

Sep 17, 2012

WYOMING AIR QUALITY ADVISORY BOARD
MEETING MINUTES
BLM Casper Field Office Conference Room
2987 Prospector Drive
Casper, Wyoming

Jim Ruby, Executive Secretary
Environmental Quality Council

Board Members Present: Timothy “Tim” Brown
Klaus Hanson
Diana Hulme
Joel “J.D.” Wasserburger

Others Present: Steve Dietrich, Administrator, Air Quality Division
Nancy Vehr, Senior Assistant Attorney General
Cole Anderson, Air Quality Division
Lori Bocchino, Air Quality Division
Tina Anderson, Air Quality Division
Darla Potter, Air Quality Division
Chris Hanify, Air Quality Division
Josh Nall, Air Quality Division
Sam Greene, Sinclair Oil Corp.
Fred Carl, Black Hills Corp.
Dawn Blevins, Monsanto
Harold R. Clayton Jr., Exterran
Brian Mitchell, Sage Environmental
Marion Loomis, Wyoming Mining Association
Lecia Craft, Thunder Basin Coal Company
Christi Howell, SWCA Environmental
Kevin Chartier, IML
Mike Wendorf, FMC
Vic Braman, TATA
Sanjay Churdly, TATA
Casey Mueller, TATA
Nica Hastigo, WPX Energy
Brett Harding, TATA
Ted Rasmussen, Wyoming Machinery Co.
Wendy Lowe, Peabody Energy

I. CALL TO ORDER

Timothy Brown: The Air Quality Advisory Board is now in session. I call to order, introduction of new Board members. Is that you, Mr. Dietrich?

A. Introduction of New Board Member

Steve Dietrich: Yes, I thought what I'd do is since a lot of folks on the Board are relatively new and we do have one brand new member, Ms. Diane Hulme. Did I pronounce that right?

Diana Hulme: Yes, Diana.

Steve Dietrich: Diana? It may be good to just have everyone introduce themselves for purposes of the new member and then we'll go on from there, okay?

J.D. Wasserburger: My name is J.D. Wasserburger. I'm from Lusk, Wyoming.

Timothy Brown: Timothy Brown, Green River, Wyoming.

Diana Hulme: Diana Hulme, Laramie, Wyoming.

Klaus Hanson: Klaus Hanson, Laramie, Wyoming. Hey, we're the majority.

Diana Hulme: That's right. (laughter)

Steve Dietrich: And I'm Steve Dietrich, the Air Quality Administrator with DEQ. And so if you'd like, I can just go on to the next item. Okay.

B. Division and Board Responsibilities

Steve Dietrich: The next section deals with Division and Board responsibility. So what I thought I would do is just read a couple of little paragraphs to you guys. Some of you guys, this will just be a repeat. This is from the statute—our statute. I didn't bring a copy of the book. It's a little yellow book that Tina has, for example. And what I've got is an excerpt from that, pages 25 and 26, actually, from that statute. And by way of review and some new information for Diana, basically it is each advisory board shall consist of five members appointed by the Governor. "Each board shall have one member who represents industry, one member who represents agriculture, one member who represents political subdivisions, and two members who represent the public interest. Not more than three members of each board shall be from the same political party. Each board shall hold at least four regularly scheduled meetings each year. And special meetings may be called by the chairman at any time. Three members shall constitute a quorum for the purpose of conducting business. But all decisions must be approved by a majority of the total membership of the board. The powers of the board--the next page, 26—which is section 25-11-114. The advisory board shall recommend to the council through the administrator and director, comprehensive plans and programs for the management of solid and hazardous waste, prevention and control and abatement of air, water, and land pollution, and the protection of public water supplies. The advisory board shall, in this case air, shall recommend to the council through the administrator and director of the adoption of rules, regulations, and standards to implement and carry out the provisions and purposes of this act which relate to their divisions and variances therefrom. The advisory board shall counsel with and advise the administrator of their respective divisions in the administration and performance of all the duties

of the division and shall make an annual written report to the Governor. The advisory board shall counsel with and advise each other, the public, and the director of the department in order to coordinate the policies and activities of their respective divisions and to achieve maximum efficiency and effectiveness in furthering the objectives of the department. Each administrator and staff shall provide the appropriate board with meeting facilities, secretarial/clerical staff, supplies, and such other assistance as board may require in performance of its duties.” And I think we’re prepared to do that today. So that was just a quick review for you guys as well as folks in the audience. And so I’ll turn it over to you.

C. Approval of Meeting Minutes for March 30, 2012 Meeting

Timothy Brown: Okay. The next item is approval of minutes from the March 30, 2012 meeting that we did in Laramie, Wyoming. Do we need to review those or do we just need to make a motion to approve those?

Tina Anderson: Unless there are any concerns.

Timothy Brown: Unless there are any concerns or comments?

Klaus Hanson: Move to approve.

Timothy Brown: Do we have a second?

Diana Hulme: Second.

Timothy Brown: Okay it’s then approved, the meeting minutes for March 30, 2012. Next item, old business, staff activities, vacancies, and structure.

II. OLD BUSINESS

A. Staff Activity - Vacancies, Structure

Steve Dietrich: Right. That’s me again. This is an organizational chart of the Air Quality Division of DEQ. I’m just going to give you a brief overview of some things that are on there. And since the last Air Quality Advisory Board meeting on March 30, just to fill you in, we have actually filled ten positions. And they’re all on this organizational chart. But seven more vacancies have occurred in that same time period. Some of those vacancies occurred due to staff leaving the agency to go to industry, while others are due to internal promotions. In addition, since April 17, all State agencies have a certain number of vacancies that they have to maintain as vacant. In the case of DEQ, that number is seven. Three of those seven are actually in the Air Quality Division. So these three vacancies are currently in air permitting, and as of today, Air Quality has ten vacancies. So on the chart here, there are actually ten vacancies shown on this organizational chart. So we’re trying to make some headway there, but sometimes you gain some ground and you lose some ground in the recruitment process. I think trying to fill ten positions since the end of March 30—we’ve been doing a good job there. But other folks maybe

have other plans and so we can't always retain the staff to make any great headway on the vacancies. But we're working hard on it. Also, we mentioned at the last meeting that we're looking to rethink how we organize to gain some efficiencies as well as planning for future workloads. This is still in development; although as we fill more vacancies, that I mentioned earlier, the organization will become clearer, especially taking the closest look at air permitting, which seems to be the bulk of the vacancies that we talked about. So that's all I was going to update you on there. Any questions on that?

Timothy Brown: Any questions? Okay, next item, enforcement activities report.

B. Enforcement Activities Report

Nancy Vehr: I'm going to use the podium. They said that would help in presenting. I'm Nancy Vehr from the Attorney General's Office and I represent the Air Quality Division. So one of the things I do for them is help out with enforcement activities. In March 2012, there were 68 open enforcement cases including several that were operating under consent decrees. Consent decrees usually go on for a longer period of time so they're still continuing. The last report covered eight months. This is four months. So when you're comparing, just take those two items into consideration. Since March of 2012 we've opened fourteen cases. The total opened since January 1 is 35. In the past four months we've closed nineteen. And the total since January 1 is 47. So right now we have 63 open enforcement cases. So we've come down a little bit. They cover a variety of mediums and areas of the state. We also have a number of facilities, as I mentioned, there's eight facilities that are operating under consent decrees. And those may involve more than one enforcement action that's consolidated. Permit appeals—we haven't had any, so there's nothing on permit appeals. On other cases, there are several EPA rule cases that we follow because it affects our permitting. There are some national ambient air quality standards that have been appealed over the years. One is dealing with PM_{2.5}, ozone, and sulfur dioxide. All of those are either in the briefing, argument, or getting ready for decision stages. So these kind of go on for many years. On the national rules, there were four cases related to greenhouse gases. And at the end of June the DC circuit upheld those cases, or upheld EPA's decision. Wyoming was not a party to those particular ones. We're tracking them. There are three lawsuits that we have challenging the implementation rules. And those are still pending in the DC circuit court of appeals. I'll cover those more when we get to the greenhouse gas presentation. And that is all for enforcement, unless there's any questions.

Timothy Brown: Any questions or concerns? Next item, new business, rulemaking.

Steve Dietrich: Well, can I interrupt for a second? There is another update we need to do under old business and it deals with the general conformity rule. It's not on the agenda because this is news that's come up since we advertised the agenda. So I just need to fill you in a little bit on the general conformity. You remember last time we met on March 30, the final recommendation by this Board was to send two options for consideration to the Environmental Quality Council on the General Conformity regulations. After further discussions, after that meeting with DEQ management and also some input from the Governor's staff and the Governor, it was decided to

go forward with the option that gives the State the most control. In other words, DEQ will amend its existing regulation on conformity that will align better with the latest EPA version rather than delete our existing regulation and allow EPA's federal regulation to stand. That was the second option—we were going to completely delete our regulation and then adopt, let EPA's stand. So we decided to move forward with the one option. So I needed to update you on that. I know we had quite a bit of discussion on that, trying to decide what the recommendation needed to be. After all that was said and done, there was further input that we got that helped us decide to go the one option. Questions on that?

Klaus Hanson: I think if I remember right, we didn't issue a preference at the time...

Steve Dietrich: No, we issued both... as options. And I think if I remember correctly, without reading the minutes, you wanted the EQC to see both options...

Klaus Hanson: Correct. Yes.

Steve Dietrich: Well since that time, some other input has been gathered and decisions have been made. So I just wanted to make you aware that we're going to be down to one option going forward to the EQC.

Timothy Brown: Any other questions or comments? New business, rulemaking. Proposed changes to the Air Quality Standards and Regulations.

Steve Dietrich: I think we have a power point to help us.

Tina Anderson: So there's space up front here if you all just want to come around and grab a chair.

Klaus Hanson: Do we need our packet?

Steve Dietrich: Yes, it might be good to have some of your handouts.

Tina Anderson: You don't need to bring the actual rule language. We're going to give you the back story for the Greenhouse Gas Rules. Then we'll bring you back up front when we actually go through the nitty-gritty for the rule language.

Steve Dietrich: There's a number of folks that will be making parts of these presentations, including myself, Tina, and Nancy, and Cole for this portion. Lori—I forgot Lori. First slide here, okay. These are the topics we're going to cover. The debate on greenhouse gases contributing to climate change continues. We're all aware of that. So we're really not here to discuss that today and that theory. But according to EPA, greenhouse gases have the potential to contribute to global warming and can thus affect climate change at a much faster rate. That greenhouse gases are emitted due to human activities worldwide. The rate at which greenhouse gases have been emitted into the atmosphere increase dramatically since the industrial revolution

in the U.S. in the 1800's. The top six greenhouse gas compounds that EPA's the most concerned about are going to be shown on the next few slides. And so what Cole Anderson is going to do is kind of go through those slides and give us a breakdown of what those compounds are.

Cole Anderson: My name is Cole Anderson. I'm the New Source Review Program Manager. I'm also one of the vacancies that was filled since the last Board meeting. So I've taken this position, and my first day was in April. I just want to go through now and describe the greenhouse gases to you. We'll look at those six starting with carbon dioxide. You can see that's definitely the majority of the greenhouse gas emissions. This information was obtained by the USEPA. And this is their information shown in millions of metric tons of CO₂ equivalent. And I'm going to define a term here—CO₂ equivalence is the mass of the pollutant times the global warming potential. So the equivalency is a calculated number. It's not something you can directly measure. We can go on. I can go into each of the six here. Carbon dioxide—it is the basis for the global warming potential number. It has a value of one. You can see it has a life span of about 50 to 200 years in the atmosphere. The pie chart shows the industrial areas where these are typically emitted. Not all of them are subject to regulation under the air quality rules. Again, this is national information from EPA. This is methane. Methane is about ten percent. So we've gone from 84 percent down to ten percent. The global warming potential here is a little bit higher. It's now at 21, and it lasts about twelve years. Nitrous oxide—you'll notice that the global warming potential again is increasing. We've gone out to 310 now for this. It lasts about 120 years. And this accounts for about four percent of the greenhouse gas total emissions. I'm not going to talk about litigation. And finally the last group, the fluorinated gases. When we talk about the six, we've only done three today, the remaining three are listed under the fluorinated gases. These are typically synthetic gases that have been used for specific industrial purposes. As you can see, these ones, a little bit can get you a long way, especially if you look at FFSF6 at the bottom. The global warming potential is 23,900. So just a little bit of mass times that number gets you a pretty large CO₂ equivalence. You can see it's very variable. They last for a while. SF₆—3,200 years is what they're saying it can last in the atmosphere. As you'll notice, the 80 percent there, that's coming from substitution of ozone depleting substances. So as we worked through the 70's to remove ozone depleting substances, the resulting chemicals are now contributing to global warming. So that's just a point there. Are there any questions on the six greenhouse gases?

