brief—the other side is going to be filing a brief and the 10th Circuit transferred our case to the DC Circuit Court of Appeals. Typically for air quality cases, when there's a national regulation like EPA promulgating those national standards, those are heard in the DC Circuit Court of Appeals. When it's a locally applicable regulation that's been promulgated or action taking is heard in the Circuit for our area which is the 10th Circuit. So we filed in the 10th Circuit, Texas had also challenged in the 5th Circuit and got transferred to DC, so the 10th Circuit

transferred us as well, combined all of the cases and we just filed our brief in February. EPA will be filing their brief in two weeks. And all the briefing will be completed in June. The DC Circuit doesn't hear arguments during the summer, so we'll probably be set for argument on our cases in the fall. So Steve will be touching base in terms of greenhouse gas, kind of regulation, and the development and the statute that got enacted this session. And I may jump in back at that point to discuss some stuff. But I just kind of wanted to give an overview of the national picture of the litigation.

Tim Brown: So Nancy we're looking at at least a year.

Nancy Vehr: We're looking at maybe by the summer for the four national cases. And if we get to have argument on the implementation rules that Wyoming challenged in the early fall it could be spring of next year. It's typically about six months that the DC Circuit takes on answering. And then once they give those decisions, the Court of Appeals, they can send stuff back to agencies and get appealed again. Parties can appeal to the US Supreme Court as well. So there still may be years of litigation left. The other area that involves Wyoming that has been under litigation is in regards to regional haze. Wyoming started working on regional haze, I think 2003 when I first started, the agency was getting its first state implementation plan submitted and had been working on it for quite some time before then. So this has been a long process. And there were various litigation that occurred on EPA's rulemaking as it came out afterwards that sent decisions back. Wyoming submitted its state implementation plan in January—years fly by too fast for me now, I lose track of 2011, seems like it's still right now. And EPA got sued for missing deadlines. They have a certain amount of time that they are required to take action. And so they didn't take action timely enough and were sued this summer. There was a consent decree that required them to take action on various state implementation plans for regional haze, Wyoming being one of those states. And so EPA is under a deadline that has now been extended until May to propose what action they will take on Wyoming's regional haze state implementation plan. And then in November, they're under a court order deadline to take final action. So that will be happening shortly and we'll see what they have to say. There's other regional haze actions that EPA has taken in other states. And some of those cases, Oklahoma being one, and a specific facility in I believe it's New Mexico or Arizona being another, that already EPA's action is final and it's already been appealed and challenged. So there will be lots of this continuing in the future. And I think that's all I have on enforcement and general litigation. But if you have any questions now or later, feel free.

Jefferson Snider: Thank you Nancy. So we're off to new business. Rulemaking. And Tina, is it your turn now? Thank you.

III. NEW BUSINESS

Tina Anderson: I have to eye critical staff in case I say the wrong thing. Tina Anderson with the Air Quality Division. And I know we really loaded you down with a pile of paper you have to get through again. When you signed up, you didn't know there would be quite this much reading. But we'll try to help you through it today. I've also got Carissa Krey, who's in the purple shirt over here, is going to help me with this. She's done a lot of work on preparing these, so we're going to share this so you don't have to listen to me drone on for hours either. And as always, I represent the Division here. We do this; it's definitely a group effort. There's a lot of expertise in our Division and I depend heavily on lots of input.

So I can't always answer all the questions you have, but we've got some good people here too that can help. So we're going to start with reviewing these rules.

A. Rulemaking

And just for the record, I'll read in that we'll be reviewing, this is changes to Wyoming Air Quality Standards and Regulations, Chapter 2, Sections 3, 4, 6, and 12; Chapter 3, Sections 4 and 9; Chapter 5, Section 3; Chapter 8, Sections 1, 3, 5; and then there will be some discussion about federal rules. We're not actually asking you to adopt that. So that's the total.

1. Proposed Changes to Wyoming Air Quality Standards and Regulations

a. Chapter 2, Ambient Standards

- i. Section 3, Ambient standards for nitrogen oxides**
- ii. Section 4, Ambient standards for sulfur oxides**
- iii. Section 6, Ambient standards for ozone**
- iv. Section 12, Incorporation by reference**

So to begin with, I need you to pull up the document that says Ambient Standards, Chapter 2. And then the draft date is 2/21/12 on the top. And then Gina did we get those passed out? Gina's going to give us a couple of handouts to go with it. This is our ambient standard chapter. And our ambient standards—these are the maximum concentrations that are allowed in the outdoor air to protect public health and the environment. EPA establishes these at a national level. And when they do that we call them national ambient air quality standards. A lot of the handouts you have with all of the numbers on it actually has the NAAQS, all of the EPA standards written out. What we're going to try to do—the general effort today is to try to match that list as close as we can with our own regs. It's very hard when you have separate sets of ambient standards. And EPA has done a lot of work in the last couple years of dating these standards. They're actually required to do an update on a five year cycle for these. Some of these haven't been revised since the '70's. And they've been sued because they haven't revised them. And now they're going crazy and revising them all on this five year cycle so they don't get sued. So there's always one being revised. So we're trying to catch up with all of those. So that's why we're here today. We prefer to bring these into our standards so that we can enforce them as a State standard, rather than having the federal government enforce them. So I'd also like to add that these are probably one of the most important parts of our program. Because they're kind of our report card for how well we're doing. If we meet these standards, then we've got good clean air in the state. And when we fail to meet the standards we have to make adjustments to our program to manage the sources in the state. So they're an important part. If you look at the EPA list again. That's the one with all the numbers. You'll see there's three important parts to every NAAQS. There's a level. And that's indicated on there. And that's sort of obvious—that's the concentration. They're in different units depending on the pollutant. There's also an averaging period—the time over which the standard is measured. And then there's something called the form. And the form indicates how an exceedance or a violation. I hate to use that word, but it probably

means more to you. But when you go above the standard, how that's actually calculated. So that's the forms. So the level, the averaging time, and the form are critical parts to every standard. They have primary standards which are focused on public health protection. Those are the most important. And then we have secondary standards that are concerned with things like visibility, how well you can see the Grand Tetons from your car, or crop protection, or animal welfare. That falls into the secondary standard. But public health is the primary standard. So the other handout is a map. And it shows you where all of our monitors are for the state system. Anybody out here that wants to look at these...and the State of Wyoming has a very effective monitoring program. So now one of the most important things we do is also one of the best things we do, I have to say. And I take no responsibility for that. This is Darla's program and there's a woman that works for Darla, Cara Keslar, does a real bang up job keeping all of these sophisticated monitors going all over the state. And compared to other states, I think we really shine in this area. You can see from the map that we have different kinds of monitors. We monitor for both gaseous pollutants—that's your sulfur dioxides and nitrous oxides—as well as particulate matter. We do visibility monitoring and meteorological monitoring. This is all real expensive equipment. So it's a big part of our budget as well, wouldn't you say, Steve?

Steve Dietrich: Yes.

Tina Anderson: So the important part of the program. So having said that, just to give you some grounding for what we're going to talk about here, if you'll pull up the actual language changes in Chapter 2, we'll talk about what we're going to change. And this begins on page 2-2. The first standard we'll talk about are the ambient standards for nitrogen oxide. This is one of the changes that EPA has made fairly recently. Nitrogen oxides is a whole family of pollutants. There are NO's and NO₂'s and nitric acid and nitrous acid. And they're all part of a family. We actually measure NO₂ and that's the way EPA has set it up. It is the component of greatest interest. It's a way to standardize how you measure these all over the country. Not that these other parts aren't important too. But the ambient standard is the one that we focus on. If there's a problem there, additional monitoring can be done to isolate some of these other constituents. So you'll see in paragraph (a) that we're dropping some older language. We've had an annual nitrogen oxide standard for a long time. We are not actually introducing a new annual; we're just writing it so that it matches the federal language. So in paragraph (a), this is not actually new, it's just a rewording so that it's congruent with federal language. You'll notice that the averaging period is annual. It's a primary standard. The level is 53 parts per billion. That's all described in paragraph (a). Paragraph (b) is a brand new standard. And that's the one hour. A much shorter standard—that you have to be very careful about. And I'm sure if there's people from industry out here, they're also concerned about this new one hour NO₂ standard. The averaging period is one hour. It's primary. And the level is 100 parts per billion. So that's (a) and (b). And then (c) is a secondary standard which you might note is also annual and it matches exactly with what's in (a). So the primary and the secondary for annual NO₂ are the same. And then following that under letter (d), which (d), (e), (f), and (g)—we're looking at the form, how we actually measure exceedances. And it's done differently depending on which of those standards. So they're specified in each of those. And they all cite the Code of Federal Regulations for how to actually go through the procedure. It's prescribed. So that's all I have to say about the NO_x revisions. Any questions on that piece? I will also add that we are not violating the standard...

Tim Brown: That was my next question. How close are we? Where are we on these?

Tina Anderson: You know for the annual, we're well within compliance. The on- hour NO₂ is so new that we haven't generated enough data to actually make that assessment.

Tim Brown: Okay.

Klaus Hanson: Must both standards be met, the primary and the secondary? They're not in contradiction to each other. Because one seems to be just a shorter time period, right? And would that then affect the other standards? I'm a little unclear on that.

Tina Anderson: So the primary annual and the secondary annual are identical. They're both 0.053 parts per million. So if you meet the primary, you meet the secondary.

Klaus Hanson: You meet the secondary. For that particular one. I'm looking at other ones that there seems to be a difference...

Tina Anderson: Yes.

Klaus Hanson: On your list here.

Tina Anderson: You're right. You raise a good question. Historically we have never had the issue where you violated the secondary and not the primary. So we haven't crossed that bridge. But it's a very good question.

Tim Brown: Have you had much comment on the one hour?

Tina Anderson: We haven't had any comment on this package. I can tell you that when EPA rolled it out nationally, they had many comments. That takes us then to Section 4, which is the ambient standards for sulfur oxides. Again, we have some changes in here that are largely the result of EPA introducing a new short term one hour standard. Again we don't have—it needs three years of data to make a determination of full compliance. We don't have that yet. We're still collecting data. The older standards that have been crossed out have literally been around since 1969 and 1970. So they are very old. We are proposing to take out those first two, the (a)(i) and (ii). That's the 60 and the 260 micrograms per cubic meter. And then the third one, which is actually a three-hour concentration, has been moved down into the new language, repackaged a little bit, and we're retaining it as a secondary. Because EPA has got it as a secondary. So we used to have virtually three primaries. We're dumping two of them and turning one into match the secondary standard. So the primary one hour ambient standard for sulfur oxides is 75 parts per billion. Very tight standard. We're very concerned about this one. We're not the only ones. There's quite a big debate going on nationally about this. We submitted quite a few comments on this. It's not the level that is bothersome as the implementation of the new standard. That's where most of our comments are focused. EPA has not gotten back on that aspect. But the standard has been set at the federal level. So it's one of those we have to comply. We're trying to match them up here. So the first page there has your primary one hour. And that's followed directly by the form. And then you turn the page to page 2-4, you'll see the secondary three hour ambient standard under letter (b). And that's followed by its form for how you actually measure exceedance. It's a slightly different organization from the NO₂. But this is the way the federal government has rolled it out. We tried in the past to try to create our own little way of

saying their rules, and you just get yourself into trouble. Because then they update them and you have to keep trying to make them match. We finally decided just to copy them word for word. And then you know you've got exactly the same package. So that's the NO₂/SO₂ piece. Any questions on those? And then that takes us down to Section 6 on page 2-4, which is ozone. What we're asking today or we're proposing today is to include the 2008 standard, which is already four years old. But this is a standard that has been highly litigated and been in limbo since 2008. EPA introduced it; they immediately got sued on both sides. Then they decided to reconsider the standard. Then they were going to roll out the reconsidered number. That got delayed four times. This is all in the course of four years. And then finally at the end of 2011, the President actually stepped in, dumped the reconsideration effort and we went back to the 2008 standard. So now as a state, we're scrambling because we're now having to deal with the standard we thought was going to be reconsidered. Everybody was trying to second guess where to go with that. So what we're pulling in here is just the 2008 standard. And Darla's going to talk more about detail on this in her presentation, ozone update. I should also add that in spite of all of that delay and the fact that we haven't moved it into our standard; we still measured according to the 2008 standard that was out there. So all of the data collected was weighed against that 2008 standard. So we've been watching since 2008. And as I said Darla will talk more about this. But this is where the concern is in the Upper Green.

Klaus Hanson: Question. Is this ozone measuring not also dependent on weather conditions rather than on industrial output, etcetera. So we only have partial control over it, of course. So does that factor in, in the measurement, if the weather doesn't cooperate then do we get slapped?

Tina Anderson: Do we get special dispensation for the weather? No, unfortunately we don't. I mean, it's part of our explanation for what is happening out there. And we're still required to meet the standard. We're doing our best to understand. Weather is one of many complicated issues out there. But we still have to meet the standards.

Klaus Hanson: That's kind of a heavy oneness then. Because we have no control over it.

Tim Brown: Are we going to talk about attainment/nonattainment? That would be in Darla's presentation?

