

BEFORE THE WASTE AND WATER ADVISORY BOARD  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF WYOMING

**FILED**

JUL 30 2007

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Environmental Quality Council

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SOLID AND HAZARDOUS WASTE DIVISION  
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TRANSCRIPT OF MEETING PROCEEDINGS

PURSUANT TO NOTICE duly given to all parties in interest, this matter came on for meeting on the 14th day of June, 2007, at the hour of 8:15 a.m., at the Wyoming Oil and Gas Conservation Commission Offices, 2211 King Boulevard, Casper, Wyoming, before the Waste and Water Advisory Board, Chairman Glenn Sugano presiding, with Ms. Lorie Cahn, Mr. William Welles, Mr. Joe Olson, and Ms. Marge Bedessem, Board Members.

ORIGINAL

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

(Meeting Proceedings commenced

8:15 a.m., June 14, 2007.)

CHAIRMAN SUGANO: Good morning, ladies and gentlemen. We will call the meeting to order. This is the summer meeting of the Water and Waste Advisory Board. We're holding the meeting here in Casper. Today we're going to hear from the Solid and Hazardous Waste Division, so we have with us Leroy Feusner and his staff.

First thing we will do is look at the proposed new P2 rule and receive public comments on that.

Then we have grant requests that are coming in for reimbursement of groundwater monitoring well. And lastly on the agenda is an update on the prioritization process and ranking of the orphan sites identified here in Wyoming.

Before we get started with our meeting we will make introductions. My name is Glenn Sugano. I represent local government.

MS. CAHN: Lorie Cahn. I represent the public at large.

MR. WELLES: Bill Welles representing agriculture.

MR. OLSON: Joe Olson representing industry.

1 MS. BEDESSEM: Marge Bedessem representing  
2 the public at large.

3 CHAIRMAN SUGANO: Leroy, could you  
4 introduce yourself and your staff.

5 MR. FEUSNER: Leroy Feusner, administrator  
6 for the Solid and Hazardous Waste Division.

7 MS. MEREDITH: Vickie Meredith with the  
8 Solid and Hazardous Waste Division.

9 MR. ANDERSON: Carl Anderson with Solid  
10 and Hazardous Waste Division.

11 MS. SMITH: Paige Smith with the Solid  
12 Waste and Hazardous Division, and I'm with the Volunteer  
13 Remediation Program.

14 MR. FEUSNER: We have some more people  
15 here, but they've stepped out for a little bit.

16 CHAIRMAN SUGANO: Okay, thank you.

17 The -- I guess the first thing we should do is  
18 approve the meeting minutes from our last meeting. Has  
19 everyone had a chance to review those minutes from the  
20 February 6th, 2007 meeting that was held in Lander, and if  
21 so, could I have a motion?

22 MS. CAHN: I just got the minutes so maybe  
23 we could approve them at tomorrow's meeting and then I  
24 will have a chance to review them.

25 CHAIRMAN SUGANO: That's fine.

1           Then we had a transcript from the water division  
2 side. Have you seen the transcript?

3           MS. CAHN: I have not seen that.

4           CHAIRMAN SUGANO: All right. We will.

5           MS. MEREDITH: Excuse me. I don't know if  
6 you need me here for the meeting. After Lorie looks at  
7 the meeting minutes, since I prepared them, I guess I was  
8 hoping that if there were changes or questions -- I wasn't  
9 planning on spending the night and I doubt I can get a  
10 room.

11           MS. CAHN: If you give me -- maybe on a  
12 break this morning I will look at them.

13           CHAIRMAN SUGANO: Or otherwise we will  
14 make some arrangements so that you can talk over the phone  
15 or something and just defer our approval.

16           With that being done, let's just move into the  
17 first item on our agenda, and that would be the proposed  
18 new rule from Chapter 1, the pollution prevention plan  
19 requirement.

20           Leroy.

21           MR. FEUSNER: Mr. Chairman, board members,  
22 we have a couple of presentations we would like to make  
23 today to the Board and with the goal of obtaining your  
24 authorization to advance into the next round of the  
25 rulemaking process.

1           The way I would like to see this administered is  
2 I would like to have the presentations made by Carl  
3 Anderson and Paige Smith first, and then we can receive  
4 comments from the audience, both in written comments and  
5 maybe some oral comments, and then finally had have some  
6 discussion of the comments received with further Q and A.

7           I think it is more important to have the  
8 presentation about the concept of the rule first before we  
9 get into the particulars about Q and A and the other  
10 aspects.

11           So with that I would like to turn it over to  
12 Carl Anderson here who will make the presentation on the  
13 content of the proposed rule.

14           MR. ANDERSON: Thank you, Leroy.

15           Mr. Chairman, Board members, we're bringing to  
16 you today a rule on pollution prevention, and as part of  
17 the Voluntary Remediation Program statute, in order for  
18 sites to be considered eligible for participation in the  
19 Voluntary Remediation Program, they must be implementing a  
20 pollution prevention plan consistent with rules  
21 promulgated under the Act. That's a specific citation  
22 from our Environmental Quality Act.

23           The rule that we're bringing before you today  
24 establishes P2 plan standards for who may ever want to  
25 enter a facility into the Voluntary Remediation Program.

1 I want to talk a little bit about the rule development  
2 process.

3 We did a stakeholder work group that was  
4 composed of individuals from DEQ, the Environmental  
5 Protection Agency consultants and folks from industry.  
6 And that work group worked on the rule early on and  
7 advanced it well into the rule development process. And  
8 then over time DEQ internally has made some adjustments to  
9 that rule based on comments and some internal discussions  
10 that we have had.

11 What is pollution prevention? There are two  
12 main components to pollution prevention, and I want to  
13 emphasize those components because I think it will come up  
14 in your discussions as we talk about the rule in comments  
15 and my further presentation.

16 The two components to pollution prevention are  
17 activities or actions to reduce or eliminate the volume or  
18 toxicity of contaminants, and those are contaminants that  
19 are used or created, contaminants that enter a waste  
20 stream or contaminants that may be discharged to the  
21 environment.

22 The second component to pollution prevention are  
23 practices to prevent the accidental release or spillage of  
24 contaminants.

25 What is a contaminant? A contaminant is defined

1 in the Environmental Quality Act as any chemical,  
2 material, substance or waste that is regulated under  
3 federal, state or local law or regulation; is classified  
4 as hazardous or toxic under federal, state or local law or  
5 regulation; or where its exposure is regulated under  
6 federal, state or local law or regulation.

7 So it is a pretty encompassing definition for  
8 contaminant. And it includes, you know, materials or  
9 substances that are to be used as part of processes, raw  
10 materials, intermediates, byproducts and wastes.

11 The purpose of our pollution prevention rule is  
12 to -- it defines facilities that are subject to pollution  
13 prevention requirements as a condition of eligibility for  
14 participation in the Voluntary Remediation Program. It  
15 defines an implementation framework relative to a number  
16 of dates, including the effective date of the statute, the  
17 VRP statute, which was March 10th of 2000. Its time  
18 frames are based on the effective date of the P2 rule, and  
19 we anticipate that that effective date would be January 1  
20 of 2009.

21 And that date of January 1, 2009, we have pushed  
22 that out to accommodate the rulemaking process as well as  
23 the outreach activities that we're going to have to  
24 conduct as part of this process because that outreach  
25 activity is going to be very important and significant in

1 terms of implementation of this rule.

2 Another time frame is the date when the  
3 contaminant was released to the environment and the date  
4 of application into the Voluntary Remediation Program.

5 The rule also defines P2 requirements for  
6 written pollution prevention plans and it also defines  
7 alternative minimum pollution prevention operating  
8 standards.

9 As I mentioned in the previous slide, it defines  
10 the applicability of pollution prevention to facilities  
11 and the rule defines two types of facilities. There are  
12 facilities where a written P2 plan, a specific written P2  
13 plan, would be required. These are -- include hazardous  
14 waste, large quantity hazardous waste generators;  
15 facilities that are required to have a spill prevention  
16 countermeasures and control plan; they are required to  
17 have a Department of Transportation emergency response  
18 plan; or they're required to report toxic emissions under  
19 the Toxic Release Inventory; a permitted or interim status  
20 hazardous waste facility; or it is a tank site with a  
21 release from a nonfuel tank source.

22 So if any one of these criteria apply, then that  
23 facility is subject -- it is considered a Tier 1 facility  
24 and is subject to a written P2 plan.

25 Other facilities, all of the other facilities



1 that don't fall into that universe, are subject to  
2 alternative minimum P2 operating standards.

3 And as the rule was developed, the work group  
4 recognized that there are facilities that have -- because  
5 of the activities that they conduct, the scope of their  
6 activities, the size of their activities, those facilities  
7 have the ability or should have the ability to focus more  
8 on the reduction and elimination component of pollution  
9 prevention and have the prevention part of it as a  
10 component as well.

11 The work group recognized that for other  
12 facilities, for the smaller facilities, that the greater  
13 expectation for those facilities would need to focus on  
14 the prevention aspect. So there was a clear thought  
15 process during development of the rule to distinguish  
16 between facilities that can focus on actually looking at  
17 the processes and reducing and eliminating volume and  
18 toxicity versus those facilities that probably would get  
19 the most benefit from just looking at pollution  
20 prevention, just prevention activities in general. I will  
21 talk about that a little bit more.

22 In addition, the rule identifies facilities that  
23 would be considered to meet pollution prevention  
24 requirements: If the release from the facility is the  
25 result of a transportation, air, rail or truck incident

1 that was not caused by the owner/operator.

2 It also identifies facilities that manage small  
3 quantity inventories of contaminants. And small quantity  
4 of contaminants is defined as less than 50 pounds or less  
5 than 55 gallons of contaminants at the site at any one  
6 time.

7 Sites where the owner/operator can demonstrate  
8 that they're an innocent owner pursuant to the  
9 Environmental Quality Act would meet the P2 requirements.

10 And then there are circumstances where a site  
11 might have managed household wastes or household  
12 quantities of used oil, and those sites or households or  
13 whatever wouldn't be subject to P2 requirements.

14 I talked a little bit about the timing for  
15 implementation, and I'm not going to belabor this chart.  
16 It is taken from the rule, and it was meant to put into  
17 tabular format a narrative in the rule describing the  
18 relationship between when we have a release and when you  
19 enter the program and when you have to be implementing  
20 your pollution prevention plan. But I will just run  
21 through a couple lines.

22 For all sites that had a release before January  
23 of 2009 and their application was submitted before January  
24 of 2009, they aren't required to have a meet P2 standards.

25 For facilities, we identify them as Section 4(a)

1 facilities, those are the Tier 1 facilities. For example,  
2 if one of those facilities had a contaminant release after  
3 January 1st, 2009, and they made application into the  
4 Voluntary Remediation Program after 2009, they would be  
5 required to have P2 plan at the time of the release in  
6 order for them to be eligible to participate in the  
7 Voluntary Remediation Program.

8 And the same kind of logic pertains to those  
9 facilities that are Tier 2 facilities. After January 1,  
10 2009, if they have a release and they submit application  
11 after January of 2009, they would have to demonstrate that  
12 they're in compliance with the minimum operating standards  
13 at the time of the release.

14 The written P2 plan -- pollution prevention plan  
15 requirements, a written P2 plan is required of those -- of  
16 the Tier 1 facilities, and these are the facilities -- and  
17 as we run through these requirements, you will see that  
18 the focus on these requirements is on that reduction and  
19 elimination in the volume and toxicity of contaminants.  
20 And so that's the focus within the written P2 plan.

21 Just to run through the requirements, the plan  
22 would need to specify what facilities the plan applies to.  
23 There needs to be a management commitment in the plan and  
24 needs to identify who is responsible for writing, updating  
25 and implementing the plan. There needs to be a

1 description of the facility's activities, the products and  
2 the processes and a discussion of the type and volume and  
3 purpose of contaminants, their receipt, their storage and  
4 their management.

5           Based on the processes/contaminants used at the  
6 Tier 1 facilities, the facilities would evaluate how to  
7 reduce or eliminate the volume and toxicity of  
8 contaminants as well as evaluate the ability to or how  
9 they can prevent releases.

10           Under the P2 plan the facility would evaluate  
11 candidates for pollution prevention based on economic  
12 feasibility and technical feasibility of implementing  
13 those pollution prevention candidates. They would look at  
14 any liability reductions they would have from their  
15 pollution prevention activities and any regulatory  
16 reductions.

17           In terms of liability reduction, for example, a  
18 dry cleaner may go from a solvent-based cleaning process  
19 to a water-based cleaning process. It may significantly  
20 reduce their liability.

21           An example of regulatory reduction would be  
22 using less or generating less waste and thereby you may go  
23 from being a large quantity generator to a small quantity  
24 generator of hazardous waste. And that's a fairly  
25 significant reduction in regulatory requirement.

1           Based on the evaluations of the P2 candidates,  
2     the facility would identify specific pollution prevention  
3     activities and develop a schedule of milestones and goals  
4     for implementation of those pollution prevention  
5     candidates and would work on methods to increase P2  
6     awareness and training within the workplace and document  
7     the effectiveness of any of the pollution prevention  
8     activities that were implemented.

9           There's a need to maintain the plan and evaluate  
10    and modify the plan as necessary and look at the degree of  
11    implementation of pollution prevention practices, quantify  
12    the success of implementation of those pollution  
13    prevention activities and modify the plan as necessary.