Sam Greene: Cole, I think it's important to note that these are, I believe the term is "anthropogenic," not naturally occurring emissions.

Cole Anderson: For the fluorinated gases?

Gina Johnson: Please state your name.

Sam Greene: This is Sam Greene with Sinclair Oil Corporation.

Gina Johnson: Thank you.

Cole Anderson: Any additional questions? Yes.

Klaus Hanson: Yes, what is the percentage?

Cole Anderson: They are two percent of the total. So we've gone from the 84 percent being carbon dioxide down to the last small group of two percent.

Klaus Hanson: Two percent. Okay.

Cole Anderson: I'll turn it over to Nancy.

Steve Dietrich: Hold on (discussion of next presenter). I'll be brief. So that gives you an idea of the universe of compounds we're dealing with here in greenhouse gases. But just to make things more complicated in Wyoming, our own Wyoming statute, which is 35-11-13, page 36 in that yellow book states, and I'll quote this, "Effective March 31, 1999, neither the Department nor the Council shall propose or promulgate any new regulation or rule intended in whole or in part to reduce emissions as called for by the Kyoto Protocol from the residential, commercial, industrial, electric utility, transportation, agricultural, energy, or mining sectors." Without the authority to regulate greenhouse gases, Wyoming cannot conform to any of the new EPA requirements dealing with greenhouse gases. In fact, there is a substantial list of litigation targeting the new regulations that the EPA has proposed. And Nancy's going to go over that over the next fifteen slides or so.

Nancy Vehr: Greenhouse gases—you either start with litigation or regulation and you end up having the other one happen as well. Back in 1999, the Kyoto Protocol statute that Steve just read, there was also a rulemaking petition that several states and entities had put together to regulate greenhouse gas emissions from cars. And this rulemaking petition was submitted to EPA. EPA denied the petition. It went up all the way to the United States Supreme Court on appeal. And that's the Massachusetts v. EPA case that came out in 2007. In that case, there were two points made. One is that greenhouse gases are air pollutants. And the second result from that case was the Supreme Court directed EPA to determine whether automobile emissions cause or contribute to air pollution which may reasonably endanger public health or welfare. And those are two key phrases. So from those two key findings, there's the series of rules and regulations that came out. The first is this Endangerment Finding. And the Cause and Contribute Finding. Both were in the same rulemaking. That was in 2009. And EPA determined that greenhouse gases endangered public welfare by contributing to climate change. The second one was the Tailpipe Emission Rule. In spring 2010, along with the Timing Rule in June of 2010 there was a Tailoring Rule that came out. So these four are called the national rulemakings. Later on, EPA excepted biogenic emissions from being considered under the Tailoring Rule. And then on June 29, just a week or so ago, they issued their final decision on step three of the Tailoring Rule. And I'll go into each of these rules a little bit later. And then there was a rulemaking that they did in the fall of 2010 dealing with implementation of these greenhouse gas rules for states. On the endangerment and cause and contribute finding, EPA defined the greenhouse gases as being the aggregate of those six gases. So it's not any one

individually, but the aggregate together is greenhouse gases. Motor vehicle emissions of greenhouse gases contribute to the climate change. So that was another finding that they made. And then they found that greenhouse gases and climate change endanger public health and welfare. So once they made these findings under the automobile section, it triggered rulemaking or actions that they took in other areas. One of those is the Tailpipe Emission Rule. This is a joint rulemaking they did with the National Highway Traffic Safety Administration and it was fuel economy standards. And then the EPA portion was on the greenhouse gas tailpipe emissions. It covered cars and light trucks for the 2012 to 2016 model years. Those vehicles, the earliest they could start coming off the production line was January 2, 2011. So that's when they made the rule effective. That date comes up again in additional rulemakings, one of which was this Timing Rule. Once you start regulating a pollutant under one section of the Clean Air Act, like the automobiles, EPA felt they needed to regulate it then under other sections affecting stationary sources. The issue was when did it become regulated. The Timing Rule said greenhouse gases or any air pollutant becomes subject to regulation under the Clean Air Act once a regulation requiring control of that pollutant takes effect. Remember under the Tailpipe Rule, they said that rule went into effect on January 2. So then that's when for other aspects of the Clean Air Act EPA felt that the greenhouse gases became a regulated pollutant as of that date. So now they have to deal with how does this affect stationary sources. And they came up with the Tailoring Rule. Under the Clean Air Act, for large stationary sources, those are emitters of either 100 tons per year or 250 tons per year of regulated air pollutants. And you can recall from the slides that Cole showed you, that under CO₂ equivalents, it doesn't take much to have a global warming potential. But it may take a lot more of it to get a tons per year basis. And so EPA designed this Tailoring Rule to phase in the regulation of greenhouse gases. So that smaller sources that were just emitting at the 100 and 250 ton level would not be impacted. So what they did for stationary sources under construction permitting, the PSD sources, they raised the thresholds to this 75,000 or 100,000 tons per year of the CO₂ equivalent and they kept the mass basis of 100 tons per year. For Title V, the Operating Permit Program for large sources, they have it at 100,000 tons per year CO₂ equivalent and also have a mass basis requirement of 100 tons per year. This phased in regulation then, those were the first steps. Of course, once all the regulations happened, lawyers get involved and you get litigation. So the litigation is this Coalition for Responsible Regulation v. EPA. There were well over eighty separate petitions for review of various rules of those four national rules on endangerment, tailpipe, timing, and tailoring. And in February, these were filed in the DC Circuit Court of Appeals. Whenever there's a national rulemaking, that's the court that gets to hear them. And the DC Circuit in February heard oral arguments and issued their decision on June 26. The opinion is, I don't know, 90 pages long. It's pretty long. The court upheld the Endangerment and Tailpipe rule. So they actually got to the merits arguments in those cases. And they upheld what EPA had done. On the Timing and Tailoring rules, the DC Circuit never reached the actual meat of the argument. What the DC Circuit did was they dismissed those challenges on jurisdictional grounds. They basically said the people that brought these challenges don't have standing or right to be here in court to bring them. And so we don't have to hear them. So they did not consider those arguments any further. And then the Implementation Rules, that whole next series of rules that came out in the fall, which are how to implement these rules for the states. The court recognized that there's other cases challenging those. And they declined to address

those cases. And that's the case that Wyoming's involved in, are the Implementation Rule challenges. On this decision where it just came out at the end of June, the petitioners in those cases are evaluating whether they should file for rehearing or go on and ask that the US Supreme Court take one or more aspects of this case. And they have, I think, a two-month time period where they can decide. So this case isn't what's considered a final judgment or final action. So now what comes when you've got the Endangerment and those four national was this Implementation Rule. So you get more regulations coming in to play. And so these next series of slides will cover what are called the Implementation Rules for getting tailoring at the state level. There was a state plan call, a failure finding, and a federal plan. And if you look at all of those dates, those rules were proposed in the fall of 2010. But they all became final within a two week time frame. So states were not given much time at all to get this implemented. Under the state plan call rule, in the proposed rule, EPA had listed Wyoming as able to apply this prevention of significant deterioration to construction permitting program to greenhouse gas sources. They had a table that they listed. And they had Wyoming on this list of, I'll call it good states that could apply this. However, Wyoming has this Kyoto Protocol statute, this 35-11-213 that Steve read. And Wyoming informed EPA that we're not able to regulate greenhouse gases. That we're on this, because of this statute. And EPA had said in order for states to get permits, they have to go to a permitting authority. And states get this authority through state implementation plans. If there's not a state implementation plan in place, then EPA can do the permitting, but EPA has to take an action against the state, called a federal plan, finding of failure, before EPA can become the permitting authority. If there wasn't a permitting authority, EPA said that sources would not be able to get construction permits effectively. EPA was putting the construction ban in the state. And so the State had to be moved over to this list of bad states that didn't have the ability to permit these sources. So in the final rule, EPA found that Wyoming and twelve other states' plans were inadequate. And then they set this state plan submittal deadline for Wyoming as December 22. Again, Wyoming needed to have permitting authority in place or sources would not be able to get construction permits. And that was the date that EPA said needed to be in place in order for permitting to happen for Wyoming sources as of the January 2, 2011 deadline. So that was the first of the implementation rules, the state plan call. The second one was the failure finding. Basically, they had done the state plan call on December 13. And they said by December 22, you need to have a permitting authority in place. If you don't have a permitting authority in place, then we, EPA, can go ahead and take over permitting so sources can get construction permits. So, of course, they found that we didn't submit a plan by December 22. Because we had a statute on the books that would need legislative change before we could do any permitting. So this was even before our legislature could take any action. So we got the federal failure finding. So that's step two in this implementation rule process. And then the third thing was imposing this federal plan. Initially, the plan applied to Wyoming and six other states. There were thirteen that found that they couldn't do greenhouse gas permitting. But they chose later dates to submit state plans, so EPA didn't find they didn't submit a state plan at that time. And that was because their state process works a little bit different than Wyoming's. The federal plan went into effect on January 2. EPA said the federal plan where the regulations found in 52.21 and that's EPA's federal plan, that they apply in any state, their permitting. And the federal plan applies only to greenhouse gases. So once the federal plan was put in place, it established a dual permitting scenario in Wyoming

for greenhouse gas sources. EPA's responsible for the greenhouse gas portion of the permit. And Wyoming Department of Environmental Quality, Air Quality Division is responsible for the remainder. So, get those rules in place, and now you get the cycle started again. So there's more litigation. And this covers Wyoming's cases. I'm sorry, did you have a question? Oh, okay. So this covers Wyoming's cases. Once EPA took final action, then we could challenge those actions. Even though we had objected to them previously. The case originally started out called Wyoming v. EPA. It's now called Utility Air Regulatory Group v EPA. We started our case in February 2011 in the 10th Circuit Court of Appeals. When EPA does national rulemaking, it goes to the DC Circuit Court of Appeals. When it's local or regionally applicable rulemaking, it goes to the applicable circuit court. For Wyoming, that's the 10th Circuit. We felt this was an action against our state plan and needed to be filed in the 10th Circuit. There were other petitioners that filed. The National Mining Association, Wyoming Mining, utility and regulatory group. Other petitioners filed in the 5th Circuit. That would be Texas. And then had filed in the DC Circuit, because EPA felt these were national rules. So there were three different courts that were hearing similar petitions. So in August of 2011, all cases ended up transferred to the DC Circuit Court of Appeals and were consolidated into this UARG v EPA case, which is how it's now called. In June of 2012, we completed all the briefing on the case. And so now we're just waiting for the court to either set an oral argument, which would be sometime this fall. Or tell us, hey we're not going to hear argument on it and we'll issue a decision on a briefing. We haven't heard any word from the courts since we filed our final briefs in June. So that case is still open, alive, and pending. So then, some addition. And Steve, I don't remember if you're talking on this...

Steve Dietrich: Uh, yes. What slide are you on? Yes.

Nancy Vehr: Yes.