Tina Anderson: Yes. We're just trying to get the numbers in. So then there's one final change. You saw on the top of page 2-5. That's the form. The form changed slightly. The number of the level is actually mentioned in the form. And then on page 2-8. This is the incorporation by reference section. And I don't know how much you remember the last time we went through these. Every time we cite the Code of Federal Regulations in your rules, you need to update those as well. Because you're actually requiring sources to follow that as well. So they become a part of your rules and you're pulling them in by reference. So rather than do that every time we cite one, we consolidate them in one place. You'll see these in every chapter. So that's all we're doing there. We're updating those as of July 1, 2011. So that's all we needed to say about Chapter 2.

Jefferson Snider: Now are we going to go through all of them and then vote or...I'm wondering where public comment comes in, where the voting comes in, where...

Tina Anderson: That's up to you, how you want to organize it.

Jefferson Snider: Because I don't see anything here on the agenda as far as...

Tina Anderson: If you want to do a time out right now and ask for public comment, we can do that while it's fresh in people's minds.

Jefferson Snider: It makes sense to me...

Tim Brown: It won't be so confusing...

Steve Dietrich: That way you don't have to go back...

Jefferson Snider: So this is the appropriate time now to ask for public comment. Unless there's more questions for Tina from the committee or the board. Okay. So is there any public comment about Chapter 2, the ambient standards and the revisions that Tina just summarized a minute ago.

*****Note:** An unknown audience member speaks up at this point in the audio. He is asked to state his name for the record and to come forward to the microphone. He does neither and instead states that he has a question, but that he now thinks the question is more appropriate for a later section. He does not come forward again to ask his question or make a statement.

Jefferson Snider: Without any public comment on Chapter 2, can we move to Chapter 3, then Tina? Are you prepared to do that?

Steve Dietrich: Carissa's going to do that.

J.D. Wasserburger: Mr. Chairman, do you think we should just approve these at this time, Chapter 2?

Jefferson Snider: I don't think any of them interact, so I think it makes sense to vote now.

J.D. Wasserburger: I do too. I'd like to see that. I would so move that we amend Chapter 2, Sections 3, 4, 6, and 12 as recommended by staff.

Klaus Hanson: Second.

Jefferson Snider: So there's a second. And at this point, should there be more comment? I'm sorry. I don't understand the parliamentary...

Tim Brown: I think it would be discussion. No, I have nothing further to add.

Jefferson Snider: Okay, all in favor of the motion on the floor say aye.

Klaus Hanson, Tim Brown, J.D. Wasserburger: Aye.

Jefferson Snider: Opposed? So the motion passes.

b. Chapter 3, General Emission Standards

Carissa Krey: My name is Carissa Krey and as Tina mentioned, I work with her on rule development. And I'll be going through Chapters 3 and 5 for our proposed changes. So if you just want to turn first to Chapter 3, the 2/21/12 draft. This chapter deals with general emission standards. And it's one of our oldest sets of regulations. And they're set at a point where the emissions are introduced to the air, so usually at a stack. And the changes we're proposing are Section 4 and Section 9.

i. Section 4, Emission standards for sulfur oxides

We're proposing to remove the contents of Section 4, Emission Standards for Sulfur Oxides, and we've just put "reserved" there. And we reserve them just so we don't have to shuffle all of our other sections around. So Section 4 was developed in the early to mid '70's. And the reason we put this into our regs was to demonstrate to EPA that we were protecting the ambient standards. And at the time that we put them in, we were more stringent than the federal regulations. And they were really helpful at the time, since we didn't have federal regulations that were of equal stringency. But over time, since the '70's, a bunch of new rules and new programs have developed, such as source specific New Source Performance Standards, regional haze, the acid rain program, and Best Available Control Technology. So they've kind of outlived their usefulness then, since we have all these source specific requirements in place. And the problem we're running into with having these old regulations in there is that sources are having to comply with the new rules as well as these old rules. And that presents a lot of problems when it comes to things like averaging times and monitoring, recordkeeping, and reporting requirements. So both the State and Industry are having some problems demonstrating compliance with the standards. So before we decided just to take this standard out completely, we decided that we needed to look at the source specific permits that have the Chapter 3, Section 4 applicability. And the reason for that is we had to make sure that there was an actual numerical limit listed in these permits, rather than just a reference to Chapter 3, Section 4. Because obviously, if there's just a reference, we wouldn't be able to just take that out because essentially we'd have conditions in there that would have a reference to nothing. So if you want to turn to page 3-8. You can see that Section 4 is broken down into two paragraphs: part (a) and part (b). Part (a) was set in 1972 and it deals with sulfuric acid plants. And we do have one existing sulfuric acid plant in the state that this rule is applicable. And we looked at that permit and have found that there is an actual numeric limit listed in it. So we don't have any problems with taking this part out. And it's important to note that all the new sources that will come in following New Source Performance Standards. So part (b) was developed in 1975. And that deals with sulfur dioxide for fuel burning equipment. And we do have eight of those sources in the state. And those are things like trona plants, power plants, and a chemical manufacturing facility. So we also went through and looked at those permits to make sure there was that numerical limit in there again. And for all those eight sources we do have that in place. So we don't see any problems with removing this section either. Are there any questions on that?

Jefferson Snider: I have one question. So what happens if they re-permit?

Carissa Krey: Like if there's a modification?

Jefferson Snider: Yes, a modification. Where do they go to look for a standard if it's been removed here?

Carissa Krey: Then they'll fall under things like New Source Performance Standards and Best Available Control Technology.

Jefferson Snider: Okay. All right. Thank you.

Carissa Krey: So all new or modified things will fall under these other existing standards that we have.

Jefferson Snider: Okay. Thanks.

ii. Section 9, Incorporation by reference

Carissa Krey: So the only other change that we're proposing to this chapter is Section 9. And that's incorporation by reference. Tina just spoke about this for Chapter 2. It's just updating a reference to the Code of Federal Regulations from 2010 to 2011 to stay up to date.

J.D. Wasserburger: Question, Mr. Chairman. So if we strike Section 4 in its entirety, I guess Section 5 becomes Section 4? I guess everything is going to move up.

Carissa Krey: We just reserve. We write "reserved" in there. So we just leave it there.

J.D. Wasserburger: Reserved? Okay, I understand. Thank you.

Carissa Krey: If we put another rule into this chapter, we'll put it there.

Steve Dietrich: And you don't have to renumber.

Klaus Hanson: I'm still unclear. As long as it is reserved, it is still applicable as a standard? Or it's no longer applicable for the industry...

Carissa Krey: It's no longer applicable. There will be no contents within that section. The section itself will just sit there empty.

Klaus Hanson: Okay, then I guess I come to my final question: the standards for sulfur dioxide—how will they be regulated at this point if we have reserved the standards that are no longer applicable?

Carissa Krey: Those areas that I talked about, the New Source Performance Standards, Regional Haze, Best Available Control Technology, already set stringent or more stringent requirements than we have in here...

Klaus Hanson: Say the same thing? I'm not a scientist or a chemist, so it takes me a while to catch up.

Jefferson Snider: Plus there are the ambient standards that we talked about in the previous chapter.

Klaus Hanson: Right.

Jefferson Snider: There's backstop there.

Klaus Hanson: It's regulated in a different place, in other words.

Jefferson Snider: Well we're talking about emissions here, so...

Tim Brown: It will be in your permit. It's written right in your operating permit.

Carissa Krey: The numerical limit...

Tim Brown: You'll see each source has a number associated with it and you're held to that emission limit. And that's from the New Source Performance Standard.

Steve Dietrich: The number of sources that Carissa went through and listed eight in one category and so many in another, they may not have modified their permit in a very long time. So even though a New Source Performance Standard may be out there, you know they may not have incorporated all of those newer conditions into their permit because they haven't modified the permit since then. So we're trying to make sure that there's at least a limit in there if you take away this regulation.

Klaus Hanson: Okay.

Jefferson Snider: I have another question. You said that both the state and industry were having trouble demonstrating compliance. Is this because they were emitting too much?

Carissa Krey: No, it's just the averaging periods in particular are a little tricky. Where the two sets of standards will have different averaging periods, then you have to look at both sets and decide which one is more stringent.

Jefferson Snider: So it's in part being done to...

Carissa Krey: It's not that they can't comply—it just takes a lot more work to go through...

Jefferson Snider: Bookkeeping or analysis of the measurements.

Carissa Krey: Yes...

Jefferson Snider: Which go into checking to see whether they're in compliance?

Steve Dietrich: So we'll tend to, if we have two different averaging periods, try to stick with the strictest one so that we're not actually relaxing anything. And so if you can go to one standard, which is usually the stricter one, you can drop the other one that's making it hard to comply with, because the averaging time is different.

Carissa Krey: And there's different things like different reporting requirements, so you have to submit different reports on each rule.

Jefferson Snider: Got it. Okay, thank you. Any further discussion from the Board?

Tim Brown: No.

Jefferson Snider: Then I think we should move to public comment, if there are people interested in commenting on the revision that's being proposed for Chapter 3. Please come forward. I don't see anybody. Okay, so we're deciding on Chapter 3.

J.D. Wasserburger: Mr. Chairman, I would move that we strike the language in Section 4 and reserve it at this time and change the language of Section 9 to reflect proposed changes by staff.

Tim Brown: Second.

Jefferson Snider: Okay. All in favor of the motion?

Tim Brown, J.D. Wasserburger, Klaus Hanson, Jefferson Snider: Aye.

Jefferson Snider: Opposed? And the motion passes.

c. Chapter 5, National Emission Standards

i. Section 3, National emission standards for hazardous air pollutants

Carissa Krey: Okay, so the next changes that we're going to look at are the ones that we're proposing for Chapter 5. And that's the 2-8-12 draft. So Chapter 5 is National Emissions Standards. And those are standards that are set at the national level for specific sources. And we're proposing to change Section 3, which is national emission standards for hazardous air pollutants. And hazardous air pollutants are defined as chemicals that can cause adverse effects on human health or the environment. And there's currently a list of 186 hazardous air pollutants that are regulated with this section. And there's a list of those in our rules on page 5-40 to page 5-44, if you're interested in looking at that. But those are some common ones—mercury, benzene, asbestos. And these are set at the national level—the list we're regulating. We don't decide on that at all. So what we're proposing to do. On page 5-35 to 5-39 we have a list of the subparts that we adopt by reference out of the federal rules. And those are just source specific requirements. And if you remember with our last rule package, we went through this list and cleaned up all the ones that we don't have sources for in the state. So if you turn to page 5-39, what we're proposing to do is remove subpart 5D (DDDDD), which is the standards for industrial, commercial, and institutional process heaters. And I'll just call this the boiler rule to simplify it from now on. And if you notice, this one's adopted by reference a little differently than the rest of them. The rest of them are adopted from the Code of Federal Regulations. And this one is adopted from the Federal Register. And I guess in order to explain why we're adopting it like that and why we're proposing to remove this one, I'll go through the history of it a little bit for you guys, because it's a little bit long and messy. So in September of 2004, the final rule was promulgated at EPA. And this is the rule that we're adopting by reference in Chapter 5. But in June of 2007 this rule was vacated. And the reason for that is because it's tied to another rule, which is the Commercial and Industrial Solid Waste Incinerator Definition Rule. And the courts found that there was a definition in there for commercial or industrial waste that was inconsistent with the Clean Air Act. So as a result, they vacated that rule. And the repercussions of that for the boiler rule was that if this definition rule was vacated, then the boilers subject to the boiler rule would change. So as that definition changes, all of the sources that fall under the boiler rule would change a little bit. So both rules had to be vacated. And at this point, we decided and also by the advice

of EPA to just leave the 2004 rule in our rules. Because if we didn't do that, we would have to look at each boiler individually and do source specific best available control technology, which can be a pretty long process. And we didn't want to have to do that. So since it was vacated, it's not present in the Code of Federal Regulations. So we had to adopt that one from the Federal Register notice. Which is why that's a little bit different than the rest of them in our rule. So in June 2010, there was the new proposed Boiler and Incinerator Rule. And in March 2011 that rule went final. But at the same time, as EPA finalized the rule, they also issued a reconsideration. And the reason for this was because the difference between the final rule and the proposed rule was pretty significant. They made some pretty big changes. So they wanted to go through additional review and get public comment again. So in May 2011, EPA issued a stay in the final effective rule, which means the rule was still in place but the effective date would be at a later date after EPA went through the legal challenges of the reconsideration process. And in December 2011, they issued their proposed reconsideration of this rule. But, and this is where it gets tricky again, in January of 2012, the US Court of the DC Circuit vacated the stay on the final rule. So right now, we have this 2004 rule on the State rules that we adopted and then there's a final 2011 rule that's now in effect. And then we have the 2011 reconsidered rule, which is still proposed, not final. So you could see that it presents a pretty big problem to demonstrate compliance with this rule, especially since each one is significantly different. They change pretty drastically each time it's proposed or made final. So what we've decided would be the best option to do is to remove this 2004 rule from the State rule and not adopt the final rule at this point, because we already know it's going through the reconsideration process and it's going to change, hopefully in the next few months when they issue the final reconsidered rule. So we're just going to keep it off the State rules for now and just rely on the final federal rule until that's reconsidered. And then at that point, when we go through another rule package, we'll adopt that reconsidered final rule into our regs. So I know that was pretty confusing and long history.