14           For the Tier 2 facilities, these are the other  
15    facilities, in general the smaller facilities, the focus  
16    for those facilities is on prevention of releases and so  
17    the requirements for those facilities relate to good  
18    housekeeping and preventative maintenance practices,  
19    activities such as employ release and spill/leak  
20    prevention activities, immediate cleaning up spills,  
21    cleaning up -- making sure there are cleanup supplies and  
22    materials available for responding to releases.

23           Preventative maintenance practices include  
24    inspection and maintenance of equipment to prevent  
25    releases, maintain repair and service records, monitor

1 those locations where you might expect to have potential  
2 releases, and conduct corrosion prevention.

3 Additional pollution prevention operating  
4 standards include segregation and storage practices such  
5 as labeling containers, preventing hazardous waste from  
6 solid waste being mixed and thereby creating a larger  
7 volume of hazardous waste, storing compatibles together,  
8 segregating solids, isolating liquids from solids and  
9 storing in impermeable pads or berms.

10 In addition, employee involvement and training  
11 to encourage P2 and encourage workers to identify or  
12 recommend P2 actions; train workers on release prevention  
13 and review any pollution prevention successes.

14 With regard to the Tier 2 facilities and the  
15 alternative P2 operating standards that apply to those  
16 facilities, those aren't required to be kept in a specific  
17 plan, but those records in terms of documentation of the  
18 activities are required to be kept by the facility  
19 owner/operator and to be available for DEQ if DEQ would  
20 like to inspect those standards.

21 So there's a difference between the Tier 1  
22 facilities that have to have a specific written plan that  
23 documents those things that I talked about relative to the  
24 P2 plan requirements versus Tier 2 facilities that just  
25 have to implement practices and document that they're

1 meeting those practices.

2 That concludes my portion of the presentation.  
3 I just wanted to summarize, you know, what's in the rule,  
4 the purpose for the rule. And we recognize that this is a  
5 broad, encompassing rule in terms of the facilities and  
6 industries that are going to be affected in Wyoming by  
7 this rule.

8 It was clearly the intent of the legislature  
9 that DEQ needs to focus on pollution prevention activities  
10 and that's the reduction and elimination and the release  
11 prevention as well. And that in order for sites to take  
12 advantage of the Voluntary Remediation Program, the  
13 benefits in the Voluntary Remediation Program which  
14 include things like alternative cleanup standards for  
15 soils and the issuance of specific liability assurances,  
16 that there should be a link between, you know, cleaning up  
17 releases and also pollution prevention in terms of  
18 preventing future releases with the idea, somewhat  
19 optimistically or altruistically, that we would be put out  
20 of business because people wouldn't be releasing.

21 But it is a broad rule. It is going to affect a  
22 lot of industries. And we recognize that we have got a  
23 significant outreach activity that we're going to have to  
24 implement, not only before the effective date of the rule  
25 but after because businesses will come and go in Wyoming

1 and those businesses may want to take advantage of the  
2 Voluntary Remediation Program.

3 And we have been working on developing plans for  
4 outreach, and Paige is going to talk about that.

5 MS. SMITH: Any questions on this before I  
6 switch over to a different -- hold on while I get this  
7 going.

8 As Carl said, we at DEQ realize that in order  
9 for this to be successful and meet the intent of the  
10 legislature, which is to try to minimize and prevent  
11 future releases of contaminants into the environment, this  
12 has to be an extremely thorough, detailed, well thought  
13 out outreach program, and it also is going to have to be  
14 directed at numerous businesses in Wyoming.

15 The list is probably thousands of particular  
16 businesses long, and we do have access to those particular  
17 names, addresses, and we will have to think about getting  
18 something to each one of them. But we also realize that  
19 you can't just mail somebody something once because they  
20 usually throw it in the trash, that we will have to find  
21 multiple sets of media to be able to get to these  
22 businesses to let them understand what the VRP is and what  
23 you will need to do to be able to come into the VRP.

24 We have a twofold effort going. It will be more  
25 VRP outreach so they understand that program, as well as



1 the P2 aspect of it. This has to be a continuing effort.  
2 This is not something that will stop January of 2009, or  
3 whatever year date we have from the date that the rules  
4 are approved by the governor. We want to have at least a  
5 year for people to understand what pollution prevention is  
6 about and give us an opportunity to do the best outreach  
7 we can in the meantime. But it is going to have to  
8 continue after that. So the rest of my presentation gets  
9 into some of those -- the ways of doing that.

10 So the first thing we have done is for the  
11 mailing for this rulemaking we did include this list of  
12 major trade groups in Wyoming received a copy of the rule  
13 and cover memo that explained what it meant to them.

14 Now, I have to say, we didn't hear back from a  
15 single one of them, so that tells you they don't read.  
16 You know, people do not read that stuff, even in a big,  
17 nice, brown envelope, you know, that we did not hear a  
18 word. So it is obvious that that alone is not going to be  
19 enough. But we at least -- hopefully somebody in each of  
20 these offices went, "Huh, I will read that sometime," so  
21 somebody may have it on their radar, but we're going to  
22 have to continue to do much more multiple media outreach.

23 And the things we've thought of and have been  
24 working on while this rule is in its creation, rulemaking  
25 process, is creating generic examples of pollution

1 prevention plans and alternative minimum pollution  
2 prevention operating standards for people to have, you  
3 know, a resource for them to look at and see exactly what  
4 it is we would be looking for. And not so much what we're  
5 looking for as much as what they want to think about that  
6 would help their particular business.

7 And the other thing we will be developing is  
8 outreach materials with recommended P2 operating standards  
9 tailored to specific businesses; for example, dry  
10 cleaners, automotive repair shop, oil and gas exploration  
11 production and farms and ranches. Farms and ranches also  
12 deal with contaminants.

13 Stop me if you have questions.

14 In that outreach material we want to have real  
15 life examples of things that they can do and how much  
16 can -- money can be saved by doing that, because we all  
17 know that for a business, anybody operating a business for  
18 profit, the money to be saved is a huge incentive to doing  
19 some of the pollution prevention activities so we want to  
20 be able to focus on that as well.

21 Lorie, did you have a question?

22 MS. CAHN: I was wondering from the slide  
23 before, what kind of time frame are you looking at for  
24 having outreach kind of training sessions available to  
25 these people as well as the materials? What kind of time

1 frame were you looking at? And I just mean in terms of  
2 how much time between then and January 1st, 2009 do you  
3 anticipate?

4 MS. SMITH: I'm anticipating that we're  
5 going to be having it going as soon as we know we have a  
6 rule going forward. We're in the process of creating  
7 things now that we can have for that year to get the first  
8 cut and try to do -- you know, as you will see, we have  
9 other resources to use for this as well, and I'm sure  
10 there will be more as we start looking into this further  
11 and talking to different agencies.

12 But the intent is that we're starting now  
13 because the worst thing will be when somebody says, "I  
14 didn't know I needed a plan." We don't want that to  
15 happen. So it is going to have to be thorough and  
16 detailed.

17 So besides real life examples, which I think  
18 people understand what it is that it means to them,  
19 worksheets for businesses to use as means of verifying  
20 their own P2 practices and their alternative minimum  
21 pollution prevention operating standards so they have  
22 something they can have in-house that the manager uses to  
23 ensure that they're getting on paper what sorts of  
24 activities they want their employees to do and a way that  
25 employees can understand what it is they're being expected

1 to do.

2 Because a big part of pollution prevention is  
3 expectation, and I think it is going to be incumbent on  
4 managers of any facility to make it clear to their  
5 employees what their expectations are and why -- and why  
6 we want this done, because for some -- in some cases it  
7 will be doing an extra step if it has -- you know, if they  
8 didn't normally segregate their materials, they will need  
9 to start doing that.

10 But all of this, the bottom line is it will save  
11 them money because if they have a release, the costs of  
12 cleaning up gasoline in soil and digging up thousands of  
13 cubic yards of material is expensive, very expensive, plus  
14 you lose the amount of money for the product that you just  
15 lost, thousands of gallons of diesel fuel spilled to the  
16 ground. So it all comes down to profit.

17 And we have talked about utilizing direct mail,  
18 press releases, paid advertising, articles in newsletters  
19 being published in trade groups, newsletters and other  
20 newsletters that come out of the State of Wyoming,  
21 different government offices, radio ads and personal  
22 presentations to political, economic and trade groups.

23 We also plan to coordinate with other state  
24 agencies that routinely communicate with businesses in  
25 Wyoming. Through their own mailings and on their web

1 pages and other outreach that they may do, we want to  
2 piggyback on that and explain to businesses what the VRP  
3 is and what the pollution prevention plan is and what it  
4 will take to come in the VRP.

5 Our first cut, and I'm sure there will be more,  
6 is the Business Council, the Secretary of State's  
7 office -- which every new business that comes into Wyoming  
8 has to go through the Secretary of State's office. So  
9 that will be our way to do a continuous outreach to new  
10 businesses coming in Wyoming -- the Department of Revenue,  
11 Department of Employment, and, as I said, there will be  
12 others.

13 CHAIRMAN SUGANO: Paige, you will put it  
14 on the DEQ web page also, right.

15 MS. SMITH: Absolutely. Absolutely.

16 And that segues into the next point is that we  
17 plan to educate every DEQ employee not only on VRP,  
18 because not all of them understand it at this point, but  
19 have them be our spokespeople for pollution prevention  
20 outreach when they do their inspections, any of the  
21 discussions they do with businesses in Wyoming.

22 And we already have two outreach staff that are  
23 doing some pollution prevention, not necessarily in  
24 relation to this rule because it hasn't -- this is, you  
25 know, our first cut at getting the rule out for

1 rulemaking, but they have already been doing pollution  
2 prevention activities, and we will also integrate their  
3 activities into this as well.

4 The other thing that is going to be so important  
5 is maintaining complete and permanent records of all of  
6 the outreach activities done, who has been contacted, who  
7 is that business and trade groups, et cetera, because we  
8 feel like if someone says, "I didn't know," we would like  
9 to say, "We mailed you this on this date. We mailed you  
10 this on this date. We had this in your newsletter. Are  
11 you a member of this trade organization?" and so that we  
12 can try to minimize the "I didn't know."

13 So with that, that's the end of my presentation.  
14 Any questions on outreach?

15 MS. BEDESSEM: Can you give me a better  
16 idea of what kind of work force you have to --

17 MS. CAHN: Can you speak into the  
18 microphone? I can't hear you.

19 MS. BEDESSEM: Paige, can you give me an  
20 idea of what kind of work force you have to be able to  
21 implement this outreach program? You mentioned that  
22 you've got two people that already do P2 work and that  
23 you're going to try to have people that are -- DEQ  
24 personnel that are already doing inspections to be able to  
25 transfer some of this knowledge.

1           But what you're describing sounds really large.  
2           And so can you tell me what, you know -- what your  
3           resources are as far as personnel?

4           MS. SMITH: I will turn that over to Leroy  
5           since he knows the staffing.

6           MR. FEUSNER: Pollution prevention is new  
7           to Wyoming in terms of a government program, I think, as  
8           everybody understands. It has changed, but it has changed  
9           in the right direction. To implement this is going to  
10          take people to do the job. We're not going to be able to  
11          get any more state employees, at least at the present  
12          time.

13          However, within Carl and Paige's area they will  
14          not only use primarily Paige's expertise on developing  
15          this, but that's why we want to include other parts of  
16          government in this outreach program. This is not just a  
17          DEQ outreach. It is a multi-government agency outreach.

18          Now, yeah, we're going to have to have some  
19          point of focus in the Department to do that, and that will  
20          be in Carl's group, combined with the outreach program as  
21          contained in the administrative branch of DEQ also. It is  
22          going to be a workload, we recognize that. And we plan to  
23          do what we think is necessary to get the word out.

24          So we don't have dedicated staff, per se, but it  
25          will be incorporated into their existing work group.

1 MS. CAHN: Paige, is there going to be  
2 some kind of sort of registration of -- I mean that's not  
3 the right term -- but registration of the person who is  
4 responsible for the P2 program so you contact a business,  
5 and then you say, "Who is your P2 person?" and then  
6 there's some recognition that there's been communication  
7 back and forth from DEQ, between DEQ and that person.

8 MS. SMITH: I think there has to be. I  
9 can't say exactly who that would be, necessarily, but I  
10 think that there will definitely be a point of contact  
11 because I think the only way this is going to work is to  
12 have people talking to people and they need to know it is  
13 not just some nameless face, click on here to e-mail to  
14 DEQ. That's just not going to cut it. There has to be  
15 human --

16 MS. BEDESSEM: And it seems also that it  
17 would be important for there to be a central person at DEQ  
18 to sort of maintain a database of who has been talked to,  
19 who has been contacted, what information have you  
20 received, so that all of those -- you know, for example,  
21 if someone is going out to do a mining inspection and they  
22 hand out something or other, that there's a record of who  
23 was talked to and what contacts were made so you're not  
24 repeatedly contacting the same few people and missing  
25 whole groups and so forth.



1           So that seems a large thing to manage, but  
2           that's important.

3           MS. SMITH: I agree, it is important  
4           because you don't want to bombard people. If they get the  
5           message, you don't want to keep coming back just to  
6           irritate them. But you also want to know who is giving  
7           out information and where have they been so we have this  
8           continuous record. No, I agree completely and it is a  
9           huge job to do this right.