Steve Dietrich: Okay. And there is more. Since the EPA imposed the federal plan in December of 2010, DEQ has been working with the Wyoming Legislature to find a way to deal with the need to write air permits to allow construction to happen, yet not jeopardize the pending litigation that Wyoming is part of that Nancy just summarized. What came out of that is Senate File 86. That was a result of the last legislative session earlier this year. Senate File 86 amended the Wyoming statute that I quoted earlier, 35-11-213, to give the DEQ the authority to go forward with rulemaking to allow DEQ to regulate greenhouse gases in addition to the criteria pollutants that we already have the authority to regulate. The criteria pollutants being NO_x and SO₂ and CO. The three key provisions of Senate File 86 are listed here. And that the legislature directed DEQ and the EQC to adopt the greenhouse gas regulations that are no more stringent than EPA's regulations. Secondly, to reduce the risk of muting out the EPA's litigation that we're part of. Senate File 86 delayed the effectiveness of any rules that the DEQ and the EQC adopt. To be effective, either the legislature has to authorize DEQ to submit a greenhouse gas state plan, or there's a final judgment that Wyoming is part of in litigation. So one of those two things need to happen in order for us to go forward with our rules. The third key provision is that the legislation included two repealer provisions or off-ramps. The first being that Congress prohibits or repeals EPA's greenhouse gas authority. And I don't know if that's going to happen

any time soon. And then the second is, the federal court has to issue a final judgment which takes away EPA's authority, which is still pending. So that's the gist of what Senate File 86 allows us to do. And so we've gone forward with State rules and we're here today as part of that process to arrive at some slides that we're going to go over here on the rules. But again, the rules we develop can be as stringent, but no more stringent than EPA's rules. We've got to revise our current permitting rules that cover large industrial sources. It does not cover minor sources. It's just the major sources that we're talking about. Again, we've got to create the off-ramps if requirements change. We have to comply with Senate File 86 in our rulemaking. And eventually we're going to replace the federal implementation plan that EPA's put in place for greenhouse gases in Wyoming with our own approved state implementation plan that EPA has to also approve. So that's what we're trying to do here. The next steps, after today, would be to present this rule package that we're going to go over with you today, with the EQC in early October. And the hope is that we will get the necessary approvals, from not only the EQC, but also the Governor's Office, so that the regulations are finished before the next legislative session in Wyoming on 2013. So that's the goal we're trying to achieve. And that's taking it as far as the authority that was granted to us in the last legislative session. So I think at this point, do we have questions? Klaus?

Klaus Hanson: Steve, can I ask a question for the bullet point number one? Being in local government, we always find of course, state law trumps local law, federal law trumps state law. Now if you say as stringent as federal rules, that makes sense. No more stringent, that's an attempt. But we cannot be more liberal, anyway, than federal rules. Isn't that the case?

Steve Dietrich: That's generally what the expectation is. That's correct.

Klaus Hanson: I mean we can't you know...

Steve Dietrich: I think what they were trying to put in place here is that they want us to make rules. The legislature wanted us to make rules...

Klaus Hanson: Correct...

Steve Dietrich: Get the authority back in Wyoming. But they also realize that they don't want us to be any more stringent on this topic, on this particular set of rules than what the feds are.

Klaus Hanson: So the second part makes sense to me. The first one is kind of self-evident, anyway. That's what I was getting at...

Steve Dietrich: Correct...

Klaus Hanson: So nobody should think in this room or anywhere else that we certainly can exceed the federal rules by making them more liberal. We can't do that.

Steve Dietrich: Right. In order to get primacy a lot of times the EPA says you at least have to be as stringent as what our rules...

Klaus Hanson: Correct...

Steve Dietrich: Marion Loomis. Do you have something you want to say?

Marion Loomis: I'm Marion Loomis with the Wyoming Mining Association. The State can be more stringent than the federal rules. We've already done that with SO₂ rules. They're ten times more stringent than the federal rules. So without a provision that says that you cannot be more stringent, the State could have been more stringent.

Klaus Hanson: No it makes sense to me. I just wanted to make the point that we shouldn't think that we could just forget about the federal rules and be more liberal than the federal rules. We can't do that, can we?

Steve Dietrich: Marion pointed out that we could have gone stricter, although Senate File 86 basically puts it in place that they don't want us to at this time. The local level could be more strict than some state rules. They always have that option. So that concludes that portion of the presentation leading into what Tina's going to go through now, the actual rule changes themselves. So if there are any more questions there, we'll move onto that section.

III. NEW BUSINESS

A. Rulemaking

Tina Anderson: We'll have you all go back up there...I'm Tina Anderson with the Air Quality Division. We have lots of experts in the room. I coordinate the drafting of these rules, but Lori Bocchino over there from the Operating Permit Program was a big contributor as well as Nancy Vehr, who you've heard from. And Cole Anderson and Josh Nall in the middle of the room are with the PSD program and will also help if we have a lot of difficult questions. But it's definitely a group effort. And I'm going to go through the actual rule changes. Today I brought in what we're calling now the annotated version. I put that in front of your desk. It's a little bit different than what we sent you in the mail. What we sent you in the mail was the full blown text. And that's what we had prepared one month out from this meeting. Since that time, the need arose for people to get in there and look at this quickly, see what it means and not have to dig through the forty intervening pages. So we created this second version. It's also what's in the back of the room if anybody needs a copy to follow along. And it's also been loaded up on our website. So I think probably for ease, we'll go through the abbreviated version unless you have questions or would rather take the longer version.

Timothy Brown: No, I think we'll go through the annotated version.

Tina Anderson: We just need to all pick the same one so that we're not looking at different page numbers. We'll start with Chapter 1, Common Provisions. And at the top it says "Draft

6/8/12 Annotated Version.” It only includes pages with revisions, not the full chapter. And the first changes are indicated on page 1-1 under Section 1. This is the Introduction to common provisions. The introduction is simply a listing of what’s in the chapter. It doesn’t have a lot of regulatory content to it. But you’ll notice that Sections 2 through 6 have also been added. It’s not because we’re actually adding the sections here. It’s because we haven’t updated this introductory section for a long time. When we first started the rules, our introductory sections were like a sentence long. Over time, we’ve realized we needed more explanation because the chapters were getting longer. So we started putting more of the content in the introduction. So today, 7 is really the only new piece in here. But 2 through 6 have been added to the introduction paragraph, just to bring it up to speed with the other regulations. Does that make sense? It took longer to say that than to understand it, I’m sure. Page 1-2 is the next change. And that is a definition of greenhouse gases. These are the six compounds that Cole went over on the slide show. And this comes straight out of EPA’s definition of what a greenhouse gas is. And as Nancy pointed out, it’s the aggregate not the individual pollutants.

Diana Hulme: Can I just clarify there Tina? Just along with what’s written in red there, if a source was a major source for just CO₂ it would not be regulated because it’s only emitting the one gas?

Tina Anderson: No, it would still be a major source, but you are required to look at all of those and add those up. The others may be zero.

Diana Hulme: Okay. Alright. Thanks.

Tina Anderson: The next page is page 1-3, which has essentially the guts of the regulation under Section 7(a). In here we require that sources that have the potential to emit greenhouse gases be subject to the Operating Permit Program, which is in our Chapter 6, Section 3. And the PSD or prevention of significant deterioration program, which is in our Chapter 6, Section 4. Those are the two big permitting programs. All over the country, the big difference between the two, just a reminder, is that Chapter 6, Section 3 is an operating program, like the name indicates. It’s for sources that are already built, up and running, and have to get a permit to actually operate. The PSD section deals with new construction. You actually have to have this permit before you build. And it is the most complicated portion of our rules. And it will get more complicated as we add greenhouse gases. So that’s the heart of the rule here. Directing sources to actually go to those sections for parts of our rules. Under Section 7(b), we have a provision that basically says that if you’re a minor source, you don’t need to get a greenhouse gas permit. All of our minor source permitting occurs through Chapter 6, Section 2. It is the normal portal into the permitting process. But we didn’t want to bring the greenhouse gases through that direction because then it would suddenly bring in all these minor sources. So we actually elected to bring it in through Chapter 1 and tell you that minor sources are not affected because they’re not required to get greenhouse gas permits on the federal level. And again, we’re not trying to be any more stringent. So this is a really important provision that minor source permitting is not required for greenhouse gases. Under (c), this is about the repealing aspect. And Nancy talked about this and Steve also touched on it. We brought this into the rule

as well because Senate File 86 requires this. So the first two sections of (c), “(c)(i)” and “(c)(ii)” are the off ramps that you’ve heard about. On (c)(i), this a congressional action. It would actually prohibit the EPA from regulating greenhouse gases. And (c)(ii) is when a federal court would issue final judgment, which would then again prohibit EPA from regulating greenhouse gases. So in the event of either of those things happening, this rule would need to be repealed. Under (d) there’s a definition for final judgment. It basically means that it can’t be appealed through the legal process. And then under (e), just a clarification on when the repeal actually happens. And the repeal would happen once the Governor certifies to the Secretary of State. So that’s just an internal definition for us. We actually have a legal definition for when the repeal would occur.

Klaus Hanson: At the last note on 1-3. The second sentence says, “Congress prohibits EPA from regulating greenhouse gases.” Has that happened? Or this hasn’t happened, right? So it should actually read something like “could” or “may” or whatever. Because I read this and I thought, this has happened. But it hasn’t happened. This is what you refer to as the off-ramp, right?

Tina Anderson: And these annotations are not being voted on today. It might have been approved if I said “if.” You’re right. Congress did not do that. We wouldn’t be here today if that had happened. So that’s the extent of what’s in Chapter 1. Any questions about that? Okay. Now we get into Chapter 6, our permitting chapter.

Steve Dietrich: That’s a good question. The question before the Board is do they want to hear all of the chapters and approve them one by one? It’s up to you guys.

J.D. Wasserburger: I think we should approve one by one...

Timothy Brown: It might be better to approve this one. If there’s no discussion, concerns, or comments. So we need a motion.

J.D. Wasserburger: I would move that we approve the language in Chapter 1 that the staff has presented today.

Diana Hulme: Second.

Timothy Brown: The motion has been made and seconded to adopt the language in Chapter 1 that’s presented by the Department. Okay.

Tina Anderson: Just as a point of order, you didn’t take any comment from the public...

Timothy Brown: Does anyone need public comment?

J.D. Wasserburger: Do we need to vote on that?

Timothy Brown: Do we need to vote? Now we need to vote? All in favor?

J.D. Wasserburger, Diana Hulme, Klaus Hanson, Timothy Brown: Aye.

Timothy Brown: All opposed? So passed.

