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BEFORE THE WATER AND WASTE ADVISORY BOARD
STATE OF WYOMING

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HEARING TO DISCUSS PROPOSED CHAPTER 5 WITH INCORPORATED
PUBLIC COMMENT FOR THE CERTIFICATION OF WATER AND
WASTEWATER OPERATORS

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TRANSCRIPT OF HEARING PROCEEDINGS

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P R O C E E D I N G S

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(Hearing proceedings commenced 9:10
a.m., February 4, 2011.)

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CHAIRMAN WELLES: I did not bring an
agenda today, but the second part of our agenda is the
proposed Chapter 5 rule-making. I do have one. And we
will now have a presentation from the DEQ staff
concerning the proposed rule with changes that have been
incorporated based on comments received during the public
comment period which ended, in parentheses, on November
15th, because actually, it didn't end. There was a
glitch.

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And I'll let you explain the glitch, John, and
we'll go on.

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MR. WAGNER: Thank you, Mr. Chairman.

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Lorie, can you hear me okay?

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MS. CAHN: (Nods head.)

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MR. WAGNER: Okay. Very good.

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Yeah, we made two mistakes. The first mistake
we made was, when we put on the website the, quote,
unquote, final draft that we developed after we received
comments, we didn't clearly note that that, quote,
unquote, final draft was not open for further comment.
We definitely should have done that, because people would
go on the website, and they would see a draft, and they

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1 would think, oh, well, I can comment. We didn't clearly
2 indicate that the comment period had ended November 15th.

3 The other problem that we had was, as noted by
4 Ms. Cahn, was in the boilerplate entry or first paragraph
5 in our public notice, we say public comments are welcome,
6 and Kumbaya. We're going to have a good time and listen
7 to everybody. So that was not -- that was a mistake, as
8 well. So obviously we confused people. And it's
9 appropriate, probably, in my opinion, Mr. Chairman, that
10 we go through the comments, we go through the final
11 draft, evaluate where we are, and then I don't think that
12 there's much choice but to open it back up for additional
13 public comment, just because we made those mistakes.

14 So are there any questions or comments about
15 that? Again, I apologize, because it's going to push us
16 down the road another quarter. But these particular
17 rules, it's not real critical that we get these done
18 quickly. We'd like to get them done as soon as we can,
19 but it's not critical. That said, we don't really have a
20 presentation ready.

21 And again, let me back up. I have two people
22 with me that I forgot to introduce. Diane Walker
23 Tompkins, who is the main person working on these rules,
24 and Suzanne Engels, who is in that program. And Suzanne
25 will be working on regulations in the future, and she

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1 wants to get some experience and learn from the mistakes
2 that Diane and I have made.

3 So, anyway, we did not really have a
4 presentation ready to go. We just basically wanted to go
5 and have you provide comments back to us on the final
6 draft, whether you think we did a good job or whether
7 there's still some things that you think we need to work
8 on.

9 CHAIRMAN WELLES: Okay. I guess what I'll
10 do is open it up for board comment, then.

11 And, Lorie, would you like to begin with any
12 comments?

13 MS. CAHN: Yes, I would. Yes, I would. I
14 actually -- you know, normally we do do public comment
15 first before we do board comment. And because of the
16 confusion, where the announcement for this meeting said
17 we welcome public comments, I would prefer to open it up
18 to public comments at this time. We have a number of
19 people here at the meeting that have come. And if
20 anybody -- I'd like to at least -- if it's all right, we
21 could ask for public comments. I don't know if we need a
22 board motion to open up board comments -- or, I mean,
23 public comments. But I'd like to open it up.

24 CHAIRMAN WELLES: Do we have agreement on
25 the board for that? I don't think we need a motion.

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1 MR. APPLGATE: Fine.

2 MR. WAGNER: Mr. Chairman, I do think

3 it's -- right now the comment period is closed, because
4 it closed November 15th. If you're going to reopen it, I
5 think you probably need to make a motion --

6 CHAIRMAN WELLES: Okay.

7 MR. WAGNER: -- and formally do that.

8 MS. BEDESSEM: I'd like to make a motion
9 to extend public comment period another 30 days from the
10 date of this meeting.

11 CHAIRMAN WELLES: We have a motion on the
12 floor to extend the comment period for 30 days. Do we
13 have a second?

14 MR. APPELATE: Second.

15 CHAIRMAN WELLES: And we have a second.
16 All those in favor say aye.

17 (All members vote aye.)

18 CHAIRMAN WELLES: Unanimous. So the
19 comment period is open for 30 days. And why don't we go
20 ahead and -- I guess for the sake of the audience here,
21 if it's all right, we'll go ahead and open the comment
22 period there with Lorie and then go around the state and
23 end up here, if that's okay.

24 MS. CAHN: We'll like Jackson to go a
25 little later if there's other people that want to make

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1 comments, and then we'll come back to Jackson.

2 CHAIRMAN WELLES: Okay. Are there other
3 participants around the state on the video that would
4 like to make comments? Do we have comments at all from
5 anybody? Laramie, Cheyenne, Buffalo?