10           MS. BEDESSEM: Also, that will give you an  
11           idea of how effective -- for example, if you've trained a  
12           number of people at DEQ and asked them to do this, they  
13           will give you some feedback about whether that's actually  
14           happening or not, whether people are remembering the P2  
15           stuff or not remembering as they're leaving the facility.  
16           So I would encourage you to look at how to develop that  
17           database and document that work.

18           MS. SMITH: And we will have to rely on  
19           those folks within DEQ to give us feedback on the kind of  
20           reception they're getting from the businesses, operators  
21           that they're talking to. And if that operator says,  
22           "Well, I never plan to join the VRP," say, "Fine. You  
23           don't have to do a P2 plan." It is only associated with  
24           their ever wanting to enter the VRP. If they understand  
25           the VRP and don't see any reason why they would ever want

1 it, they don't have to do a P2 plan. But we still have to  
2 let them know that if you ever want to join, you have to  
3 have a plan.

4 So to me that's sort of a catch-22 that we're in  
5 with the way it was written by the legislature is that we  
6 have to cover the universe of businesses that may ever  
7 want to come in, but only 10 percent of them may ever come  
8 in and may ever do the plan. But I also think if you can  
9 explain to people how it would save them money in the long  
10 run, I think you will get people doing P2 plans that may  
11 never enter the VRP, and the good thing would be because  
12 they never had a spill because they did P2.

13 MR. OLSON: Mr. Chairman, could I ask a  
14 question of Carl, please?

15 Carl, I guess just one overarching. When you  
16 take a look at especially Section 6 of the proposed rule,  
17 I guess in my mind the VRP has always had an intent to  
18 bring people in. It was meant to be an inclusive program  
19 and it was meant to be something that was based on  
20 self-disclosure and the fact that, hey, we're going to  
21 come to you, work together constructively to come up with  
22 something.

23 And I get concerned when I see things that seem  
24 to me like they may be a limiter on encouraging people to  
25 be a part of that program. We all understand the need for

1 pollution prevention and how important that is as a first  
2 step, in other words, do everything we can reasonably to  
3 prevent pollution up front. But I guess when I look at  
4 Section 6, it seems very, very complicated, complex, a ton  
5 of information that would be required.

6 And I guess one of the questions that I have is  
7 you had mentioned that you worked with many different  
8 folks trying to come up with the program. And I guess I'm  
9 just kind of wondering if you could give me some feedback  
10 on what you heard from industry when this was put together  
11 and with the sections, especially with regard to  
12 Section 6, because it seems like a lot of information --  
13 evaluate each system, method, operating practice or other  
14 activity for economic feasibility, technical feasibility,  
15 reductions in liabilities -- that is a lot of information  
16 that could be very ambiguous.

17 So did you receive feedback from industry on  
18 that, Carl?

19 MR. ANDERSON: In the early rule  
20 development and work of the work group I wasn't directly  
21 involved in those meetings, but those -- it was an open  
22 stakeholder group and I mentioned there was DEQ, EPA,  
23 consultants and industry representatives.

24 And my understanding was as the rule developed  
25 there was general consensus in terms of at least that

1     portion of the rule that has over time, with respect to  
2     the Tier 1 and Tier 2 facilities -- that there was a  
3     recognition that certain facilities have the ability to  
4     look at pollution prevention beyond just preventing  
5     releases; that they're involved in industries activities;  
6     the scale and scope of their activities are such that  
7     they're large; they have the potential for releases; and  
8     they have a staff that would be able to look at the  
9     processes and activities that they conduct and do that  
10    evaluation in terms of where can we reduce or eliminate  
11    contaminants in the processes and activities that we  
12    conduct.

13             I think there was, you know, consensus on the  
14    work group that there was a need to distinguish between,  
15    you know, that reduction and elimination component of it  
16    and just the prevention of releases component of it, and  
17    that the vast majority of facilities in terms of  
18    numbers -- maybe not in terms of the volume of  
19    contaminants or the potential for release, but in terms of  
20    the number of facilities, those are going to be the Tier 2  
21    facilities and those facilities probably, because of the  
22    scope of their activities and the ability to -- for  
23    in-house expertise, those facilities should be subject to  
24    a specific P2 plan but should implement those operating  
25    standards, those housekeeping standards just to look at

1 and focus on the release prevention part of it.

2 So that's a long answer for a short question.

3 MR. OLSON: Thanks, Carl.

4 CHAIRMAN SUGANO: Joe, and I think we can  
5 help answer your question, too, because I notice there was  
6 a written comment in our packet that came from industry.  
7 And this might be the time to just open it up for public  
8 comments, and Bob Dundas, if he's here, can speak to  
9 his -- he can speak to his comment. And anyone else from  
10 the audience is welcome to make comment.

11 Before you speak, would you identify yourself  
12 for our court reporter? Thank you.

13 MR. DUNDAS: Between Carl and Leroy,  
14 between a rock and a hard place.

15 MR. ANDERSON: Right where we want you.  
16 You get him high, I'll get him low.

17 MR. DUNDAS: And I will be in Scotland  
18 before you.

19 Good morning. I'm Bob Dundas. I'm the  
20 environmental coordinator with Belle Fourche Pipeline.

21 Besides being the environmental coordinator with  
22 Belle Fourche Pipeline, I also work for a variety of other  
23 companies under the True organization that include  
24 trucking companies, ranches, feedlots, couple other  
25 pipelines, oil and gas exploration and production company,

1 probably a couple others that I don't remember. So you  
2 all have seen my comments on behalf of Belle Fourche  
3 Pipeline. They were over there on the table.

4 MS. SMITH: Can I interrupt you just one  
5 second? If it would be helpful to you, I have your  
6 comments electronically with the numbers in the margin.  
7 Is there any reason you would want them projected while  
8 you're discussing it?

9 MR. DUNDAS: I don't care. I am just  
10 going to discuss the high notes. I'm not going to read  
11 them again. I don't think that that does any benefit. I  
12 thought I would just kind of hit on the high notes of them  
13 and we will go from there.

14 This is the third set of comments I have  
15 actually produced regarding this rule. As this is the  
16 first time in front of you all, every time it was proposed  
17 to be heard in front of the water and waste advisory  
18 board, I did have comments prepared. I think I submitted  
19 them to Carl. We met once over the phone and discussed, I  
20 think, round one of the comments, and then I had another  
21 set in January ready, but then it was pulled off the  
22 board, so those comments didn't reach you. So this is the  
23 third time I've commented. So we obviously believe in the  
24 rule.

25 We believe in P2. However, I'm not quite sure

1 this is the right -- the right way to go about doing it I  
2 guess is my ultimate comment. I would agree, this is very  
3 far reaching. It is one of the few rules I can even think  
4 of where a company is required to comply with the rule  
5 before they ever meet it. It is kind of an interesting  
6 concept. No other rule that I can think of, but that's  
7 the way the act is written so that's just the way it will  
8 have to be done.

9 I think this two-tier system is very  
10 complicated, and it has got the potential for the  
11 companies I work for to go back and forth, actually. You  
12 could actually go from a Tier 1 to Tier 2 or Tier 2 back  
13 to a Tier 1 depending on the dynamics of your business.  
14 As you grow or as you downsize, whatever the case may be,  
15 or just change focus in operations, you could actually go  
16 back and forth.

17 It is also possible, I believe, that very small  
18 facilities would have to comply with the Tier 1  
19 requirements. For instance, if you have a 1320-gallon  
20 gasoline tank that would be subject to SPCC, you would  
21 automatically become a Tier 1 facility. And so a small  
22 farm and ranch operation would have to comply with the, as  
23 previously mentioned, the complex Tier 1 requirements --  
24 and I think that's quite a burden -- whereas you could  
25 have a fairly large facility that doesn't have some of

1 these other requirements that would actually be a Tier 2  
2 facility. So I think there's some inequities there.

3 While a majority of facilities may be subject to  
4 Tier 2, I think the Tier 1 requirements are very complex,  
5 very far reaching, and will be difficult to do and very  
6 expensive to go through the process, especially for  
7 companies that don't have staff that are trained in P2 and  
8 it hasn't been one of their focused activities.

9 Another comment that I had was I'm concerned  
10 that there is no prereview of your plan. So a company may  
11 actually go through the effort of putting together what  
12 they think is a pretty fine P2 plan and 18 years down the  
13 road submit an application, now they need to go into the  
14 VRP and the plan is reviewed and for whatever reason it is  
15 deemed ineffective or it doesn't comply with the  
16 requirements. I'm not quite sure what happens then.

17 If you as an operator -- as an owner/operator  
18 has made a good faith effort to put together a plan but  
19 either you missed an item or you didn't adequately address  
20 it in the DEQ eyes, are you then subject -- are you denied  
21 access into the program? Do you have to go through the  
22 corrective action process some other way? That's a  
23 concern I have.

24 Even though I know there is not a policy of the  
25 DEQ to second-guess you, but you never know for sure how



1 your plan is going to be received until it is submitted.  
2 So you may be going down the road thinking everything is  
3 hunky-dory and then all of a sudden you get a response  
4 back saying no, because you didn't do this or you didn't  
5 do this effectively, you will be denied access. One of my  
6 concerns.

7 I am really glad to see that they are targeting  
8 P2 outreach. I think it is incredibly important. I think  
9 just by the fact that I'm the only one that made comments  
10 on this rule shows how ineffective even the outreach they  
11 have done so far has been. And if this is going to  
12 succeed, it is going to take a heck of an effort. And I'm  
13 glad to see that going forward.

14 The innocent landowner issue kind of concerns  
15 me. We have miles and miles of pipeline out there and  
16 every year operators, third parties forget to do their  
17 one-call locates. They dig into our line. They make a  
18 big mess. Hopefully they have the financial resources to  
19 clean up their mess. It had nothing to do with us. We  
20 had our pipelines properly located, they have been  
21 properly identified, but they popped our line. They make  
22 a big mess. In one instance they filled a landowner's  
23 basement that was being built. It was a big crude oil  
24 swimming pool.

25 The way the rule is written, if we didn't have a

1 P2 plan in place, even though we had absolutely nothing to  
2 do with that accident, we would be denied access into the  
3 VRP because we didn't have a plan in place even though the  
4 release was not a function of our activities.

5           Somehow I think that issue should be looked at.  
6 I think the innocent landowner can go a little farther  
7 than it is defined in the regulation right now.

8           This is a very broad-reaching rule. It is going  
9 to affect every business. I think it needs to be made  
10 clear to businesses that if you don't follow the P2 plan,  
11 what the ramifications are. There aren't a lot of options  
12 out there for cleanup other than the VRP, other than going  
13 through the administrative order on consent which is not a  
14 pleasant thing to go through either.

15           So I think people need to understand what their  
16 decisions are doing and what the ramifications of not  
17 following the P2 requirements are.

18           I just -- I have just a couple questions based  
19 on Carl's presentation. I just wanted to clarify. When  
20 you said one of the criteria for Tier 1s, Carl, is if you  
21 have a tank site that is a nonfuel tank source. Those are  
22 just tanks that are subject to the water quality's tank  
23 program, right?

24           MR. ANDERSON: That's correct.

25           MR. DUNDAS: Those are not EMT tanks or

1 crude oil break-out tanks.

2 MR. ANDERSON: Yeah, those would be tanks  
3 subject to the crude oil tank storage program.

4 MR. DUNDAS: I have a concern. From an  
5 oil and gas standpoint, there's very little we can do to  
6 remove or eliminate toxicity. We can do a lot to  
7 eliminate or reduce the potential for releases. I have no  
8 problem with that. And we certainly believe in that  
9 because every drop of oil that's spilled on the ground is  
10 a drop of oil that we can't put down the pipeline and  
11 that's money in the bank.

12 So I have a problem with the focus on  
13 elimination or reducing toxicity when primarily all we're  
14 talking about is either crude oil going down the line. If  
15 we reduce our levels, we're reducing our throughputs and  
16 that affects a lot of lines. So somehow I think that  
17 needs to be considered.

18 And at a general fuel tank facility, again, a  
19 little farming operation, a little ranch operation, the  
20 only thing we have out there that we are talking about is  
21 gasoline or diesel fuel. There's very little you can do  
22 to eliminate or reduce the toxicity, but you've still got  
23 to go through this whole process to review it and make  
24 sure you've got all of your ducks in a row.

25 I think we need to focus more on the elimination

1 of the releases rather than the reduction in those cases.  
2 And there needs to be some sort of means for recognizing  
3 that all facilities are not built the same. We're not all  
4 refineries.

5 Prevention is our greatest ally, in my opinion,  
6 and we certainly believe in that. We institute a lot of  
7 processes and we do a lot of work to minimize releases,  
8 and I don't think the rule recognizes all of the work that  
9 industry is already doing.

10 I would suggest as part of your outreach it  
11 would be incredibly useful to have a list of consultants  
12 that are qualified -- and I know you all are -- that are  
13 qualified or able to provide technical assistance to  
14 industry -- so that if we need some help or the small mom  
15 and pops need some help with their -- either getting their  
16 facility audited or plans developed, they would know who  
17 to contact.