Tina Anderson: Okay. Then moving on to Chapter 6. Again, this is our permitting chapter. Again, we've added something to the introduction. This is again the laying out of what's in there. We've added one sentence to clarify and actually improve the readability of these regulations. Just to point out, minor sources are not covered by greenhouse gases. It's the same sentence you saw in Chapter 1. We've moved it in here, just to make sure that it's seen. So that's all that's happening in Section 1(a). Section 3 is our Operating Permit Program. And again, on page 6-2, you'll see we've added again the definition of greenhouse gases. It's identical to what you saw in Section 1. And it's the same list of pollutants that Cole went over earlier this morning. If it's alright, I'd like to jump to the definition of TPY CO₂ equivalent emissions on page 6-4, because it's used...I know I'm out of order, but it's easier for me to explain this one and then come back. So we'll jump to page 6-4 and then go back. It looks huge. And it actually has three big parts to it. The very top part is the definition. The middle part is an exemption for biogenic materials. And it's an exemption that's only going to last through July 21, 2014. But it's in place right now, so we put it in there. That will probably come out. EPA will either choose to regulate them or they won't. But we'll figure out what to do later, with that piece. And then at the end is an incorporation by reference direction. You've done a couple of these meetings now. And you know now that normally what we do is just shove all that incorporation by reference to the end of the chapter and just do it in one nice little place. But for the purpose of greenhouse gas regulations, we are bringing it in specifically because if we have to go through this appeal process and we have to take all of this out, it's much simpler for us to take out this whole chunk than to go and revise a whole lot of pieces and mess up our existing regulations. So while these regulations are not the most elegant regulations we've put together, we think they serve the purpose and make it easy to get in and out of if we have to make changes going forward. So I'll apologize right up front. Like I said, they're not the most elegant regulations we've pulled together. So getting back to the definition of TPY CO₂ equivalent. This, and Cole has already talked about this. It is what you end up with when you try to add up all of these different greenhouse gas pollutants. And each of the pollutants Cole showed you has a different global warming potential. And in order to get them all to add up, you have to get them all converted into CO₂ equivalent units. And this particular part of the definition tells you how you do that. You multiply the mass amount, which is just straight mass by that global warming potential. And then you'll get a CO₂ equivalent number. And we actually have an example of that. If you'll flip back to the page before, on page 6-3, there's a little table where we've done the math for you. So you can see each of the pollutants on the far left column. Then these are just made up mass numbers. These are not associated with any particular industrial unit. And you can see their total for mass. And then you can see their global warming potential multiplier, which are those numbers which Cole had showed you earlier. And then once you multiply them, you get the numbers on the right. So even though the mass numbers are only adding up to 75 tons, you can see that the CO₂ equivalent is over 100,000 tons. So this table will

not actually go into the regulations, we just created it here today so you get an idea of what a CO₂ equivalent number is. With that, I'd like to go back to the definition on page 6-2. We're modifying the definition of major source under Operating Permit Program. Anybody have any questions at this point? So major source is defined differently in the two big programs, PSD and Operating Permits. And under major sources, it's typically a source that emits a hundred tons. And that requirement still has to be met for greenhouse gases. We figure their straight mass. They still have to hit that 100 tons. But when you do the CO₂ equivalent piece, it has to hit 100,000 tons. So those are the thresholds. That's what the language on the bottom of page 6-2 is telling you. In order to require a source to permit under the Operating Permit Program, they have to show that they have the potential to emit 100 tons per year on a mass basis and 100,000 tons per year on a CO₂ equivalent. And that's after July 1, 2011. So that's how you get into the Operating Permit Program.

Klaus Hanson: Tina, on that particular sentence, has the potential to emit. Who determines that potential. Because it's sort of a real, right?

Tina Anderson: So the source would take a crack at it when they're putting their application together. And then Lori's staff will look at that pretty closely when it comes in, to see if it's realistic.

Klaus Hanson: So it would be your agency that says, "Yeah, you have the potential..."

Tina Anderson: Right. But the applicant will come forward with their best understanding. Because they're the ones that know the process...but then that's all reviewed by the permit staff. Alright, any questions about this? That takes us through Section 3. That takes us up to Section 4 which begins on page 6-4. Again, this is the preconstruction program. We're only dealing with large industrial sources. Power plants, refineries, cement kilns, type sources. You'll see on page 6-5 again we've brought in the definition of greenhouse gases. And you'll see some of the same definitions and themes repeated here. But it's laid out a little differently and that's primarily because EPA laid it out a little differently. We're trying to stay as close as we can to their language so that it's approvable. So we're constantly doing this balancing act between meeting what's required under Senate File 86 and trying to pull something together that EPA will actually approve. And if we don't meet both of those, this rule will not pass. So greenhouse gases, again the definition is in there. Again, you'll see below it the definition for TPY CO₂ equivalent. Same sentence there at the top of "(i)(A)," and then the incorporation by reference language is below it. Then there's a description of how you actually sum up the various gases there at the bottom. Similar procedure. And then the biogenic exclusion is actually on page 6-6. A new term is added in the middle of page 6-6. And that's "emissions increase." So when you're dealing with PSD sources, you're either dealing with a brand new source, what we call a greenfield source, which will be the applicant coming in with the emissions associated with a whole facility. Or an emissions increase from an existing facility would also fall under this. So it's important to be able to define what is meant by an emissions increase and what is meant, more importantly, by a significant emissions increase. Because we do, in other places in the PSD rule, define what significant means for other pollutants. And those we do not want to apply

to greenhouse gas because they're a lot smaller. So if you can see sort of the essence of this is that it takes 75,000 tons of CO₂ equivalent to actually be a significant increase. And then we begin a series of scenarios under which you are required to get a greenhouse gas permit for a PSD source. And establishes different thresholds depending on the scenario. So if we look at the bottom of page 6-6, we're beginning first with a source that emits both what we call criteria pollutants. That's the NO_x, SO_x, particulate, ozone type pollutants, and greenhouse gases. And it's in this case, a new source, and it emits both of those in a major level. So just for example, I put in 300 tons of NO_x, nitrogen oxides, and it will emit at least 75,000 tons of CO₂ equivalent, then you are required to get a permit for greenhouse gases. So that's scenario #1. Scenario #2 is very similar except that we're talking about an existing major source. So it's already got the major amount for a criteria pollutant, but it wants to permit an increase. That's #2. And then #3 would be a brand new source that doesn't emit criteria pollutants in a major level but does emit greenhouse gas at 100,000 tons per year. And then the fourth scenario is an existing source that's already emitting greenhouse gases at 100,000 tons. This is a big source. And then it wants to do a change that will actually bring in an additional 75,000 tons per year of CO₂ equivalent. So all of those types of sources and changes, whether existing or new, have to get a permit through the PSD program for greenhouse gases. And I'll stop for a minute. Any questions about that? We didn't dream any of this up. It came straight from the EPA regulation. At the bottom of page 6-7, there's also another provision to make sure that the mass is considered as well. So in addition to what we've already seen of the CO₂ equivalent, you also have to meet those mass rates that are required for the PSD program. A little different from the Operating Permit Program, because it only has a 100-ton threshold. PSD has two groups of sources. Some of them are what we call named sources, which are actually listed on page 6-9. They are things like primary lead smelters, which we don't have any of. But power plants are definitely in there. Phosphate rock processing plants, coke oven batteries, anything that is on that list. Those are 100-ton sources. Everything else, if you emit 250 tons per year on a mass basis, you're in PSD. And Nancy had talked about this earlier. I just want to hit home again, that it's not enough that you just emit the CO₂ equivalent, but you also have to hit that mass threshold for both of these programs. It's a further restriction, actually on regulating greenhouse gases. So you saw that example of a source, the example again here. Page 6-3. This is a perfect example of a source that doesn't hit the mass threshold but does hit the CO₂ equivalent threshold. This source would not be regulated under greenhouse gases. It's harder to require the regulation if you require both of those thresholds be met.

Klaus Hanson: Tina, I looked at this before. You lost me on the mass definition. Is this when you compact it and make it solid? Or what does this mean?

Tina Anderson: The mass just means that if you actually weighed this material out, that's what the weight would be.

Klaus Hanson: So then I did understand it correctly. So if you weighed it on a scale...

Tina Anderson: Right. That takes us to page 6-8, the definition of major stationary source under PSD. We've added some clarifying language here to make sure we don't inadvertently

bring people into the program that we didn't mean to bring into the program. So this is our existing definition of major stationary source. And here we have added language to make it clear that if you're a greenhouse gas you go to another part of the regulation to find out what your threshold is. So if we hadn't put this language in, you could be brought into the program simply by being 100 tons of greenhouse gases if you were a named source. And that was our concern there or 250 if you're not a named source. And then on the bottom of page 6-9 under Section 14. This is incorporation by reference, modification because we inserted those IBR sections intermittently throughout the regulation. We kind of messed up the language in the existing incorporation by reference section. So this parenthetical phrase, "except as otherwise noted" has been added. That will come out once we modify all of this and removed all of the incorporation by reference to the end of the chapter. So it will be another revision. We will be before you again when we take it out... And that's all the changes in Chapter 6.

Timothy Brown: Any questions?

Diana Hulme: I probably missed this from Nancy's presentation. So if we adopt this today, it goes to EQC. What would be the effective date of this, then? If they bless it as well?

Tina Anderson: It will not become effective until the Legislature decides, basically.

Diana Hulme: So after next session.

Tina Anderson: Right.

Diana Hulme: And if they decide maybe July 1 effective date. I didn't know if it was an EPA effective date or...

Nancy Vehr: There's two processes that are going on. One is the rulemaking process that becomes State law. And the other is the state implementation plan process to become federal law. So on the rulemaking process, the Senate File 86 directed the agency to make the rules. They don't go into effect until one of two things happen. One is the Legislature says, "Ok, State. Now you can submit a plan to EPA." Or the other one was if there is a final judgment in Wyoming's lawsuit. And then there's a certification that the Governor does. And so the date that the Governor would certify that is when they would become effective as State law. They still have to go through the federal...

Diana Hulme: And then so when that happens, permitting will start immediately?

Tina Anderson: We said, we then have to package this up and send it down to the EPA. They have to approve that. And that will probably take months. I'm hoping months, not years. And once that happens, then they'll remove the FIP and our SIP will be in place.

Timothy Brown: That's if it goes in front of the Legislature in 2013. Or next session. So that's best case scenario.

Tina Anderson: Right. Best case scenario is sometime later in 2013.

Diana Hulme: And if I could ask a follow up to that. So what kind of workload is the Division expecting then, once all this starts? Is it significant?

Steve Dietrich: Funny you should ask, because Lori is going to try to cover some of that.

Diana Hulme: Am I jumping the gun?

Tina Anderson: Good questions. We probably ought to let you vote on...

Steve Dietrich: If you need to know that we could do that now...

Diana Hulme: I don't need to know that, I was just curious.

Steve Dietrich: I can say in general terms that PSD actions are not as quick as minor source actions. So what we're starting to see is an increase in those applications or even applicants considering submitting those. But what they're contemplating is because of the dual permitting scenario that which EPA has to issue a permit as well as the state, some facilities are actually a little hesitant to go down that path.

Diana Hulme: Exactly. Thank you.

Timothy Brown: If you're in the middle of the permitting process when this switches over to the state, the state will just pick it up where EPA left it in the permitting process?

Steve Dietrich: Ideally, that's the way it can happen. However, what we've been learning through time, in other cases, like in other states where an EPA permit has been issued for greenhouse gas before the state got primacy, that permit still stands. So unless it's superseded somehow, it's still a valid permit that EPA's issued.

Timothy Brown: Right. Thanks.

Tina Anderson: Good questions.

Timothy Brown: Thank you. Do we need any public comment, input? Concerns? Someone's got to have something...

Steve Dietrich: Well, this is kind of hard to understand sometimes when you hear it for the first time.

Sam Greene: I'm Sam Greene with Sinclair Oil Corporation. We currently have a dual permitting project in process with both the Division and EPA. It has been active for roughly

about a year. This is for an expansion project at one of our refineries. Dealing with the two entities in a separate nature is problematic just from a logistic point of view. Having different players review the permit applications. Things like that. We're at the point where we believe we're going to be going to a public comment period. We're trying to coordinate both of these state and federal agencies currently so we can save time and effectively have a public comment period for both of these permits. It certainly would in my opinion and my company's opinion to have a single permitting program, it would streamline things. We've got a very long working relationship with the Division. Even though there has been turnover with Steve's group here, there is equally and more frequent turnover with the folks we've worked with at EPA. So it's very difficult to have that continuity with the agency, which is located in Denver, as you know. So we support adoption of the rules by the Division.

Timothy Brown: Thank you.

Marion Loomis: Mr. Chairman. I'm Marion Loomis with the Wyoming Mining Association. And it was our understanding, and I think it's still true, Tina, on your Title V Operating Permit Program, you collect fees. And these, when we do greenhouse gas permitting, that will not be subject to fees, is that correct?

Steve Dietrich: Yes, at the current time, we don't plan on assessing fees associated with greenhouse gas emissions, that is correct.

Marion Loomis: And is there anything in the, I didn't see anything in any of these that would preclude you from that, though.

Steve Dietrich: That's also correct. These regulations don't touch on that. In order to try and address it, we decided to be silent on it. In other words, to put something in there that says we can't collect fees is harder to change later than it is not to collect fees and to be silent on it. That's as simple as I can state it. We have the ability to collect fees, but we'd still have to put something in there to say we do rather than put something in there now that says we don't have the ability to collect fees. It starts to complicate the issue further. It's harder to do it later. Do you want to try to address it further?