6 (No response.)

7 CHAIRMAN WELLES: All right. Well, then,
8 we'll comment here. Do we have any public comments here
9 in Casper?

10 MR. PEPPER: Yes.

11 CHAIRMAN WELLES: Please come forward and
12 introduce yourself so everybody in the state can hear
13 you.

14 MR. PEPPER: My name is Mark Pepper. I'm
15 the executive director of the Wyoming Association of
16 Rural Water Systems. Just two quick comments, actually,
17 kind of confusion points. On the section on contract
18 operators --

19 CHAIRMAN WELLES: Could you -- could you
20 define the paragraph?

21 MR. PEPPER: I didn't do it to that
22 degree.

23 MR. WAGNER: Section 11.

24 CHAIRMAN WELLES: That's Section 11, page
25 9.

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1 MR. PEPPER: A general point regarding
2 contract operators. I felt that this section may be a
3 little bit inconsistent with the general operator
4 certification as it relates to the change making

5 responsible charge operators. I would think that we have
6 several contract operators around the state who have
7 employees that are not the same license level as the
8 contract operator. And they would be on site in a system
9 that they may not be the same level as the system they're
10 on site with. And that seemed to be an inconsistency in
11 the certification, where the responsible charge operator
12 has to be the same level as the system in which he's
13 operating at the time. So if he's on site as a Level 1
14 at a Level 2 site, even though the contract operator and
15 the contract with him is a Level 2 or a Level 3 operator,
16 the responsible charge operator should still be the same
17 level. So that was an inconsistency that we thought was
18 a fallacy within the contract operator scenario.

19 The second point we'd like to make is a general
20 comment regarding owner enforcement. I think there was
21 some confusion in the comment response from the
22 Department on my comments regarding owner enforcement.
23 Chapter 5 I think places an inordinate responsibility on
24 the operators for the operation of the system. And
25 clearly, the responsibility for the operation of the

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1 system falls squarely with the owner. The operator takes
2 direction from the owner. And if the owner is not
3 willing or up to the task, the operators are kind of
4 stuck. And this kind of falls on them to some degree.

5 And I point to the fact that in the
6 administrative orders that are issued from the EPA, the
7 EPA indicates that unless we notify you otherwise, the
8 owner, slash, operator of the water system must correct
9 these problems. I'm sure that, talking with EPA, they
10 have that standard language in there primarily to cover
11 themselves on transient noncommunities where operators
12 are not required and the owner is responsible, but there
13 is a confusion as to who's responsible in a community
14 water system then for enforcement. And we feel that
15 Chapter 5 is an appropriate place for the Department to
16 put some of the enforcement action in. And we go through
17 the aspects of how we're going to discipline an operator,
18 but we don't talk about how we're going to discipline the
19 owner, other than they get a nasty letter.

20 And we thought that was a confusion point on
21 some of our comments, where the Department said that they
22 thought that was a management issue. We weren't talking
23 about the relationship between the owner and the
24 operator. We were talking about the relationship between
25 the Department and the owner.

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1 I have no further comment. I will take
2 questions if you have any.

3 MR. APPLGATE: Chairman, I do.
4 You're referring to Section 5?

5 MR. PEPPER: Chapter 5 in total.

6 MR. APPLGATE: So there wasn't anything

7 in general where you thought that language -- did you
8 have a proposed area --

9 MR. PEPPER: No. Those were comments from
10 the Department. As we generally read Chapter 5, the
11 rewrite, we did not see the type and level of enforcement
12 we would like to see against the owners. And then in our
13 comments regarding that, the Department responded that
14 they thought that was a management issue. And I think
15 they were confused as to our comments being the
16 relationship between the enforcement actions of the
17 Department and the owner, not necessarily the owner and
18 the operator.

19 MR. APPELATE: So I just want to make
20 sure I understand this comment. Generally the
21 enforcement action is with the owner. That's what you're
22 arguing. And the language should be clear on that.
23 Operators might be employed by the owner or under
24 contract to the owner, but the responsible party for
25 compliance is the owner.

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1 MR. PEPPER: Correct. The operators have
2 a responsibility, as well.

3 MR. APPELATE: So does this section deal
4 with compliance? Because this is really talking about
5 operator certification. And operator certification is
6 just telling the owner what level of operator
7 certification he needs for that facility.

8 MR. PEPPER: Correct. But then in
9 facility owner responsibility, Section 16, didn't see any
10 enforcement. And we think that Chapter 5, if we're going
11 to talk about the facility owner responsibility, it's
12 appropriate to talk about the facility owner
13 responsibility enforcement.

14 MR. APPELATE: Well, it does say -- I'm
15 not disagreeing with you. I just want to try to get to
16 the heart of this issue. If you look at paragraph (a)
17 under that section, Section 16, it is a bit late in the
18 section, but it does say the facility owner shall ensure
19 compliance with the requirements of this rule. Does that
20 address your concern?