18 I would really like to see more of this be  
19 focused just towards a general operating standard, get rid  
20 of the two-tier system. I think you could simplify this  
21 incredibly by simply focusing on operating standards and  
22 you do these 12 things or these 10 steps.

23 And the legislator -- the legislature did not  
24 specify what the P2 rule has to be, it is just that you  
25 all have to have one. So I think you have great

1 flexibility in determining the ultimate content of this  
2 plan. And I think right now it is way more complex than  
3 it needs to be. And while it is important to have a  
4 meaningful rule, we need to have one that's useful, user  
5 friendly and equal to all.

6 And I guess my last comment is I don't believe  
7 that the working group that started on this process has  
8 ever provided comments specific to this final rule, this  
9 latest draft, have they? And it might be useful to get  
10 their input to see if -- to see how they feel about it. I  
11 know they started working on it, but I don't know that  
12 they stayed with it all the way to this point. And it  
13 might be useful to get the P2 working group's comments on  
14 this rule before it goes any further.

15 I think that's pretty much what I have at this  
16 point in time.

17 CHAIRMAN SUGANO: Thank you, Bob.

18 MR. DUNDAS: Any questions?

19 MR. OLSON: Could I ask a question? This  
20 would probably be both directed at Carl and Bob, possibly,  
21 but, you know, when you look at -- when you look at  
22 Section 6 of the rule, I think you can go through some of  
23 that and you can identify those things that you think are  
24 very reasonable, very definable, very measurable, isn't  
25 subject to broad interpretation. I mean, there are parts

1 of it -- you know, identifying your contaminants, volumes,  
2 what you have, what your facility is like, those kinds of  
3 things, and then release prevention, that's something you  
4 can identify and it is something that's very well  
5 understood, I think, by most operators.

6 But then there are other portions of it such as  
7 reduce or eliminate toxicity, and Section 7, evaluating  
8 the system for economic feasibility, technical  
9 feasibility. And my concern would be this: We get a  
10 spill and someone comes into the Department with an  
11 application for a VRP and they have a P2 plan. Those are  
12 the parts of it I think where it is going to be now we're  
13 going to go back and forth on, well, is the work that was  
14 done adequate or not adequate, because those are subject  
15 to real, real broad interpretation, you know, what is  
16 economically feasible, what is technically feasible. It  
17 is going to be site specific. But when you take those  
18 portions of Section 6 like (a)(vii), you're going to end  
19 up with that type of a rub a lot of the time, I think.

20 So I guess I would like to see this thing maybe  
21 go back to that group and maybe let's identify the parts  
22 of it that are readily definable and measurable and then  
23 work on defining the other portions of it more clearly.  
24 Is that something that folks think could be done?

25 MR. ANDERSON: Well, I wanted to mention

1 before I respond to Joe's question that we have developed  
2 some responses to the comments that we received from Belle  
3 Fourche Pipeline and we can respond to those directly at  
4 the appropriate time.

5 And one of the comments was related to, you  
6 know, our review of pollution prevention plans and our  
7 determination it is not adequate, and therefore, you're  
8 not eligible for participation in the Voluntary  
9 Remediation Program. We agree that was a good comment.  
10 The statute, our statement of basis and the rule doesn't  
11 specifically address that.

12 But we had never anticipated that we would  
13 review pollution prevention plans as part of eligibility.  
14 We view that portion of it as being voluntary. There's a  
15 requirement that you have a P2 plan, and what we're  
16 envisioning is that as part of the application there would  
17 be a certification line in the application that would say,  
18 "We have a pollution prevention plan consistent with the  
19 requirements of" dah, dah, dah, the rule, and that would  
20 just be signed by, you know, the appropriate responsible  
21 party.

22 So we don't anticipate that we're going to  
23 review plans or have people submit their documentation for  
24 minimum operating standards. We might have inspectors ask  
25 to look at those pollution prevention plans, but we're

1 not -- that is not a threshold. We don't anticipate that  
2 that's a threshold for us. And we believe that, you know,  
3 given the diversity of industries in Wyoming that there's  
4 going to be a need, you know, to customize those plans.

5 So for a pipeline facility, for a company like  
6 True companies, you know, it will be developed on what  
7 makes sense in terms of the activities and operations that  
8 they're involved in. We're not going to second -- we're  
9 not going to second-guess that, I don't believe.

10 So whatever makes sense in terms of those  
11 operations, if you have an operation where reduction and  
12 elimination of the toxicity and volume of contaminants  
13 just doesn't make sense, you've done all that you can do  
14 or there's no way that you can implement that component,  
15 well, you can customize your P2 plan to focus on the  
16 release prevention aspect of it.

17 But there are other industries in Wyoming that I  
18 think can benefit from that analysis of process and look  
19 at ways to eliminate and reduce. Coastal Chem, for  
20 example, they may have processes in Cheyenne, they may  
21 have processes that could benefit from using different  
22 input chemicals or ways to manage waste streams.

23 It really is a customization thing and the idea  
24 is not to cram this stuff down people's throats. The idea  
25 was just to get them to think about, you know, what it is



1 that they can do to prevent the amount or reduce or  
2 eliminate the amount of stuff that they generate and  
3 manage and to prevent releases.

4 So it is -- we recognize that it needs to be  
5 customized and there's flexibility in how people go about  
6 developing their P2 plans or meeting the minimum  
7 alternative operating standards. So we really -- like I  
8 said, we don't intend to review P2 plans as part of an  
9 eligibility determination.

10 CHAIRMAN SUGANO: So, Carl, what I'm  
11 hearing is you will accept a good-faith effort, and  
12 probably have a certification line on the plan somewhere,  
13 if the person says he's done it to the best of his  
14 ability.

15 MR. ANDERSON: Yeah. We haven't worked up  
16 specific wording on that, but it would be along those  
17 lines that if they certify that they have -- are aware of,  
18 you know, the requirements and have developed a P2 plan in  
19 accordance.

20 It just -- we just want to make sure that  
21 there's a -- that there is a good-faith effort, that it is  
22 not just a hollow exercise to look at pollution  
23 prevention.

24 CHAIRMAN SUGANO: Do you have anything  
25 else, Bob?

1                   MR. DUNDAS: I guess my concern is  
2 whenever we certify, I don't certify prevention plans, my  
3 management certifies it, so we like to have a pretty good  
4 understanding of what we're certifying for. It is awfully  
5 scary for me to certify something because with  
6 certification comes the what if. If it is found you've  
7 certified something and it is not adequate is there an  
8 enforcement component for failing to or to falsely  
9 certify?

10                   I also just had one little -- as part of one of  
11 our conversations we had I threw out a hypothetical kind  
12 of regarding this issue. I said what if a pipeline  
13 company decided that their corrosion protection program  
14 was going to be to make sure everything stayed well  
15 painted. You know, paint is one of the ways of keeping  
16 rust away and theoretically should help to minimize  
17 corrosion. And almost before I could finish the DEQ staff  
18 said, "Well, that wouldn't be sufficient." So without  
19 even, you know -- there was second-guessing, and  
20 second-guessing is one of those things that we all do.

21                   And that is just an example of how one operator  
22 could think what they're doing is fine, but when it is  
23 reviewed at a later date by DEQ staff, they might  
24 disagree. And then you get into, as Joe was saying, that  
25 negotiation of, okay, this is inadequate, then what do we

1 do about it, you know. And there's hundreds, probably, of  
2 examples of how this could go.

3 There's some things that are cut and dried. We  
4 know what adequate berming is. There's lots of things  
5 that are really pretty simple to do. But then there's a  
6 lot of gray areas in this rule, and I think there's a lot  
7 of potential for, "Well, that really doesn't meet the  
8 intent," even though it is not their intent to  
9 second-guess. But I think it is problematic as it is  
10 right now.

11 CHAIRMAN SUGANO: Do we have any other  
12 public comments at this time?

13 Thank you, Bob.

14 MR. HAUGEN: Thank you. I'm Terry Haugen,  
15 public works director for the City of Laramie. We have  
16 been associating with BP Amoco on a site in Laramie that  
17 has had past contamination so it is not on the current VRP  
18 site list.

19 We believe that if we acquire this site, it will  
20 probably transact after January 2nd, 2009, and we're  
21 inquiring as to whether future inclusion on the VRP site  
22 is possible and how that would be applied with this P2  
23 plan on that site if we acquired it after that date.

24 MR. ANDERSON: In the rule this would be  
25 one of those circumstances where the release occurred

1 prior to the effective date of the rule. And I think as  
2 well the City of Laramie would probably -- I'm not sure if  
3 they could make the innocent owner demonstration, but I  
4 would assume that because of the date of the release, the  
5 City wouldn't be subject to a pollution prevention plan.

6 The alternative -- and I know there's been quite  
7 a bit of discussion. I have been talking with BP about  
8 their site in Laramie. One alternative -- and my  
9 understanding in talking with Joe Deschamp is that they  
10 anticipate beginning work out there sometime next year,  
11 depending on what transpires between the City and BP in  
12 terms of their negotiations.

13 And he's indicated, as they have done for their  
14 site here in Casper and the site in Greybull, that they  
15 would enter the Laramie site into the Voluntary  
16 Remediation Program. So if they anticipate conducting  
17 work, my assumption is that they would enter the Voluntary  
18 Remediation Program before conducting that work. That's  
19 just based on what I've heard from Joe Deschamp.

20 MS. BEDESSEM: Mr. Chairman.

21 CHAIRMAN SUGANO: Yes.

22 MS. BEDESSEM: I think what True is  
23 pointing out though that is almost a set of dates that  
24 don't fit in the grid.

25 MS. SMITH: His contamination happened --

1 I'm sure that's been closed for years. So it would be the  
2 before 2009 and it would be a plan --

3 MS. BEDESSEM: So it seems to me that to  
4 make that clear that there should be another line on here,  
5 so for all sites before January 1, 2009, the VRP  
6 application date is after January 1, 2009. And I don't  
7 see that there is that option on the grid.

8 MS. SMITH: Okay.

9 MS. BEDESSEM: You see what I mean? First  
10 column is before and second column is after and then what  
11 happens?

12 MR. ANDERSON: Yes, that's a good point.

13 MS. BEDESSEM: So putting in another line  
14 and then that would be clear --

15 MR. HAUGEN: That would help.

16 MS. BEDESSEM: -- under All Sites.

17 CHAIRMAN SUGANO: So that would cover your  
18 scenario.

19 MR. HAUGEN: Yes, it would. Thank you.

20 CHAIRMAN SUGANO: Could I ask, what are  
21 you going to do with that site? What is the City of  
22 Laramie planning.

23 MR. HAUGEN: Consideration right now would  
24 be probably split uses. One would be a recreational site,  
25 possibly some soccer fields. Another one would be

1 expanding wetland along the river in that area. And then  
2 the third possibility is some area that's out of the  
3 hundred-year floodplain would possibly be a public works  
4 facility.

5 CHAIRMAN SUGANO: New home for you.

6 MR. HAUGEN: Yes.

7 CHAIRMAN SUGANO: Thank you.

8 Any other comments?

9 MR. ANDERSON: Mr. Chairman, I was  
10 wondering if the Board was interested in DEQ talking about  
11 our responses to the comments that we got from Belle  
12 Fourche.

13 MS. CAHN: I would be.

14 CHAIRMAN SUGANO: We would be.

15 MR. ANDERSON: In my discussion I will  
16 have paraphrased Bob's comments and when he comes back I  
17 did the best I could to paraphrase what his concerns were  
18 and we will go by paragraph in his letter.

19 Bob, I was just telling the Board as I run  
20 through responses to your comments that I've paraphrased  
21 what the concern is, and if I don't exactly capture it,  
22 you can --

23 MR. DUNDAS: Hit you on the head.

24 MR. ANDERSON: In the first paragraph I  
25 believe the comment was that there's not a clear statement

1 that pollution prevention is needed for VRP eligibility  
2 and what the ramifications are if you don't have a  
3 pollution prevention plan and can't participate in the  
4 Voluntary Remediation Program.

5 We believe that the statement of reasons for  
6 this rule as well as the rule at Section 3 are clear with  
7 respect to the link between pollution prevention and  
8 eligibility for participation in the Voluntary Remediation  
9 Program.

10 However, we will add clarifying language in the  
11 statement of reasons and in the preamble to the rule to  
12 make that more clear, and that we will highlight -- we  
13 don't think we can do this in the rule, but we think in  
14 the statement of reasons we can highlight the  
15 ramifications if you're not able to participate in the  
16 Voluntary Remediation Program, those being primarily  
17 taking advantage of institutional control like the use  
18 control area, alternative cleanup standards for soils, and  
19 the issuance of specific liability assurances like no  
20 further action letters and certificates of completion.

21 And we will -- we will clarify those  
22 ramifications and we will -- clearly, you know, this is  
23 going to be one of those significant components of our  
24 outreach. And as Paige mentioned, this rule doesn't  
25 require everybody to have a P2 rule. It is only for those

1 who ever anticipate that they want to take advantage of  
2 the Voluntary Remediation Program. That would be clearly  
3 a focus of the continuing outreach we have in the  
4 Voluntary Remediation Program for the P2 rule as well.