Lori Bocchino: Yes. We did give this some thought. In order for us to change our fee structure at all, we have to go to the Minerals Committee. It's not part of the regulatory process, but every time we go through the budget session, we go forward to the Minerals Committee and we say either we're going to change our fees and here's what the new structure is and why, and we have to get their approval. Or we're not changing anything, we're just going to continue with the system we're using now. So there is still a mechanism in place. We can't just change our fees whenever we feel like it. So we wouldn't be able to charge for greenhouse gases right now. Because we haven't gone through the Minerals Committee in order to get that authority. So there will be no change to our fee structure. And if we ever did want to charge fees for greenhouse gases or do anything else to our fee structure, we would need to go through the minerals committee and get their approval to do so.

Marion Loomis: I don't think that's accurate. You go to the Minerals Committee to tell them what you're going to do, but you don't get approval from the Minerals Committee. You put it into your budget appropriation and it goes through the Appropriations Committee. And as long as the Appropriations Committee approves your budget, that automatically gives you authority to increase your fees. But there's no vote by the Minerals Committee...

Steve Dietrich: That's correct.

Marion Loomis: You could increase your fees. You do that as a courtesy just to let everybody know what you're going to do.

Steve Dietrich: That's correct, Marion. That's absolutely correct. To further what Lori was trying to describe, in our statute, we are required to cover all of the operating costs for the Title V Program with fees. So at which time we have workload and cost associated with the Title V program, we are required to periodically update our budget request, budget appropriations. Part of that step is to go through the Joint Minerals Committee and then later on to the Appropriations Committee to get that approval. And at which time we think we need to assess higher fees associated to cover those costs, like for greenhouse gases, we'd have to go through that whole process that we just tried to describe together. I don't know if that answers all of your questions and concerns and your points at all, Marion, but...

Marion Loomis: Mr. Chairman?

Timothy Brown: Yes sir.

Marion Loomis: Well not really, because you can charge fees on Title V. So without something that would limit your ability to charge greenhouse gas fees, I don't see anything that would stop you from doing that. Because you have authority to charge, what is it, \$25 an hour for each ton of emissions now under the Title V Operating. I forget what the current...

Steve Dietrich: It's an amount per ton.

Marion Loomis: So you don't have to go back to the Legislature to charge fees on any of your emissions. And if you choose not to charge them on greenhouse gas emission fees, that may be your decision. But I'm not sure that there's anything that would preclude you from doing that in anything that I've read.

Steve Dietrich: Technically, you're correct. And I don't have the statute unless I pull it out and look at it. For each criteria pollutant that we currently charge fees for, there is a ceiling of 4,000 tons for each facility. If you apply that to the greenhouse gas, on a mass basis is what most people would be interested in. But if you look at that 100,000 ton and 75,000 ton thresholds, you quickly get above the 4,000 tons that's stated in our statute for limitation for how the fees are calculated. So rather than try to redo all that at this time, we just decided to stay away from it for

expediency sake to get these regulations where they need to be for the current concerns with getting primacy on greenhouse gas. The fee structure will be something we may have to explore in the future. That's correct. We just chose not to do this at this time. So if we want to have a limitation, that would take another change to what we're trying to put in place here right now. That's correct. Whether it would be in the statute or solely in the regulations or both, it may have to be in both to limit both that possibility, collecting fees on greenhouse gases. So you're right, we don't have a limitation right now. Except that the way the statute is set up to limit above 4,000 tons for each pollutant. You can't charge fees above that. I don't know if I was clear on that or not. But I can pull the statute out and look at it if you want to.

Timothy Brown: Do you feel we need to look at the statute?

Marion Loomis: No.

Timothy Brown: Any further questions, Mr. Loomis? Sir?

Fred Carl: Fred Carl, Black Hills Corporation. We operate several power plants in the state, an oil production operation, and operate coal mines. And we are fully supportive of the implementation of these regulations. Permitting greenhouse gas, the issues around permitting greenhouse gas in Wyoming is a mess. And it's going to get messier if some action isn't taken. So we would really urge the Board to move along with these regulations and get this process going. And enable Wyoming to get control over permitting and greenhouse gases in the state. We're currently also going through a process of permitting a new power generating facility in Cheyenne. And on the first of June just held a joint EPA and state public hearing on the permits. Let's put it this way—we're having some issues with EPA right now in getting them to move and process comments and get this thing going. Multiple additional requirements that come with an EPA permitting process. There's different appeal processes. There's some significant hurdles that come along with the federal process. And it gets control of the operations out of the hands of the State of Wyoming. The Title V permitting effort—when that comes along, is going to be another disaster if Wyoming doesn't get control of it. So without going into a whole lot of detail here, I'd be open to any questions you might have. But we really urge you to move along with this.

Timothy Brown: Any questions? Thank you. You have a question? Yes, ma'am.

Wendy Lowe: My name is Wendy Lowe and I do governor relations...

Timothy Brown: Do you want to come up? I think maybe they've got the microphone up here. I just realized...

Wendy Lowe: My name is Wendy Lowe and I do governor relations with Peabody Energy in Wyoming. And thank you very much for having this public comment session today in Casper, which where we all happen to be running to an oil recovery institute meeting as well. In regard to this one issue, in relation to fees. Many of us have been working on this issue for a couple

years now as the EPA regulations have been coming down. And we've anticipated what Wyoming needed to do. And we've had a lot of discussions with the Department, including Director Corra. And in many public meetings, I just thought it might be fair to share with you that Director Corra did indicate that there was no plan to hire new people for the Division, to implement the greenhouse gas rules. Nor was there an intention on the part of the Department to charge fees for the greenhouse gas portion of the rules. This was thoroughly discussed at several meetings. So I just thought perhaps that you might want to know that this has been a topic of discussion. Quite frankly, it probably would have been preferable to some companies that you put in the rules that they not charge a fee for the greenhouse gas rules. The Legislature is very concerned about the growth of State government and the growth of the Department. And it's been sort of a quandary that Wyoming has had dramatic decreases in Title V emissions, and yet the cost per ton has had to increase in order to accommodate administrative costs for the Department. Many people find that a very interesting situation. We're emitting less and charging more. And it just sort of seems counter intuitive. And certainly, one of the reasons that many of the companies wanted the State to take the program was for ease of permitting. But there was also an understanding it would not cost more for the program. That they would not charge fees. So I don't know. We'll probably be making more formal comments in this regard. But I thought perhaps a little bit of discussion that we've had as we've had our informal working groups, to come to this point today. That's sort of what we've been talking about. Thank you very much.

Timothy Brown: Thank you. Come up here please.

Marion Loomis: Mr. Chairman, I'm sorry I didn't come up to the podium before. I didn't realize you were recording it, I guess. The Wyoming Mining Association has been involved in this process for, as Wendy Lowe said, for two years, or ever since it got started and certainly was involved a lot in the legislation that was passed to preclude DEQ from regulating greenhouse gases. We, and I just want you to know, in case you don't, the effort that went into the legislation that passed this last year. It started out a very contentious issue between some of the utilities that are trying to get permits, greenhouse gas permits, the mining industry that is concerned about how this is going to look around the nation, if Wyoming, the largest coal producer in the nation concedes and caves in to this. What does that do to all of the litigation that's going on. And so the effort to pull all of the language together that ended up in the legislation that passed this last session was quite phenomenal. And the balance that, when it was going through the legislature was very delicate. Everybody was being very careful not to do anything to upset the apple cart. And I just wanted you to know the little bit of that background. And Wyoming Mining Association is in support of these rules going forward. We think they're good. And we want to see them pass. And then we will be involved in the legislation that is being currently drafted that will come up in front of the legislature. Probably the Joint Minerals Committee this fall—we're hopeful that we can have some legislation or some legislation will be drafted for the August Minerals Committee meeting. And then ultimately they're adopted in or adopted at their last committee meeting before the end of this year, to have a joint committee bill to go to the Legislature. But all of that effort will be reviewed closely by all of the attorneys. And I know the utilities in this room are very concerned about it. And I want you to know we

support it. We were one of the ones that were behind the original legislation to preclude regulation of greenhouse gases. But we are in full support of these rules.

Timothy Brown: Thank you. Any other comments? Concerns? Comments on the Board? So the next is to, we need a motion to approve or a motion not to approve regulations as written.

Diana Hulme: I move to approve the amendments to Chapter 6 regulations.

J.D. Wasserburger: I second.

Timothy Brown: A second. Now we need to vote. All in favor?

Klaus Hanson, Diana Hulme, J.D. Wasserburger, Timothy Brown: Aye.

Timothy Brown: All opposed? Okay, so it's been moved and seconded to approve the language in Chapter 6, to approve the language.

Tina Anderson: We just have one more short chapter here. Chapter 7 is a companion chapter to the Operating Permit Program. So what I'm going to talk about is exactly what we did in the Operating Permit Program section. This chapter deals with how you assure, through monitoring, that the emission limits that you've established in the Operating Permit are met on a continuous basis. Very strict requirements, called CAM or compliance assurance monitoring. And because when this program was set up, we just pulled the definitions of major source into the CAM regulation, we also need to bring in anything for modifying in the Operating Permit Program. So you can see on page 7-1, we're again adding the definition of greenhouse gas. And on page 7-2, we're putting exactly the same language that we put into Chapter 6, Section 3 on what the thresholds are, what it takes to bring a source into the Operating Program for greenhouse gases. Again, it's the 100,000 tons per year CO₂ equivalent. And a 100 tons per year mass basis. And now on page 7-3, we're again adding that massive paragraph that defines a TPY CO₂ equivalent, which includes an exemption for biogenics in the middle and an IBR section, an incorporation by reference at the end. So that's really all we're doing there. It's nothing different from what we described to you. But it's a companion program, so we need to keep those parallel.

Timothy Brown: Any questions? Questions, comments?

Klaus Hanson: Just a question. This has monitoring regulations. So the actual monitoring is already in the regulation someplace else. So we don't have to—this just adds greenhouse gases, but the monitoring process is already outlined in this thing, right?

Tina Anderson: Right. So you're just looking at the little abbreviated piece, but...

Klaus Hanson: I've got the whole thing here. And I can't remember where it was. It says Section 2 is continuous monitoring requirements and that's...

Tina Anderson: Well, there's other monitoring requirements in this chapter that aren't CAM. We're only talking about CAM requirements. It's compliance assurance monitoring. Because those are the ones with requirements for the Operating Permit Program.

Klaus Hanson: All right. Thank you.

J.D. Wasserburger: Mr. Chairman, I'd move to approve Chapter 7 as presented by staff.

Diana Hulme: Seconded.

Timothy Brown: All right, it's been moved and seconded to approve the language as written by staff. All in favor?

Klaus Hanson, Diana Hulme, J.D. Wasserburger, Timothy Brown: Aye.

Timothy Brown: All opposed? Ok. So it's approved to accept the language in Chapter 7 as proposed by the staff. Are we at a good spot to take a break? Let's take a five minute break and then we'll reconvene.

Timothy Brown: All right. Let's reconvene. I've got a request first, before we proceed. That if anybody hasn't signed in, please sign in, in the back. Because we need an accurate head count for recording purposes and the BLM needs to know exactly who was here also. So if anyone hasn't signed in, please sign in. With that, next order of business is something's not on the agenda that we need to discuss...

Tina Anderson: We just have a refinement. Actually we have some real life examples of greenhouse gas permitting that Lori was going to cover...

Timothy Brown: So we can go over here...this is just examples...

Tina Anderson: Just three slides, so...

Lori Bocchino: My name is Lori Bocchino. I am the Operating Permit Program manager for the State of Wyoming. And I wanted to give you all a little context for what kind of facilities are going to be subject to this. Some of it you've actually already heard about from some of these companies who are represented in the audience. There are three dual permit applications currently being processed right now. And this is in the PSD arena, so these are construction permits where Wyoming is processing some of the parts of the permit and EPA is processing the other part. The first is for the Black Hills Prairie Generating Station in Cheyenne. This is a gas-fired power plant. And we have already had our public hearing for this and were able to coordinate with EPA in this particular case. So the public hearing happened at the same time and the same place. And right now, both agencies are working on a response to comments that we got from those permits. We only received comments from the company itself, which was Black Hills. The EPA received comments both from Black Hills and the US Fish and Wildlife Service.