21 MR. PEPPER: No. It addresses the
22 responsibility of the owner, but it doesn't address the
23 enforcement if they don't comply. As we do in other
24 sections of Chapter 5 with -- if an operator doesn't
25 comply with some of the operator certification

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1 requirements, we can revoke his license. We can do all
2 sorts of things to the operator. But if the operator is
3 at the mercy of the owner, there's no enforcement action
4 to the owner.

5 MR. APPELATE: So what I would suggest --
6 because I know it's hard for me as a board member. When
7 we get general comments like this, there's probably a
8 little confusion on our part and WDEQ on exactly what you

9 want. I would suggest you write proposed language that
10 you submit to the Department and that we would then be
11 able to review that would address specifically how you
12 think that issue needs to be addressed. Because I think
13 I understand what you're asking, but I wouldn't -- I
14 wouldn't know how to address that. And I'm sure WDEQ
15 would appreciate a more specific written comment.

16 MR. PEPPER: No. And that's great. I
17 appreciate the fact that you gave us time today for
18 public comment to put some of that on the record, as well
19 as then opening the record for 30 more days. And we will
20 submit the suggested language.

21 CHAIRMAN WELLES: Yeah. And I'm assuming
22 that when you refer to Section 16, facility owner
23 responsibilities, and then if you go back into the
24 comments that were already made by the public, there's
25 one, two, three, four, five -- five comments and a

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1 response from DEQ, but none of that covers the question
2 that you're raising.

3 MR. PEPPER: Correct. That was the
4 confusion point that I wanted to bring up.

5 CHAIRMAN WELLES: So I agree with Dave.
6 Write a specific --

7 MR. PEPPER: You bet.

8 CHAIRMAN WELLES: -- response, you know,
9 relative to Section 16, facility owner responsibilities.
10 And I understand what you're talking about. I mean, it
11 makes sense to me. But again, in order to put it in its
12 proper perspective, I think Dave is correct.

13 MR. PEPPER: No. And I appreciate the
14 additional time.

15 CHAIRMAN WELLES: Okay. And the same with
16 your comment on Section 11. I didn't quite figure that
17 out yet. But I understand a similar problem.

18 MR. PEPPER: We'll do the same with the
19 contract operator level of operator certification.

20 CHAIRMAN WELLES: Yeah.

21 MR. APPLGATE: I have a clarification on
22 that question, as well. I think it's fair to say there
23 might be a difference of opinion in terms of facilities
24 that have contract operators and perhaps your advocacy
25 for operator certification. So to understand what you're

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1 asking for, you're saying that you think if a contract
2 operator is -- I'm just going to make this up. He's a
3 Level 4 contract operator, and he's in charge of multiple
4 facilities, that his individuals that work for him at
5 each facility should have the same certification that
6 that facility requires, that he -- so you -- I mean,
7 because there's a lot of comments that kind of just kind
8 of go directly opposite that. So, again, I just want to
9 make sure I understand your -- I'm not saying whether I
10 agree or disagree. I'm just trying to understand the

11 comment, that you think every facility should have on
12 site an operator that has that certification level?

13 MR. PEPPER: Correct. Which,
14 Mr. Chairman, as written right now, the responsible
15 charge operator has to be the same level as the system in
16 which they're operating. The responsible charge operator
17 is defined as that person who's operating the system at
18 that time. So if a contract operator's employee, being a
19 Level 1 as an example, is on site that day at a level 2
20 facility, that would seem to be inconsistent with the
21 responsible charge operator certification definition.

22 MR. APPLGATE: I was just seeking
23 clarification on your position.

24 MR. PEPPER: That do it?

25 MR. APPLGATE: Thank you.

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1 MR. PEPPER: Any other questions?

2 CHAIRMAN WELLES: Diane, does that square
3 with you as far as understanding, or John?

4 MR. WAGNER: Yes, Mr. Chairman. I think
5 Dave, Mr. Applegate, hit the conundrum here that we're
6 facing, and that is there are people who feel that
7 anybody who's on site working at a plant needs to be
8 certified to the level of that plant. And there are
9 other people who are hiring these contract operators, and
10 the contract operators are sending out employees who
11 maybe are below, or maybe not even certified at all,
12 below the level of the plant. They're still under the
13 auspices of the responsible charge operator, who may be
14 sitting in Gillette, and the plant may be 50 miles away.
15 And the conundrum is, okay, do you require the employee
16 who's at the site 50 miles away to have the same
17 certification of that plant, or is the guy back in
18 Gillette, who is properly classified and is overseeing
19 this guy 50 miles away, is that good enough? That's the
20 conundrum with this.

21 MR. APPLGATE: And I just wanted to make
22 sure I understood. I have some thoughts on that. And
23 I'm industry rep, so I will have some thoughts that maybe
24 represent that point of view. But I wanted to get some
25 clarification on what you were discussing.

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1 MS. BEDESSEM: Because you're right.
2 We've gotten comments on both sides completely on that
3 one issue.

