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BEFORE THE WATER AND WASTE ADVISORY BOARD
STATE OF WYOMING

PROPOSED REVISIONS TO DRAFT WATER QUALITY RULES AND
REGULATIONS FOR REVIEW BY THE WATER AND WASTE ADVISORY
BOARD

TRANSCRIPT OF HEARING PROCEEDINGS

Transcript of Hearing Proceedings in the above-
entitled matter before the Water and Waste Advisory
Board, commencing on the 24th day of June 2011 at 9:05
a.m. at the Oil and Gas Conservation Commission Building
Hearing Room, 2211 King Boulevard, Casper, Wyoming,
Mr. Bill Welles presiding, with Board Members
Ms. Marjorie Bedessem, Mr. David Applegate and Mr. Glenn
Sugano in attendance and Board Member Ms. Lorie Cahn
appearing via video- conferencing. Also present were Mr.
John Wagner, Ms. Diane Walker-Tompkins, Ms. Kim Parker
and Ms. Suzanne Engels.

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P R O C E E D I N G S

(Hearing proceedings commenced 9:05
a.m., June 24, 2010.)

CHAIRMAN WELLES: I'd like to call this
meeting of the Water and Waste Advisory Board to order.
And I'll start with introductions. I'm Bill Welles,
representing agriculture, living in Buffalo.

MS. BEDESSEM: Marge Bedessem,
representing the public at large. I live in Laramie.

MR. SUGANO: Glenn Sugano, an elected
official living in Rock Springs.

MR. APPLGATE: Dave Applegate,
representing industry, from Casper.

MS. CAHN: Lorie Cahn, representing the
public at large in Jackson.

MR. WAGNER: And with the Department of
Environmental Quality, Water Quality Division, on my far
right is Suzanne Engels with the Water Quality Division.
And Suzanne will be heading up the next rule package that
we bring forward. And next to Suzanne is Kim Parker, who
runs our operator certification program. And next to me
is Diane Walker-Tompkins, who is primarily responsible
for putting together this rule package, and myself, John
Wagner, administrator of the Water Quality Division.

CHAIRMAN WELLES: Well, John, I'll ask you

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1 to start off with the discussion on the modifications to
2 Chapter 5.

3 MR. WAGNER: Thank you, Mr. Chairman.

4 As you're all aware, this is hopefully the last
5 meeting that we'll have on the Chapter 5 rules. We've
6 got just a couple of housecleaning items that we would
7 like to bring forward for the consideration of the
8 advisory board. I think if we work -- if we start by
9 working off of the document that's titled "Proposed
10 Draft," which is the -- what is that, the second document
11 in the package? It's the one that's got -- it's the
12 rule, and it's pretty much in its final form. If you'll
13 look on page 5-11 of that document, at the bottom there
14 is a word -- the word to, T-O, that's crossed out.
15 That's obviously a typographical error that we're going
16 to have to fix. It's the second-to-the-very-last line at
17 the bottom.

18 In Section 5(a)(i), which is on page 5-3, there
19 is the word "website," which is one word. And to make it
20 consistent throughout the document, we need to change
21 that to two words. So, again, that's kind of a minor
22 change.

23 CHAIRMAN WELLES: And where is that, John?

24 MR. WAGNER: That's on page 5-3. And it's
25 in Section 5, parenthesis (a), parenthesis little (i).

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1 And it's just like I said, the website -- the word
2 "website" is one word. It needs to be two.

3 And then the last housekeeping change we have
4 is, if you look at the strike-and-underlined copy of the
5 rules and regs, which is the first document there in your
6 package, Section 9 is a whole new section that, in the
7 strike-and-underline version, should all be underlined.
8 And we failed to do that. And so that's a correction
9 that we need to make, as well.

10 MS. BEDESSEM: What page is that, John?

11 MR. WAGNER: And that is on page 5-15 of
12 the strike-and-underlined copy. And it's all Section 9.
13 And that should have been underlined.

14 So are there any questions about any of those
15 housekeeping changes, at least that set of housekeeping
16 changes? We have one other kind of more major
17 housekeeping change. I want to make sure those are all
18 okay with everybody.

19 (No response.)

20 MR. WAGNER: Okay. The last kind of
21 housekeeping change is Section 7(c), C as in cat. And
22 that's on page 5-7 again of the proposed draft. That is
23 a whole new section that used to be Section 8. We just
24 moved -- we just picked up Section 8 and moved it to
25 7(c). We thought it was a little more logical location

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1 to put it there. There's no real other -- other than
2 that, it just seemed to us to make sense to put it there.

3 So what was originally Section 8 just was completely
4 eliminated.

5 So, frankly, that's it for us as far as
6 housekeeping changes and changes we'd like to see in the
7 final version that goes to the Environmental Quality
8 Council. Now, there are other changes that were made
9 from the previous version that were based on comments
10 that came from the board itself and from people who made
11 comments in what we call the second round. And I will
12 leave it to the -- to you guys to come forward if there's
13 anything left in here that you're not entirely happy
14 with, that you would like more discussion of. We're
15 ready for that.

16 MR. APPLGATE: Mr. Chairman, I have both
17 a question and a couple comments. My question is a
18 process question. We're here today to vote and approve
19 to move this forward. If we were to have some selected
20 changes, is it appropriate for us to vote on those
21 changes as a board? I'm trying to understand, if we
22 wanted to make a couple changes, should those come
23 forward as a motion to make the change such that you
24 would then move forward? I've seen in the past where
25 sometimes you move forward with a document that has your

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1 proposed language, and then you footnote it with the
2 board's language if you didn't agree to that. Could you
3 talk to me a little bit about that process?