Steve Dietrich: So in summary, we may take this rule forward through our process at the State level, which still has to run from this Board to the EQC and beyond. At the same time, the federal rule will still be reconsidered. It's not final yet. So somewhere down the road, we may have to start the rulemaking process to incorporate that.

Carissa Krey: And in January of this year, EPA issued a letter saying they won't act on enforcement for the final 2011 rule because they're reconsidering it right now.

Tina Anderson: This is why you have to have a full time attorney working for you all the time.

Steve Dietrich: That's right.

Carissa Krey: Are there any questions?

J.D. Wasserburger: I wouldn't know what questions to ask.

Tim Brown: We're just basically waiting? We're doing this until it's decided then we'll put it back in?

Steve Dietrich: Yes. That's a good way of putting it.

Carissa Krey: At the federal level.

Klaus Hanson: Okay.

Carissa Krey: So you'd have to demonstrate it to EPA, not to the state.

Steve Dietrich: It wouldn't come to us.

Jefferson Snider: All right.

Klaus Hanson: Do we have a lot of instances of institutional boilers and heaters? We do.

Carissa Krey: We do have a lot of boilers in the state and it applies to the entire universe of boilers.

Jefferson Snider: So for example a school is being built and they have a furnace—they have a boiler by definition to heat hot water. So do they have to get their permit then from the federal government to do that?

Tina Anderson: Well there's a size cutoff. These are institutional, commercial boilers. If it's of a size that doesn't fit into the category...

Carissa Krey: A lot of the small boilers are just tune up requirements. So it's not actual emission limits set for it. They just have annual, whatever the requirements...

Steve Dietrich: The boilers get bigger—so do the requirements.

Nancy Vehr: Jeff, if I could add to the response on your question. Standards apply whether you have to go through permitting or not. So if it was a facility that had to go through permitting, it would still come to the State for permitting. The standard would apply whether we put it into our permit or not. It depends on who goes for enforcement. So they'd still have to comply with the national standard out there.

Jefferson Snider: Thank you.

Carissa Krey: Any other questions?

Steve Dietrich: No, but those are good. You have to think about the little guys and the big guys.

Klaus Hanson: Yeah. Where does he go now? Yeah.

Jefferson Snider: Thank you Carissa. Is there public comment on the proposal? Having none, it looks like we're going ahead.

J.D. Wasserburger: Mr. Chairman, I would move that we remove subpart 5D (DDDDD), Section 3 from the language of this Chapter 5.

Klaus Hanson: Second.

Jefferson Snider: Thank you. All in favor of the motion, indicate aye.

J.D. Wasserburger, Klaus Hanson, Timothy Brown, Jefferson Snider: Aye

Jefferson Snider: Opposed? Not hearing any opposition, the motion passes. And do we want to go ahead or do people need to stop here and take a break.

Tina Anderson: A short break might be a good idea. The next one's kind of long.

Jefferson Snider: Long?

Steve Dietrich: The next section is kind of long, yeah.

Jefferson Snider: So let's take a ten-minute break. Is that typical? Okay, thank you. All right, so we'll break until ten minutes from now, whatever that is.

(Break)

Jefferson Snider: Okay, we're going to reconvene, looking at Chapter 8, Nonattainment Area Regulations. And it looks like Tina's up.

d. Chapter 8, Nonattainment Area Regulations

Tina Anderson: Notice how I cleverly shuffled that Chapter 5 off to Carissa.

Jefferson Snider: She did a good job.

i. Section 1, Introduction

Tina Anderson: I'll make up for it here. Because 8 is not very pleasant either. If you weren't able to read it, I totally identify. This was a hard one. And your feedback is important. This transcript does get forwarded to the Environmental Quality Council. At the last meeting, they specifically mentioned that they appreciate your feedback, discussion, your recommendations. It makes their jobs easier because you've already asked the "dumb questions" or whatever. There is no dumb question—I shouldn't say that. But I know what you were saying, because we all have those questions. So keep asking them. General conformity—I thought what I'd do, kind of a game plan here, is to explain what the purpose of this rule is, because that's not even clear. What options we're looking at for dealing with it, because I gave you a lot of paper. Then I'll go back to the State proposal, the one where we actually marked up the State rule and kind of go through that and try to describe what the changes are. And then we'll come back to discuss the merits of the options. So if that is agreeable, I thought that would be our plan of attack. So general conformity, first of all, only applies to nonattainment areas. So we don't have to worry about general conformity in Laramie or Cheyenne or Wamsutter. It will only apply to the nonattainment areas of the state. Right now we have one, which is Sheridan. And it's nonattainment for PM₁₀. It has been for a long time. And we've actually complied but the status is still nonattainment. I won't get into that, but the other area of the state is the Upper Green River Basin, which Darla's going to talk about here in a bit. And that is not officially nonattainment but we're heading that direction. So only nonattainment areas. And the purpose of the federal rule is to require other federal agencies like the Bureau of Land Management, the BLM, or the Forest Service or any number of federal agencies, if they

are proposing a project that emits in a nonattainment area, they cannot worsen or aggravate the problem that you've already got out there. That's sort of the general purpose of the rule. And it makes sense. Why would one part of the federal government be telling you you've got to clean up the mess and another part of the federal government come in and actively making the situation worse. So they've set up this thing called general conformity. There's a whole other branch of conformity that deals with transportation, traffic situations, and focuses on the big L.A. situations where you're constantly putting in new lanes of traffic in the middle of a nonattainment area. That's not what we're talking about today. This is every federal action except transportation, okay? So the reason that we're bringing this to you today is because we do have a federal agency, the BLM, the Bureau of Land Management, which is involved in numerous federal actions. And they deal with leasing and projects on federal lands that have to do with energy development. You all know there's lots of gas development going on in the western part of the state. Most of that happens on BLM land. And because those are federal actions and because this area looks like it's going nonattainment, they're beginning to panic. Because they're going to have to do one of these analyses to show that what they're proposing in these projects conform to what our plan is to get the area cleaned up. So that's why we're here today. The state job is to bring the area back into attainment. That's not their job. That's our job. But they have to conform to it. So in 1993 we created the first version of this. And that's what you see here in the one that's called 2/21. That was the 1993 minus all the revisions. We created it because of the Sheridan nonattainment area. At that time, we were required to have this rule in our state implementation plan. That was our agreement with EPA on how to clean up the Sheridan situation. This was a brand new concept in 1993. EPA had never written a general conformity rule. We went through and created a rule that complied with what we had to. Did it in our SIP. We never had any federal agency wanting to do a project in the Sheridan area. So we never used it. So it sat there until now. And now we've got this described BLM situation in the Upper Green. So BLM has met with us and explained their side of it. So we are trying to address this problem by updating this. It was radically updated in 2010. So the changes that we're going to talk about today are from that set of revisions.

Nancy Vehr: To clarify, those revisions happened at the federal level.

ii. Section 3, Conformity of general federal actions to state implementation plans

iii. Section 5, Incorporation by reference

Tina Anderson: Right. This all happened at the federal level. We have done nothing with this, which is why it is about eighteen years old at this point. So the options that we're looking at today are to take the existing rule, Chapter 8, Section 3 and modify it so it looks like the federal rule so BLM can do their work. Or option B is to strike the whole thing out and just have the BLM refer to the federal version because we can now do that. They've actually changed the requirement to include it in your SIP. You no longer have to include it in our SIP, which is a big difference. So option A would be to take the old one, update it to the federal language. Option B, which is the 2/28 draft. You just see strike out all over it, right? You're wondering, "Why did she send me just strike out all over it?" Because I have to have a document to actually take through the process, if that's the option you pick. So we would strike all that out and then the feds would just deal directly with the federal rule. Okay? So those are the options. The 2/21 draft is modifying the existing rule. The 2/28 draft of Chapter 8 is the strike out version if we decide

to go with the adopting of the rule. Not even adopting the rule, just letting BLM deal with the rule. You also received a copy of the federal rule itself. This is what they would be dealing with. It's under Subpart B, determining conformity general federal actions to state and federal implementation plans. Is that making more sense? All right, so I'm going to grab the one that says 2/21/12. I will take you through what the proposed changes are. So what were the options to the rule here? You'll see right off the bat, adding and incorporating by reference. We talked about that a couple of times. It's a really old one. We didn't have that in there before, so we put that in. We do that again on page 8-1, reference to an introduction to adding adoption by reference. So that's no big deal. Then you need to jump to page 8-7. And you'll see some strikeout on the bottom of 8-7. I'm going to go through this pretty quickly, because I hope we don't get ourselves bogged down in a lot of detail here. I'm going to summarize these changes in groups. This first group of changes on the bottom of 8-7 and the top of 8-8 are we're taking out the language that allows these federal agencies to phase in the conformity process in 1993. Because there's never been a general conformity process. And there were lots of BLM and Forest Service activities that were already in place or happening. So you can't just expect those people to go back to this if they've already got a process going. So they had sort of a phase in process. We don't need that anymore because the rule's been around and they should all know about this at this point. So all of that language is coming out. Then you'll see on page 8-8 and it goes all the way through 8-13, the addition of numerous and either updates or new definitions. Like I said, the rule is eighteen years old. Air quality has changed a lot in eighteen years. References to photochemical grid models. Nobody really used photochemical grid models eighteen years ago. They're now the rage. So there's lots of updating that's happening in these definitions. If you have specific questions, I'll attempt to answer them. But I wasn't going to go through each one of them. You'll see PM_{2.5} on 8-12. This is a new pollutant since 1993. That's the particulate matter that's really small. It's like five microns and smaller. So that takes us to page 8-13, where it says applicability, which I think is a little ironic because this is really a section about what's not applicable. So between pages 8-13 and 8-22, they're all the ways a federal agency can get out of doing this rule. So it's the non-applicability section. So beginning on page 8-14 and 8-15, you'll see some tables. And these are levels for each pollutant. They're basically *de minimis* levels. If you propose a project as a federal agency, and you emit under these levels, you don't have to do conformity determination. Those are just right off the bat; you can get out of the program. I will tell you that these levels are quite low when you're looking at BLM projects for gas development. Way more than 50 tons of VOCs. So that regulation is written for all federal agencies and all kinds of sources, not just what's happening in the Upper Green. So that's the first way. And then on page 8-15 there is a whole other group of what's not covered by this regulation. And these are activities which are federal actions but clearly not emissions producing. You know, a judge makes a decision, it doesn't produce emissions. Training of law enforcement personnel, balancing a budget. So the federal government balances a budget, if they ever do, they do not have to do a conformity analysis. So that's the second group. And that takes us to page 8-17. And beginning with little Roman numeral four, there's a whole other set of activities. And these activities are emission producing. But for other reasons you wouldn't want to make them go through a conformity determination such as a hurricane wipes out New Orleans, right? So then FEMA comes in with 200 engines to supply electricity to some area that needs power. They all produce NO_x and VOCs. They don't have to do a conformity determination. So those kinds of things are listed. Research efforts are listed. I do want to draw your attention to the bottom of page 8-17. A very significant change. It doesn't look like much, but we know it is. It's under little four, big A. A portion of an action that includes major

or minor, new or modified stationary sources will require a permit under the New Source Review Program. What that means is that if the Air Quality Division, just as the one Steve manages, already has an approved NSR program, a permitting program for both the small and the big sources, is federally approved, you don't have to count those sources in this analysis either. And this is big, because that's a lot of the sources that are out there, these minor sources. The thinking there is that there's already a program in place that's focusing on those emissions. He's doing everything he can to sort this out. It's kind of redundant to have them try to cover this in this rule as well. So our old language didn't have that word minor in there. That's an addition to the 2010, so that's a significant one. Bottom of page 8-18, the top of 8-19, is all of the paperwork, essentially. A follow up that goes with if you have to bring those engines into New Orleans, you can't just do it. You have to file a bunch of paperwork. And if it takes more than six months to get things up and running, you file for extensions. And that's what's happening in that language that's been added there. And then in the middle of page 8-19 under little Roman numeral six, there's another category introduced. Again, you don't have to do a conformity analysis. These are actions taken by the federal agencies themselves, which are presumed to conform. And so they can't just do this willy-nilly. They have to follow all the instructions that are outlined below. They can't cause or contribute to a new violation. They can't interfere with the applicable SIP. There's quite a bit, lots they have to go through to actually presume to conform. There's additional requirements. You have to notice it. You have to contact the EPA. You have to contact the state if you have such a list. It's important to note here that they have to come and contact us. They come up with the presumed conformed list. So we would weigh in on it at that point. So that's what's happening on page 8-20. And then on the top of page 8-21, again another category of activities that get out of doing this analysis. Just three categories there in the middle, (A), (B), and (C) that are just presumed to conform by EPA. And one of them is if you have a facility wide emission budget that's already been included in a state SIP. Now this presumes a lot. This means that we've already done our work, figured out what the problem is out there, and we've decided that a particular facility can have a budget associated with the whole facility included in our SIP. And then they can make changes within that facility and they don't have to go through this analysis. The second category is prescribed fires. Yeah?