4 CHAIRMAN WELLES: Okay.

5 MR. PEPPER: Thank you very much.

6 CHAIRMAN WELLES: Well, we appreciate your
7 comments, Mark, and thank you for coming.

8 MR. PEPPER: Thanks.

9 CHAIRMAN WELLES: Are there any other
10 commenters here this morning in Casper?

11 UNIDENTIFIED SPEAKER: I think Mark
12 covered everything.

13 CHAIRMAN WELLES: Do we have -- I guess
14 the only other comment, then, is back in Jackson. So,
15 Lorie, would you introduce your --

16 MS. CAHN: You can make them or submit
17 them in writing or both.

18 UNIDENTIFIED SPEAKER: I don't have a
19 decisive comment or question.

20 MS. CAHN: I think we'll pass in Jackson
21 in terms of public comments. And I think people need
22 more time. They didn't realize the public comment period
23 was open. And so they'll digest this information and
24 perhaps submit written comments.

25 CHAIRMAN WELLES: Okay. Do we have any
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1 other public comments? Yes, ma'am?

2 MS. GOODNOUGH: Yes. I'm Beth Goodnough.
3 I'm with the Western Fuels Dry Fork Mine in Gillette,
4 Wyoming. And I guess I appreciate you reopening the
5 public comment period. I think the mining industry
6 submitted quite a few comments about whether the people
7 on site that work -- because our mines are open 24/7.
8 And there was a misconception about whether or not --
9 because we are having potable water systems running 24/7,
10 whether the people that are in those plants doing other
11 work have to be certified or not.

12 There's a lot of confusion in the mining
13 industry about that. And I know that several of my
14 colleagues wrote comments on it. The response and the
15 rewrite didn't satisfy them. They want to write more
16 comments. I wrote some comments. I'm not going to read
17 them. They're seven pages. So I'll just submit them,
18 and you can digest them. My comments have suggested
19 language changes in there that would satisfy me. Again,
20 you have to kind of satisfy everybody, and I recognize
21 that.

22 But I appreciate you reopening the public
23 comment period. Our water system operator is also
24 confused the way it's worded now. He does not know if
25 he's going to be allowed to continue to service our

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1 operations or not in Campbell County. So, thank you.
2 And I'll just leave these with you.

3 CHAIRMAN WELLES: And we do have copies
4 that we received through your communication with Dave.
5 And we'll pass them out.

6 MS. GOODNOUGH: Right. Because I was
7 confused whether or not it was still open for comments.

8 CHAIRMAN WELLES: Well, technically it
9 wasn't, but technically it was.

10 MS. GOODNOUGH: If you wanted to read
11 them, then, now that it's officially open, I'll resubmit
12 them, and you will be receiving more.

13 MR. APPLGATE: I think you should
14 resubmit them formally.

15 MS. GOODNOUGH: Okay.
16 CHAIRMAN WELLES: Yeah. I think they
17 should be resubmitted, you know, through the process at
18 the meeting and then for 30 days. Now -- well, go ahead.
19 MR. WAGNER: I was just going to --
20 that's, I think, exactly correct. When you do resubmit
21 them, be sure to change the date --
22 MS. GOODNOUGH: Okay.
23 MR. WAGNER: -- so that it's in the proper
24 window.
25 MS. GOODNOUGH: Okay. Well, you will be

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1 getting a new set of comments from me, then. Thank you
2 very much.

3 CHAIRMAN WELLES: Thank you, Beth.
4 Appreciate your coming to the meeting.

5 MS. GOODNOUGH: Thank you.

6 MR. APPELATE: So are we now open for
7 board comments?

8 CHAIRMAN WELLES: Yes. First I wanted to
9 make sure, Lorie, did you hear all of that and understand
10 that? And your --

11 MS. CAHN: Yes.

12 CHAIRMAN WELLES: Your folks there
13 understand that they may submit new comments as long as
14 the date is correct? As of today, it's open for 30 days.

15 MS. CAHN: Thank you.

16 CHAIRMAN WELLES: At this time I would
17 open the comment to the board. Would you like to go
18 first, Lorie?

19 MS. CAHN: You guys can go first. But is
20 there any way to get microphones to you guys? It's still
21 hard to hear. It's hard to hear Marge.

22 CHAIRMAN WELLES: We're working on that.

23 MS. BEDESSEM: And I'll talk louder.

24 (Pause in proceedings to adjust
25 equipment.)

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1 MR. APPELATE: Can you hear us now,
2 Lorie? Can you hear me now?

3 MS. CAHN: Yes.

4 MR. APPELATE: If you're okay,
5 Mr. Chairman, I have a couple comments.

6 First off, I'd like to say to WDEQ I appreciate
7 your efforts. Rule-making is very difficult.
8 Definitions are always problematic. It requires going
9 over them multiple times. So I appreciate your efforts.
10 And I think there's -- 95 percent of this rule is very
11 good. Okay? I don't think we're quite there yet, so I
12 have some comments today, and I hope you'll listen to
13 those with an open mind. But I do appreciate your
14 efforts in where we've gotten to.