5 I think Bob's second comment in the second  
6 paragraph relates to the complexity of the two tiers of  
7 facilities, what happens if you have operations that cross  
8 different tiers and his suggestion that all facilities  
9 should be subject to the same requirements. And I go back  
10 to reiterate that work groups focus on the fact that there  
11 are those two components to pollution prevention, the  
12 reduction and elimination in the toxicity and volume of  
13 contaminants and the release prevention, and that there  
14 are certain facilities, because of their activities, the  
15 scope and scale of their activities, that could benefit by  
16 looking at in a customized way, you know, those activities  
17 and how they might be able to reduce and eliminate as well  
18 as prevent releases, but that there are recognition for  
19 those smaller handlers, the Tier 2 facilities, that the  
20 focus for those facilities should be on the release aspect  
21 of pollution prevention.

22 And once again, pollution planning should be  
23 based on the company's activities, at least in our mind.  
24 And we know that, you know, this is not a clear-cut -- or  
25 there's gray areas in terms of how you define pollution



1 prevention for a company versus pollution prevention for  
2 specific activities or facilities, but that there should  
3 be the ability to customize pollution prevention plans.  
4 And that depending on how that plan develops, you will,  
5 you know, need to consider whether or not those are Tier 1  
6 kinds of activities or Tier 2 activities.

7           The third comment was related to the spill  
8 prevention control and countermeasures plans and emergency  
9 response plans in terms of meeting plan requirements, and  
10 the comment was that very few of those requirements in  
11 those plans meet pollution prevention plan requirements.  
12 And that's -- we think that's true. We never intended  
13 that SPCC plans or emergency response plans would satisfy  
14 fully pollution prevention. Those plans just aren't  
15 comprehensive enough and they don't apply to, you know,  
16 many facilities.

17           The fourth comment was related to rejection of  
18 P2 plans, and we have talked about that and our intent  
19 is -- that's a valid comment. It is our intent not to  
20 review plans. And, quite frankly, in the conduct of our  
21 business we receive documents all of the time that are  
22 signed and certified by owner/operators, by professional  
23 geologists, by professional engineers, and there just has  
24 to be some level of trust that when a management person in  
25 a company puts his name on the line, that they made a good

1 faith effort to comply with the rule.

2 And, you know, I'm not sure that I agree that  
3 that certification in terms of the applicability of the  
4 rule to some future circumstance really, that's -- that,  
5 once again, focuses on the release part of the pollution  
6 prevention, pollution prevention in terms of being, you  
7 know, sort of an ongoing kind of thing, something that  
8 would be done on an ongoing basis and not something you  
9 certify about some just-in-case or some future scenario.

10 And as I mentioned, we intend to develop some  
11 language in our application for that certification. And  
12 that's part of -- our application is part of the fact  
13 sheet under the Voluntary Remediation Program.

14 Bob's fifth comment was related to lack of DEQ  
15 technical pollution prevention outreach, and we understand  
16 that concern. There have been some issues, resource  
17 issues in our outreach group. We have two guys that are,  
18 you know, meant to cover the state in terms of just  
19 outreach activities in general in terms of, you know, what  
20 the DEQ does, and not only pollution prevention but other  
21 activities as well.

22 And as we have talked about, we recognize the  
23 importance of this broad outreach, that we're going to  
24 have to sort of do the octopus thing and make sure that  
25 we've got everybody engaged that we can get engaged to get

1 the word out before the effective date of the rule.

2 Bob's next comment related to the lack of public  
3 interest and comments shouldn't be construed at  
4 acceptance, and we recognize that. We recognize that we  
5 have a long ways to go in terms of making sure people  
6 understand the pollution prevention rule and its link to  
7 participation in the Voluntary Remediation Program if they  
8 ever choose to participate in the program.

9 With respect to Bob's comment with regard to  
10 third-party fault in creating releases, we believe that  
11 for a company that's involved in those kinds of operations  
12 that -- and if they anticipate that they ever want to  
13 participate in the Voluntary Remediation Program and they  
14 recognize that they themselves have the potential to  
15 create releases, that those facilities will have a  
16 pollution prevention plan. And whether that release is  
17 the result of their actions or third-party action, it is  
18 not meant to be a reactive process. It is meant to be  
19 proactive.

20 So to be concerned about pollution prevention as  
21 a knee jerk to a third-party reaction, we think you need  
22 to take more of a proactive approach and be accounting for  
23 the fact that you have a pipeline and you may be having  
24 your own releases.

25 And then the final comment I think was Bob's

1 summation with regard to elimination of the tiered system,  
2 applying the same standards to all facilities and having  
3 finite, simple operating standards, and I think we've sort  
4 of beat that horse.

5 So that's our responses and if you have any  
6 additional questions.

7 CHAIRMAN SUGANO: No, thank you, Carl.

8 You know, at this time I would like to just call  
9 for a break because our next order of business would be  
10 just to ask for Board questions.

11 But, Leroy, could we ask someone to maybe kill  
12 the air conditioner.

13 (Recess taken 9:30 a.m. until 9:47 a.m.)

14 CHAIRMAN SUGANO: Thank you very much.

15 We're ready to reconvene our meeting. And what we're  
16 going to do is call for Board questions and comments  
17 regarding the P2 rule. But before we get into that, I  
18 think Leroy wants to jump in for just a couple minutes.

19 Leroy.

20 MR. FEUSNER: Thank you, Mr. Chairman,  
21 Board. We appreciate hearing all of the comments and the  
22 concerns expressed during this procedure concerning this  
23 very important P2 rule.

24 And taking that into account and with the intent  
25 of advancing this rule if at all possible today, I would

1 propose removing Section 6(c)(vii) from this draft rule.  
2 And what we will do is we will make that a concerted  
3 effort in the outreach program in terms of pointing out  
4 the benefits and criteria that a potential P2 party might  
5 want to consider in developing the plan.

6 MS. CAHN: Leroy, I didn't hear you,  
7 6(c)(i) --

8 MR. FEUSNER: 6(c)(vii); it is on page 1-8  
9 of the proposed rule.

10 MS. CAHN: Is that microphone working?

11 So 6(c)(vii), you are --

12 MR. FEUSNER: I am proposing that we  
13 remove that section from the rule and include it in the  
14 outreach program.

15 CHAIRMAN SUGANO: So based on the comments  
16 you get from the outreach program, you will come back with  
17 or you will add to the section, then, based on those  
18 comments.

19 MR. FEUSNER: Well, we would not have a  
20 Section 6(c)(vii) and we would include those parameters as  
21 far as the one on one meetings or the group meetings with  
22 potential P2 people or companies who prepare plans, that  
23 they might want to consider these different aspects in  
24 their plan preparation, rather than include it in a rule.

25 MR. ANDERSON: Mr. Chairman, if I may,

1 during the development of the rule those four criteria --  
2 economic feasibility, technical feasibility, reduction in  
3 liabilities and reduction in regulatory requirements --  
4 were present to serve as discriminators between different  
5 pollution prevention activities, and you might be able to  
6 balance, you know, one approach against another approach  
7 in terms of its benefit relative to those four criteria.

8 I think we could probably just incorporate those  
9 considerations and guidance for people to think about when  
10 they're balancing P2 alternatives.

11 CHAIRMAN SUGANO: Thank you, Carl.

12 At this time I would like to open the floor for  
13 Board questions and comments. Do we have any -- anyone  
14 want to start? Lorie.

15 MS. CAHN: Just would like to go over some  
16 procedural issues. I had requested before and I would  
17 like to request again that we receive the Board packet in  
18 entirety as opposed to having to go and download, for  
19 instance, like the meeting minutes and the packet of the  
20 transcript.

21 MS. SMITH: Maybe you didn't get it, but a  
22 mailing went out -- just looking for it -- dated, I think  
23 it was May 6th, that had everything attached, the hard  
24 copy. So I apologize if you didn't get it. Maybe we need  
25 to do certified mail.

1 MS. CAHN: Because I think these guys said  
2 they downloaded their stuff.

3 CHAIRMAN SUGANO: The Water Quality  
4 transcript, the Water Quality Division, which is different  
5 from your department.

6 MS. CAHN: Meeting minutes.

7 MS. SMITH: They were part of that. Here  
8 it is. It was a memo dated May the 9th and had the  
9 agenda. Did everyone on the board get it? For some  
10 reason --

11 MS. CAHN: Must be an operator error here  
12 on my part.

13 MR. ANDERSON: Let's verify we have your  
14 right address.

15 MS. CAHN: Because I actually reviewed  
16 even the wrong version of this, the stuff we did in  
17 December.

18 MS. SMITH: Maybe we need to send yours  
19 certified and we will know if you got it. Maybe there's a  
20 problem.

21 MS. CAHN: I think this is the first time  
22 I haven't received the packet that everybody else did.

23 CHAIRMAN SUGANO: Lori's timeline showed  
24 2008 and what we have before us is 2009.

25 MS. SMITH: That is an older version that

1 you previously had from the next-to-last meeting.

2 MS. CAHN: From the previous meeting.

3 MS. SMITH: I apologize you didn't get it,  
4 but I'm glad to hear everyone else did.

5 MS. CAHN: I guess for my benefit maybe  
6 you could go over some of the changes between the two  
7 versions since I reviewed the wrong version. I'm sorry.

8 MR. ANDERSON: I think we can do that.

9 MS. CAHN: I know the date changed and  
10 that's good.

11 MR. ANDERSON: I think the more  
12 significant change was that we removed the NAICS codes.  
13 The version you have has the NAICS codes in it; is that  
14 right? We defined facilities, first the Tier 1  
15 facilities, those being the facilities with hazardous  
16 waste generators, yada dah; we defined Tier 2 facilities  
17 as all other facilities, so we removed the NAICS codes.

18 We added some provisions -- so there was -- we  
19 removed the NAICS codes and defined facilities in Section  
20 4, those facilities in need of pollution prevention plan.  
21 And, once again, that's the Tier 1 facilities and the Tier  
22 2 facilities, the Tier 2 facilities being all other  
23 facilities that aren't Tier 1 facilities. And we removed  
24 the NAICS codes which were originally in Section 5, the  
25 version of the rule that you have.



1           We added three new definitions with respect to  
2 household waste and household used oil generators and the  
3 fact that they would be considered to have a pollution  
4 prevention plan.

5           We added an additional modification to the  
6 definition of pollution prevention. As sort of an  
7 example, we added pipeline pegging as an example of a  
8 prevention activity.

9           We added a definition for release and we  
10 reworded the definition for a small quantity generator --  
11 small quantity inventory. I'm sorry.

12           We added the new Section 3. New Section 3 is  
13 that short section that makes it clear with regard to the  
14 pollution prevention plan and VRP eligibility.

15           We reorganized the rule. Section 4 in this  
16 version of the rule talks about the two tiers of pollution  
17 prevention.

18           We added innocent owner as considered to have  
19 met the pollution prevention plan requirements and  
20 household waste and household do-it-yourself oil  
21 generators were added.

22           We changed the date from '08 to January 1, '09.

23           We reversed the order in terms of the pollution  
24 prevention plan requirements and minimum P2 operating  
25 standards. Those sections have been flopped.

1           And we -- in the previous rule we had a  
2     Section 9 which was documentation requirements for P2  
3     plans and minimum operating standards. We took those  
4     documentation requirements and put them into the specific  
5     section for plans and minimum operating standards.

6           And we added a new section in terms of -- and  
7     this is a requirement under our rulemaking that we had to  
8     address how we were going to incorporate federal -- codes  
9     of federal regulations that we reference in the rule. We  
10    have to be careful about how we do that in our work.

11           I think those were the changes that we made  
12    between the version that you have, Lorie, and the version  
13    we have before us now.

14           The other is that the rule was originally  
15    proposed to be in the Department's -- as a rule under the  
16    rules of practice and procedure for the Department, but we  
17    made a decision -- because it really didn't fit into  
18    practice and procedure, we decided it would become a rule  
19    under the Voluntary Remediation Program. So that's an  
20    administrative thing.

21           MS. CAHN: Thanks, Carl.

22           I just have just something that maybe -- I don't  
23    know if you or Leroy need to or could answer this best,  
24    but I'm just a little confused in terms of the intent of  
25    the legislature and just wondering if I could get some

1 background on why did the legislature put this under VRP  
2 as opposed to making it some requirement now outside of  
3 the VRP? Because, I mean, obviously an ounce of  
4 prevention is worth a pound of cure, so this is a real  
5 good idea and a good thing for industry to have or for  
6 facilities to have. And so I -- I just was curious about  
7 why this is where it ended up, if there's some background  
8 that would help me understand that.

9 MR. ANDERSON: Unfortunately, Dave Finley,  
10 previous administrator in the Solid and Hazardous Waste  
11 Division, could provide the specifics on that in that he  
12 was -- worked with the legislature in the development of  
13 the statutes. And based on the conversations that I've  
14 had with Dave, there was a recognition by the legislature  
15 that there should be an attempt to incorporate pollution  
16 prevention as an ethic.

17 And I think in terms of the Voluntary  
18 Remediation Program and the purpose that it serves in  
19 terms of, you know, remediation of releases and the  
20 benefits that it offered, at that particular time it was a  
21 vehicle for incorporating a pollution prevention ethic  
22 more concretely into the activities of the Department.  
23 That's the best I can do on that.

24 MS. CAHN: Great, thanks.

25 CHAIRMAN SUGANO: Any other comments or

1 questions from the Board?