Klaus Hanson: Colorado.

Tina Anderson: Yeah. So if you have a prescribed fire that is conducted in accordance with the interim air quality policy on wildland and prescribed fires, or an equivalent replacement EPA policy, you don't have to go through this analysis. So don't get me started on fire. I'll keep going. The third action is actions that the state has identified as to conform in our SIP. Again, this assumes that we've already done our work, figured out what they are. I honestly couldn't come up with an example yet. We're having a hard enough time trying to get the emissions we know are out there, down, let alone figure out what might come along that we would presume to fit in with whatever solution we come up with. But those are just three categories that are presumed to conform. But all of that is a big caveat on the bottom of 8-21. If EPA or a third party, a third party could be anybody, can come in and demonstrate that these presumed to conform actions would actually violate or would mess with the maintenance of the SIP or would increase the severity of the violation, then it would not be presumed to conform. So there's all kinds of little catches. And then on the top of page 8-22, there is a new provision, another one that's really important to be included, whatever route we take, and that is a grace period. So the federal agency doesn't have to

conform instantly. They've got a year after the designation is made to actually start the conforming process. So grace periods are pretty critical. Right now, our existing rule doesn't have that grace period so right now BLM is in a tight spot because there is no grace period. We're about to get a nonattainment designation and they won't be conforming. So we have to come up with some kind of solution here. Then on the middle of page 8-22, begin discussing what's actually required of a conformity analysis. Lots of reporting requirements. Lots of notification. Again, I'd like to point out that when the federal agency is making a determination, they have to come to us and tell us that this is happening. They also have to go to EPA, any other affected federal land managers. A thirty-day notice—that whole process is described on 8-22. On the top of 8-23, they also have to create a public participation process. The public gets involved as well, so that's part of the process. If it happens in an area that actually goes beyond state borders, you have to publish in the Federal Register so that other states and the public are also noticed as well. And then on the bottom of page 8-23, it basically says to make a conformity determination and then you change your emissions, you go back and do an evaluation. It doesn't stand for all time. And then at the top of 8-24, it talks about how you align all of the various federal actions with this conformity piece. In the middle of page 24, we actually finally get to the guts of the rule. So twenty-four pages into it we find out what it would take to actually demonstrate conformity. And this goes to the next, goes through page 8-30. And I'm going to summarize more broadly here as we go through this section. There are basically about six ways that you can demonstrate conformity that are spelled out in these six pages. And the first one is that if the emissions are accounted for in our SIP, that's the State SIP, in our nonattainment demonstration. So we're going to come up with some kind of solution for our nonattainment area. If we figure out what those emissions are from this federal action, we just pull those into our SIP and include them in there. And it's part of the solution. That's one way you can get through this. That is way easier said than done, because right now obviously we're having difficulty hitting the standard with what we know we have out there. We're talking about introducing new sources to the mix, so getting those to all fit into the solution is not an easy fix. So that's number one. Number two, I mentioned at the bottom of 8-24, is an offsetting type approach. So every new emission you bring in, you offset it with an existing emission so that you have no emissions increase. Does that make sense? So you're proposing to bring in 6,000 new wells. And it has, I'm just making this stuff up, it has 300 tons of VOCs associated with it. We go out there and find 300 tons of VOCs to offset it so the balance is zero. So that's solution number two. Again, way easier said than done. And in the middle of page 8-25, they throw in a modeling solution. You can model your way out of this. Which is only allowed for CO and directly emitted PM₁₀. So it's not even available for ozone. So it doesn't really help us, but it's in the rule. And then at the bottom of 8-25, the State can just make a statement that the emissions budgets specified in what they're proposing would not actually exceed the SIP. And again, it's one thing to write this down in a rule. That one is going to be very difficult—just to make a statement. Probably even more is one on the top of page 8-26 where even though we haven't figured out the solution, the State will just commit to figuring out how all those emissions fit in there. We just give them a bye. So that's solution number four. And then so the Governor actually has to sign off on that one. We would basically say, "I don't know how you're going to do it, but I'm committed to getting these emissions fit in there, signs and sends to the BLM or whoever and they go on their merry way with their process and Steve Dietrich has a huge problem to deal with.

Steve Dietrich: I'm not going to be an advocate of that option.

Tina Anderson: And then another solution on the bottom of 8-26 is that your transportation plan, which we talked about briefly, would just incorporate these. We don't have a transportation plan. We don't have a transportation problem in the state, let alone a plan to deal with how they pull those emissions into that plan. So those are basically the description of the options through this process. None of them is really great, but that's what we have to deal with. Then on page 8-28 and 8-29, just a lot of detail on the information that has to be included in these conformity analyses. This is what the BLM or the Forest Service would do to demonstrate that they're not going to exacerbate the problem. So they say things like, "your latest and most accurate emission estimation techniques should be used." "Your air quality modeling analysis must be based on applicable air quality models and databases that are referenced from the EPA guidelines." This is the kind of thing that we deal with all the time. We know that there are certain rules that we have to follow to make a demonstration. So the federal agency would have to follow all of this detailed analysis. Then on page 8-30 and 8-31, this deals with facility wide emission budgets. I mentioned this earlier. I have to say that this concept would fit better with something like an airport. So you've got L.A., which is a nonattainment area for ozone. Nonattainment for lots of things, but you want to build a new airport for L.A. or even expand the one you've got. You've got a nice border around a great big facility. It's got all kinds of emissions associated with it. What they're saying is that you would establish a budget for that whole airport and then the federal agency that's building the airport could do whatever they want within that budget. Now extending that concept to a project, which involves lots of leasing and permitting and wells and gas development areas, is a whole different ball of wax. So it's a much bigger area. There are so many more sources. There are lots of different kinds of sources. They're often owned by different companies. We haven't exhausted this one yet but it's a long shot. So all of these instructions have to do with how you would fit in with an emissions budget. Then we go to page 8-32 and 8-33. 8-32 has to do with the offsets. We talked a little bit about offsets. Offsets required in different—depending on how severe your nonattainment area is, the offset ratio has to be a little different. So there are provisions for that, if you go that route. There's also inter-pollutant offset provisions. Ozone is not a pollutant that's emitted directly—there are precursors. It actually comes from nitrogen oxides and VOCs in the presence of sunlight create ozone. Those basic precursor elements—you could actually offset one with the other according to the rule. Now again in theory, that might not be useful for what you're trying to do in a nonattainment area. We haven't even determined which of those is really the one to go after. We're getting closer, but it's still a huge part of the work that's underway right now. But that provision is in there. And then there's a provision for early emission reduction credits. This one may have some promise. But it's a little tricky because the Division has actually started something like this. We've got sources out there that have actually made early reductions, significant early reductions. There's a whole question of double counting. Can they do their early reduction and we do our reduction, do we count both of them? We've got to sort all of that out yet. But there is a provision in there for that. The federal agencies are not in the business of controlling sources of air pollution, so again the project still comes back, it's still Steve's problem. He's got to figure out how this early reduction thing would work. But there's an option there for the federal agency to take advantage of. That's what's on page 8-33. And discussed in a little more detail on 8-34. And that's the speedy trip through Chapter 8. I'll pause there and answer questions. Because I covered that pretty fast.

Timothy Brown: This is strictly nonattainment areas we're talking about?

Tina Anderson: Strictly nonattainment.

Jefferson Snider: And is the Division providing an opinion, one way or another of what they want?

Tina Anderson: Well, we sat down and tried to figure this out all by ourselves. And decided it was pretty complicated. So that's why we're coming to you. We're leaning, but our Director, John Corra, asked us to take this out and get your comments, your advice, the public's comments and advice as well. So that's kind of where we're at right now. I haven't talked about the other option yet. Do you want me to get into that...

Jefferson Snider: I don't think I heard you get off the fence, though. Is it the adoption of update or repeal and compliance with federal rule that you're proposing best for the State/Steve/the Division? Or do I even have the two possibilities right?

Tina Anderson: I was talking about some options within the rule itself.

Jefferson Snider: Ah.

Tina Anderson: No, that's okay. So the federal agency has some options for how to demonstrate that they conform. And those were those six things. Some of them are not very attractive to the Air Quality Division. None of them can be done by BLM by themselves. They're going to have to be done with us. They're going to have to work very closely with us. But the larger decision that has to be made a board such as yourself is choosing between modifying the existing rule, which is the piece we just went through, or just chucking the whole thing, defaulting to the federal rule and BLM would then follow the federal rule and we just wouldn't have that in ours. In either case, the requirements are identical. It's not an issue about what's easier to comply with. Those are the same. What's different is the mechanism by which the whole rule is enforced.

J.D. Wasserburger: Mr. Chairman, wouldn't you think it would be easier just to delete the language and not have to worry about litigation in the future with BLM or am I thinking that that could happen?

Tina Anderson: We may end up, and Nancy could probably speak to the litigation side of this...

Nancy Vehr: When you have the conformity just applies to federal agencies. So when you have a state law, typically, and you go to enforce that state law or these rules, typically you can go to State court and seek enforcement in State court. But with federal agencies, you end up in federal court. So by deleting the requirements from our State rule it won't change where we're going to be in the long run. Whereas other rules, it's important that we take those actions in State court. Here, if you delete the requirements then you defer to the federal rule. It's not going to affect where you end up litigating if you got into a disagreement with a federal agency. So that makes it easier, when you have a State rule, seek State enforcement.

J.D. Wasserburger: But am I thinking wrong that, let's say for instance BLM could bring a case against the State of Wyoming. But if we didn't have the language, wouldn't they have to deal with EPA and leave you out of the mess?

Nancy Vehr: With conformity, and this is where it's kind of counter intuitive, because conformity, the federal agency that's doing the federal action, the Clean Air Act requires that that federal agency make this demonstration. And under the Clean Air Act, there's provisions that EPA can enforce it; there's provisions that states can enforce, and there's provisions that citizens can enforce. And so those still remain intact. So the federal agency is still going to have to deal with EPA; the federal agency is still going to have to deal with the state, because they have to comply with the whole rest of our state implementation plan for that nonattainment pollutant. The things that Tina brings forward and the agency that require updates periodically because the federal law changes—by taking this regulation out of our State rules, we won't need to come forward every time the federal rule changes. They'll refer to just the federal rule.

Steve Dietrich: Also, Tina went through the regulation—how to change it. Our current conformity State rule that's been on the books for a long time and we never had to use, through time requirements have changed in the federal version of it, to the point where if we left it the same in our rule right now, we'd be more restrictive than the new federal version of the conformity rule. So if by anything we need to change what we have on the books right now, to fix that first of all. But the method in which we fix it is where the choice comes to you guys and later on to the EQC. Fix it so that it's not in our rule at all or fix it so if it is in our rule, that it meets the new federal version of it. So that's what's really before us today.

Tina Anderson: And on the options, we tried to weigh these options. Keep the State rule--go to the federal rule. If you keep the State rule, to me the big advantage is you preserve the right to be more stringent. Then you can actually make federal agencies do more for our state than they would for other states. So in this case that right would be preserved. What we've given you in these changes doesn't make it more stringent. But if we keep the State rule and want down the line to increase the stringency level, then we would have that option. That is the single advantage I can see to keeping the State rule. I'm just trying to be honest with you. And we don't have to keep going through this, and you still would have to keep going through rulemaking every time we update this, so we would be back, with updates. But go with the federal version and we won't have to discuss conformity again. Not that that should influence your decision here today, but we would then take the rule out of our SIP; we would no longer have this rule in our SIP. We make our obligations to EPA less and we try to keep those obligations down to a minimum. We like to run our own program here, so that's an advantage from our perspective on the going with the federal rule option. It makes our SIP more streamlined. We aren't carrying something that we're not getting much out of. With both cases, I think it's fair to say that the State is very involved in the process itself. I don't know that we're giving up control in the process. It's not our process—it's a federal process. But they still have to keep coming to us, asking, "Is this going to work—is this going to fit?" There's no way they can do it without our involvement.

J.D. Wasserburger: So you're designating the first, to strike the language, you're designating that. How are you titling that?

Tina Anderson: The 2/21 version is modify existing rule. That would be the State rule—that's option 1. Option 2 is the 2/28 draft version and that's strike out the State rule; just default to federal rule. Is that clear? If you're trying to figure out the two options you can refer to the drafts even to make it simplest.

Steve Dietrich: So are we actually asking them to pick a version today or not?

Tina Anderson: Well, we would ask them to recommend... You could even weigh in as to what your preference is.

Nancy Vehr: For rulemaking purposes, when you repeal a regulation so that the option 2, which is the strikeout version, it still has to go through the whole rulemaking process. And so if you wanted to forward both sets of rules on to the EQC and say we recommend one over the other or however you want to do that equally, both sets can still go forward to the EQC. You don't have to eliminate one of those options for the EQC.

Steve Dietrich: So if we went forward, we'd take comments on both versions from the public, going into the EQC.