15 And my comments today are kind of based on two
16 things, previous comments, John, that were received, in

17 particular, Comment 2 that's in the comment section. I'm
18 just going to read the last sentence by a gentleman named
19 Bud Spillman. "If you could please be more specific as
20 to what you are looking for here regarding these
21 definitions." His comment caused me to look closely at
22 the definitions and has raised some questions for me.

23 The other basis for my experience -- or my
24 comments, I say with some pride that I am a certified
25 operator, Level 1. I got that about thirteen years ago,

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1 I think, when I was an engineering manager at a facility
2 that was undergoing remediation, and I had operators
3 working for me. And I felt, to have some degree of
4 credibility, I should perhaps get my certification. I
5 was there three years, so I only did Level 1, and then I
6 moved on, and I haven't operated a plant since. But I
7 was intimately involved in the operations of a facility.

8 I brought a few things today as props so they
9 would prompt me for my questions. We had a clarifier.
10 That's a piece of the clarifier wall. And that's going
11 to prompt a question. Then we went through Klenzor, the
12 filter. Then we went through activated carbon. And then
13 we had sludge management over here. So if you're an
14 engineer like I am, you save parts of these plants or
15 your projects because that's what we do. We work on
16 projects, and then we want to remember them because
17 they're part of who we were. So they prompt a number of
18 questions based on the definitions, and I'm going to go
19 through those.

20 And really, the heart of this goes to the
21 initial definition of an operator.

22 CHAIRMAN WELLES: Can you tell us where
23 you are?

24 MR. APPLGATE: I'm on page 5-3, halfway
25 down the page. "Operator means any individual who is

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1 directly involved in the on-site operation, maintenance
2 and repair of a facility." Now, in this -- now, I have
3 to also -- for full disclosure here, I represent the
4 industry position. I'm an industry rep. I understand
5 there is some tension between that position and -- and
6 maybe not when we get to the end. But I fully appreciate
7 Mr. Pepper's comments, because he's an advocate for
8 operator certification, and his comments really, I think,
9 originated from the idea that he's pushing owners and
10 operators to get their operators certified. He's an
11 advocate for certification. And I agree with that
12 philosophical position he's coming from. The tension is,
13 do we put additional burden on facilities in terms of
14 their cost of personnel, their cost of labor and their
15 cost of contract? So there needs to be some balance
16 there.

17 So let me just ask a couple questions based on
18 my experience in my facility. Our clarifier had coal tar

19 epoxy as an interior coat, and our activated carbon tanks
20 would sometimes have corrosion issues, and so we would
21 hire a third party to come in and do Plasite repair or
22 coal tar epoxy repair on our tank. Is that third-party
23 contractor who's working on my tanks an operator?

24 MS. WALKER TOMPKINS: Are they being
25 supervised by another operator, or are they under the

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1 direction of a certified operator?

2 MR. APPLGATE: They are.

3 MS. WALKER TOMPKINS: Are they affecting
4 the quality of the water?

5 MR. APPLGATE: No. Let me read the
6 definition. "Operator means any individual" -- any
7 individual -- "who is directly involved in the on-site
8 operation, maintenance and repair of the facility." So
9 this individual is directly involved in the repair of the
10 facility, but I would not -- let me continue on with my
11 comments. I would not consider him, quote, an operator.

12 I have a third-party contractor who comes to
13 pick up my dewatered sludge. I have a container of
14 dewatered sludge from fifteen years ago. That
15 third-party contractor would be deemed an operator who
16 comes and unloads sludge from my tank? I don't think we
17 would want to deem that person an operator. So I find
18 the operator definition to be problematic, because at the
19 industrial facility I worked at, you had third-party
20 people that would come in and do work.

21 Another example would be at a mine or a power
22 plant or lots of different places where you have water
23 treatment. Here's another example. You might need to
24 have PLC repair, or programmable logic controller
25 programming, for your automation system. Well, at a mine

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1 you might have a very qualified instrument tech who
2 spends 95 percent of his time working on mine
3 instrumentation. But he comes over and works on the
4 instrumentation for the water treatment system. I don't
5 think we want to define him as an operator.

6 MS. WALKER TOMPKINS: Who asked him to
7 work on the equipment?

8 MR. APPLGATE: He is asked to work on the
9 equipment by a certified operator. So here's my problem
10 with this definition. I see it as individual facilities,
11 you have third-party contractors who are not certified.
12 You might have on-site personnel, like at a mine, who
13 just spend part of their day on the facility, and they're
14 not operators. Then you might have people who are
15 operators in training, I'll say. They're not yet
16 certified, but their goal is to become certified. Then
17 you have certified operators. And their certification
18 may not meet the classification of the facility, so they
19 may be certified as, say a 1 or a 2, but they might be
20 working at a facility that's a 3. And then you would

21 have the responsible charge.

22 This is the continuum I see, people working
23 that aren't operators, operators in training, certified
24 operators, operator in charge. And I think the
25 definition here causes confusion at these industrial

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1 facilities because there is a need to have certified
2 operators who are in charge of the facility.