So the agencies are working on responding to those comments and hopefully we'll be able to get those permits out before too much longer. The other facility that is being looked at for PSD is the Sinclair Refinery, which Mr. Greene spoke briefly about. They want to make changes to increase production. And the Air Quality portion of that action is expected to be ready for public notice by the end of this month. EPA, on the other hand, is not ready yet. And they have said that they are going to struggle to keep up with the kind of timelines that we're going to be able to do. They don't have the staff to be able to process these things. And it takes them a while. FMC Granger, which is a trona facility, they've also submitted an application to EPA for the greenhouse gas portion of that change for new production lines. We have not yet received our permit application at the Air Quality Division, but we think we're probably going to get that even as soon as next week. So those are the actions that are in the works right now. There's also three more applications that we're expecting to receive in the near future. One is from Solvay for a new gas-fired boiler for plant steam. Did I get it right?

Timothy Brown: You got it right.

Lori Bocchino: There's also a Pete Lien, in Laramie, which is a lime plant. They are going to be requesting a production expansion. And they need to do that with the dual permitting process. And TATA Chemicals, which was formerly General Chemical, a trona facility, they want to be able to put in the new boiler. So we think there's going to be three more coming any time now. We also have two applications for synthetic minor actions. And there's a potential that those will be PSD for greenhouse gases, and thus, would have to go through dual permitting. One is the Wyoming Refining facility in Newcastle. They've already submitted an application to do a production increase. That application is not yet complete. So it's still in the works and it may end up being major for greenhouse gases. We also understand that OCI Big Island is going to be submitting an application for a new vertical mill. We haven't gotten that application yet. But there's a chance that it will be major for greenhouse gases. Now Title V is a different...

Klaus Hanson: What's a vertical mill?

Lori Bocchino: I'm not familiar with it...

Cole Anderson: It's a way to process their insolubles. When they do their process, they basically try and extract out the trona from the ore. And what is left over is insoluble. You can't process it. They crush it down and get rid of that. And a vertical mill is just a different type for crushing that.

Klaus Hanson: From the top down or something? Okay. Thank you.

Lori Bocchino: Now those were all PSD actions. So a facility can't proceed with construction of whatever change they want to make until they get a permit both from us and from EPA. Title V operating permits is a different situation. These facilities have already gotten approval to construct and to begin operating their facility. But in order to continue to operate their facility, they have to get an operating permit. Now their obligation is to submit an application to us.

They don't have to wait until we give them a permit to proceed. So it ends up being somewhat different. Facilities that are already in the Title V Program in Wyoming, and there are about 140 of them, do not have to do anything because of this greenhouse gas rule. The only change for them, which is really very minor, is when you're in the Title V Program, you have to renew your permit every five years. So they have to submit a renewal application to us and in that renewal application, from here forward, they will need to include a list or description of their potential greenhouse gas emissions from the facility. It's not a limit. It's not a restriction. It simply says, here's what our estimated greenhouse gases are. They already have to do this for all the other pollutants that they emit. This is just another set of pollutants that they need to estimate emissions from. And that is a requirement on them in their application. It doesn't end up being a limit in their permit. Now there are three facilities in the state that were not in Title V before, because they were not major before. Now they are major for greenhouse gases. And they were required to submit an application by the end of June. And those are those three facilities there. They are all in the oil and gas industry. There's a compressor station near Wamsutter. Another one near Douglas, close by here. And a gas plant near Opal. And those folks have submitted Title V permit applications both to us and to EPA. EPA is not the Title V permit authority, however. So those applications are kind of in limbo right now. We don't clearly have the authority to issue the permit, nor does EPA, for Title V. But because these facilities have met their obligations to submit an application, they're fine. They can keep operating—they're okay. So this is just to give you an idea of what kinds of sources in Wyoming are impacted by this. And you can see it's oil and gas, it's trona, it will be EGUs—electric utility generating units. And I don't know if anybody has any questions. Yes?

Klaus Hanson: In practicality, on your first slide you said “submission of application to both agencies” and I just want to know how this happens. Does it happen in front of a board? Or is this just in writing and goes to the two agencies?

Lori Bocchino: We get a packet in the mail. Sometimes facilities will meet with us ahead of time so we can talk about it and make sure that they're submitting the type of application we need—the information we need. And we've got some preview of what's going to happen. I think in at least one of these cases, we had preapplication meetings. So we knew what to expect.

Klaus Hanson: But I see then the complication. I mean here, at least, we are face to face. But if you are submitting to two agencies, that one is in Washington and one is in Wyoming, you don't know what the other one is doing. So it must be really a hair raising process...

Lori Bocchino: And the EPA folks they're working with are in Denver. It's not quite as bad as Washington, DC, but it is still separate. And if you're thinking about one set of pollutants, you might be saying, “Here are the controls you need. And here's the practices you need to put in place for those pollutants.” And you're looking at another set of pollutants, you may be going down a different path. So coordinating between those two agencies is very important and not always straight forward.

Klaus Hanson: That was my point.

Steve Dietrich: If I could add—Klaus, you brought up a good point about coordinating with EPA on these dual permits. Because some of the ones we're dealing with right now, we could get a little bit ahead of EPA with trying to issue our permit and ready to go to public notice, whereas EPA says "Slow down. We're not ready to go yet." What we're trying to avoid is having too many instances where we are so far ahead of EPA with our permit issuance for the criteria pollutants, EPA is not quite up to speed with being able to issue their Title V or their greenhouse gas permit for their side for that same company, that in fact creates its own construction ban because of timing rules. So you end up with this scenario that our permit is signed and ready to go, doesn't prevent any construction from happening or operating from happening. But the EPA does. And the other thing you talked about with coordinating with EPA—we deal a lot with Region 8. And we try to be as communicative and cooperative as we can. I also understand that there's an extra step there with EPA's permits, that even though they have full authority in Region 8 to issue the permit, they still have to run all of their permits for final nod through the central office, or DC. So that adds some time as well, which we have no control over. On top of that, when we were talking about vacancies and you even brought up the fact that you know they don't have the staff on board, they still have a hiring freeze, so to speak, from being able to hire outside people. So what you have going on at EPA right now, they're robbing Peter to pay Paul with staff internally, rather than hiring from outside to fill their vacancies. So the shortfall that they have with being able to adjust workload is perpetuated. And I don't know when that would change. Yes?

Diana Hulme: Just to follow up to that. Not knowing if the EPA would ever get around to issuing one of these permits. Sounds kind of like they're stagnant at this point. But if the permit was issued by EPA for greenhouse gases, who does enforcement, recordkeeping, reporting? Do they do that, on that end? So is it the whole track is totally separate?

Steve Dietrich: And there's an extra thing there that we haven't really brought up that's one of the biggest differences between effective dates and permit issuance. And that is, there's an appeal process that we have in Wyoming, that's what, 60 days from the permit signed to appeal a permit. Still doesn't stop any construction from happening. Unfortunately in the EPA process, there's the EAB, Environmental Appeals Board. Until appeals are heard from the EAB, the permit that EPA issues is not effective. Again, having another potential for a construction stop to the industry. So these are the things that we're trying to coordinate with EPA, to try to prevent that from happening any way we can. And Cole, I don't know how often you call EPA with permits that we're trying to push through for greenhouse gas, but it's probably weekly now.

Cole Anderson: Yes, he's on speed dial.

Steve Dietrich: So those are some of the traps we're trying to avoid. Okay.

Lori Bocchino: Any other questions?

Klaus Hanson: I have one more related question. I looked at a new car dealership the other day. And you talked about, you know, the regulations concerning greenhouse gases, and so on. I noticed on the new car sticker there is now a statement, how much pollution this car is putting out. So a percentage, sort of a bar line, etc. Is that part of what has come forward from the EPA concerning greenhouse gases? Because I thought it must be related in some fashion. It's something new I noticed on the car sticker, there.

Lori Bocchino: I'm not sure whether that was a voluntary thing on the part of industry or whether there's some requirement to label. Because there are sometimes labeling requirements.

Klaus Hanson: Because one of your bigger parts of the pie, of course, was automobile exhaust. And so I thought maybe this was related in some fashion. It's sort of a question that is outside your regulatory realm. Thank you.

Lori Bocchino: Okay. Thank you.

Steve Dietrich: Thanks, Lori. That's all of the presentations. So if you guys want to go back...Just to finish up in the general update section of greenhouse gases. Lori covered her slides and you've already heard some of the information I'm going to cover here. But I'll skip over where I can. Marion made reference to the fact that there was a lot of stakeholder effort in Senate File 86, for that legislation to happen. Just so you know, on July 3, we met with those same stakeholders that helped craft that legislation to give them an update on what these rules were. And the annotated version that you saw here today is—they also saw that version in that meeting as well. So we updated them on the regulatory process. And this was the first time we've been able to meet to go over what we've produced since Senate File 86. So it was a preview before this process that we're here today. So as mentioned earlier, we're trying to coordinate as much as we can on dual permitting for greenhouse gases. Lori covered the first dual permit for Black Hills Power, Cheyenne Generating Station. And those public hearings were held on the 21st of June. And that was to try to do a public hearing the same night with EPA and DEQ at the same time, to try to keep those two processes in line, that can get askew, based on how fast each entity can do their permit. The next steps that need to happen after today. Present the rule package to the EQC in early October. That date is yet to be set, but we're trying to set it for the first half of October. The hope is that we'll get the necessary approvals from the EQC and the Governor's office so the regulations can be finished before the next legislative session. And the other thing I just wanted to make you aware of, and Tina, were you going to cover this next?

Tina Anderson: EGU? Yes, I can cover that.

Steve Dietrich: EPA has proposed an NSPS for greenhouse gases on EGUs. They proposed that on April 13 of this year. And so we've already commented on those proposed rules. And so what Tina is going to do is go over what some of that is. Are you ready to do that now? Okay.

Tina Anderson: Can I close the door on the rule piece here? I had a comment that had come in for Black Hills Power and Light. And I'm going to just pass it down and let them look at it. But it was—Fred Carl was up here earlier. And it is a totally supportive letter. I'll get you a copy of it in the email. But I neglected to give it to you. So on the greenhouse gas, our rulemaking under New Source Performance Standards, EPA back in April of this year, April 13, proposed a new New Source Performance Standard for electric generating units for greenhouse gases. You have dealt with New Source Performance Standards before. We brought them to you. They're in our Chapter 5. They're all those source categories. Everything from cement kilns to phosphate fertilizer plants. And there's hundreds of them. They have decided that they're going to add a special NSPS for greenhouse gases. We submitted comments on June 25. And I can tell you that our comments centered around whether or not EPA is actually satisfying the requirements of the Clean Air Act. There is a section, 111, of the Clean Air Act that requires that when EPA sets an NSPS, that the chosen technology be achievable. And they have to be continuous emission reductions that have been adequately demonstrated. In the case of greenhouse gases for electric generating units, we're talking about carbon sequestration, which is the capture and storage of primarily CO₂. In the case of EGUs, it is not in a very advanced state. We're talking private project level. The Clean Air Act very specifically says, as I said, it must be demonstrated to be achievable. We commented to EPA that we don't think they've met that demonstration at all. They also are required to consider cost. This is also in the 111 requirement. What EPA did, is said they assumed that no new coal-fired EGUs would be built, therefore the costs are negligible. Well that's pretty bizarre logic from our point of view, proposing something that's so costly in the first place, and no one's using them because they're so untested, is not a good reason to say you don't do a cost analysis. And it just takes you back to point 1, which is you haven't demonstrated this is an achievable type of control technology. EPA said that the control costs associated with new natural gas plants were also negligible, because they meet the emission rate that was proposed. What we're hearing from the energy companies is that's not the case, because EPA hasn't looked at the whole load cycle of these power plants. And they haven't looked at them long term. So again, there's some issues about whether or not they've met the requirement of cost analysis. And then finally, we also commented on their proposed thirty-year compliance plan. So for EGUs that would have to use carbon sequestration, they're giving them thirty years to figure this out. Well, there's no other source sector in the NSPS program that gets thirty years to figure this out. And to me again, it points back to the fact that there are no demonstrated technologies. So we're just going around in a big loop. So this was rolled out as an effort to be flexible and allow coal to continue to be a viable energy source. But what you're going to end up with is you have to somehow average over that thirty-year period. So let's say you went over the standard in the first ten years, you might be able to make up for it in the second twenty years. But I don't think that there's going to be too many investors that would be interested in putting money behind that kind of unknown in an industry, as expensive as power generation. So we commented on all of those. EPA is going through all of the comments, so we don't know how that one's going to roll out yet. That's just the status on that one.