Jefferson Snider: I have a question, just about formality. On page 8-8 and 8-9,...so on page 8-8, there's definitions, "(b)." Are we on the same page?

Tina Anderson: Yes. Definitions, "(b)" right.

Jefferson Snider: And then at the top of 8-9 there's "(i)" and "(ii)." And the question is, are those numbered correctly?

Tina Anderson: This is a formatting that we kind of developed. Definitions are in our rules. And in the old days, we actually numbered every definition because they were in the rules and we literally numbered them and then put subheadings on them. We have found over the years that the EPA keeps adding definitions. And when you do that, you have to keep shuffling the order of the entire piece, because they've been numbered. So it's really difficult to keep up with it. So we took the numbers off the definitions. But once we did that, we said, "Well some of these definitions are so big that they have subparts to them." So we've left the small Roman numerals in as subheadings under these definitions.

Jefferson Snider: I had just lost track of the numbering...

Steve Dietrich: It makes it more confusing doesn't it?

Tina Anderson: So you'll see on page 8-9, that yes, there at the top there's an "(i)", "(ii)" that goes with the definition for "cause or contribute" and then down under "continuing program responsibility" below again, there's a "(iii)". It does go with those definitions. It's perfectly good questions. It's a format that we created and the Secretary of State's Office would probably go berserk if they looked at it that closely. Because they're very particular about how we format our regs.

Klaus Hanson: Can I ask you one question? On 8-9 there is a statement about confidential business information. I thought everything that the federal government does is open for inspection. So I'm kind of confused about this statement. Does it apply anywhere or is it just a definition that's mentioned here? You know we have this trouble of course in local government with the press association all the time, etcetera, that things have to be open and accessible to the public, etcetera. So what does this definition do here?

Tina Anderson: I think it has more to do with the components of the project that they're working on. So let's go back to the airport case. So a federal agency wants to build a new airport. In the process of doing the analysis, they have introduced some new equipment here or there and they're trying to estimate emissions. And they're sharing this information with the state. It may be that some of the equipment is proprietary, in terms of trademarks or it may be that some company or subcontractor doesn't want all the world to know how they did such and such part of the process. And then they close that off as the confidential business piece. It's a pretty narrow—I think there's rules that define what can actually be...

Nancy Vehr: The Freedom of Information Act, which is applicable to federal agencies, has certain exceptions and one of them being confidential business information. There's demonstrations that are required. This would be up to the federal agency to make those kinds of definitions. And it's just that that's the kind of—they have to disclose that in the rule.

Klaus Hanson: It could end up as a court case anyway...

Nancy Vehr: Yes.

Klaus Hanson: To open it up afterwards.

Nancy Vehr: Yes.

Steve Dietrich: So to further your question, you thought that everything the federal government does is open to the public. And that's not the case. So there is a smaller subset, but you do have to meet that criteria. And there's usually four criteria they have to meet, to where you can't be FOIA-ble, under the Freedom of Information Act, to get that information to the public. And that's what this is trying to describe.

Klaus Hanson: Okay.

Tina Anderson: We know we're asking a lot from you here. Because these are complicated to understand. They look—we're telling you that they're really the same thing. Are you asking us if they're two things or the same thing? In one case, it's keeping the State rule, which would only preserve ability to be more stringent in the future, if we wanted to. And you could actually do that anyway if you went with the federal. You could go back. It makes it a little easier because we'd have the rule. The other option is we just chuck it all and rely on the federal rule for the federal agency. And then there's no updating. And like I said, I think you're going to end up in the same place.

Jefferson Snider: I find it interesting that what we did earlier was bring the State standards into conformance with the federal. And now one of the options is to reserve that right.

Tina Anderson: The difference there is, when we were talking about the ambient air quality standards. The State of Wyoming brings that NO_x standard, that SO₂ standard in here and some boiler operator out in the trona patch violates that standard, that company now deals with Steve and the State of Wyoming and the AG's office when it gets down to the disagreement. As Nancy pointed out in this case, we don't get to keep that, because it's a federal agency not a private entity that we're arguing with. And it all gets booted up to federal court.

Steve Dietrich: So if you're looking for a recommendation from us, the State, DEQ, we're not in a position to do that today. But you can certainly make a recommendation to do one or the other but still send both of them towards the EQC and still take public comment.

Timothy Brown: There would still be public comment at the EQC?

Steve Dietrich: That's correct.

Klaus Hanson: Well correct me if I'm wrong. This strikes me sort of as a state's rights versus federal authority question. And since we're dealing with federal mandates here or federal rules, we could sit on our haunches and say "No, we would like to enforce the state laws and could be more stringent." Or, which in some case, the federal mandate could overrule in court anyway, so what is gained by reserving our state authority here in dealing with a federal issue? So yes, we could be very proud and say, "We're Wyomingites and this applies to us." Or we could be practical and say, "This is a federal issue anyway." And my feeling would be either way is fine. What's easier to administer here is probably the question. And that's something that I can't decide. That's what you guys have to decide. And I have to excuse myself for a moment. I've got to get some water.

Tina Anderson: I think we've done a pretty good job of sort of getting the crux of it.

Steve Dietrich: Right.

Tina Anderson: If we really want to be bad guys to BLM or Forest Service or whatever federal agency, then sticking with the State rule is probably the way to go. That option preserves. If we don't want to do any more than what the feds have already laid out, the other option probably makes more sense.

Jefferson Snider: And which one is easier to administer for the State?

Tina Anderson: Probably, the dump the rule option.

Klaus Hanson: That's where I was, I guess.

Timothy Brown: From a practical standpoint, it sounds like it's easier to let the federal agencies...

Tina Anderson: But we rarely get to do what's easiest.

Klaus Hanson: Well let's hear from the attorney.

Nancy Vehr: On the having the State rule, in terms of just kind of practical responsibilities, means you would just have to keep it updated. This one, the Clean Air Act was amended; SAFETEA-LU came out in 2004. They said you don't have to have this in your state implementation plans anymore. Colorado, Texas, went and took it out of their state implementation plans. Utah, I think you said...

Tina Anderson: Never put it in...

Nancy Vehr: Never put it in and I haven't checked on any other states. So there's probably a mixture of what different states are doing. The conformity rule, EPA updated from that 1993 version, after

SAFETEA-LU in 2004 or 5, they updated in 2010 and came up with the new updates that we either need to get into our rule or defer to the new updates in the federal rule. So the obligation for the State going forward is that when you have something in your state implementation plan, you have to keep it updated. So it would be to keep an eye on the federal register and update it as this conformity changes. Or dumping it, you let the feds just deal with that out there. And then there's the issues too of going to how you want something to proceed at the state level as going with the feds or against Wyomingites, or as Justice Scalia called us "Wyomings" in a recent opinion.

Klaus Hanson: One additional observation—I know that, for example, local government can always make a regulation that is more stringent than state government rule. The same applies federal versus state. So even if we were to apply the federal standard here, and find that one place that we would like to be more restrictive, my feeling is we can still do that.

Nancy Vehr: One of the things the feds did when they updated the rule was they did put a provision in dealing with state implementation plans on conformity. So they have the conformity regulation that Tina provided from the federal CFR. They also updated the state implementation plan requirements. In regards to stringency, they stated a state's or tribe's conformity provision may contain criteria, procedures more stringent than requirements described in the conformity only if, the state's or tribe's conformity provisions apply equally to non-federal as well as federal entities. What that exactly means, we don't know yet. But they are saying, essentially, you can't treat the feds differently than you would a private entity...

Klaus Hanson: At this point it's a hypothetical question anyway. But it can be done. So...

Tina Anderson: You've got to remember that this applies for the whole state, not just the Upper Green. So we have gas development going on all over the state. Not all of the other areas are so intense in the BLM property. Some of them are just lots of private property. So if you create a nonattainment area in one of those, what Nancy is saying is that same level of scrutiny is going to apply.

Klaus Hanson: And it should.

Steve Dietrich: That's right.

Tina Anderson: And you can always punt, too. We're just as confused as you are. So let's let the EQC rule on this.

Steve Dietrich: And take comments in the meantime on both versions. That's entirely an option.

J.D. Wasserburger: Mr. Chairman, I'd like to say that we should, I would like to see this Board prefer option 1 with the language left intact, as presented by staff, over striking the language, and give the Council and the DEQ the ability to monitor those agencies without striking that language out. I'd like to see that presented to the Council. That's my opinion.

Timothy Brown: I would like to see public comment presented on both option A and option B. Because I think the more options that are explored, and the more that's fleshed out, is going to benefit everybody.

That's my opinion. I think more comment from both sides can only help this situation and help in the determination of what we want to do.

Tina Anderson: Joel, were you saying that you were leaning towards option A as supporting that option, but continuing the discussion for both options?

J.D. Wasserburger: Well, I would prefer that we present this to the Council, preferring that language that you have adopted, rather than striking the language, to give you latitude at the Council to monitor and give some oversight of the federal agencies, rather than striking that language. At first, I was for striking the language, because I just think it is simple. But then I hate to take away, well we wouldn't be taking away oversight, but at least have language to have the rights to an oversight of those federal agencies. I don't know if I'm making myself clear...

Tina Anderson: No, I think I understand what you're saying. You're not real sure what you're giving up when you dump the State rule, is that correct?

J.D. Wasserburger: Exactly.

Tina Anderson: And until you understand that better, you want to preserve those state's rights?

J.D. Wasserburger: Right.

Tina Anderson: That's exactly what our Director was also concerned about, perceptions.

J.D. Wasserburger: Right.

Tina Anderson: It's a hard thing to sort through. He's in the same position.

J.D. Wasserburger: Thus us Wyoming should have a strong voice, I think. So rather than strike language, that's my preference. To adopt this over striking language and have it presented to the council that way—preferring this language.

Tina Anderson: And just so you understand, the state's rights issue here, on what we're preserving is the ability to be more stringent towards these federal agencies that are trying to complete these federal actions. So gas development could go through a more rigorous oversight in this state than maybe another state. That's the other way to look at this.

J.D. Wasserburger: I'm not so sure that would happen though. I don't think this state would do that. So.

Timothy Brown: If the regulations were more stringent, that would happen...

Steve Dietrich: Right...

Timothy Brown: But if they're the same...

Steve Dietrich: But if we make them the same by changing our current rule, we're not doing that at this point. That's right.

Tina Anderson: Right. It's still up to you all to further discuss this and then take a vote.

Klaus Hanson: Well I guess I argued the other side. So, we're cool with the decision.

J.D. Wasserburger: Does that have to be in the form of a motion?

Jefferson Snider: No, I think there's two motions on the floor. There's Mr. Brown's, if I understand right, who wants to push both forward...

Timothy Brown: Forward, for more examination...

Jefferson Snider: And Mr. Wasserburger's, who wants to propose to keep the modified State rule and pass that forward. But my question is, do you want to pass that forward as the preferred option or the only one?

J.D. Wasserburger: That would be my preferred option.

Jefferson Snider: Okay.

Nancy Vehr: I just had a procedural matter, if you wanted to have comment before you did your motions, then...

Jefferson Snider: Yes...Should we ask if there's comments from the public?

Kevin Chartier: I'd like to make a comment. Kevin Chartier, concerned citizen from Sheridan. As a federal rule applying to federal agencies, I can see the attractiveness of not having it on our books. But I think that one has to keep in mind that in a nonattainment situation, the State of Wyoming carries a great deal of risk. And I would be careful to take any options, including defending and enforcing a State rule, off the table in mitigating those risks. So I think in that case, option A would be preferred, to keep the language in our State rules. I know it takes a little bit more work to do that, but I think looking forward and to a situation that's developing in our state, it's not hard to think of a scenario where the State might want to be more stringent to protect its interests. I know it's sort of in generalities there, but I could conceive of scenarios where that might be in Wyoming's best interests.

Steve Dietrich: Okay. Thank you. I think if you go forward, like with your option even, you'll get comments from industry and the public, just like that.

Timothy Brown: That's exactly what I wanted to see. And I have no preference one way or the other. But that would come out and that would help delineate what we're trying to do here.

Steve Dietrich: Okay.

Jefferson Snider: No further comments from the public? I'm unclear on the parliamentary process. We vote on the first motion? Or we seek seconds for the first motion...

Timothy Brown: My motion was to send both to EQC for the sole purpose of getting public comment...

Jefferson Snider: I'm still not...

J.D. Wasserburger: I would withdraw my motion and second his, if that would be acceptable parliamentary procedure, Mr. Chairman.

Jefferson Snider: Okay. So we have a second for Mr. Brown's motion. That makes it a little bit easier.

Timothy Brown: We may still end up in the same place, you know? But we may just have a little more discussion.

Klaus Hanson: What's the timeline on something like that? If we send both forward, can we expect a ruling?

Tina Anderson: Well the next thing we'll do is try to line up a meeting with the Environmental Quality Council. I think we'll make that happen; hopefully sometime this summer, get in front of them. Then it takes another couple months after that. So the earliest would be fall that it would all be resolved.

Klaus Hanson: But it would not be interminable...