3 So let me throw out some potential problems
4 with this definition. We use here this idea of just an
5 operator. And again, it, to me, covers things that we
6 would not call operators, like I just presented, these
7 third-party folks and folks that come in from off site.
8 So then when we get into the definitional use of
9 operator, for example, if you turn to page 5-9, under
10 "operator responsibilities," it says, Section 10,
11 paragraph (a) -- now, again, you got to remember, some
12 people from industry have just read the previous
13 paragraph of operator to somehow include everybody who's
14 ever worked on this facility.

15 It now says -- "All operators" -- the "all" has
16 been deleted. "Operators shall maintain accurate
17 pertinent continuing education records." Well, the
18 third-party contractor or the person on site, they're not
19 maintaining records, because they're not -- I don't
20 really think you want them to be operators. I changed
21 this in my -- I don't want you to make this change yet,
22 but I threw out here, "Operators who have certification
23 shall maintain accurate records," not this wide net of
24 operators that you've covered previously.

25 If you go to page 5-10, Section 12, paragraph

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1 (a), again, you use just this general term "operators."
2 "Operators are required to obtain 24 hours of pertinent
3 continuing education." Well, again, the third-party guy
4 that comes in and does my coal tar epoxy repair and the
5 electrician from the mine, they're not required to do 24
6 hours of continuing education. The operator with
7 certification is required to do that continuing
8 education. So throughout here, we have a confusion, I
9 think, between all the people that work on the facility,
10 those that need certification and those who are the
11 responsible-in-charge operator.

12 I think existing comments, independent of any
13 new comments, existing comments were raising that
14 concern. When I look at the definition of operator here,
15 I think to myself, well, there's a couple ways. I'm not
16 going to tell you exactly how to address this, but I do
17 think it needs to be addressed. I think you could, for
18 example, define certified operator. To me, that's the
19 definitional term that's more important in this document,
20 that a certified operator is this. Because, again, you
21 have all these people that work at the facility who are,
22 again, third-party contractors, on-site people, operators

23 not yet certified. So I would -- I would come up with a
24 definition that says certified operators means blah,
25 blah, blah.

0026

1 Down below here in "responsible charge
2 operator" -- I'm reading another definition now on page
3 5-3, bottom of the page. "Responsible charge operator
4 means the person designated by the facility owner to be
5 the certified operator." We haven't defined certified
6 operator. We've defined operator in general, but not
7 certified operator.

8 If you go through the test multiple times, you
9 have an adjective in front of the word "operator," which
10 begs the question of, what is the definition of that
11 particular operator? So I personally think that you
12 could make this much clearer if you simply defined
13 certified operator and responsible charge operator. I
14 think a certified operator would mean someone who has the
15 training that he's acquired and taken the testing or done
16 whatever. I do think you cause a problem up here when
17 you say anyone who's directly involved in operation,
18 maintenance or repair of an operator (sic). I don't
19 think that's the case in most facilities.

20 I thought, well, maybe you could fix it by
21 saying operator means any individual who is directly
22 involved in the operation of a facility. But then I
23 thought, well, that adds some problems, because you have
24 certified people that, really, their focus is maybe
25 maintenance and repair, but -- so, anyway, there's some

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1 confusion there.

2 Now, let me ask, do you agree with that
3 confusion, or do you think, like many of the commenters,
4 that I'm simply not reading it correctly?

5 MR. WAGNER: Mr. Chairman, I'm reluctant
6 to get into a whole lot of detail. But I think
7 Mr. Applegate makes some really valid points that we
8 definitely need to take a look at. Yeah, Mr. Applegate's
9 comments are going to be on the record, and we'll be able
10 to read them verbatim, and we'll address those comments
11 just like we would any other comments from anybody from
12 the public.

13 MR. APPLGATE: Okay. I have some more.
14 Page 5-12. So, again, my one primary comment that I'm
15 finished with now is just this definition of operator or
16 certified operator.

17 At the top of the page, "Facilities with
18 multiple operating shifts, an operator certified to the
19 level of the facility shall be on site for each shift."
20 Now, again, I come back to my personal experience. This
21 facility that treated groundwater that was discharged
22 under an NPS permit operated 24 hours a day. It was
23 automated. This was thirteen years ago, so I'm sure
24 things have become even more sophisticated. It was

25 automated. There was a problem. It would call the
0028

1 operator, the responsible charge operator. He would be
2 able to pull up the facility on his computer, where he
3 had on-line real-time indication of -- it was both remote
4 monitoring and remote control. Okay? He could turn
5 things on or off via the computer. You guys are familiar
6 with that.

7 So I guess in this definition, I struggle to
8 understand, well, does multiple operating shifts refer to
9 the fact that there's people on site all the time or that
10 the facility is a 24-hour facility? And we certainly
11 have lots of industrial facilities -- I'm not as familiar
12 with the municipal side of things. But we have lots of
13 industrial facilities that operate 24/7 that do not have
14 people there all the time. So I thought this definition
15 actually went the wrong direction when "on-site" was
16 added to it.