4 MR. WAGNER: Sure. Yeah. It would be
5 pretty typical for the advisory board at this point to
6 say, well, we'd like to change such and such a section
7 from this wording to that wording and you all vote on it
8 and accept that. And if we agree, then there's no
9 problem. There have been occasions where the advisory
10 board has said, well, we would like to change such and
11 such a section to something new. And we disagree with
12 it. What we do in a case like that is we go ahead and
13 give your version to the Environmental Quality Council,
14 but we footnote it and say the Department disagrees, and
15 here's why we disagree. And that happened -- I can't
16 remember the details, but that has happened one or two
17 times in the past.

18 MR. APPLGATE: So, Mr. Chairman, I have a
19 couple -- I think they're relatively minor, but you may
20 have a different opinion. I have about three or four
21 changes I'd like to bring forth. I think I'd want them
22 to be evaluated by the board individually, rather than --

23 MS. CAHN: Dave, could you please get the
24 microphone a little bit closer? It's getting hard to
25 hear you.

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1 MR. APPLGATE: Sure, Lorie. I said I had
2 about three or four changes that I'd like to propose.
3 I'd like to bring those fourth individually for the board
4 to consider. And I'd like to bring them forth as motions

5 if that's appropriate to do that.

6 I guess I would like to make a comment. I
7 think the rules are very good. I appreciate the changes
8 that have been made. I think in particular the changes
9 to definitions on operator have immensely clarified the
10 rules. So I think the package is in very good shape.
11 And again, I have what I think are relatively minor
12 suggestions. But if this is the appropriate time, I'd
13 like to bring those forward.

14 CHAIRMAN WELLES: It is. Please go ahead.

15 MS. CAHN: Dave, just a matter of
16 procedure, typically what we do in this type of situation
17 where somebody has some language that they'd like to
18 propose, we haven't been doing those as motions. We've
19 been just saying -- having it as part of board
20 discussion, and then you propose what your -- you know,
21 we have board discussion on it, and after we've had board
22 discussion, then we entertain the motion. I don't know
23 if that's proper procedure by Robert's Rules, but that's
24 the way we've been doing it.

25 MR. APPLGATE: I'm fine with that

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1 approach. And that would perhaps eliminate a bad motion.
2 Maybe I'll hear comments that will change my mind. And I
3 appreciate WDEQ providing feedback on this discussion, as
4 well. Again, it's just a few suggested comments.

5 I'm on page 5-4.

6 MS. BEDESSEM: Are these pages in the
7 proposed draft?

8 MR. APPLGATE: These are pages in the
9 proposed draft. At the top of the page, there's a
10 paragraph (e) that says Level 1 water -- water treatment
11 operators may operate any Level 1 water distribution
12 facility. That same paragraph (e) is down in the Level 1
13 wastewater treatment. A little further down the page,
14 you'll see another (e) paragraph. Level 1 wastewater
15 treatment operators may operate any Level 1 wastewater
16 collection facility. I think those two paragraph (e)'s,
17 I would suggest we delete those, because I think they're
18 kind of inherent. You don't go down to the various Level
19 2, Level 3, Level 4 descriptions and see those paragraph
20 (e)'s. So I guess maybe WDEQ could probably provide some
21 clarification on why paragraph (e) is included only for
22 the Level 1 facilities.

23 MS. CAHN: Dave, this is Lorie. Isn't
24 that because one's water treatment and one's a wastewater
25 treatment? The wording isn't exactly the same there.

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1 They're two different sections.

2 MR. APPLGATE: But if you go down under
3 Level 2 water treatment, there's no paragraph (e). And
4 if you go down under Level 2 wastewater treatment,
5 there's no paragraph (e). There might be a good reason
6 for this. I'm just seeking clarification.

7 MS. WALKER-TOMPKINS: For the smaller
8 systems that only would have one operator for a lower
9 level, the water system operator can operate a
10 distribution system. We're not saying that they can
11 operate anything other than a distribution system. Later
12 on in the rule, we say that a higher level certificate
13 can always operate a lower level. But this is not saying
14 that. This is actually saying it can operate a different
15 type of a system. So the water system people can operate
16 a distribution system, and the wastewater folks can
17 operate a collection system only at the Level 1.

18 And that was because of a comment from smaller
19 systems not wanting to have -- to put out the money for
20 so many different types of certificates. And so way back
21 in the beginning of this process, DEQ agreed to allow
22 Level 1 water systems be able to also operate the
23 distribution part so they would only have to have one
24 certificate instead of two.

25 MR. APPELATE: So with that comment, I'm
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1 still a little unclear. So under Level 1 water
2 treatment, I see where the paragraph (e) says Level 1
3 water treatment operators may operate a Level 1 water
4 distribution. I now understand that. You're clarifying
5 that even though they're Level 1 treatment, they can
6 operate a distribution?

7 MS. PARKER: Correct. The reverse is not
8 true, yes. In other words, a Level 1 distribution
9 licensed operator could not operate a Level 1 water
10 treatment facility.

11 MR. APPELATE: Perhaps I'll suggest a
12 couple editorial things to that to be clear. Level 1
13 wastewater -- Level 1 water treatment operators may also
14 operate a Level 1 water distribution facility. That's
15 obviously some change. And is it facility or facilities?
16 Would you be opposed if you added "also" between "may"
17 and "operate" and pluralized "facility"?

18 MR. WAGNER: Mr. Chairman, I don't think
19 that there's any problem with adding the word "also" in
20 there.

21 MR. APPELATE: And pluralizing
22 "facility." Because I'm assuming they can operate more
23 than one facility. But I do appreciate the
24 clarification.

25 MS. WALKER-TOMPKINS: But then we'd have
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1 to take the word "any" out. Correct?

2 MR. APPELATE: Well, I don't think the
3 word "any" belongs.

4 MS. WALKER-TOMPKINS: So you want the word
5 "any" deleted?

6 MR. APPELATE: I think that's a good
7 suggestion. Level 1 water treatment operators may also
8 operate Level 1 water distribution facilities. And then

9 below in the paragraph (e) would be Level 1 wastewater
10 treatment operators may also operate Level 1 wastewater
11 collection facilities. So I appreciate the clarification
12 on that.