Tina Anderson: It can't be interminable. We've got to come up with some kind of solution...

Klaus Hanson: That's what I'm concerned about, that if we send them both forward, that something comes back as a solution, eventually. You guys need something to go by.

Tina Anderson: Yes, the old rule as written is quite out of date.

Steve Dietrich: The Council meets like three or four times a year. The trick is getting on the agenda. And the earlier you get on the agenda, the earlier you have a hearing.

Jefferson Snider: And it was the AG's office or the Division who made the modifications to the State rule? Is it a team process or is there some person that is meeting that effort?

Tina Anderson: We did that.

Klaus Hanson: You did that.

Jefferson Snider: The Division did that?

Tina Anderson: Yes, but what we did was take the federal rule, put it side by side with the old State rule and just make sure that they looked the same. The formats...

Jefferson Snider: Not a trivial process, then...

Tina Anderson: Oh, no. But it's also not the first time we've done it. Our PSD rules—that's exactly what we did. Those were rules that we reviewed the last time. We take that federal version and pound it into the State format. That's a case where we have very clear tweaking and special State options in there. That's one where we definitely want to preserve the State piece. That's clear cut.

Jefferson Snider: No more discussion? All in favor of Mr. Brown's motion to...I'm not sure the word is recommend here...

Klaus Hanson, Timothy Brown: Send forward...

Jefferson Snider: Send forward...

Timothy Brown: Both options...

Jefferson Snider: Both options. And then we're sending forward to the EQC—is that to the EQC?

Tina Anderson: Yes. Without making any recommendation towards either side, is that correct?

Timothy Brown: That was my recommendation. If we want to modify that, but the way I put it forward was with no recommendation.

Tina Anderson: And Joel, your concerns are being picked up on the mic. The EQC is going to read these comments...

J.D. Wasserburger: Right.

Tina Anderson: And plus we will take them forward as well.

Klaus Hanson: My concern would be, is that I think this is a matter that ought to at least have a recommendation from this group. Even if we send both forward, to say the recommended, or the preferred action of the committee would be whatever it is. Because otherwise we're kind of aggregating our role here. And letting someone else make the decisions that it is probably even less qualified to do it than this group is. That's why I'm a bit concerned. That we're sending them forward without any recommendation. I mean the recommendation could be, as was suggested early on, ease of applicability or whatever. At least something of that nature that the group could look at and say, "Ah ha. Yes, from that perspective this is the preferred one or this is the not preferred one, or whatever."

Steve Dietrich: That's entirely an option you can send forward. Send both, with a recommendation from the Air Quality Advisory Board that you prefer option whatever. And that can actually be the motion you vote on to send forward. And what that would actually do is, we take that to the EQC, but to get there, we'd advertise both versions for the public comment to take to the EQC.

Timothy Brown: Mr. Chairman, I would like to withdraw my recommendation and then submit a new one. Send both forward, with a recommendation of option A.

J.D. Wasserburger: I guess on preferring one option over the other, I don't have enough expertise to know what the ramifications of us having more stringent standards than the feds might be in the future. So that, I like to have the language but I'm not clear on what that could do to a nonattainment area. But I still, I would restate my motion...or was yours in the form of Tim? We're kind of confused...

Timothy Brown: Well I withdrew my original motion with no preference...

J.D. Wasserburger: Okay...

Timothy Brown: And then I will resubmit pass both to EQC with a recommendation of option A, which still...

J.D. Wasserburger: That was my motion and I would second that.

Timothy Brown: Okay.

J.D. Wasserburger: Thank you. Mr. Chairman, you're as clear as mud, now?

Jefferson Snider: I'm good. No more discussion then. I think we should vote. It's getting close to lunch time. So all in favor of forwarding both options to the EQC with the preference to option A, signify, and I think that's your...

Timothy Brown: Yes.

Tina Anderson: Can you clarify that option A is preserving the State rule draft, 2/21/12?

Jefferson Snider: With option A being preserving the state rule, remaining intact...

Tina Anderson: With the proposed revisions, I guess...

Jefferson Snider: With the proposed revisions, dated February 21, 2012.

Steve Dietrich: There you go.

Jefferson Snider: All in favor say aye.

J.D. Wasserburger, Timothy Brown, Klaus Hanson, Jefferson Snider: Aye.

Jefferson Snider: All opposed? And the motion passes.

Tina Anderson: Now we need to make a decision about do we just keep going and get through the meeting and then eat lunch or do you want to take a lunch break and then come back...

Jefferson Snider: I'm confused. Because are we, have we done (I) on the agenda? Chapter 8? Incorporation by reference or is there something else to do...

Steve Dietrich: The agenda...

Jefferson Snider: Regarding Chapter 8?

Tina Anderson: So, (I)...

Jefferson Snider: (III)...

Tina Anderson: III. That incorporation by reference is simply the last, that last little piece, that section five. That's part of the thing you just recommended. What we didn't...maybe you're asking about subpart B, here? That's the federal—we just, that's not something you have to vote on. That is just the bare federal rule. I just wanted to give it to you so that you could see it...so that you have it.

Steve Dietrich: That was this...

Tina Anderson: So...

Jefferson Snider: So it seems to me that there's a break in the agenda here. We finished the part A, the rulemaking. Then the agenda picks up, if I understand correctly, with part B, general updates from the Division?

Steve Dietrich: Yes.

Jefferson Snider: So that's where we are now, as far as the agenda goes?

Steve Dietrich: Yes.

Jefferson Snider: So the question is, do we go ahead for another half an hour before lunch?

J.D. Wasserburger: What type of a timeframe do you see, taking section B?

Steve Dietrich: I could tell you that the greenhouse gas update will probably take somewhere in the ten minute range or so. Darla, your presentation on ozone would be what?

Darla Potter: My estimation, with minimal questions, is about thirty minutes. But from what I heard this morning as you were going through the rulemaking for the updating of the standards is that we'd have some members of the audience that seem like they have some questions. So I guess it's hard to gauge on that...

Steve Dietrich: It may take longer than that, yes.

Darla Potter: It may take longer than a half an hour.

Steve Dietrich: So we're between forty and forty-five minutes, minimum.

Tina Anderson: And then setting up another meeting...

Steve Dietrich: We've still got that agenda to do too.

Jefferson Snider: I think we can finish all this before 1:00. It's just a question as to whether people have the fortitude....

Timothy Brown: We could take a break now and come back and do the presentations...

Steve Dietrich: Entirely up to you guys...

J.D. Wasserburger: I have a ways to drive; I'd just as soon...

Timothy Brown: I do too...

J.D. Wasserburger: Get'er done and....

Klaus Hanson: And be done with it...

J.D. Wasserburger: And get on the road.

Jefferson Snider: So let's go ahead with part B of the agenda.

Timothy Brown: Do you want to take a short break, Mr. Chairman?

Jefferson Snider: We should probably take a short break. That's a good idea. Take a five-minute break.

Steve Dietrich: Come back at 11:40.

Jefferson Snider: Yes, come back and start at 11:40.

(break)

Jefferson Snider: We should reconvene? Director, sir?

B. General Updates from the Division

1. GHG

Steve Dietrich: I'm not doing this presentation. This is Darla's presentation. I'm going to tag team a little bit with Nancy here, because she's more versed in some of the legal aspects that we'll get into with the greenhouse gas. But Wyoming, at the end of 2010 was one of thirteen states that did not have an approvable SIP for regulating greenhouse gases. And so, they became thirteen states that were initially facing a federal implementation plan, or a FIP. Which Wyoming still has, as of January 2, 2011. Or December 22, 2010. Since that time, all but six states of those thirteen states have gotten a SIP approved by EPA and no longer have a FIP. But there's still six states. So they're dealing with a FIP. By way of review, in case you're not familiar with what the classes of pollutants are for greenhouse gases, I'll just tell you what that is. It's an aggregate group of six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, is the classes, groups, okay. Because Wyoming prides itself on being the regulatory authority, like DEQ does, for environmental permits, this issue came to the forefront in the last legislative session. Because in our statute, 35-11-13, which is on page 36 in the yellow book, we do not have authority to regulate greenhouse gases because of that statute. So at the same time, Wyoming filed some litigation on the proposed Tailoring Rule. The litigation that Nancy mentioned earlier is pending. And she'll get into that in detail back in a minute again, as well as the desire by Wyoming to get authority to regulate greenhouse gases, both of those efforts needed to go forward. But they were trying to craft a way to go forward in the legislature so that if they gave Wyoming DEQ the authority to regulate greenhouse gases, they didn't want to jeopardize the litigation that's still pending, that Wyoming's a part of. And I'll let Nancy describe that here in a minute. But what we have, Senate File 86 is what came out of the legislature, gives us the authority basically to go forward with rulemaking at the State level. To put rules in place that can eventually become part of our SIP that's submitted to EPA. It does not give us the authority to make that submittal. But we can do the rulemaking at the State level. So what I'll do is pause right there for right now, and let you talk about your part and then I'll come back and talk about the schedule that we have.

Nancy Vehr: The situation that was created by having a state implementation plan for all the criteria pollutants and then a federal implementation plan for greenhouse gases created what's called a dual permitting situation. So a source that would emit greenhouse gases and criteria pollutants above certain thresholds, would have to go to EPA for a greenhouse gas permit and the State for the other pollutants. So with this legislative session having this dual permitting, it became as people studied these rules rolled out from EPA, they determined that when you go to EPA for permitting, you are not dealing with the Wyoming permitting agency, you're dealing with the federal permit writer, who may not be as familiar with the situation and setting in Wyoming. You are going to have additional federal laws apply—there's an endangered species act that applies to federal action, there's a national historical preservation act, there's environmental justice and any other executive order that might come out. You're on a different permitting timeline. When you get to the end of that process, in the federal world, the permit is not final if it's appealed on their air quality permits. They go to something called the Environmental Appeals Board. So a source that's gone through the permitting process with EPA, EPA says "Here's your permit", someone appeals it, that source cannot start construction until that environmental appeals board decision has been reached. And so you're dealing with an administrative hearing body, and essentially stays construction. Additional requirements are under the federal side, you have to commence construction within eighteen months within getting a permit. So there's additional construction timelines that apply. At the same time, the source would be dealing with the EPA tract, they'd also be dealing with the state tract. And so we in Wyoming, when we issue a permit, it's final when it's issued. The source can immediately start construction. And if it's appealed, it goes to the Environmental Quality Council. And then up through our district court system, instead of through the federal court system. And so sources are today faced with this dual permitting scenario if they're in Wyoming. None of the surrounding states have this dual permitting, I can't remember on Idaho, but none of the other surrounding states. So the sources came forward to the legislature, along with DEQ, and wanted that addressed. And came to terms on agreement on some legislation to go forward that would allow Wyoming DEQ and the EQC to start rulemaking but not change our state implementation plan until certain events happened. And the concern was if we went forward and we said, "Here's everything" our litigation would be booted out. And the issues that we wanted the courts to address would not get to be addressed. So the Senate File 86 does a couple of things. It's listed in the statutes under 35-11-213. I believe, I don't know if you gave a copy of the senate file...

Steve Dietrich: No.

Nancy Vehr: Okay. But 35-11-213 in the yellow book there is commonly referred to as the Kyoto Protocol Statute. And it prohibited DEQ and EQC from developing rules. So the legislature amended that and added some additional subparagraphs underneath. One of the subparagraphs says, "Hey, you shall go and start rulemaking to get the greenhouse gas rules on the books. And they won't become effective until one of two things occurs." One of them is our litigation that we have going forward, gets finally decided. Or we the legislature say, "Yes, this situation has got to be changed. And we'll go ahead and change it by additional statutory change." So we'll develop rules and regulations. And they'll go through the rulemaking process, but they won't become effective until our litigation is completely done or the legislature says they become effective. The legislature also placed some restrictions on our rules and regulations, one of which is we can't be more stringent than the feds. So we have the same definition of

greenhouse gases. If the feds set, in the Tailoring Rule they set the thresholds at 75,000 and 100,000 tons, we can't say it's ten ton sources or something that's more stringent. It's equivalent to what the feds would have. The Act also provides for repeal of this rulemaking authority if a couple of events occur, one of which Congress enacts legislation that says, "EPA, you can't do greenhouse gas rulemaking." Then our authority goes away to do rulemaking as well. Or, remember I told you about those national litigation cases involving the Endangerment Finding and the timing Tailoring Rule? If those, a federal court issues a final judgment that prohibits EPA from regulating greenhouse gases, then our authority goes away as well. There's an automatic repeal in the statute. We mentioned on those national cases, they're being decided right now by the D.C. Circuit Court of Appeals. There's four national cases. They can go in a whole bunch of different ways. And there's still a right to appeal or ask the U.S. Supreme Court. So it still would be some time. But if those events occur, then our authority goes away, as well. So if it's required on the national level, the federal level, our rules would be in place. If something happens on the federal level that takes away EPA authority to do greenhouse gas permitting, then ours would go away as well. So we won't be more stringent than the feds. So that's the part here where now we've got to start the rulemaking process.