Steve Dietrich: So any questions on that?

Timothy Brown: Any questions? No.

Steve Dietrich: So we're rolling along on all these different updates that we're trying to give you. We ended up with greenhouse gas. And we're talking about these New Source Performance Standards for greenhouse gas. So the next thing on the list is talking about ozone nonattainment. And I think Darla, you were going to do a presentation on that as well. I believe that's the last PowerPoint presentation that we've got. We're going to make you get up again...

Darla Potter: I'm Darla Potter. I'm the Air Quality Resource Management program manager for the Air Quality Division. The focus of today's ozone update is to update the Board regarding changes that have occurred in regard to ozone since the last board meeting in March of this year. We want to make sure that the Board is kept up to date on changes and advancements in regard to ozone within the state of Wyoming. Because in the future, you will be asked to provide input in regard to our nonattainment planning as well as Ozone Advance, which I'll speak to in the presentation. This presentation isn't very long, but I wanted to give you a roadmap of what I plan to cover in just a few slides. First, I will go over EPA's action in regard to the 2008 National Ambient Air Quality Standard. I'll touch on the Upper Green River Basin ozone nonattainment area, speak to you about Ozone Advance, let you know the status of our Upper Green River Basin Air Quality Citizens' Advisory Task Force, and also give you an eye toward what the future holds for the Division in terms of ozone. Tina, could we go to the next slide please? In terms of EPA action, when I did the presentation for the Board in the fall of 2011 as well as in March, we will continue to try to update EPA's most relevant actions for you. The standard that we're dealing with was promulgated by EPA in March of 2008. That standard was to be reconsidered. A number of years were spent awaiting that reconsideration until in September of 2011; the White House released a statement asking EPA to withdraw the reconsideration process. And they announced that we would, in fact, be implementing the 2008 ozone ambient air quality standard. In early December 2011, EPA sent what are called 120-day letters to states. Those consisted of the preliminary response to the ozone nonattainment recommendations that were submitted from the states to EPA in March of 2009. In terms of final rulemaking, on May 21, 2012, there were two final rules that came out in the Federal Register. One of those was EPA's designation of the nonattainment areas in regard to the 2008 ozone ambient air quality standard. And the other provided the nonattainment area classification approach, attainment deadlines, and a revocation of the 1987 ozone standards for transportation conformity. And if we can go to the next one, how that affected us specifically in Wyoming is that back in March of 2009, Governor Fruedenthal had submitted a recommendation to EPA and recommended that the Upper Green River Basin, the area that is shaded and outlined in red, be designated as nonattainment based on our monitoring in the area. It includes all of Sublette County, portions of Lincoln County, and portions of Sweetwater County. With the Federal Register action on May 21, the Upper Green River Basin was noticed to be a nonattainment designation, was designated with a marginal classification. The classifications are based on a percentage above the standard approach. And that was released in the May 21 rulemaking as well. That marginal classification is the lowest classification and is for areas that have ozone levels that are closer to the ambient air quality standard. That marginal classification ranges from 0.076 to 0.086 parts per million. Our Boulder monitoring station has a design value, and

that's the number that's directly comparable to the ambient air quality standard, we have a design value at that monitor of 0.078. So we are at the lower end of that marginal classification range as well. With all things published by EPA in the Federal Register, there's a timeframe before they become effective. That final nonattainment designation becomes effective on July 20 of this year. With what has been promulgated in the final rule, the attainment date for a marginal nonattainment area, we are afforded three years. And so we will need to attain the level of the standard for that area by December 31 of 2015. Go on to the next slide. Ozone Advance was an option created by EPA to allow states to take credit for early reductions of ozone-forming pollutants. We saw a draft version of the guidance, and I talked to you at the March board meeting about that. That guidance was finalized by EPA in early April. The Ozone Advance program recognizes that early reductions will be counted toward the overall goal of reducing emissions in the nonattainment area. It was particularly appealing to the State of Wyoming, because while EPA has been deciding what to do in regard to the ambient air quality standard reconsideration, Wyoming has worked with industry a considerable degree to take action in the Upper Green River Basin to reduce emissions of ozone precursors, primarily nitrogen oxides and volatile organic compounds. So this was of great interest to Wyoming. It does not relieve the State of any of the EPA requirements for nonattainment areas. The agency sent a sign up letter to EPA that's required per the program. We sent that to EPA April 12. We did, in fact, receive an acknowledgement by EPA thanking us for signing up for the program. Over the course of one year, between April 2012 and April 2013, the Agency will need to determine the value of participating in that voluntary program as we get more information on ozone implementation. There are some key things in regard to baseline dates that are very important for this area and for the Agency to take into consideration. In April of 2013, one of the requirements of participating in the program is that the Agency will have to submit to EPA more details on how Ozone Advance will work in Wyoming, specifically in the Upper Green River Basin nonattainment area. What we're really hoping as an agency, is that the value of participating in Ozone Advance is that it is a way for the State to give credit to industry for those early reductions that have been happening since 2008 in that area. In the update for the Board in March, we informed you that an Upper Green River Basin Air Quality Citizens' Advisory Task Force has been formed. It's a mouth full, so we just call it the task force. The purpose of the task force is to consider and advise the DEQ specifically on potential solutions to reduce ozone. The products and outcomes from the task force are anticipated to be periodic reports of issues discussed, recommendations that the task force has considered, and issues undertaken to enhance education and awareness. It is a task force comprised of 26 individuals from a wide variety of stakeholder groups. It encompasses participants from municipal governments within the nonattainment area, county governments, the Agency, the Governor's Office, the Bureau of Land Management, the US Forest Service, Sublette County Public Health, the oil and gas industry, as well as citizens, all specifically to the Upper Green River Basin nonattainment area. They have held a number of meetings, starting in mid December with a steering committee meeting. Their meetings began with the full task force in February. Met in February and March. Twice in May. Met June 20 and their next meeting is scheduled for July 18. In the June meeting, and as was continued in the July meeting, the task force is currently working through identifying consensus options that will later be crafted into consensus recommendations, which will then be submitted to the Agency. The Agency will then consider those recommendations from the task force and determine how

those, in fact, can move forward, if they can or can't be for some reason. If we don't have regulatory authority for some things, we'll have to contemplate those items. Currently, we're anticipating that the task force will get to the point of working on consensus recommendations in the fall of 2012, to give you a rough idea of a time frame. It's a process that I think for a number of the task force members, is taking longer than they would have liked. But as you can see, it's a diverse group of individuals. It's a large group of individuals. And it takes time to work through that process.

Steve Dietrich: And if I could add, there's 60-65 recommendations that they're sorting through right now, trying to prioritize them. So it's taken a number of meetings to get through that list.

Darla Potter: What the future holds. We're still awaiting a number of things that EPA needs to provide for states to know what is required for ozone nonattainment planning. We have a little bit of information about marginal classification that came out in the May 21 Federal Register notices for those final rules. We know for a marginal classification there are fewer and/or less stringent mandatory air quality planning and control requirements. Some of those that we know are required, we will be required to adopt an emission statement rule for stationary sources. We do know that we will be required to submit a baseline emissions inventory. We do know that we will need to implement a nonattainment preconstruction permit program. A while ago, we came forward to the Board and incorporated the federal nonattainment New Source Review permitting requirements into the State rule by reference. And so there's some of these things that we have already done. We actively collect emissions inventories. Now it's an issue of the agency sorting through what additionally we need to bring forward to the Board to meet those requirements. The classification rule also specifies that for a marginal classification, we are not required to prepare an attainment demonstration and the associated contingency measures. Given that, we know a little bit. But we still need to wait for the implementation rule to be proposed by EPA. We are anticipating that to be this summer. What we have been told is that EPA intends to propose a rule that is simple and straightforward. That remains to be seen. To move things through fairly quickly, what we're anticipating is that that implementation rule will look very similar to the implementation rule for the 1997 ozone standard. That's our expectation. Through that process, then the implementation rule should become final toward the end of 2012. And that will give us a more defined pathway, as far as the implementation requirements for the Upper Green River Basin nonattainment area. And the last slide of any content. There has been an ozone monitoring rule that has been out there—it was originally proposed in July 2009. At that point in time, it was to establish minimum monitoring requirements as well as ozone monitoring seasons. That's important to the State of Wyoming, because we're monitoring ozone values in February and March, which is outside of the conventional ozone season. The latest information that we have about the status of that rule is that it is still stalled at the Office of Management and Budget at EPA. So at this time, we don't have any expectation as to when EPA will finally break loose and roll it out. We're continuing to monitor in the State of Wyoming. And we're looking at all of our monitoring data that we collect at those sites. But getting that would be helpful. Everything that I've talked about so far is geared toward the 2008 ozone national ambient air quality standards. I think it's really important to highlight each time we talk about this, that the next ozone national ambient air quality standard review is already underway. So

while we are working hard to deal with the standard of 0.075 parts per million, EPA is already looking to revise the standard. We're anticipating a proposal in late 2013. Then a final standard would be anticipated in the summer or fall of 2014. That would translate to the State needing to submit a recommendation on designations by late 2015. 2015 should ring a bell for you. Because with a marginal nonattainment area, we will need to demonstrate attainment by December 31, 2015. So as you can see, we've got an overlap that's anticipated. And then EPA would need to do final designations for new standards in late 2016. While we are working hard to deal with the 0.075 parts per million ozone standard, it is really important to realize that there is a review that is already underway. We are anticipating that the standard will go lower. And so as we continue to work to address ozone in the Upper Green River Basin, the staff continually looks at where we're at with regard to the monitoring values and the realization that more than likely, we will be dealing with a lower standard once EPA completes their review. And with that, if Mr. Chairman and the Board, if you have any questions, I'd be happy to answer those.

Timothy Brown: Any questions, Klaus?

Klaus Hanson: Lower meaning easier to attain?

Darla Potter: Lower meaning more difficult to attain.

Klaus Hanson: In other words, you raise the standard? It's confusing, I think.

Darla Potter: So the level of the standard set in 2008 is 0.075 parts per million. I believe when we were dealing with the reconsideration, and Tina could correct me if I get this wrong, but I believe that the range that they were looking at in their proposal was between 0.06 parts per million and 0.07 parts per million. So we're anticipating it, the lower standard would make it more difficult to attain the standard.

Klaus Hanson: I think I have trouble with the lower standard, here. Because it's a lower number but a higher standard.

Darla Potter: It's a more stringent standard, yes.

Klaus Hanson: And I have another question about the term Ozone Advance. Shouldn't it really be ozone retreat? Because that's what we're talking about, right? Because it's misleading to the public. You know you think we want to lower it, don't we?

Darla Potter: That's a good point. And unfortunately, EPA gets to name their programs and processes. So, I do not disagree...

Klaus Hanson: You see I come from a linguistic standpoint, and that's my problem...

Steve Dietrich: We signed up for Ozone Advance, and from what I understand, we were the first state to sign up for it. So I'm kind of wondering what we've asked ourselves to do...

Timothy Brown: What would the nonattainment area look like with the newer standard.