13 Now, Lorie, should I bring that forward --
14 again, for the process, should I bring that forward as a
15 motion, or can we just make that as a recommended change
16 that WDEQ has agreed to?

17 MS. CAHN: Well, we can either do a motion
18 on that individual one, unless there's any other board
19 discussion on it, or we can just wait until we've gotten
20 them all and make one motion for all the changes.

21 MR. APPLGATE: I would like to do the
22 motion individually because I'm not sure you'd agree with
23 the other changes. I would make a motion to make the
24 changes that we've just discussed, that on paragraphs
25 (e), two paragraph (e)'s on 5-4, that we add the word

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1 "also" in each case and leave the word "any" in each case
2 and pluralize the word "facility" in each case.

3 MS. BEDESSEM: I second the motion.

4 CHAIRMAN WELLES: All those in favor
5 please say aye.

6 (All members vote aye.)

7 CHAIRMAN WELLES: Opposed?

8 (No response.)

9 MS. BEDESSEM: She said aye.

10 CHAIRMAN WELLES: We can see your lips
11 move.

12 MS. BEDESSEM: Yeah, we can read your
13 lips. You said aye.

14 MS. CAHN: Aye. Having a hard time
15 getting it off mute.

16 CHAIRMAN WELLES: Motion passes.

17 And, Dave, go ahead with your next comment,
18 please.

19 MR. APPLGATE: I have just two additional
20 comments. They're on page 5-10. Again, my first comment
21 will be, I appreciate the clarification of language here.
22 I think, in particular, the use of the word "available,"
23 rather than "on site," was a very good change.

24 CHAIRMAN WELLES: Can you identify where
25 we are?

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1 MR. APPLGATE: Yes. It's Section 15.
2 The comment I was just making was in reference to
3 paragraph (a)(i). I was making the comment that the
4 change to the words "shall be available" in paragraph (i)
5 was a very positive change in this text. Thank you for
6 that.

7 My actual recommended change is in paragraph
8 (b). The more I thought about this and the timing
9 associated with the change in operator and the fact of
10 the timing it takes to get contractors on board, I just

11 think it would make more sense to give these folks 60
12 days, rather than 30 days, if the change is made. I just
13 think for certain mining companies, municipalities, I
14 just think sometimes it would take longer than 30 days to
15 do that. So that's my recommended change. I guess I
16 would ask feedback from WDEQ, if they would be opposed to
17 that, why?

18 MR. WAGNER: Mr. Chairman, I'm going to
19 defer to the people here at the table with me because I
20 don't know what our current requirement is or if we have
21 a current requirement.

22 MS. PARKER: Yes. It is currently 60
23 days. However, we find that that leaves the facility
24 without a certified operator for a very long length of
25 time, inappropriately length -- inappropriate length of

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1 time. That has been shortened to 30 days. That still
2 allows them a month to settle a contract. We believe
3 that is an adequate length of time to negotiate a
4 contract. We would really prefer it to be ten days,
5 however, we understand that you do have to have a
6 reasonable amount of time to negotiate contracts. So 30
7 days was the compromise.

8 MR. APPLGATE: So I guess the comment
9 I'll make is, I'd move that we bring forward a motion. I
10 think I understand your answer. I just think the fact
11 that we're changing this, I'm not sure I understand if
12 there's been an actual problem.

13 MS. PARKER: If I may, yes, there has been
14 a problem with systems being without certified operators
15 for a very long length of time as a result of the 60-day
16 allowance.

17 MR. SUGANO: Mr. Chairman, if I could,
18 just coming from the public sector, you know, city
19 attorneys always have to review contracts. And for
20 smaller municipalities, maybe 30 days isn't enough time
21 to review a contract, because the smaller cities have
22 attorneys on retainer. They don't have in-house counsel.
23 Just from my experience in the public sector, I know that
24 contracts sometimes take more than 30 days. Maybe 45
25 days would work for situations where contracts have to be

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1 reviewed. But I do -- I do hear what you're saying about
2 time is of the essence. I would agree with that. But I
3 just think there's some difficulty getting contracts
4 approved. I don't know how it is in the mining industry,
5 but I can certainly speak from the public sector.

6 MR. WAGNER: Mr. Chairman, I'll just jump
7 in here. We heard 45 days mentioned. That may be
8 something that would be a reasonable compromise from
9 where we want to be, versus where we are today.

10 CHAIRMAN WELLES: Well, and I would think,
11 also -- and I'm not familiar with the process. But what
12 happens from DEQ's standpoint if this does not happen in

13 30 days or 45 days or 60 days?

14 MR. WAGNER: Well, technically, the
15 facility, if they don't have an operator, they're out of
16 compliance. They're not -- the facility is not being
17 operated with a properly certified operator. So there's
18 some threat to the public health from that. And so it's
19 a matter of how long do you -- how long is reasonable to
20 do the work, get the contract signed, versus how long do
21 we want to leave the public, at least in theory, at risk?
22 So right now, as Kim indicated, our rules require 60
23 days. We thought we needed to tighten it up, and we
24 thought 30 was reasonable. But we would -- if it was
25 changed to 45, it's probably something that we would --

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1 that we would accept.

2 CHAIRMAN WELLES: Well, I guess I would
3 ask what -- other comment?

4 MR. APPLGATE: No. I'm willing to make a
5 motion for 45 days and compromise. I make a motion that
6 we change the section to reflect 45 days, which is a
7 change from the 30 in the proposed, but less than the
8 current regulatory framework.

9 MR. SUGANO: I'll second the motion.

10 CHAIRMAN WELLES: All those in favor say
11 aye.

12 (All members vote aye.)