2 Marge.

3 MS. BEDESSEM: So the comments that Bob  
4 Dundas made regarding the list of what kinds of facilities  
5 would be Tier 1 versus Tier 2 and the concern -- you know,  
6 we think of this, you know, Tier 1, the ones that have to  
7 write this -- actually a written plan versus the ones that  
8 just have operating standards kind of as the big guys  
9 versus little guys viewpoint. But Bob pointed out that  
10 there was the possibility that there would be a number of  
11 little guys included in that first group because of, for  
12 example, having one, you know, larger tank.

13 So there may be some facilities that, you know,  
14 aren't very economically capable, let's say, of producing  
15 an elaborate plan that might be in that first group. So  
16 that concerns me about how those are split with respect to  
17 that SPCC requirement because that might include some  
18 little groups in there.

19 I'm feeling a little better about it with the  
20 fact that you propose to remove Section 6(c)(vii) because  
21 that's probably the most expensive component of a written  
22 plan. The rest of the materials in a written plan, I  
23 think, could be written by a facility owner based on the  
24 knowledge of their operations and with outreach help.

25 So I'm a little less concerned about that right

1 now, but I wanted to point out if at any point you do -- I  
2 like your approach of addressing it through outreach,  
3 those additional requirements, but if that ever comes back  
4 in, then you may want to revisit the list of Tier 1,  
5 Tier 2, because I think that could present a problem.

6           There are -- I have a question about in the part  
7 about the written plan it says this document has to be  
8 available for DEQ personnel on inspection. Under what  
9 conditions would these facilities be subject to any  
10 inspection? Under what inspection program would this  
11 happen?

12           MR. ANDERSON: They could be inspected  
13 under the hazardous waste program and being a hazardous  
14 waste generator. They could be inspected under the  
15 hazardous waste program if they're one of the permitted or  
16 interim status treatment, storage and disposal facilities.

17           You know, we typically, if we do conduct  
18 inspections under the Voluntary Remediation Program, those  
19 are oversight inspections of groundwater monitoring  
20 activities, compliance evaluations for groundwater  
21 monitoring. We don't anticipate that we're going to send  
22 inspectors out to VRP facilities to confirm that they have  
23 a pollution prevention plan. It might be part of, you  
24 know, some other inspection and if they're there for some  
25 other reason. But we don't anticipate specifically

1 sending folks out into --

2 MS. BEDESSEM: Well, because that kind of  
3 wording is in there, I think when people read it there's a  
4 tendency to think that -- I'm okay with the wording in  
5 there, but I think there is a tendency to think that, oh,  
6 you know, I can get a violation for not having this piece  
7 of paper.

8 And so I think your discussion of how you're  
9 going to approach those plans and that you're not going to  
10 do an actual approval of the -- review and approval of the  
11 plan and so forth, I think it is important for the solid  
12 waste program or the VRP program to come out with a policy  
13 statement or memorandum that can be viewable on the Web  
14 that states, "This is how we're going to do this. You  
15 have to have a plan so that someone in your company cannot  
16 perjure themselves by certifying that you have one, but  
17 that your agency is not going to go through a submittal  
18 and approval process," and that -- have that well  
19 documented because, you know, there's certainly a concern  
20 by the regulating community that that may be your policy  
21 today but can they rely that's how you're going to  
22 interpret it two years from now.

23 So having an official policy statement saying  
24 that's how you're going to do it I think is very important  
25 for acceptance of this and participation in this program.

1 That's a suggestion. It is apart from the rule, but I  
2 think it is an important item.

3 The other concern I have is all this is  
4 happening, you're doing outreach, trying to get people to  
5 know that they need to come up with a program -- I mean a  
6 P2 plan or operating standards by January 1, 2009.

7 How do you gauge your success at this? In other  
8 words, January 1, 2009 comes and goes and since they are  
9 not submitting a plan for approval how do you know how  
10 many of these thousand or more businesses that could be  
11 involved in the VRP actually did that. Maybe now the VRP  
12 program, since that is the cutoff date, is now only  
13 applying to the 20 facilities that met the P2.

14 So you see what I mean? How do you get a  
15 feedback to know whether you were successful at this  
16 outreach? Because until someone needs it you don't know  
17 if they actually did that and that your whole program may  
18 be actually now helping 15 sites.

19 So it seems to me that you have to come up with  
20 some way of finding out if you are reaching those people  
21 or not, and if those plans are actually happening.  
22 Because after that, after January 2009, you're going out  
23 doing continuous P2 outreach just because it is a good  
24 idea and thing to do, but not because it has anything to  
25 do with VRP because maybe none of these groups actually.

1 did it.

2 Have you put any thought into that and, you  
3 know, kind of getting that feedback, finding out what  
4 actually happened?

5 MR. ANDERSON: We haven't and that's a  
6 good suggestion. You know, as you were talking, just  
7 trying to think of things that we could do, I'm not  
8 flashing on anything. That's a good suggestion. We want  
9 to be able to verify our success based on positive rather  
10 than, you know, rejecting, you know, five out of ten  
11 applications we receive after January of 2009 because they  
12 don't have a P2 plan. That's not going to be a great  
13 measure of success.

14 MR. FEUSNER: I think too, Marge, that the  
15 date of January 2009 was a year after this rule is  
16 anticipated to become final. There was no intent to  
17 confirm or deny whether or not a party had established a  
18 P2 plan. The impetus really lies on the P2 company or  
19 party to have one in place in order to become eligible for  
20 the VRP. So it is really a voluntary part -- on the part  
21 of the company and not necessarily a regulatory follow-up  
22 for us.

23 MS. BEDESSEM: But still, if January 2009  
24 comes and they don't have it, they may just throw out all  
25 the VRP information because they can't use it. So you



1 don't want that scenario because the point is to get as  
2 many industries that can be involved in this as possible.  
3 And so if the outreach isn't as successful as you want it  
4 to be, you basically have taken your VRP program and  
5 brought it down to just this (indicating).

6 So how do you judge if that worked or not? It  
7 seems to me that there has to be some sort of immediate  
8 feedback, you know, because nine times out of ten EPA  
9 comes up with a deadline and comes out with a rule that  
10 gets approved, there's a deadline and then nine months  
11 later I see in the C.F.R. we're proposing to extend the  
12 deadline two more years because they have either gotten  
13 comments or they have a mechanism of figuring out that the  
14 word didn't get out there and we don't have everybody  
15 onboard like we wanted to.

16 So you don't want to be in a position of not  
17 being able to fix that if that's a problem.

18 MS. SMITH: You know, we don't have any  
19 regulatory hammer to actually say, "Give me your plan,"  
20 at least we're not proposing that regulatory hammer. We  
21 are really in sort of an odd catch-22 based on how it was  
22 written in the statute. I have never seen anything like  
23 it. And I don't have an answer for how we would know  
24 other than anecdotally to ask people who are willing to  
25 say to us, "Yeah, I learned" -- "so-and-so came and spoke

1 to me and I thought it was a great idea." So you've  
2 gotten rid of this solvent and that one, but it is not  
3 like I can go out and say, "Well, let me see" -- I can  
4 say, "Let me see what you're doing."

5 MS. BEDESSEM: Could you do a  
6 questionnaire or something when you do inspections saying,  
7 "Are you going to have....," otherwise you really have  
8 absolutely no --

9 MS. SMITH: We have no idea until they  
10 come to the VRP. I think what you said of a questionnaire  
11 is a pretty good idea if you have some carrot for the  
12 questionnaire to be answered. Right now the carrot is to  
13 be able to come into VRP and a lot of people still don't  
14 understand how good those carrots are because it is pretty  
15 complicated. So I think it is up to us to sell the VRP  
16 even more. Again, it is based on if somebody has a spill.

17 MS. BEDESSEM: I am just suggesting you  
18 think about if there's a way to gauge that with a  
19 questionnaire and some carrot to find out whether 90  
20 percent of businesses you were trying to reach decided to  
21 blow it off and not do it or what exactly happened with  
22 that so you can gauge the success of your program and be  
23 able to move on to what you would do different next time  
24 or whether there has to be some changes and so forth.

25 MS. SMITH: No, I agree. I think your

1 point is very well taken. I'm just not exactly sure how  
2 you could gauge it in a meaningful way where anybody would  
3 even tell you, but I think that's something we will have  
4 to think about.

5 MS. BEDESSEM: That's all I have.

6 CHAIRMAN SUGANO: Thank you.

7 Joe.

8 MR. OLSON: No, thought better of it.

9 MR. WELLES: I have one quick comment.  
10 The key to this, as I understand and listen, is the word  
11 "voluntary," and I think in that spirit DEQ has a  
12 tremendous responsibility in not only the outreach but  
13 also in the -- for lack of a better word -- the regulatory  
14 part of the program.

15 And to give you an example, which I'm sure a lot  
16 of you have heard about and other counties are doing it,  
17 too, but in Johnson County the Conservation District and  
18 the county Solid Waste District on two different days this  
19 spring -- and they have done this for several years --  
20 they offer a free day where people can bring -- whether it  
21 is paint or oil or tires or computer parts or whatever.  
22 It is absolutely overwhelming and a hell of a lot of work  
23 as a volunteer, which is what I was doing, just stacking  
24 it up, but, I mean, again, it is a voluntary program. And  
25 I think if you do the outreach and if you do the

1 follow-up, you will have a success.

2 And I remember back some years ago when Dave  
3 Finley was describing his efforts with the legislature and  
4 this program. I don't remember the details because I'm  
5 getting too old, but I do remember that conversation and I  
6 do remember being impressed by, you know, the whole  
7 concept of voluntary remediation programs. So I guess I  
8 would just throw that in.

9 CHAIRMAN SUGANO: Thank you, Bill.

10 I guess from my viewpoint I just wanted to ask  
11 when did the legislature add the P2 plan to the  
12 Environmental Quality Act?

13 MS. MEREDITH: 2000.

14 MR. ANDERSON: March of 2000. That was  
15 the effective date of the VRP statute.

16 CHAIRMAN SUGANO: And the VRP came into  
17 being when, what year.

18 MR. ANDERSON: Well, in 2000. Actually,  
19 there was original legislation in 1999 that the governor  
20 signed, and I can't remember --

21 MS. MEREDITH: No, he let it pass without  
22 signature.

23 MR. ANDERSON: Yeah, let it pass without  
24 signature and directed DEQ and the parties to work on a  
25 better piece of legislation. So it was originally enacted

1 in 1999, but the piece of legislation that ended up in the  
2 Environmental Quality Act was worked on from 1999 until  
3 the subsequent session in March of -- well, the session in  
4 early 2000. And then the rule -- the statute became  
5 effective in March of 2000, and that included the  
6 provision in the Voluntary Remediation Program statute  
7 that -- about eligibility is contingent on having a  
8 pollution prevention plan. That was part of that piece of  
9 legislation that went into effect in March of 2000.

10 CHAIRMAN SUGANO: So I guess I see one of  
11 the things that is lagging right now is the work group  
12 went into -- came into being sometime after 2000. They  
13 probably haven't met too often after their initial  
14 meetings, is that -- that's usually how things go with  
15 those work groups.

16 MR. ANDERSON: It is my recollection that  
17 there was a significant flurry of activity early on, and  
18 then as the rule got more defined there was less work-  
19 group activity and the DEQ took on the polishing aspects  
20 of the rule.

21 And at times during that polishing of the rule,  
22 versions of the proposed rule were sent back to the work  
23 group for input. But in terms of the work group, you  
24 know, continuing to meet, that happened initially and the  
25 DEQ, like I said, took the responsibility to sort of

1 polish it off.

2 CHAIRMAN SUGANO: Sure. And were the  
3 truck stops and convenience stores, some of the major  
4 players in the state, involved in your work group?  
5 Because those are the people that are probably going to  
6 apply for a VRP.

7 MR. ANDERSON: We had -- from outside --  
8 in addition to DEQ and EPA, we had some consultants and we  
9 had a representative, industry representative, from  
10 Terrace and Platte Pipeline. We didn't have  
11 representatives from marketing, you know, petroleum  
12 marketing.

13 CHAIRMAN SUGANO: Well, that's fine. That  
14 just kind of leads me into a question, then, to Leroy.  
15 You permit the aboveground storage tanks and the  
16 underground storage tanks in the state. Can that list be  
17 cross-referenced with the outreach program that Paige  
18 talked about? I mean, it seems like the people that have  
19 some of the larger tanks onsite could be contacted through  
20 an outreach program.

21 MR. FEUSNER: Mr. Chairman, yes, the  
22 storage tank program does have a mailing list of all  
23 storage tank facilities in the state. That list can  
24 certainly be incorporated into the outreach for the P2  
25 rule program.

1                   CHAIRMAN SUGANO: Just a suggestion. I  
2 think you could cross-reference -- get out into a larger  
3 community, then, if all of the truck stops with storage  
4 knew they were required to have a P2 program.

5                   MR. FEUSNER: You got to remember that for  
6 the storage tanks program those facilities are eligible  
7 under a state -- separate state program for remediation  
8 and cleanup.

9                   MS. MEREDITH: But not for spills.

10                  MR. FEUSNER: But not for spills. So if  
11 they have a spill, they could enter the VRP if it is not  
12 related to the storage tank system.

13                  CHAIRMAN SUGANO: And then what do you  
14 want to see of this board today, Leroy, if you could.

15                  MR. FEUSNER: Mr. Chairman, what I would  
16 like to suggest to the Board, with the removal of that  
17 Section 6(c) -- 6(c)(vii), I would like to get the Board's  
18 approval to advance this rule to the next round of the  
19 rulemaking process.