17 "For facilities with multiple operating
18 shifts." So, again, I think there would probably be
19 comments from industry that says, "Well, wait. Are you
20 now telling us we have to have someone, a designated
21 responsible charge operator there all the time just
22 because the facility is operating 24 hours a day?"

23 I think this whole concept of multiple
24 operating shifts needs clarification. And the
25 clarification I would ask you to think about is, are we

0029

1 talking about a facility that discharges 24 hours a day?
2 Are we talking about a facility that has actual personnel
3 there 24 hours a day? Because again, there's lots of
4 industrial and probably lots of municipal facilities in
5 smaller places that operate automatically, you know, at
6 least half the day.

7 I'm not sure I follow the desire to have in all
8 facilities a substitute operator. And this, again,
9 might -- there will be probably differences of opinion on
10 this. But I think if an industrial facility has a good
11 record of compliance, that we should not be adding to
12 their burden of compliance by suggesting they now not
13 only have to have a certified operator, but a certified
14 operator at that location or a backup certified operator.

15 I mean, I think if an industrial facility has a
16 certified operator and they have a demonstrated record of
17 compliance, that's really what we're trying to achieve
18 here, not add to their financial burden, which I think
19 you've done here by saying, not only do you have to have
20 a responsible charge operator, but you need to have a
21 substitute designated responsible charge operator. I'd
22 like to understand the rationale for that. That's a
23 question. I'd like to understand the rationale for
24 having --

25 MS. WALKER TOMPKINS: What happens when

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1 the operator goes on vacation?

2 MR. APPLGATE: At the industrial facility
3 that I worked at -- and nowadays, with cell phones and --
4 you know, for the most part, if you really had a problem,
5 you could contact him. Or in other cases, sometimes you
6 can just shut the plant down. I guess what I'm saying is
7 there's all sorts of site-specific issues that should go
8 into play, rather than just carte blanche saying you now
9 have to have, you know, not only one, but two certified
10 operators for every facility. And there is, you know,
11 the ability, I think, in here to ask for relief on that.

12 But again, as an industry rep and someone who's
13 always been kind of on the industry side of the
14 discussions with WDEQ, always having to say, okay, go
15 this far, do this, but you can come and ask us for
16 relief -- I'd rather us just having the language, we'll
17 discuss with you what's needed during the -- maybe the
18 permitting process. Because if you got to go all the way
19 over here and we'll give you relief, that puts a lot of
20 burden on industry to try to go in and make that
21 argument, and you're going to be working with different
22 people at WDEQ. And some may. Some may not.

23 MR. WAGNER: Mr. Chairman, let me -- first
24 of all, I want to say that we'll digest your comments.
25 Just a couple points, though, is I think we come from

0031

1 the -- we come from the municipal precept on these
2 particular rules, because that's really where operator
3 certification is aimed. And so the industrial, we
4 probably didn't think through quite as much as we
5 probably should have.

6 I also want to point out, though, remember that
7 these rules do not apply to the operators of any
8 privately owned wastewater systems. Privately owned
9 wastewater systems, industrial, whatever, are not covered
10 by these rules. The only thing that is covered by these
11 rules are publicly owned wastewater systems and public
12 water supplies. Public water supplies are defined as
13 anyone -- any facility with more than 15 service
14 connections or serving 25 or more people.

15 So when we're talking about industry facilities
16 here, we're talking about industrial facilities where
17 they're providing drinking water to the staff. They're
18 not providing -- we're not talking about wastewater
19 treatment facilities in an oil refinery. We're only
20 talking about drinking water systems providing the staff.
21 So I just want to make that clear.

22 So Mr. Applegate's examples there are nice
23 examples, but they don't really apply in this case,
24 because I think it was wastewater system that you
25 were --

0032

1 MR. APPLGATE: Right. But just to
2 disagree with you a little bit, you still have third-

3 party people coming even at these facilities and doing
4 maintenance. So you're right. The actual facility
5 itself, but the idea of having --

6 MR. WAGNER: The concept is accurate. I
7 definitely agree with that. Okay. Enough said.

8 MR. APPELATE: But I do appreciate the
9 clarification, because I'm not sure I fully appreciated
10 that in the wastewater side. So I do appreciate that.

11 MR. WAGNER: I believe, Mr. Chairman, if
12 you -- I believe it's in the "objective," Section 2 on
13 page 5-2. Down there about the middle it says, this rule
14 requires all public water supplies and publicly owned
15 wastewater treatment and collection systems be operated
16 by appropriate -- so it narrows it.

17 MR. APPELATE: So I have another comment
18 on page 16 of 17 of your comments. This is the --

19 MS. WALKER TOMPKINS: I'm sorry. 16 and
20 17 of the comments?

21 MR. APPELATE: Page 16 of 17 of the
22 comments. This had to do with comment on the need for
23 weekly inspection, versus monthly inspection. I would
24 just note in the comments that you had a comment from
25 Chris Powell, City of Torrington, so you had a municipal

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1 commenter, a commenter from the Wyoming Mining
2 Association, an industrial commenter, and Bill Mixer, who
3 I think most people realize is a well respected trainer
4 of operators and maybe does his own contract operations.
5 All three of these folks from three different represented
6 groups were concerned about this idea of monthly, versus
7 weekly inspections.