13 CHAIRMAN WELLES: Motion passes. You
14 can't vote twice.

15 MS. CAHN: Wasn't sure if the microphone
16 was muted or not. Okay. I'll only vote once.

17 MR. APPLGATE: Mr. Chairman, I just had
18 one other, I guess, question, possible clarification or
19 change. Paragraph (e) on that same page appears to me to
20 perhaps be an unnecessary paragraph. It says any changes
21 made to operating personnel should be reported to the
22 administrator. Operating personnel is not a defined term
23 in this prefatory framework. Operating personnel, to me,
24 could mean lots of people. And I'm not quite sure why
25 the Department needs to know about every particular

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1 change in personnel that's working at this facility if
2 they're not the certified operator. So perhaps some
3 clarification from WDEQ before I make my motion.

4 MS. BEDESSEM: Can I say one thing? It
5 seems like, in our sense of comments before, there was a
6 lot of work done on kind of tightening up the definitions
7 of, you know, responsible charge operator and contract
8 operator and certified operators and the tendency to move
9 away from just using the word "operator" without any
10 qualifier. And so I guess our question here is, are you
11 wanting to know if there's a change in any certified
12 operating personnel, or are you interested in the change
13 in the responsible charge operator?

14 MR. WAGNER: Mr. Chairman, I'll defer

15 again to Kim and Diane and Suzanne.

16 MS. PARKER: We're primarily interested in
17 knowing changes that occur within a facility regarding
18 the responsible charge operator or the substitute charge
19 operator. However, it is -- the most expedient way to
20 get an operator certified is to let us know as soon as
21 possible that they're there. So even new hires or
22 uncertified operators would be advantageous to let us
23 know they're there as soon as possible. But specifically
24 what we need to know about are the responsible charge
25 operator or substitute responsible charge operators.

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1 Those are the most critical.

2 CHAIRMAN WELLES: So is there a way we can
3 change this definition that would be more descriptive?

4 MS. WALKER-TOMPKINS: If you say
5 certified, then you're eliminating the new hires. And
6 part of the path to become certified starts clicking as
7 soon as you are working. Your work experience starts
8 then. And as you know after reading this, in order to
9 get certified, you have to have X amount of time of
10 experience, X amount of time of training. And that's
11 what we were trying to capture. It may be worded in such
12 a way that that point doesn't come across. But it is
13 important to us to know when folks are hired so that we
14 can start the experience clock ticking.

15 MS. BEDESSEM: So you start tracking
16 everybody that hasn't made an application for
17 certification just if they're working at the facility?

18 MS. WALKER-TOMPKINS: Correct.

19 MS. PARKER: They may work at a facility
20 for anywhere from six months to -- I have some that are
21 just now getting certified, and they've been there almost
22 three years, during which time they submit me training,
23 other supporting documentation for their licensing well
24 ahead of the time when they actually apply for a license.
25 So, yes, we start tracking them as soon as their

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1 employment starts.

2 MS. BEDESSEM: So this sentence reads this
3 way specifically because you wanted to know about any
4 operating personnel?

5 MS. PARKER: Correct. Although like I
6 said before, most critical from the enforcement standard
7 and compliance standpoint is knowing whether or not they
8 have adequately certified responsible charge operators.

9 MR. WAGNER: Mr. Chairman, I don't recall
10 that we got any comments on this particular issue. And
11 so, again, I'll poll the staff here.

12 Was that at all controversial?

13 MS. PARKER: No.

14 MS. BEDESSEM: I think the comments in
15 general were just about defining what operators were and
16 what operating personnel. So I don't know that anybody

17 would have made a specific comment to this. It was more
18 on falling under the definition of what operators were
19 and so forth.

20 MR. APPLGATE: Yeah. I appreciate your
21 clarification, as well. I didn't know you were tracking
22 everybody that worked at a wastewater treatment plant.
23 It seems to be a little odd, to be honest with you. It
24 seems like that requirement, the idea of being certified
25 or pursuing certification --

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1 MS. BEDESSEM: Would be up to the
2 individual.

3 MR. APPLGATE: -- would be up to the
4 individual. It does seem a little big-brother-like.

5 MS. PARKER: May I offer one more piece of
6 clarification? If they intend to become certified --
7 obviously people that are not intending to become
8 certified, I have no need of knowing whether or not
9 they're working at a facility. It's purely to enable
10 them to get certified as quickly as possible that we ask
11 for that information.

12 MR. APPLGATE: That doesn't make sense.
13 I don't think that's what it says. So I'm not as
14 inclined to take a paragraph out. Now I'm less inclined
15 to like the term "operating personnel" and the time
16 frame, again, given what you've said is the purpose. I'm
17 thinking about -- I'm not sure this would ever cause a
18 problem if someone didn't report in ten days. But it
19 just seems odd to me that, okay, you hired someone new.
20 You got ten days. That's not a very long time frame.
21 Someone you hire, are they going to know within ten days
22 if they want to pursue certification? It just seems kind
23 of funny to me.

24 MS. PARKER: Actually, usually they are
25 hired into a position which is labeled as this position

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1 needs a certification or not. So, yes, they usually know
2 at the point of hire or before.

3 MR. APPLGATE: So the recommended change
4 that I'm going to bring forward as a motion is that any
5 changes to operating personnel seeking certification,
6 would be my added word, shall be reported to the
7 administration no later than 30 days after the change has
8 been made. Bring that forward as a motion, meaning I'm
9 giving more time --

10 MS. CAHN: Can we have some discussion on
11 that before we make it as a motion? I guess what I hear
12 is that it's often hard to find enough people for
13 certification. And so it seems to me -- I kind of agree
14 with DEQ. I think we should encourage -- you know,
15 they're being hired into a position to be certified. We
16 need certified operate -- you know, we need certified
17 people in the state. So I think it's a good
18 encouragement to get them to get started along the path

19 to be certified. Because that's what you want working
20 there. I don't know. I guess I'm -- I don't have a
21 problem with the wording the way it is myself.

22 MR. APPLGATE: No. I understand. I'll
23 just bring forward -- I think by -- just as a
24 clarification on Robert's Rules, I think we can all
25 discuss after a motion has been brought forward. So that
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1 motion is on the table. I ask that you ask if there's a
2 second.