20                  MS. CAHN: I thought Marge had a very good  
21 suggestion on the table. On page 1-6 under All Sites  
22 there would also be a before date of contaminant release  
23 before January 1st, 2009, but the VRP application date was  
24 after January 1st, 2009. And so how do -- maybe we should  
25 agree on how that table would continue to be filled out on

1 that row and then we could be very specific about saying  
2 we approve sending this on with -- the motion could be to  
3 recommend going forward with it with these changes.

4 MR. FEUSNER: Okay. Let us take a look at  
5 it real quick here.

6 MS. SMITH: Well, you know what, I  
7 apologize because Marge's concern was that we didn't have  
8 a listing for a contamination before January 1, '09, but  
9 they applied at the VRP before January 1 --

10 MS. CAHN: No, after.

11 MS. BEDESSEM: After.

12 MS. SMITH: After?

13 MS. BEDESSEM: So it is all sites before  
14 January 2009, just like it says in the first box, but the  
15 second box, the VRP application date, is after.

16 MS. SMITH: That would -- that would make  
17 a whole universe of contaminated property that wouldn't  
18 have to have a P2 plan. I thought you meant if they came  
19 in between -- before the rule was effective.

20 MS. CAHN: So all we would have to do is  
21 divide the box under VRP application date, that column,  
22 and the box for All Sites -- just divide that into a  
23 before January 1st and after January 1st.

24 MS. MEREDITH: That would mean everything.

25 MS. SMITH: Are you talking about --



1 MS. MEREDITH: Everything that has a  
2 release before the implementation of the rule would not  
3 need to have a P2 plan.

4 MS. CAHN: Only if the contaminant was --

5 MS. SMITH: So if it is before January 1  
6 and they apply before -- okay, they don't need a plan. If  
7 their contamination happened in 1950 and they come in the  
8 program in 2010, we want them to have a plan, correct,  
9 because most of our sites are old contamination. And so  
10 the point is so even though that particular release was  
11 old, we want people to begin to think about pollution  
12 prevention so they're not creating new ones.

13 Am I mixed up, Vickie, or is that right? I have  
14 to just think about this because it is on the fly.

15 MS. MEREDITH: What I'm thinking more is  
16 if you had a release on December 31st, 2008, and then came  
17 in after, you know, two days later, you wouldn't have had  
18 to have a P2 plan under that scenario. The release was  
19 before the January 2009 deadline and you came in.

20 MR. DUNDAS: It is grandfathered.

21 MS. MEREDITH: Yeah, it is grandfathering  
22 any release before January 2009 is basically what that  
23 would do.

24 Thank you, Bob.

25 MS. CAHN: So --

1 MS. MEREDITH: So the rest of the  
2 deadlines in there, the March and all of that would be  
3 moot, really.

4 MS. CAHN: Is everybody understanding how  
5 this table would then be modified? That's what I'm --

6 MR. OLSON: Basically you could take most  
7 of the table and get rid of it.

8 MS. BEDESSEM: The problem is that that  
9 option of before January 1, 2009 but after 2009 is not  
10 there and the problem is it needs to be addressed because  
11 otherwise you have a whole different table.

12 MS. SMITH: Right.

13 MS. BEDESSEM: So tell us what the rest of  
14 the table is supposed to say under that option.

15 MS. SMITH: So it is.

16 MS. BEDESSEM: So does it just basically  
17 fit in the unknown -- in other words, under Facilities  
18 Identified in Section 4(a) and Facilities Identified in  
19 Section 4(b), and the Unknown category should it say  
20 unknown or before January 1, 2009?

21 MR. ANDERSON: I think what we're trying  
22 to account for is right now we have for those facilities  
23 that have a release after the effective date of the  
24 statute, that's the March 10th, 2000, and they submit  
25 application after January 1, depending on for that

1 particular circumstance they would need application --  
2 they would need to have a P2 plan at the time of  
3 application.

4 For -- so I think what we're talking about would  
5 be that circumstance where we have a release before  
6 March 10th, 2000 and application occurs after January 1st.

7 MS. BEDESSEM: So then can you change the  
8 lines that say unknown to unknown or before March 10th,  
9 2000?

10 MS. CAHN: Is that what you're intending,  
11 so that if it was before -- if the date of contaminant  
12 release was before January 1st, 2009, VRP application date  
13 was after January 1st, 2009 for 4(a), are you expecting  
14 the P2 standards in Section 6, P2 plan implementation  
15 requirements in Section 5(a)(3) and when the volunteer  
16 must be implementing the P2 plan at the time of the  
17 application? Is that what you intend?

18 MR. OLSON: Could I just make a quick  
19 comment. It seems we did this in response to Mr. Haugen's  
20 comment and it seems to me like we gave him some assurance  
21 that we would make a change and that, therefore, he can  
22 put in his new building because he needs one in Laramie.

23 What I am wondering is we didn't tell him right  
24 or we didn't inform him correctly. He falls into -- under  
25 Facilities Identified in Section 4(a), Unknown and After

1 January 1, 2009. That's where he falls in. And there  
2 would have to be, then, a P2 plan, which in his specific  
3 circumstance is extremely problematic depending on when  
4 the transaction occurs.

5 MS. BEDESSEM: Unless he's an innocent  
6 owner.

7 MS. CAHN: He's an innocent owner, though,  
8 so he's got the exclusion.

9 MR. OLSON: Carl said he could not because  
10 when he buys the property, he takes on that VRP.

11 MR. ANDERSON: Has knowledge of the  
12 conditions.

13 MR. OLSON: That's correct.

14 MR. ANDERSON: So I think the fix may be  
15 in that Unknown category, Unknown or Before March 10th of  
16 2000.

17 MS. MEREDITH: I think that's right.

18 MR. FEUSNER: I think that's correct.

19 MS. CAHN: Is it before March 10th or is  
20 it before January 1st, 2009?

21 MS. BEDESSEM: It is before March 10th  
22 because otherwise it would be in the column -- it would be  
23 in the line above it.

24 MS. MEREDITH: Right.

25 MS. CAHN: So it has to be before March

1 10th, 2000.

2 CHAIRMAN SUGANO: Before the time of the  
3 Act.

4 MS. SMITH: Carl's comment is maybe we  
5 should just say date of contaminant release before  
6 January 1, 2009.

7 MR. ANDERSON: Don't have to worry about  
8 March 10th, 2000.

9 MR. OLSON: What was the intent of doing  
10 when the VRP came into existence? What was the intent of  
11 trying to segregate those before or after when the VRP  
12 program was promulgated? Because you may have procedural  
13 or statutory requirements, Carl, you need to think about  
14 before you set it anywhere you want?

15 MS. SMITH: Here is why. The statute  
16 reads "sites or portions of sites where releases occurred  
17 on or after the effective date of the article and where  
18 the owner/operator's implementing of P2 plan consistent  
19 with rules promulgated under this Act," so the statute  
20 itself has established its effective date as the date when  
21 we start thinking about P2 plans, the date of the release.

22 MR. OLSON: Then it seems to me that the  
23 VRP program has an established date when things -- then  
24 the P2 plans required also may -- and we may have to  
25 grandfather those prior to March 10.

1 MS. SMITH: Which is what we did in the  
2 first line.

3 MS. BEDESSEM: Yes, the first line is --  
4 that was what was considered first. Under All Sites if  
5 you would have before January 1, 2009 for contaminant  
6 release and after January 1, 2009 for the VRP application  
7 date.

8 MS. SMITH: And in that case we would say  
9 you need to have an application when you apply to VRP -- I  
10 mean, you would have to have a P2 plan when you apply, not  
11 at the time of the release because the release happened  
12 before the effective date of the rule, is that what you're  
13 thinking?

14 MS. BEDESSEM: So you're saying -- I'm  
15 trying to clarify. What you just said was that in that  
16 case you have to implement the plan at the time of the VRP  
17 application, not January 1, 2009.

18 MR. DUNDAS: And not at the time of the  
19 release.

20 MS. SMITH: But if you release after  
21 January 1, 2009, you have to have had a P2 plan in place  
22 at the time of the release because that's the should have  
23 known.

24 MS. BEDESSEM: Right, but if you have an  
25 old release, then you can produce the plan at the time of

1 the VRP application.

2 MS. SMITH: Yes.

3 MS. BEDESSEM: And that's a compromise  
4 between grandfathering in and --

5 MS. SMITH: Right, and having future  
6 activity.

7 MS. BEDESSEM: Do you want to repeat that  
8 for the Board, if you can?

9 MS. CAHN: I will try. I will try, and  
10 tell me if I'm right or wrong. More likely I'm wrong.

11 MS. SMITH: Hang on. Can I ask you --  
12 hold on one second. Have you two seen another  
13 permutation?

14 MR. ANDERSON: No, I'm trying to capture  
15 what I think the permutation is.

16 MS. CAHN: So I will try to capture this.  
17 Rather than -- and stop me as soon as I go wrong because I  
18 am probably wrong pretty quickly.

19 Rather than under All Sites, making any change  
20 there, we would make changes in two places, for Facilities  
21 Identified in Section 4(a), under Unknown, it would say  
22 Unknown or Before March 10th, 2000. And then that follows  
23 along, the same, so after the VRP application date is  
24 after January 1st, 2009, P2 standards are Section 6, P2  
25 plan requirements are Section 5(a)(3) and when the

1 volunteer must be implementing the P2 plan is at the time  
2 of the VRP application.

3 Likewise, under Facilities for Section 4(b) the  
4 Unknown would be changed to Unknown or Before March 10th,  
5 2000, so there's no change to the All Sites row.

6 Does that do it? No? Marge is saying no.

7 MS. BEDESSEM: I think it does.

8 MS. MEREDITH: Yeah, it is right.

9 MS. CAHN: I can see this table is very  
10 easy to use, it is simple.

11 CHAIRMAN SUGANO: Go ahead. From the City  
12 of Laramie, go ahead.

13 MR. HAUGEN: Terry Haugen, City of Laramie  
14 again. I guess when I'm looking at this page 1-6, up on  
15 the top under Item (c) I guess I'm a little confused with  
16 what is in the table when I'm looking at Item (c) because  
17 Item (c) says that the chapter does not require written P2  
18 plans or implementation of alternative pollution  
19 prevention standards as eligibility for participation in  
20 the VRP when application to the VRP was submitted before  
21 January 1st, 2009 or when the release occurred prior to  
22 March 10, 2000. So that does not concur with what's in  
23 the table below.

24 MS. BEDESSEM: And it would if it said,  
25 under All Sites, Before March 10th, 2000, or contaminant



1 release, VRP application date. It has to match.

2 MR. OLSON: That's what we were getting at  
3 here was anything prior to March 10th. The way this is  
4 written and I think the way the statute reads, the  
5 original enacting legislation would say that if you're  
6 prior to March 10th, 2000, you don't have to do one.

7 MS. CAHN: But that's before January 1st,  
8 2009, because before March 10th is before January 1st,  
9 2009.

10 MR. OLSON: Let me think about this for a  
11 second.

12 MS. BEDESSEM: Didn't realize this was  
13 such a can of worms when we first started with the missing  
14 line.

15 MR. ANDERSON: You don't know how many  
16 times we reworked this table.

17 MR. OLSON: But it is before, so when the  
18 release occurred prior to March 10th, if you read the  
19 sentence in C, it just says Chapter, dah, dah, dah, dah,  
20 dah.

21 MS. SMITH: Maybe it needs to say --

22 MR. OLSON: Does not require written P2  
23 plans or implementation of alternative minimum pollution  
24 prevention operating standards as a condition of  
25 eligibility for participation when the release occurred

1 prior to March 10th, 2000.

2 In other words, if you just take the first  
3 "when" out, because it is and/or, so you just say it  
4 doesn't require it when the release occurred prior to  
5 March 10th, 2000. That's the way I think that reads.

6 MS. CAHN: But before January 1st, 2009  
7 for the date of contaminant release is less restrictive  
8 than before 2000, March 10th, 2000. So March 10th, 2000  
9 is covered under All Sites for that condition because it  
10 is before January 1st, 2009. So that situation is covered  
11 in the table.

12 What is not covered is -- my understanding is  
13 what Marge was asking about and Terry is what if you  
14 applied for the VRP application date after -- so the  
15 release is before 2009, which 2000 is included in that,  
16 but the VRP application date is after January 1st, 2009,  
17 which would be Terry' situation. So we're asking what  
18 will this table say for Terry's situation and I'm not sure  
19 I understand.

20 MS. MEREDITH: Mr. Chairman, I think I  
21 have it figured out.

22 There's two -- the crux here is when you have to  
23 be implementing your P2 plan. If you have the release  
24 before March of 2000, and you come in after 2009, then you  
25 would only have to have the P2 plan or be meeting the

1 operating standards when you make -- when you come into  
2 the DEQ for application. So that could be 2020.

3 And there would be this 11-year time frame here  
4 that you didn't have to have a P2 plan because in his case  
5 he wasn't operating the facility when the release  
6 happened. So I think our answer to Terry would be you  
7 didn't have to have a P2 plan in place at the -- on  
8 January '09, but you will have to have something in place  
9 when you come in with an application. So there's two --  
10 there's at the time of the application and there's at the  
11 time of the -- when the rules go into effect.