Steve Dietrich: So I'll take over now. So because Wyoming doesn't want to put industry in the situation of always having to deal with EPA and us for their permitting, and have some kind of jeopardy of when they can actually start construction, and knowing that the neighboring states don't have this situation, so we've got to try and make it better to attract industry to come here and do business in Wyoming. We've got to try to find a way to get around this dual permitting problem. So with all this in place now, we've got authority to do some rulemaking. And so one of the things we want to do is tell you about today, which we've done. But then we need to get on a fast track for rulemaking. The fast track I'm going to lay out here we can finalize and start talking about our next Board meeting after this and after Darla's presentation. Basically we need to set a course by which by December we have regulations ready to submit to EPA. So what that does, if you back up all the time and look at all the calendar dates, we need to possibly meet with you guys again in June. We need to possibly get on the agenda for the EQC in September. And then do the rest of the process with the Secretary of State with all of that time playing out so we can actually issue regulations ready to go in December. But not be able to submit. We'll be in a holding pattern at that point, going into the next legislative session. At the same time, we're thinking about fitting in there somewhere in that time period, involving stakeholders. Whether that will be before the meeting with you guys in June or sometime this summer, has yet remained to be seen. But we need to get their input as well. So that's the track we're on because of the authority we've been given. So we need to take advantage of it so we can shorten the time possibly, of having this dual permitting scenario play out in Wyoming. There's approximately, right now there's two applications that have been submitted dealing with greenhouse gases. We're actually the permitting authority on the non-greenhouse gas portion. And then the greenhouse gas portion's already at Region 8 being worked on. And there's about at least six, maybe eight more in the pipeline, coming our way. And industry is kind of figuring out what they want to do and when, as far as their submittal goes. So that in a nutshell is what we are faced with. And so when we talk about scheduling for the next meeting, we're going to suggest June to you guys. Questions?

Klaus Hanson: If the Wyoming rule is properly fashioned, the federal rule governing greenhouse gases is no longer applicable? Or is just going away? Or how does this work? Because I didn't quite understand...

Steve Dietrich: There's a process there...

Nancy Vehr: And thanks, I shot past that. When you have a state implementation plan and then there's a rulemaking process that EPA went through to impose a federal implementation plan...

Klaus Hanson: Yes.

Nancy Vehr: And if we submit a state implementation plan that is sufficient, this is repealed and this goes into place. It's not—they don't have to go through a separate rulemaking if it's fully...

Klaus Hanson: Okay.

Nancy Vehr: It'll just kind of switch out and as of that date. There will be additional questions we'll have to look at in terms of sources that may have received these different permits, but...

Klaus Hanson: So in fact they say, "Yours mirrors ours, therefore is sufficient..."

Nancy Vehr: They'll switch out...

Klaus Hanson: Therefore obligate our authority to..."

Steve Dietrich: And EPA is interested in doing that really quickly. Because they don't have the staff to issue permits like we do. So they'd rather that we do it.

Klaus Hanson: Sure. Just wanted to be sure that they can't come back in a lawsuit and say, "We want ours to still apply." You know? They wouldn't do that? They're not interested in that?

Steve Dietrich: No.

Timothy Brown: You want this ready to go for the legislative session, 2013?

Steve Dietrich: Well we wanted to have it in place, possibly for that, but also have the timing in which if some other litigation plays out, some of the decisions are made, we're ready to go. And we'll be at a decision point to submit. Which we won't be able to do without the legislature granting us that or legislate. The other litigation is played out. So we're just trying to put it in place so that when they come back in to Cheyenne, we'll say "Here's what we have. We're ready to go."

Timothy Brown: Okay. I was just thinking about the timeline from now until then. And then that moving forward...

Steve Dietrich: It's really aggressive. Everything's got to fall into place just right. But it's doable.

Klaus Hanson: Sounds good.

Nancy Vehr: Yes this is an interesting rulemaking. Because typically when you go through rulemaking, it becomes effective when it's adopted. There is a provision that if the law provides that it's not going to be effective until a later date. You can do that. So this is a little bit different. It's a lot of energy expended to get the rule in place and it's kind of in a holding pattern until then.

Timothy Brown: What about the permit actions that are in the EPA pipeline? Then this comes out? They just keep going through the EPA permitting process?

Steve Dietrich: Until we have the authority and the approved SIP by EPA, we have to still do dual permitting.

Timothy Brown: But I was wondering when the SIP is approved and there's a permit in the pipeline at that time.

Steve Dietrich: Good question.

Nancy Vehr: The particular rule doesn't address that. It's one of those timing issues. When the federal plan goes away, there's no authority for EPA to do permitting. So those ones will have to be addressed...

Timothy Brown: That are in EPA's pipeline would go over to DEQ's pipeline?

Nancy Vehr: Yes, EPA doesn't have any authority at that point once our plan is approved.

Jefferson Snider: Yes.

J.D. Wasserburger: So you have the staff to handle this in full?

Steve Dietrich: You're looking at them. For writing the regs? Yes we do.

Jefferson Snider: Steve, would it be fair for you to just list the applications? What kind of plant? They're all electrical generating, coal-fired...

Steve Dietrich: There are two in house that we have. One is from Sinclair Refinery. And the other one is for a plant that's not built yet. It's Black Hills Power. It's a

Nancy Vehr: It's gas.

Steve Dietrich: It's a gas turbine...

Gina Johnson: It's the Cheyenne Station.

Steve Dietrich: It's going to be located in Cheyenne. So those two are in house right now and being worked on.

Jefferson Snider: And then the other six? Not looking for specifics...

Steve Dietrich: I think there's some trona ones. There's...

Nancy Vehr: The other part is there's the construction permitting for these sources. But there's also a requirement that operating sources, Title V, sources get operating permits. And so some of those are already in the permits. The other one would be new sources because of these greenhouse gas emissions. So they're not even aware yet of what sources those might be. The deadline, I believe, is July 1 for those sources to submit applications.

Steve Dietrich: There's about 154 Title V sources in Wyoming. And we expect at least half of those may be subject to some kind of greenhouse gas permitting, in the future. Does that answer your question?

Jefferson Snider: Thank you.

Steve Dietrich: Are we ready to move on?

Jefferson Snider: We're ready to move on, yes. Let's...

Steve Dietrich, Jefferson Snider: Darla?

Jefferson Snider: Talk about ozone.

2. Ozone

Darla Potter: I'm Darla Potter. I work for the Air Quality Division in the Air Quality Resource Management Program. Last August, when the Board convened, we gave you a rather extensive update in regard to ozone. Really covered "Ozone 101" for you. Tried to give you a picture of where we're at statewide, as well as with a proposed ozone nonattainment area. What we want to do today is present to the Board the information to keep you up to date. Seems like about every time we turn around, there's something else that has changed, that sends us in a slightly different direction. We need to keep the Board up to date, because in the future, as we proceed through a proposed ozone nonattainment area and we move into nonattainment planning and another item called Ozone Advance, there are a number of things that will come back to this Board for your consideration. And it's important for us to keep you as up to date as we can. So when it comes time for us to bring those things forward to you, we're not starting at "Ozone 101" at that point in time. So Tina will move forward. What I'm going to cover today, I'll first go through EPA action. Tina touched on some of that when she was going through the process of bringing you up to date on the ambient standards. We'll also talk specifically about the proposed ozone non-attainment area in the Upper Green River Basin in Wyoming. We'll bring you up to speed on what we've been doing since we came and spoke to you in August of last year. We will also talk specifically about this winter, January, February, March—what we refer to as winter for that area. You know it is in fact true that we have not had ozone concentrations this year that have gone above the level of the ambient air quality standard, that you adopted in the State rule earlier today. So that's the great news. But we'll also touch on what the future holds. Give you an eye toward that. Tina covered the fact that the ozone standard you adopted today recommended taking forward a 0.075 parts per million, was an action taken by EPA in March 2008. She also told you that as kind of quickly as it came out, it was litigated. EPA announced that they were going into reconsideration. And we've had a number of delays since then. What I want to bring your attention to is that at the beginning of September, the White House released a statement that asked EPA to withdraw their reconsideration of this ozone standard. Later that month,

EPA did in fact announce that it would implement the 2008 ozone ambient air quality standard. So we're again dealing with the 0.075 parts per million. We often times talk about that in terms of parts per billion. That's 75 parts per billion. It's to determine attainment. It's the three-year average of the fourth highest daily eight-hour averaged ozone concentration. So it's not exactly a straightforward standard for determining compliance. So where we're at in terms of the Upper Green River Basin, specifically. At the time, designation recommendations were due to EPA in March 2009. Governor Fruedenthal recommended that the Upper Green River Basin area, which includes all of Sublette County and portions of Lincoln and Sweetwater counties be designated as nonattainment with respect to the 2008 ozone national ambient air quality standard. We submitted some technical documentation along with that. During the reconsideration process, all of that information was put on hold. It had been submitted to EPA. No action was taken with respect to that. Because EPA came out in late September of 2011 and said, "We're going to proceed forward with the 2008 ambient air quality standard." What they did was went back to the information that we had submitted to them in 2009. And that was the basis for their review. In early December, Governor Mead received a letter from EPA giving him a preliminary response from EPA regarding the March 2009 recommendation. EPA's preliminary response was an indication of support for Wyoming's recommended nonattainment designation as well as the area that's proposed. Regardless of the delays that have gone on, the State has been very active, as well as industry in continuing to move forward. We have done a lot of research and collaboration. There have been a lot of voluntary emission reductions that have taken place in the area. And all of that has been really important. Because we continue to work on the problem even though we've had this delay from EPA. So specifically, what have we been doing since we informed you where we were at with the status last August. A lot of preparation was taken in regard to preparing for the winter of 2012, January, February, and March. I'll talk a little bit more specifically about that. The Division and the Department went to Pinedale in mid-January. We held a public meeting. The focus of that public meeting was to make sure that the citizens in the area were up to date on efforts that we'd taken in terms of collaboration and research efforts, industry had taken. We were there for a public meeting, it was in early August, before we had come and met with you later in August. And also to let them know what was going to happen in terms of our preparation for the winter of 2012. Which, by the point we'd met with them, had already put into place at the beginning of that month. Probably the biggest change and I'll give you more details on the next slide, the Department of Environmental Quality, in conjunction with the Governor's Office, decided that there needed to be a citizen's advisory group formed. So we now have an Upper Green River Basin Air Quality Citizen's Advisory Task Force. The purpose of the task force is to consider and advise DEQ on potential solutions to reduce ozone. Some of the products and outcomes that we're anticipating are periodic reports of the issues that they're discussing, the recommendations that they're considering making to the Department, and initiatives undertaken to enhance education and awareness. And education and awareness is anticipated to really go both directions. There's an avenue of that of the State agency and Department listening to the citizens and the folks on the task force. But also us sharing our knowledge with them, so that we're having that information go both ways. Membership—it's a task force of twenty-six individuals. Municipal governments, county governments, DEQ, federal agencies such as the Bureau of Land Management and the Forest Service, representative from the Governor's Office. We have a local public health representative. There are representatives from the oil and gas industry as well as citizens in the area. Status to date—a steering committee was formed. A subset of those twenty-six individuals. That meeting was held in mid-December to really start the groundwork of

some procedural issues. This group will have a charter. Some of the basis for that charter was worked on at that point in time. The first meeting of the task force occurred February 21. It was primarily procedural in nature. The second meeting had just occurred on March 21. They finished up some of the procedural work that was remaining and really started to turn toward their work to establish a groundwork that they could all agree on and work forward from to move toward considering and advising on potential solutions. Specifically for the winter of 2012, again we consider winter for the Upper Green River Basin to be January, February, March. As we have done Upper Green winter ozone studies that are aimed primarily at ambient air quality monitoring as well as meteorological monitoring, we've been doing those studies in one form or another since the winter of 2007. The focus in this study this year was really ongoing regulatory monitoring at our six permanent stations. We also supplemented that with a monitoring trailer that we located in the Jonah field. We used to have a permanent monitoring location there and it's been moved out of the area. We also had four locations for collections of air samples in canisters that then can be sent off for VOC speciation, collection, and analysis. Weather forecasting is really a cornerstone of our winter ozone season. It involves a team of forecasters, both internal employees to the Division as well as a contract meteorologist as well. They forecast daily from January 3 to March 30. In fact today, we issued our last forecast this morning. I had to step out this morning to assist with that. They've taken a different approach this year. We're still looking at the weather that we feel is conducive to elevated ozone formation based on the monitored conditions that we've observed since 2005. And earlier today, and the Board recognizes, that's a really key component to our ozone formation in the Upper Green River Basin. So each day, the forecasters look at the information that they have. Based on the weather parameters that we believe are conducive to elevated ozone formation, they would do two things: The first was to issue a winter ozone update. It was a text based update that was disseminated through a variety of media. It was a forecast for the current and next day. It was specifically determined that we needed a better way to convey to the public what the potential was for elevated ozone formation so that they could make their own decisions about outdoor activity. It's a forecast. Our forecasters hate this when I say it, but when have you ever watched a weather forecast and they've been day in and day out, over the course of 90 days, been perfect and spot on every day? The atmosphere just decides to do what it wants to do. And despite the best predictive capability and their knowledge of predicting previous years, sometimes the weather just doesn't pan out the way they think it will. What we wanted to do was provide a mechanism so that the public could be aware of the potential that we were forecasting for elevated formation. And watch our WyVisnet website for the actual monitored conditions so they could make those decisions. The other aspect of that is there are ozone contingency plans that are short-term emission reduction measures that can be put into place by industry within twenty-four hours' notice. We've done this in previous years. Then on those particular days, we call them ozone action days this year, those emission reduction activities are put into place. They are geared at minimizing the ozone precursors that are emitted into the atmosphere. On a particular day where we're really concerned that there's a potential for elevated ozone formation in respect to being able to comply with the level of the standard. We, in fact, only issued two ozone action days this year. The weather was forecast to line up to be very conducive of elevated ozone formation. Those two days were Sunday, March 4 and Monday, March 5. We did not end up with any elevated ozone on either of those days. The weather forecast in fact verified on both of those days. We do know that this year we didn't have as extensive of snow cover throughout the entire basin as we had last year. But for our checklist parameters that our forecasters use day in and day out, all of those parameters were there. And they were not only forecast, but the weather