3 MS. BEDESSEM: I think I'm not comfortable
4 with the seeking certification part at this point simply
5 because the -- when do they decide if they're seeking
6 certification? If they're hired into a position that
7 doesn't necessarily require it but they might want to
8 seek certification, how do you know when they've made
9 that decision? When you hire somebody, they don't say,
10 yes, I'm going to be certified or not. It seems like the
11 wording the way it is is pretty open-ended. However, you
12 will get a lot of questions probably from facilities
13 saying, do I have to report every person that I hire and
14 so forth? And so we get a lot of questions. But I think
15 from your discussion, you were implying that you do want
16 that universe of people.

17 MS. CAHN: Well, Marge, can you please --
18 Marge, can you please take your microphone and point it
19 to your mouth, as opposed to up in the middle of the air?

20 MS. BEDESSEM: Well, the reason it's up in
21 the middle of the air is, when I put it down, it started
22 to do this and kept falling over. So that's why it's
23 back up in the air. I have technical difficulties with
24 the end piece.

25 MS. CAHN: Thank you.

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1 MS. BEDESSEM: We'll move it down so we
2 won't tip.

3 So I guess the seeking certification part, I
4 looked at this very same sentence, Dave, and I had
5 problems with the same sentence just because we hadn't
6 defined operating personnel. And we spent all this time
7 talking about defining what operators were and whether
8 they were responsible charge. But now that we've had
9 this discussion about how you're interested in more than
10 just responsible charge operators, I can see why you left
11 it this way. But the seeking certification part, I just
12 think that's hard to define so that, is the facility
13 supposed to report at the point that that employee
14 decides they want to seek certification? Because they
15 might not know that at the time they get hired. That's
16 the concern I have.

17 MR. APPLGATE: No. I understand. I just
18 don't believe in the burden of telling everybody that
19 every time you hire someone, that you need to -- it's
20 probably a philosophical difference we have.

21 MS. PARKER: Well, part of the reason that
22 it is ten days is because we have a serious information
23 lag between when an operator is hired or fired or moved
24 to a position where they no longer need certification and
25 when we are notified about that. And like I said, it's

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1 particularly of concern when a responsible charge
2 operator is changed or removed from a position, or
3 substitute responsible charge. We have to know as soon
4 as possible whether or not that facility is without a
5 responsible charge operator. So that's why the ten days.
6 It's not only are we interested in finding out as soon as
7 someone is hired. And usually they are hired into a
8 position, which the position requires. So at the point
9 of hire, it's known that they need to get the license,
10 just to clarify.

11 MS. BEDESSEM: Well, can you change the
12 wording such that it says any changes made to certified
13 operating personnel or personnel who may seek
14 certification? And then you've got both ends covered.

15 MS. PARKER: Yeah, we could definitely add
16 clarification to that effect.

17 MR. WAGNER: So, Kim, let me make sure
18 that I -- would wording something like this work for you?
19 Any changes made to operating personnel for positions
20 requiring certification shall be reported to the
21 administrator.

22 MS. PARKER: That would work, yes.

23 MR. WAGNER: Kim nodded.

24 MS. PARKER: Yes. Sorry.

25 CHAIRMAN WELLES: Dave, does that --

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1 MR. APPLGATE: Yes. I'll rescind my
2 motion.

3 Marge, I'll let you capture that if you want to
4 capture that in your motion.

5 MS. BEDESSEM: And feel free to chime in,
6 John, if I don't get this absolutely correct. Make a
7 motion to edit Section 15, little (e). Any changes made
8 to operating personnel for positions which require
9 certification shall be reported to the administrator no
10 later than ten days after the change has been made.
11 That's the motion.

12 CHAIRMAN WELLES: Do we have a second?

13 MS. CAHN: I second.

14 CHAIRMAN WELLES: We have a motion and a
15 second. All those in favor please say aye.

16 (All members vote aye.)

17 CHAIRMAN WELLES: Motion passes.

18 MR. APPLGATE: Mr. Chairman, I have one
19 last item. It's not a proposed change, but it's a
20 clarification. So I don't have a proposed change,
21 necessarily. I just would like some clarification. On
22 page 5-3, under Section 5, facility classifications, it

23 says a facility classification review by the
24 administrator is required for any change to a facility
25 that is significant enough to require --

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1 MS. CAHN: Dave, excuse me. I still don't
2 know where you are. I'm having a really hard time
3 hearing you.

4 MR. APPLGATE: Section 5, page 5-3.

5 CHAIRMAN WELLES: What paragraph?

6 MS. BEDESSEM: Waiting for her to catch
7 up.

8 MR. APPLGATE: Paragraph (c). I'll read
9 the paragraph. A facility classification review by the
10 administrator is required for any change to a facility
11 that is significant enough to require a DEQ individual
12 permit to construct. Could you please clarify for me
13 what type of facility change requires a permit to
14 construct?

15 MR. WAGNER: I don't have the exact, you
16 know, regulation in front of me. But under Chapter 3 of
17 our rules and regulations, if you do a modification to a
18 water or wastewater system that is significant, then you
19 are required to submit an application for a permit to
20 construct that modification. And all we're saying here
21 is that if you do a modification that requires a permit
22 to construct, then a review of the classification of the
23 system has to be done.

24 For example, let's say that the City of
25 Cheyenne adds a piece of equipment to their wastewater

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1 treatment plant that removes ammonia, which didn't
2 previously remove ammonia. That would require a permit
3 to construct. We should review the classification of
4 that system because it has become more complicated.

5 MR. APPLGATE: So how is that triggered?

6 Meaning if a facility makes a change and has a permit-to-
7 construct requirement, they're required then to come to
8 you and say, we need a classification review, or do you
9 guys communicate internally, and when you issue a permit
10 to construct to a facility, do you then know that you
11 need to do a classification review?