12 MS. CAHN: So then we're back to the  
13 Unknown or Before March 10, 2000.

14 MS. MEREDITH: No? I don't think Paige  
15 agrees with me.

16 MS. SMITH: And I don't agree because we  
17 have to look at what Terry is doing. He's not running the  
18 facility. It is closed. He's not even going to be  
19 operating a facility. He's going to be cleaning up a  
20 previous activity. So there's no reason he needs a  
21 pollution prevention plan really because he's not  
22 conducting any activity that would constitute being a  
23 facility. How does that sit?

24 MS. MEREDITH: That is true, but I don't  
25 think that's covered in here.

1 MS. SMITH: Right, so we need to make  
2 that -- to me --

3 MS. BEDESSEM: Sorry, Paige, but I just  
4 want to point out a concern that that may be -- what you  
5 said may be conflicting with (c) since it has "and/or" in  
6 there. It says if you've got a release prior to March  
7 10th, 2000, you don't have to do a P2 plan. I don't know  
8 if that's right out of the statute or where that's from.  
9 But the way it is written with the "or" implies that  
10 anything happened before March 10th you're grandfathered  
11 in.

12 MS. SMITH: Right.

13 MS. BEDESSEM: So we want to make sure  
14 that line and the table do not conflict.

15 MS. SMITH: They don't jibe, right.

16 MS. BEDESSEM: I'm wondering, do you want  
17 a five-minute break to take a look at this rather than us  
18 going back and forth and getting more confused and having  
19 the minutes getting more complicated here? Can I propose  
20 to do that so you can work out and make sure that you're  
21 covered so that we can move this rule forward with the  
22 appropriate correction.

23 CHAIRMAN SUGANO: Sure. Let's take a  
24 five-minute break.

25 (Recess taken 10:38 a.m. until 10:55 a.m.)

1                   CHAIRMAN SUGANO: I will reconvene the  
2 meeting and turn it over to staff to give us the  
3 wordsmithing that they have been working on.

4                   MR. FEUSNER: Paige, would you give a  
5 summary?

6                   MS. SMITH: I will be glad to. After some  
7 fits and starts, deletions and additions, by adding in the  
8 second All Sites I think we get at what Terry's issue is  
9 and what (c) is saying. Item (c) says if you're coming in  
10 before our effective date, which is arbitrarily right now  
11 January 1, 2009, you don't need a plan because you're  
12 coming in before these rules are even in effect. So we  
13 don't care when the contaminant release happened. You're  
14 coming in before that effective date; you don't need a  
15 plan.

16                   Then for those sites they do know the release  
17 happened after March 10th, 2000 -- I mean, before March  
18 10th, 2000, the statute does not apply to those releases,  
19 based on the wording of the statute. So again, we cannot  
20 impose a P2 plan as a criteria for eligibility on a  
21 release that's pre-statute, so, again, we're not requiring  
22 a P2 plan.

23                   But let's scroll down a little further --

24                   MS. CAHN: Wait, wait, wait. I'm confused  
25 because you only know about them if they come into the

1 VRP.

2 MS. SMITH: Well, we know about  
3 contaminant outside of VRP entry because we send letters  
4 to people saying, "We know you have contaminated. You can  
5 come in" --

6 MS. CAHN: What's the VRP application  
7 indication Not Applicable under the second set?

8 MS. SMITH: Because the statute is not  
9 applicable to a release that happened before the statute  
10 was in place.

11 MS. MEREDITH: The date is not -- the date  
12 is irrelevant, not the application.

13 MS. BEDESSEM: The date they apply.

14 MR. OLSON: Statutorily you can't go  
15 before that because that was the enacting legislation for  
16 the entire program.

17 MS. SMITH: Do you think it would be  
18 better to put something other than NA? Date of  
19 application irrelevant?

20 MS. CAHN: Or not applicable at any time.

21 MS. BEDESSEM: At any time. Same thing  
22 with date of contaminant release on the previous one.

23 MS. SMITH: So let's think about this a  
24 second. Are we good? If you release at any time but you  
25 apply before -- because you obviously aren't going to

1 release after January 1, '09 -- I mean, you can't --  
2 trying to think if somebody could say -- no, yeah, I think  
3 you're right.

4 MR. DUNDAS: Couldn't you say before  
5 implementing date just to be clear because at any time  
6 kind of gives a very open-ended --

7 MS. SMITH: Anytime before January 1.

8 MS. CAHN: So we could get rid of "at any  
9 time"? It could just say before January 1.

10 MS. SMITH: 2009, so that goes back to the  
11 original which is what we had originally. But that's  
12 okay. You have to think these things through.

13 MS. BEDESSEM: So then the next one --

14 MS. SMITH: So that is the same. It is  
15 where we were before. But that's okay.

16 MS. CAHN: Because we've added an extra  
17 line.

18 MS. SMITH: Which has taken care of all of  
19 the other situations. So the thing we missed was the  
20 second line which was statute implementation. Okay.  
21 None, none, none, all right. And we didn't make any  
22 changes elsewhere on this table. So we shouldn't need to.

23 MS. BEDESSEM: Does the first one need to  
24 say between March 10th, 2000 and before January 1, 2009?

25 MS. SMITH: I don't think it matters

1 because we're not holding them to a P2 plan before the  
2 rule is in effect. I'm saying that out loud to see if  
3 that's right.

4 MS. SMITH: I think that's correct,  
5 because anybody that we have in the Voluntary Remediation  
6 Program now, we're not going to make them implement a P2  
7 plan after unless they think they're going to have another  
8 release that they're going to have to -- that will fall in  
9 a different place on the table after the January deadline.

10 MS. MEREDITH: So I think that's right.

11 MS. BEDESSEM: So what happens to the  
12 unknown lines?

13 MS. SMITH: They can come in the program,  
14 but they have to implement a P2 plan to come into the  
15 program at that time. They don't have to have the plan in  
16 place for some unknown release and they have to certify  
17 they don't know when it happened. And so that will be we  
18 leave it up to some administrator discretion on that.

19 But we also felt like we didn't want to, say,  
20 reward people for having unknown releases, I mean, for not  
21 doing something proactive in the future and get the  
22 benefits of the program without giving the State back the  
23 P2 plan.

24 We have been wrestling over here, but...

25 MS. BEDESSEM: It does appear to be



1 consistent with the terminology in the paragraph before  
2 the table now.

3 MS. SMITH: Which is important, I think.

4 MS. CAHN: I guess I'm still confused when  
5 I go down to the Unknown one for 4(a) or 4(b). If it is  
6 unknown, it could have occurred before March 10th.

7 MR. ANDERSON: It could have occurred  
8 before March 10th or before January 1 or after January 1.  
9 It has to account for the future circumstance after  
10 January 1 of unknown releases.

11 MR. OLSON: For a person to say I am  
12 not -- I don't have to have a P2 plan because of under All  
13 Sites, the second line there Before March 10th, 2000, they  
14 have to, I think, would have had documentation that would  
15 show that I knew it was there prior to March 10th, 2000.  
16 I think that's what is going to have to happen. Otherwise  
17 they fall into Unknown, they get in 4(a) or they get in  
18 4(b).

19 MS. BEDESSEM: And so, for example, a  
20 facility that hasn't been in operation, was only operated  
21 before March 10th, 2000, then the release had to have  
22 happened before then and that would be significant -- the  
23 appropriate documentation, they might not have to have a  
24 release date, but if it was closed prior to then, so that  
25 would be Terry Haugen's case, they could substantiate that

1 happened before March 10th so that's when the facility was  
2 closed before that.

3 MS. CAHN: All right. So if your date is  
4 unknown and you can show that it is before January 1st,  
5 2009, and you have applied before January 1st, then you're  
6 back up to the top thing. If your release is unknown but  
7 you can show that it occurred before 2000, March 10th,  
8 2000, then you can apply at any time. Okay. And if  
9 you're not in either of those, then you default of the  
10 unknowns of 4(a) or 4(b).

11 MR. OLSON: Correct.

12 MS. BEDESSEM: I'm okay with that.

13 MS. CAHN: Wow.

14 CHAIRMAN SUGANO: So with that discussion  
15 I will call for a motion. I think we're about to that  
16 point. We will accept the amendment that Leroy presented  
17 to us regarding 7(c) --

18 MS. CAHN: 6(c) -- I would be happy to  
19 make a motion, if you like.

20 CHAIRMAN SUGANO: Thank you, Lorie.

21 MS. CAHN: I move that we recommend this  
22 go on to -- let me start over again.

23 I move that DEQ remove 6(c)(vii) and make that  
24 part of the outreach program and modify the table to -- I  
25 will just say as indicated on Miss Smith's -- and there --

1 MS. SMITH: The revised version that I  
2 will save.

3 MS. CAHN: -- and recommend that this go  
4 on to -- as amended to the EQC.

5 Is that your next step, Leroy, to go on the EQC,  
6 then?

7 MS. SMITH: I'm sorry. One thing we  
8 didn't talk about when we were responding to Mr. Dundas'  
9 comments is that we thought he made a good point and we  
10 had proposed some additional language to the rule under  
11 Chapter -- under Section -- is it (a)?

12 MR. FEUSNER: 1.

13 MS. SMITH: -- 1(a) that perhaps reaffirms  
14 a little further -- and I have that language to show.  
15 There seemed to be some consternation that we hadn't  
16 clearly enough said what it meant to have a plan and not  
17 have a plan and what the repercussions were. So we had  
18 suggested adding some language in response to his comments  
19 in Section 1, and I can show it to you. And I apologize.

20 So let me -- we had also proposed an addition to  
21 the statement of principal reasons, statement of reasons  
22 in the preamble, but if it is all right, I will go to the  
23 rule first -- there it is.

24 In response to his comment we talked about it  
25 and thought it might be helpful if we added in --

1 MS. CAHN: Can you make that a little bit  
2 bigger? I can't read it from here.

3 MS. SMITH: Sure. So we are proposing  
4 keeping the existing statement there -- "Chapter is being  
5 promulgated pursuant to...in order to establish the  
6 pollution prevention plan requirements necessary for  
7 eligibility...

8 If an owner/operator of a facility anticipates  
9 ever wanting to enter that facility into the Voluntary  
10 Remediation Program, they will need to be implementing a  
11 pollution prevention plan in accordance with the  
12 applicable requirements of this chapter at the time of a  
13 contaminant release in order to be considered for  
14 eligibility in the VRP in accordance with the applicable  
15 requirements of this chapter is intended to accommodate  
16 all the permutations we just talked about.

17 MR. OLSON: I think it does.

18 MS. SMITH: Because we thought that  
19 this -- because the only place we say if you think you  
20 ever want to come in you need to consider having a plan  
21 depending on your circumstances -- the only place we  
22 talked about that is under Section 3, Do You Need to  
23 Implement a VRP Plan As a Condition of Eligibility? We  
24 thought it probably didn't hurt to clarify in the very  
25 beginning of the rule, sort of to get at what Bob was

1 concerned about that maybe we haven't been clear enough.  
2 So this was a proposal that we wanted to bring to you.

3 CHAIRMAN SUGANO: Sure. So I think our  
4 motion could just say and we will accept what is  
5 highlighted in front of us in yellow.

6 MS. CAHN: At this point just as amended.

7 CHAIRMAN SUGANO: As amended.

8 MS. CAHN: Leroy, go over again what the  
9 action is so that can help us, where we going from here,  
10 what would you like us to do.

11 MR. FEUSNER: Are we done with all of the  
12 amendments?

13 MS. SMITH: Well, the amendment to the  
14 rule -- this was the only amendment to the rule. The only  
15 other thing we had done was add some language in the  
16 statement of reasons, the preamble discussion that  
17 explained if you weren't able to get in the VRP, you would  
18 then be under the administrative order requirements.

19 Because that, again, was an issue Bob brought up  
20 that we did not have anywhere in here and we thought that  
21 was a good idea. That's not necessarily the rule itself,  
22 but it is -- you know, it is considered part of the rule.  
23 It is like a preamble, just like a Federal Register. If  
24 you would like to see that as well, proposed language to  
25 put in the statement of reasons just as a clarifying

1 point.

2 CHAIRMAN SUGANO: Sure.

3 MS. SMITH: Do I need to read it aloud or  
4 is everybody seeing it all right?

5 MR. FEUSNER: Okay. What I would like to  
6 see us do and the Board vote on would be to take into  
7 consideration the three now amendments that we have talked  
8 about, accept those and approve with the addition of the  
9 amendments the draft rule for further rulemaking.

10 So what I guess I need from the Board is a  
11 motion to delete Section 6(c)(vii), to -- and to implement  
12 the revisions made today for the table and the language in  
13 the purpose of the rule section, Section 1 -- 4. Sorry.

14 MS. CAHN: I move that the Board approve  
15 the draft rule as amended in four places.

16 CHAIRMAN SUGANO: We have a motion. Do we  
17 have a second.

18 MR. OLSON: I will second that motion.

19 CHAIRMAN SUGANO: All those in favor of  
20 the motion signify by saying aye.

21 None opposed.

22 Motion carries. We're moving on -- and it does  
23 go to the EQC, right?

24 MR. FEUSNER: Yes, it will.

25 CHAIRMAN SUGANO: That wraps that.