was verified. So this is a very complex secondary photochemical reaction. We know there are a large number of things at play, one of which is the weather. The weather was there. But we didn't end up with elevated ozone. So even though we've been studying this, really since 2006, with the first elevation occurring in 2005, we still don't have it down one hundred percent. Forecasting for an action day, having industry put their contingency plans in place and not having ozone levels rise to the level where it is a public health concern, we view as a good thing. We were protective of the citizens' health. We let them know that we thought there was a potential for that. But in reality, as we watched the monitors that day, it just didn't materialize. Our compliance staff—we have two dedicated staff in this particular area. They do ongoing inspections throughout the entire winter. They also have an extensive field presence on those ozone action days. They're going out and driving around the area to in fact see what's being implemented, where are we still missing things that we can improve upon for next year? In regard to the ambient monitoring, specifically, this map shows you our six locations where we've got regulatory monitoring that's going on year round. In regard to the data from this year, in particular, it's important to note that it is preliminary data. It's important for me to say that, because there are a number of steps that the data has to go through to be validated. One of the things that has already happened, however, is each quarter we do an audit of those monitoring stations. And all six of those stations passed the audit. So we don't have any reason to be concerned about the overall condition of the monitoring. But there's still that process we have to go through to make sure that each hour of that data is in fact valid. But what's important to note, and I updated this yesterday so it goes through March 28, the level of the standard again is 75 parts per billion. We did not have any days that went above that this year. In fact, we did not have any days that went above 60 parts per billion for an eight-hour average this year. So we've had that happen in years previously. We've had 2007, 2009, and 2010 were winters where we did not have ozone elevated above the level of the standard. But this year in fact, it didn't elevate above 60 parts per billion. So well below that. In regard to one hour readings, there's not a regulatory standard in regard to one hour readings. But we watch those as well. We did in fact end up with eleven days where at five of the six stations, we had eleven days where the one-hour daily maximum was between 60 and 70 parts per billion. We had seven of those days, where at a subset of those stations we were between 70 and 75 parts per billion. It's the highest we got. The Wyoming Range station was the only station that we did not see elevate above 60 parts per billion this winter. The highest it got was into the 50's. Much different picture than what we told you happened last winter.

Klaus Hanson: Does it occur during a certain time of day? These spikes?

Darla Potter: Our elevated ozone, and this is really typical whether it's a wintertime area or a summertime area, the ozone concentrations peak in the late afternoon/early evening. And so those one-hour daily maximums were consistent with that. We saw very consistent patterns. We just didn't see the magnitude that we've seen in previous years. On to what our future holds as well as yours. There is a lot that EPA needs to do to provide, in the way of proposed and final rules for ozone nonattainment planning. One of those rules was in fact proposed by EPA in early February. It's the classification rule. We were anticipating that it would be based on a percent of the standard approach. That is in fact what was proposed. The percent above the standard approach ranges from marginal areas that have ozone design values for that three year time frame that are between 76 and 86 parts per billion. They go up to extreme classifications that are design values over 175 parts per billion. Another difference within the

classification rule is that for a marginal area, you've got an attainment date you need to attain within three years of being designated. For an extreme area, on the other end of the spectrum, you're given twenty years. Your problem looks much worse. They're anticipating it taking longer. The reason that marginal is the only one up there is that the design value, based on the Boulder monitoring station, is at 78 parts per billion. So we are anticipated to be classified as marginal, based on the classification rule that EPA has proposed. We still have to await the finalization of that classification rule. That's anticipated to happen this spring/summer. What we're anticipating EPA to do is sign the ozone designations at the end of April. We have been informed that they are planning to have the classification rule final in that same timeframe, as well. That only gets us part of the way there with respect to EPA. The next part of it, is we need to know, through a separate action that EPA still has yet to propose, what will specifically be the steps and the timing that each state will have to take to implement the national ambient air quality standard for ozone. And that will be based on the areas classification as well. We're anticipating that they will issue a proposal in the spring or summer of 2012, with that being final at the end of 2012. In the classification rule, as proposed, it specifically states that areas classified as marginal are subject to the least stringent planning and control requirements. And they have the shortest attainment period, while those classified as severe and extreme at the other end of the spectrum, will be subject to the most stringent requirements and have the longest attainment periods. So we're fully expecting, if they stick with what was proposed, that the Upper Green River Basin will be a marginal area. We will have to attain in three years, which will put us in the 2015 timeframe. So we're getting more from EPA, but there are still really key things that we need. And that implementation rule is one of the really key pieces that the state still needs to know what our requirements are. And finally there are some other ozone related actions. Back in July of 2009, remember that we're dealing with a March 2008 ozone standard. In July 2009 EPA had in fact proposed an ozone monitoring rule. The two key pieces of that for us are establishment of minimum requirements as well as an ozone monitoring season. The majority of the country, an ozone monitoring season lasts from late spring or early summer into fall. We don't fit that. So we're still waiting for that to come out. But aren't really hearing much about it. There's another item called Ozone Advance. It was released in draft in early February. This is something that is important to really pay attention to. It's an option that's been created by EPA to allow states to take credit for early reductions of ozone forming pollutants. We talked a lot at the August meeting about all of the voluntary efforts that have happened by industry to already reduce emissions. We've recognized those, through our permitting program, but getting recognition of those through nonattainment planning is a different thing. So Ozone Advance has given us indications that those early reductions can be counted toward the overall goal of reducing emissions in a nonattainment area. There are some things we'll have to do. We'll have to send a sign up letter in. That will have to go to EPA before we're designated nonattainment. We'll have to develop a path forward that will have specifics in it that will go to EPA at a later point in time. Ozone Advance does not relieve the State of Wyoming from meeting any of the requirements for nonattainment planning. If the implementation rule says that you have to establish a budget based on your classification, a state with a nonattainment area would still have to do that. It just solely gives us a way to really look at giving credit for those early reductions that the State and industry have worked so hard for. So that's really what we're working toward. And we did mention this at the Board Meeting in August. While we're working very hard, and our effort is going into dealing with an ozone ambient air quality standard of 75 parts per billion, Tina mentioned as we were going through the rulemaking that EPA has to do a review of these ambient air quality standards every five years. Because of the timing of

the 2008 ozone standard, we're already into the next review cycle for the ozone ambient air quality standard. We're anticipating a proposal in October of 2013 and that being final in July of 2014. You'll notice that our attainment date looks like it will be three years out, in 2015. So we will most likely be adding a new ozone ambient air quality standard that will come out while we're still trying to deal with the current standard of 75. This will continue to be an issue. We will continue to come before you. We don't see this ending any time soon.

Timothy Brown: Did that prolong the nonattainment status?

Darla Potter: My understanding is that once a new standard would be finalized, we would be given a specific date by which the Governor would have to send a letter to EPA indicating whether we're in attainment or nonattainment. Similar to what we did in March of 2009.

Timothy Brown: Based on the new standard?

Darla Potter: Based on that. If we have a lower standard, we would look hard at does the current boundary, as defined for the Upper Green River Basin, still hold true in regard to the concerns for lower standards? Does that need to be larger? Are there other areas of the state? So until we get there, we really won't know. Our position very much is, we need to focus on the standard of 75 and the area that we proposed. We very much believe is appropriate for that standard. We'd have to reevaluate that.

Klaus Hanson: That figure of 75, would that change in the new, to what?

Darla Potter: We are expecting it to change. We're expecting it to change because the litigation going on in regard to the 2008 standard, a lot of that was spurred by the fact that the standard was set at a level that was higher than advised by the Clean Air Science Advisory Committee. I believe they recommended a range between 60 and 70 parts per billion. When they were going through the reconsideration process, that was the range that was specified for the primary standard. So we're fully anticipating it to be lower.

Klaus Hanson: 60 to 70, somewhere around there?

Darla Potter: It's anybody's best guess.

Klaus Hanson: What you presented earlier we're not too far off from that one anyway.

Darla Potter: We're not. We're currently not too far off of the 75. We're at 78. To give you an idea, I had a call the other day. And the question posed to me was, if you could use the data in 2012—2010 we didn't have any levels elevated above the level of the standard, and 2011 we did. But so far in 2012 we haven't again. If you could do your design value based on 2010, 11, and 12, what would that fourth high value have to be? We would have to have a fourth high value no higher than 55 parts per billion. Our lowest fourth high value for that monitor in particular, the Boulder monitor, is a 66 given the period of record that that monitor's been out there.

Steve Dietrich: So we're in.

Darla Potter: So we're in. It doesn't matter which set of data we use. We know that we are in fact nonattainment for that standard. Any other questions from the Board? Thank you.

J.D. Wasserburger: Thank you.

Jefferson Snider: Thank you, Darla. Okay, so talking about the schedule, you've already talked about that a little. Steve do you want to lead that discussion?

IV. SCHEDULE NEXT MEETING

Steve Dietrich: I was going to suggest that, so that we could try to get some rulemaking done for greenhouse gas rulemaking, we need to be able to come back with that rule and some other rules that we're intending to put on the list as well. Sometime in June, if that's possible. We haven't talked much about location. But one thought would be Casper as a possibility.

J.D. Wasserburger: Is that easy for you folks?

Tina Anderson: It's convenient because it's part way for everybody.

Steve Dietrich: Central.

Gina Johnson: We have a field office there.

Steve Dietrich: We have a field office there too, yes.

Tina Anderson: And it's a topic of statewide interest, so.

Jefferson Snider: It's pretty close to you. Closer.

J.D. Wasserburger: It doesn't much matter. Green River's a stretch...

Timothy Brown: Yes, we can handle it.

Steve Dietrich: That would put us on schedule to get the greenhouse gas rules and of course, some other rules under way as well.

Klaus Hanson: As long as you stay away from the week of the 11th to the 16th. That's when Wyoming Association of Municipalities meets. They are meeting here.

Steve Dietrich: So avoid June 11 through 16th.

Timothy Brown: I'm unavailable the fourth through the eighth.

Steve Dietrich: The fourth through the eighth.

Tina Anderson: So does the Doodle poll work for you all?

Klaus Hanson: The what?

Tina Anderson: The Doodle poll? When I send the email...

Klaus Hanson: Yes...

Tina Anderson: And you get to pick some dates...

Klaus Hanson: That does work, yes...

Tina Anderson: Block out those periods? How about you?

J.D. Wasserburger: I can work around anything.

Steve Dietrich: Okay.

Tina Anderson: And hopefully we'll get Ralph back in here.

Klaus Hanson: After the 18th would be nice, since you're not available the first week...

Tim Brown: I'll be out...

Tina Anderson: Sounds like the latter part...

Steve Dietrich: The second half of the month is what it sounds like to me...

Klaus Hanson: Yes, after the 18th would be really nice.

Steve Dietrich: And Jeff, this is your last go with us?

Jefferson Snider: It's been fun. I've learned a lot. Good luck. Go forward. Sounds exciting.

J.D. Wasserburger: Thank you for your years of service.

Timothy Brown: So we're going to need another Board member, correct?

Steve Dietrich: Yes, we certainly will. And we'll get started on that right away. If you guys have any suggestions, we welcome those too.

Jefferson Snider: I have a colleague who might—I haven't asked...

Nancy Vehr: Now's the time to toss out his name...

Jefferson Snider: Yes, you toss out the name before you ask them...

Tina Anderson: Well I will email you Annie Ackerman's...

Steve Dietrich: Annie Ackerman?

Jefferson Snider: And I'll take care of that...pdq and so you can...

Tina Anderson: Formal...

Steve Dietrich: That's fine.

Jefferson Snider: So you can get somebody else. Can you work with four people?

Nancy Vehr: Yes, it's a quorum of three. And to vote, the majority of the five. So as long as all three, if it's down to three it has to be unanimous.

V. ADJOURN

Jefferson Snider: Is that it? From the Division?

Steve Dietrich: It's all we had on the schedule.

J.D. Wasserburger: We move to adjourn.

Jefferson Snider: Okay.

(End)