12 MS. PARKER: Actually, the applications to
13 construct are submitted to the district engineers, also
14 the district engineers that complete the facility
15 reviews. So, yes, they would already be aware that there
16 was a need for review.

17 MR. APPLGATE: Thank you. I just was
18 curious how that happened administratively.

19 CHAIRMAN WELLES: No changes, then. That
20 remains the same. Okay. Are there any further questions
21 from the board?

22 MS. BEDESSEM: I have a question,
23 clarification. This relates back to definitions, and so
24 you can help me out here with this. Just kind of

25 understanding some of these definitions -- and I'm
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1 actually looking at -- I made my comments on the
2 strikeout copy, so I have to go back and see where that
3 is on the proposed draft copy. So I found it on the
4 proposed draft copy. It's page 5-2. And so this is
5 just -- help me out here with my grammar issues,
6 possibly. Little (u) is treatment works, which is
7 defined in a different statute. Okay. And treatment
8 works typically means the physical facility that is
9 conducting the treatment. And then (v) says wastewater
10 treatment means treatment works. And (w) says water
11 treatment means all parts of the water supply.

12 So I guess I just have some issues here with
13 things that I see as verbs, versus things that I see as
14 physical systems. So water treatment systems means all
15 part of the water supply system that collects or treats
16 water. Water treatment is a process. So is there a
17 particular reason -- I feel like there must be some
18 reason behind why, for example, the word "systems" are
19 not included in here and that these are left as verbs,
20 that there must be a rationale on your part for why it's
21 constructed this way in the set of definitions. So if
22 you could clarify that for me, I would appreciate it.

23 MS. WALKER-TOMPKINS: I'm sorry. I just
24 need a second.

25 MS. BEDESSEM: Sure.

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1 MR. WAGNER: I'm just looking at --
2 Mr. Chairman, I'm looking at Section 6. And we use the
3 term like Level 1 water treatment.

4 CHAIRMAN WELLES: Page and paragraph,
5 please.

6 MR. WAGNER: That would be on page 5-3,
7 Section 6. I'm trying to --

8 MS. PARKER: I think that term is used
9 within the rule, for example, in the descriptions of the
10 different facility levels or the different classification
11 levels of the licenses.

12 MS. BEDESSEM: So that's what I was
13 asking. Good clarification. So it's purposely left that
14 way so that this applies and lets you know that these
15 titles apply to the facilities or the systems?

16 MS. PARKER: I believe so, yes.

17 MS. BEDESSEM: Thank you. That's what I
18 needed to know. Because when I first read it, I was very
19 confused. But now that you say this is applied so these
20 titles match, then that would make sense. So, thank you.

21 CHAIRMAN WELLES: Glenn, did you have a
22 question?

23 MR. SUGANO: Mr. Chairman, yes. I'm
24 coming in at the tail end of all this. And I noticed all
25 the comments that have been made during the first public

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1 hearing and also during the second public hearing. I see
2 comments from the Rural Water Association.

3 Diane, did you receive any comments from them?

4 MS. WALKER-TOMPKINS: I did not.

5 MR. SUGANO: Well, WWPCA, the wastewater
6 people?

7 MS. WALKER-TOMPKINS: You mean for the
8 second round?

9 MR. SUGANO: Well, in general, have you
10 received comments? Because they do have a pretty strong
11 association. I just wondered if any of their spokesmen
12 chose to make comments.

13 MR. WAGNER: Mr. Chairman and Mr. Sugano,
14 I don't recall that WWPCA commented, to be honest with
15 you. And it is a little odd that they wouldn't.

16 MS. BEDESSEM: I also had one question on
17 the comment sheet that you submitted to us, the response-
18 to-comments document. The editorial note said that the
19 February 4th Water and Waste Advisory Board, we asked
20 people that had made comments to submit written comments.
21 Is this editorial note on here because responses were
22 given in this document to comments that were received in
23 written format or were comments that were stated at that
24 meeting, as well as written responded to?

25 MS. WALKER-TOMPKINS: I put that in there

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1 because you guys asked people to submit me written
2 comments. And nobody did, except for the one lady had
3 already submitted them, and you asked her to change the
4 date. So she resubmitted those with the changed date. I
5 put that in there just to remind us all that that's what
6 was discussed. And we didn't receive anything.

7 MS. BEDESSEM: But that doesn't mean that
8 any verbal comments were not -- not addressed.

9 MS. WALKER-TOMPKINS: I didn't address the
10 verbal comments because you asked for them to be
11 submitted in writing. So the answer to your question is,
12 if any verbal comments were in the transcript, I did not
13 address them, because you guys specifically asked them to
14 send them to us in a written format.

15 MS. BEDESSEM: Does that present any
16 problems for us or not?

17 CHAIRMAN WELLES: In my opinion, it does
18 not. I guess I don't remember --

19 MS. CAHN: I guess I think we need some
20 board discussion for future. Because we have a court
21 reporter. And if we have -- we ask for written -- I
22 mean, we ask for public comments at these meetings. And
23 in my mind, a public comment that's made, a verbal
24 comment that's made in these meetings is just as
25 important and needs to be considered as written comment.

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1 So I'm not sure -- I guess I thought when we extended the
2 public comment period, we were allowing people the

3 opportunity to give us written comments, not requiring
4 that they give us written comments. So I think in the
5 future, we need to be very clear about that. I mean, why
6 have -- I guess my question is why have a public comment
7 period where people can speak that we're not going to
8 incorporate their comment unless they provide it in
9 writing? So it seems to me we should be very clear in
10 the future that public comments given orally are going to
11 be considered and discussed, as well as written ones.

12 CHAIRMAN WELLES: Is there any other
13 comment on Lorie's?

14 MR. APPELATE: Just that I agree with
15 Lorie, that if they're verbal comments and they get in
16 the record, they should be considered part of the comment
17 record.

18 MS. BEDESSEM: And even if we ask them to
19 submit it in writing, that's to help you in your ability
20 to review them and respond to comments, not as a
21 requirement that the comment doesn't count unless it was
22 submitted.