Steve Dietrich: Good question.

Darla Potter: That's a really good question. With a more stringent standard, we will have to relook at the Upper Green River Basin designation boundary. The work to define the boundary for the Upper Green River Basin, really was contingent on those isolated days where we had monitored levels that elevated above the level of the standard. There were days where there were inversions, the wind stagnated, and we were able to do back trajectory analyses using the detailed meteorological information that had been collected in the area. To define an area of influence, which sources were affecting that area, to contribute to those monitored ozone levels. As the standard gets more stringent, we are anticipating that we may be in a situation where it is no longer isolated to the winter months. And then we're under potentially a different set of meteorological conditions. Potentially a different time of year. Depending on how much more stringent, the reality in the State of Wyoming is that we could be faced with other nonattainment areas. Not just the Upper Green River Basin. And so we're very much watching all of our monitoring data statewide. And watching when those higher ozone values occur. And we'll start to be able to know more once EPA issues a proposal under their review in 2013. Then what the staff will do, is we'll take our monitoring data statewide and we'll start to look at that. I would anticipate a range proposal again so that we won't know exactly where that's at. But then we can start to look at those monitors statewide and look at how that may affect us and the workload it may bring to the staff and then as well to the Board. It may not be the same area that we have today...

Steve Dietrich: So potentially that area could change and then more counties statewide, could be brought into it.

Timothy Brown: That's what I was afraid of.

Tina Anderson: Or we could have overlapping because this area has already been defined. And it still has to do everything that it has to do to come into compliance. So you'll have that boundary and then if it blows the next standard, you'd have an overlapping...

Klaus Hanson: And how much of the Green River problem is, what's the word? Anthropogenic? Versus climate, versus the climate situation?

Darla Potter: Our belief based on the meteorological conditions that lead to our elevated ozone levels is that the majority of the issue is anthropogenic sources that, in fact, operate within that boundary that has been defined...

Klaus Hanson: So it is the majority...

Steve Dietrich: So not a whole lot of transport either.

Darla Potter: It's very much, for that area, very much a local problem.

Klaus Hanson: Okay. Thank you.

Darla Potter: Any other questions from the Board? Mr. Greene?

Sam Greene: Sam Greene, Sinclair. The previous slide, you had a bullet, not required to prepare an attainment demonstration, etcetera. Does that mean that because you're marginal, you're not required to do RACT at this time?

Steve Dietrich: No. Well, possibly.

Sam Greene: Or will you need to do a RACT assessment for existing sources?

Darla Potter: We need to wait for the implementation rule to come out to be able to know what exactly will be required for RACT.

Steve Dietrich: What it does mean, though, is we are not required to submit a SIP under marginal classification. So the toolbox is a little bit light in a marginal classification.

Darla Potter: Any other questions? I think you can go back to your seats.

Steve Dietrich: Is that the last PowerPoint...So, continuing on with the general updates. I was going to cover some regional haze updates. Different role altogether. Different focus altogether. This is all about visibility. After we submitted our Regional Haze SIP to EPA, EPA, on May 24, proposed a full approval of the SO₂ portion of the Regional Haze SIP. And then public comments are being taken for that approval through July 23. EPA also proposed a partial approval/disapproval for the NO₂ and the NO_x portion and the PM portion of Wyoming's Regional Haze SIP on June 4. So EPA proposed a federal implementation plan for that portion that they're not going to be able to approve, which is the NO_x portion. And the public comment period is still open on the disapproval and the FIP option until August 3. And a public hearing is required for EPA to do that final FIP action. And so, to continue on with that, two public hearings were held in Wyoming the week of June 25. The first was held in Cheyenne on the 26th of June. And the other was held in Rock Springs on the 28th. DEQ was at both of those and we made comments; we spoke at both hearings. And so did industry and so did citizens. I also want to mention that the Governor's office attended the Cheyenne public hearing. But a letter was provided that I read into the public record at the Rock Springs public hearing. So they were at the Cheyenne but not the Rock Springs in person. Also, Representative Lummis's office was there. Senator Enzi's office was there as well as Senator Barrasso. They were all in attendance with their staff representation. Some of the points that we made when DEQ spoke—put our statement into the public record—was that it's important to the State to have discretion in the BART determinations, best available retrofit technology, that's key in this regional haze program. That we also made comments dealing with visibility impairment, which is what

regional haze is trying to address, how far you can see. And the expectations in the first planning period and reasonable progress goals. We made comments in that area. And then we also made comments on the reasonable progress demonstration. The oil and gas industry was specifically mentioned by EPA. The BART process itself and how we come to our conclusions versus what conclusions the EPA came to. And then we also commented on monitoring, recordkeeping, and reporting. So that was the overall subject areas that we covered in our verbal comments that we made at both hearings. We are working on our more technical written comments that are due on August 3. And I'm fully aware that industry is doing the same thing, namely PacifiCorp and Basin Electric are two that are working hard on those. And then, of course, the citizens are welcome to comment as well until August 3. So that's where we are on regional haze. Again, we are probably going to get approval for the SO₂ portion of that approval, but then we'll be facing a disapproval and a FIP for the NO_x portion of the regional haze. Comments? Questions?

Timothy Brown: What was the basis for disapproval of the NO_x portion?

Steve Dietrich: A lot of it dealt with not putting on the controls that they would like to see, quicker than what we had planned out. Is that a fair statement? And they also wanted stricter controls on more of the units than what we had planned for. Klaus?

Klaus Hanson: The last month of course, I was in Laramie, and I was up in Pinedale, was really very bad as far as haze is concerned because of our fires. So there's a related issue that we really have no control over...

Steve Dietrich: I'm glad you brought that up. We spent a lot of time in making that very point in our comments. That a lot of the impairment of visibility is something we don't control.

Klaus Hanson: And I think it needs to be observed. In Laramie, of course we pride ourselves on this wonderfully clear air. And all of a sudden, it no longer was there. And it was related, of course, not only to Wyoming. It was related much more to the Colorado fire coming up and with the wind situation. And it was horrendous as far as the haze was concerned. And also very, very hard to breathe. Which was a concomitant effect...

Steve Dietrich: We were seeing some changes at some of our air monitors because of that bunch of particulate matter in the air. So any more questions or comments on the regional haze? Because if not, I was going to let Tina talk about the 1-hour SO₂ NAAQS. We're getting close to the end here...

Tina Anderson: Okay, last topic. Back in June of 2010, EPA revised the primary standard for SO₂. And we brought through a brand new 1-hour SO₂ standard. We brought that to the Board the last time we met in March, asking for your recommendation to take that forward and fold that into our regs to get the primacy over the enforcement of that standard. That's the easy part. As to implementing the standard, we've been involved in a huge, ongoing discussion with EPA, along with many other states. When a new standard is promulgated, the normal procedure is you look at your data you collected for three years and then you make a determination if you're in

attainment or not in attainment. This time, EPA has said that there isn't enough monitors out there to accurately reflect what the State air is with respect to this new standard. And what they suggested when they rolled out this initial standard was to bring in modeling in addition to monitoring. We've always based designations on monitoring. All over the country—this isn't just a Wyoming thing. This is a standard procedure for the whole country. And when they rolled that out—they called it a hybrid approach. So when you monitor, and most of you know we're actually collecting the material on some kind of filtering system and weigh it. It's pretty darn accurate. It doesn't represent every particle of air in the state, but it's a pretty good indication of the quality of the air. The other alternative to model is a lot of guess work. When you estimate the emissions you put data into a model. You take representative meteorological data that doesn't represent the entire area. And you put that into the model and the model disperses the particles and you end up with an estimated concentration some place. Not a very accurate science. What EPA is asking us to do is use that modeling to actually estimate whether or not we're in attainment or not. Which we've never been asked to do before. So we commented on this. EPA actually came out with some guidelines. They got more into the detail of this. It's heavily loaded on the modeling side. Calling it a hybrid approach, but modeling trumped monitoring. And that put us over the edge. Because monitoring is how we ground our program. That's how we know if we're doing a good job, is we look at the monitors. Obviously we've got some problems in the state. We're addressing them. We go back to the monitors. So we commented. A lot of states commented. And EPA actually backed off. This is pretty unusual too. And so they've now come out with something called a white paper, where they've just thrown a bunch of questions at us, instead of a proposal for how to go forward. So again, we've just done our best to address these questions. We've sent them back in. Again, our approach is to rely heavily on monitoring. Modeling is okay for a tool that assists you in maybe siting the monitors. But we would never use it to make an actual designation. We also commented on the process. I won't get dragged down into that. But EPA was getting so far ahead of the game, actually asking that control technologies be proposed for areas before they'd even been designated. And again we said, this process is all messed up. First you look at the monitoring data. Then you decide if you're in attainment. If you're out of attainment, then you come up with a strategy to bring you back into attainment, through a state implementation plan. And the process has gotten quite mixed up, under the 1-hour SO₂. Their defense is that SO₂ is special. And we're not convinced that SO₂ is that special. We know it comes out of power plants, which is why we think it's being focused on here. But we have commented on this. They are mulling through, I'm sure, thousands of comments. East coast takes a much different perspective than the western United States. We don't know how this is actually going to fall out. Steve asked for it to be on the agenda because it's an important issue that we are involved in. Any questions on that one?

Timothy Brown: Do you have a question?

Diana Hulme: So Tina, what's next? You're answering those questions in the white paper? Is that where you are?

Tina Anderson: Right. So they've taken comment. The comment period has closed and they will make some kind of decision.

IV. SCHEDULE NEXT MEETING

Timothy Brown: It looks like next on the agenda, we've got to schedule the next meeting.

Steve Dietrich: That's what it looks like.

Timothy Brown: Any suggestions, Tina?

Tina Anderson: Probably, this is July, probably this fall we'd be looking to gather you up again. Darla had mentioned an emission statement rule. That's something that we're working on—something that we need to work for. I don't know if we'll have a draft by then. We've got some possibilities—incinerator rules that need to be updated. They're quite out of date. And we have our normal NSPS and NESHAPS updates that we'll do. So we've always got a list of things to bring before you. I don't know if there's a month that's better or worse for you in the fall? Hunting season I know is important...

Steve Dietrich: I do know the EQC—we're trying to make room for in the first couple of weeks of October. So we can't conflict with whatever day that is.

Timothy Brown: Should it be after that? So we know kind of how we did here today?

Tina Anderson: Right. And then maybe November? The first part of November so that we don't hit the holiday...Places? Do you have preferences about where you want to meet?

Timothy Brown: Maybe up in your area?

Klaus Hanson: I like Casper.

J.D. Wasserburger: Casper's good.

Tina Anderson: Casper might be good for November, because you never know what the weather's going to do. And at least everybody's got a three hour drive instead of a six hour drive.

J.D. Wasserburger: Is it easier for staff to have one in Cheyenne?

Steve Dietrich: As far as gathering up all this stuff, probably from a practical standpoint it is. It's doable anywhere we need to have it.

Timothy Brown: Well we haven't had one in Cheyenne yet, for a while, right?

Tina Anderson: That's true.

Steve Dietrich: That's true.

J.D. Wasserburger: Cheyenne would work for me.

Steve Dietrich: Laramie to here. And before that Green River.

J.D. Wasserburger: Probably could move up north, Gillette, maybe.

Timothy Brown: When it's nicer...

J.D. Wasserburger: Cheyenne works for me.

Klaus Hanson: Cheyenne? That what we've said?

J.D. Wasserburger: Cheyenne.

Steve Dietrich: In the first part of November or sometime after the EQC is what I've got written down.

Tina Anderson: Alright. Thank you.

J.D. Wasserburger: Thank you.

Timothy Brown: Anything else that we need to address from the agenda?

V. ADJOURN

J.D. Wasserburger: I move to adjourn.

Diana Hulme: Second.

Timothy Brown: All in favor?

J.D. Wasserburger, Diana Hulme, Klaus Hanson, Timothy Brown: Aye.

Timothy Brown: Opposed? Meeting's adjourned.