23 MR. WAGNER: Mr. Chairman, I understand
24 the feelings of the board, and I agree with it. I think
25 in this particular case, our assumption was, I think the

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1 way the discourse took place within the meeting was,
2 thank you very much, Ms. Goodnough. It would be
3 helpful -- frankly, it's always easier for us to deal
4 with written comments than it is with a written
5 transcript. And I guess we made the assumption that
6 anything she said verbally would be put into written
7 comments which we could consider. I understand your
8 concern about that, and we certainly in the future will
9 be careful about that. I think in this particular case,
10 though, I would be surprised if there's anything that she
11 said verbally that was not in her written comments that
12 they submitted later.

13 CHAIRMAN WELLES: Yeah. I think I would
14 agree with what everyone has said. But I think it's also
15 important that we're all on the same page. And, Lorie, I
16 appreciate your comment, because I also agree with you.
17 That's what we're here for.

18 MS. CAHN: But let me ask a question of
19 Diane, because I myself did not go back and look through
20 and check the transcript against the new version. So I
21 guess, Diane, do you feel that there's any issues that
22 were raised by the public that were not addressed by
23 these changes that were addressed -- that were raised by
24 the public verbally?

25 MS. WALKER-TOMPKINS: No. I think we

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1 addressed everything. I mean, Mr. Pepper, I don't think
2 made -- Mr. Pepper was the only other one that you guys
3 asked. And some of the changes that he requested had
4 been made, and some of them you guys brought up, and we

5 made. And some of his were in -- I believe one of the
6 ones that Ms. Goodnough had. That said, I'd have to read
7 back through the transcript to let you know if I
8 addressed every single one or not. And I can do that. I
9 mean, I don't have my highlight copy, but I can do it
10 really quick if you'd like.

11 MS. CAHN: Well, let me ask you how long
12 you think that would take. Because we could take a ten-
13 minute break if that's okay with the board, if you think
14 you can do it in five or ten minutes.

15 MS. WALKER-TOMPKINS: Okay. I can do it
16 in that amount of time.

17 CHAIRMAN WELLES: I think Lorie needed a
18 break. Go ahead, Lorie. What were you going to say?

19 MS. CAHN: Oh, I was just going to propose
20 that we take a quick ten-minute break.

21 CHAIRMAN WELLES: Okay. We'll take a
22 ten-minute break. Be back here a little after 10:00.

23 (Hearing proceedings recessed
24 9:55 a.m. to 10:07 a.m.)

25 CHAIRMAN WELLES: Okay. We're all back,

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1 and DEQ has finished going over the wording, so I'll turn
2 it over to you.

3 MR. WAGNER: Thank you, Mr. Chairman.
4 Mr. Pepper was the primary person who -- was the only
5 person who made verbal comments at the last meeting but
6 did not follow up with written comments. And so we
7 looked at the verbal comments that Mr. Pepper made, and
8 Diane and Kim can explain to you how we responded to
9 those verbal comments.

10 MS. WALKER-TOMPKINS: The first one was he
11 was concerned that we take a lot of time to do
12 enforcement against operators and then we don't outline
13 anything for facility owners. And that's beyond the
14 scope of this rule and beyond our statutory authority.
15 We actually had two other folks that submitted comments
16 the same, and we addressed that in here. So that's one
17 of the ones that's answered.

18 MR. WAGNER: Let me stop you just a
19 second. Just to make sure everybody's clear, there
20 was -- Mr. Pepper was concerned that, in the rule, we
21 didn't say what would happen to somebody who violated the
22 rule. And in our response to comments, we said the
23 statute drives that. If we have a violation of the rule,
24 then the enforcement requirements as outlined in the
25 statute is the process that we would follow.

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1 MS. PARKER: Do you want to summarize his
2 concern?

3 MS. WALKER-TOMPKINS: He was concerned
4 that there's contract operators out there that have
5 employees, and when they send the employee out to the
6 site, that they're not certified at the level of the

7 facility that they're sent to. And, in fact, Kim will
8 tell you that we did address that issue, as well.

9 MS. PARKER: Section 15(c), which requires
10 a facility to designate -- or, which requires a
11 facility -- pardon me. Let me read it directly, rather
12 than paraphrase it. Section 15(c) on page 5-10 reads,
13 the responsible charge operator and any substitute
14 responsible charge operator shall be certified at a level
15 equal to or greater than the facility for which they are
16 responsible.

17 Now, whether the contract operator servicing a
18 facility is the responsible charge or is one of his
19 employees being in the situation -- the substitute
20 responsible charge, that would adequately describe what
21 level of certification they would require to operate that
22 facility, which would be the level of the facility. So
23 we anticipate that that would satisfy his concern.

24 CHAIRMAN WELLES: Does the board have any
25 other questions?

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1 MS. CAHN: No. But I'd just like to say
2 thank you very much, Kim and Diane. I think you guys and
3 whoever else has supported you, you've done a really
4 thorough job. And I appreciate the fact that you
5 actually took our verbal comments that we gave as a board
6 and incorporated them into these responses to comments.
7 So I think it was very easy to follow, a nice package. I
8 appreciate your hard work.

9 MR. WAGNER: Mr. Chairman, I might point
10 out one thing. When I went over the housecleaning items
11 when we first started, we probably should actually get a
12 motion to vote on those, as well, because I don't think
13 that was done. I think I just kind of told you about it,
14 and there was general agreement, I think.

15 CHAIRMAN WELLES: That's correct. So
16 could we have a motion to approve John's initial
17 housecleaning activities?

18 MS. BEDESSEM: So moved.

19 MR. APPLGATE: Second.

20 CHAIRMAN WELLES: We have a motion and a
21 second. All those in favor please say aye.

22 (All members vote aye.)

23 CHAIRMAN WELLES: Motion passes.

24 MR. APPLGATE: So do we need a motion to
25 move the rules forward, then?

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1 CHAIRMAN WELLES: Please.

2 MR. APPLGATE: I move that we move these
3 rules forward with the amended changes that we approved
4 today to the EQC.

5 MS. BEDESSEM: Second.

6 CHAIRMAN WELLES: We have a motion and a
7 second. We'll have a vote. All those in favor please
8 say aye.

9 (All members vote aye.)
10 CHAIRMAN WELLES: Motion passes. We're
11 having a cheering section going on from DEQ.

12 MS. BEDESSEM: And I'd like to echo
13 Lorie's remarks, that I think the changes that you've
14 made in this rule really -- I mean, it was a good rule to
15 start with, but I think it's been improved as far as
16 clarity. And I think you'll have an easier time dealing
17 with operators with the new language. And I think you
18 did an excellent job. So, thank you.

19 CHAIRMAN WELLES: And I would like to also
20 echo those comments and say that, on behalf of the board,
21 we appreciate the discussion and the ability to -- your
22 ability to accept some of our changes and the public
23 change. And I think it all makes for a better package.
24 And that's what we're here for. So, thank you to DEQ.
25 Good job.

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1 MR. WAGNER: Thank you, Mr. Chairman. I'm
2 wondering if, just before we end the water quality
3 portion of the meeting, I would ask Suzanne Engels if she
4 would give you our plans for the next rule package from
5 Water Quality.

6 MS. ENGELS: Yes, Mr. Chairman. Water
7 Quality Division is working on revising Chapter 25, which
8 is specific to small wastewater systems. We are in the
9 initial phases of hosting stakeholder meetings and hope
10 to have our first draft to the board for the fourth
11 quarter meeting this year.

12 MR. APPLGATE: Mr. Chairman, I just want
13 to make a comment to Mr. Wagner. The e-mail you sent out
14 that had all the rule making that you expect to do over
15 the next couple of years was incredibly helpful. I hope
16 we can set a precedent with that. I've wondered in my
17 couple years on the board -- or I thought it would be
18 nice to kind of know what was coming in the future. So I
19 was pleased to see that perhaps that request had been
20 made by the governor. And I think it's very helpful for
21 this board and I would think helpful for WDEQ to kind of
22 lay out that planning and communicate. So, thank you for
23 that e-mail. And again, I just appreciate the
24 communication.

25 MR. WAGNER: One last item from my

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1 perspective, and that is the third quarter meeting. Last
2 year we did kind of a field trip up in Jackson which I
3 think was helpful and useful for everybody. We're
4 planning the same sort of thing this year. And I think
5 the Solid and Hazardous Waste Division is going to tie in
6 with us at this upcoming meeting. We're thinking of
7 having it in Cheyenne and a field trip out to see what we
8 call Missile Site 4 on the Warren Air Force Base. We've
9 got a significant groundwater issue there with
10 contamination of groundwater from some of the legacy

11 missile sites. And we think it would be pretty
12 interesting. It ties in groundwater, and it ties in the
13 City of Cheyenne's water system. And we hope that you
14 can all make it to Cheyenne sometime maybe in September,
15 and we can show you that and how it all kind of ties
16 together. And I think Solid and Hazardous Waste was
17 going to give you a field trip for something in that
18 area, as well.

19 MS. ENGELS: I do have another thing I
20 would like to bring up for Chapter 25. Just for planning
21 purposes, I know with Chapter 5, I believe Mrs. Cahn had
22 reviewed our draft version before the board had actually
23 received it to clean up grammatical issues. And we would
24 like to do that again with Chapter 25 if you are
25 available and that's okay with the board.

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1 MS. CAHN: That's fine. Happy to do that.

2 MS. ENGELS: Thank you. How much time do
3 you need, just so we can prepare the document to you?

4 MS. CAHN: Diane, do you remember how -- I
5 think I turned it around fairly quickly the first time.
6 Do you remember?

7 MS. WALKER-TOMPKINS: I think it was about
8 two weeks, two or three weeks that you had it.

9 MS. CAHN: Okay, yeah. I think two weeks
10 should be fine. Just depends, really, when it comes in.
11 I know I've got a vacation planned for two weeks in
12 August. So I can still get e-mails. So if it's going to
13 be during the last two weeks of August, we should just
14 communicate about how to get in touch with me.

15 MS. ENGELS: Okay. I'm not sure exactly
16 when. We're having stakeholder meetings in the beginning
17 of August. And we'll be working to get a draft version
18 fairly quick. So we'll be in touch.

19 MS. CAHN: Okay.

20 CHAIRMAN WELLES: And obviously this means
21 a pay raise for Lorie's high-paying volunteer position.

22 MR. WAGNER: 100 percent pay raise.

23 CHAIRMAN WELLES: No. We do thank you,
24 Lorie, because your efforts on this chapter that we just
25 passed certainly speeds the process up, and it's very

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1 much appreciated.

2 So is there anything further with the Water
3 Quality Division?

4 MR. WAGNER: No.

5 Lorie, I assume if we do something in
6 September, you would want it to be on a Friday?

7 MS. CAHN: Yes. I would prefer a Friday
8 if we could. That would give me Thursday to travel to
9 Cheyenne and Saturday to get home. So that would be
10 great. Unless you want to send the state plane to come
11 and pick me up.

12 MR. WAGNER: I'll check with the governor.

13 Thank you, Mr. Chairman. We appreciate your
14 help on this.

15 CHAIRMAN WELLES: Well, thank you.
16 (Hearing proceedings concluded 10:18 a.m.,
17 July 24, 2011.)
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1 C E R T I F I C A T E
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3 I, RANDY A. HATLESTAD, a Registered Merit
4 Reporter, do hereby certify that I reported by machine
5 shorthand the proceedings contained herein constituting a
6 full, true and correct transcript.
7

8 Dated this 11th day of July, 2011.
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15 RANDY A. HATLESTAD
16 Registered Merit Reporter
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