8 And again, I guess I'd just raise the issue of,
9 compliance is ultimately what we're trying to do here.
10 And if all of these commenters are saying, hey, we have
11 facilities, and we're not sure weekly is needed in all
12 cases, I think WDEQ should at least justify their
13 response that says, "DEQ feels strongly that once a month
14 is not appropriate." And I would say, "Okay. Why not?"
15 What's your experience base that says somehow you have
16 compliance issues or problems that justify your position
17 of once a month as not being adequate, when you have,
18 again, commenters from three different groups that have
19 suggested they have facilities that may only need once a
20 month?

21 MR. WAGNER: Mr. Chairman, I'm a little
22 lost. What comment number?

23 MR. APPELATE: This is Comment Number 15.

24 MR. WAGNER: 15?

25 MR. APPELATE: It says, "This section

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1 should be changed" -- I'm going to read the very
2 beginning part on page 17.

3 MR. WAGNER: I'm sorry. We were on the --
4 we were back on page --

5 MR. APPELATE: "This section should be
6 changed to a physical inspection at least once a month
7 due to locations of some systems. In many areas contract
8 operators are hard to find. By making the operator
9 complete physical inspections once a week, the cost of
10 the contract operator fee could go up for the systems."
11 That was a municipal commenter.

12 The same comment was made by a mining
13 representative. Then the same comment was made by Bill
14 Mixer at Casper College. My point is, you have three
15 very distinct and different groups there that are making
16 the same comment. Your response is, "We feel strongly
17 that once a month is not enough." My request to you is
18 justify your response.

19 MS. CAHN: Dave, can you tell us which
20 comment you're talking about? It still didn't come
21 across.

22 MR. APPELATE: Comment 15.

23 CHAIRMAN WELLES: It's page 6, and then it
24 continues on to page 7.

25 MR. APPELATE: Comment 15, page 6.

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1 Now, let me be clear. I'm not necessarily
2 saying that once a week may not be justifiable. But I
3 think W -- I think WDEQ, John, owes it to this wide
4 variety of constituent groups to justify that position.
5 And again, if facilities are in compliance and they've
6 been in compliance and they've done a good job with an
7 inspection frequency of once a month, then I'm not sure
8 why we should feel compelled to change that in this
9 ruling.

10 CHAIRMAN WELLES: Well, it does say at the
11 very last in the DEQ response, "A facility owner may make
12 a request for consideration to reduce frequency of
13 visits."

14 MR. APPELATE: And like I said earlier,
15 as a representative of the regulated community, I'd
16 prefer to not always ask -- always have to ask for
17 relief. I would sometimes want the ability to have that
18 discussion that there be more burden put on the
19 regulatory agency to justify their position, other than
20 simply say, "You shall do this, and then if you can come
21 up with the right set of reasons, we might change our
22 mind." I'm being transparent of whom I'm advocating for.

23 Thank you.

24 CHAIRMAN WELLES: Do we have any other
25 comments from the board?

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1 MS. BEDESSEM: I have a couple comments, a
2 lot shorter than Dave's comments.

3 CHAIRMAN WELLES: Step up and speak up so
4 Lorie can hear you.

5 MS. BEDESSEM: Okay.

6 Well, I thought it was interesting, the

7 comments from Mark Pepper earlier regarding the
8 responsibilities of the owner, versus the
9 responsibilities of the operators. And there's a
10 statement in here under the -- I'm trying to find it.
11 The last -- the last item under the list of the owners,
12 "The facility owner shall ensure compliance with the
13 requirements of this rule."

14 CHAIRMAN WELLES: Can you reference --

15 MS. BEDESSEM: It's on page 5-12.

16 CHAIRMAN WELLES: Paragraph?

17 MS. BEDESSEM: Well, it would be
18 renumbered (i). Right now it's still (k), but it would
19 be renumbered (i).

20 CHAIRMAN WELLES: Okay.

21 MS. BEDESSEM: So, "The facility owner
22 shall ensure compliance with the requirements of this
23 rule." And, you know, I can understand why it doesn't go
24 into detail with respect to enforcement as to if they
25 don't ensure compliance, because that likely would fall

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1 under the general enforcement authority of DEQ and the
2 typical procedures, as opposed to some removal of
3 certification, which is something that can be done to an
4 operator via this specific rule. However, if the
5 facility owner shall ensure compliance with the
6 requirements of this rule, then they have to know that
7 their operators are maintaining their certification and
8 their continuing education records and so forth.

9 And it seems to me that there is a burden on --
10 for example, in the section on the contract operators
11 that they keep records of what they've done at the
12 facility for five years and the records shall be
13 accessible for review upon request by DEQ or by the
14 owner, well, if your contract operator gets fired and
15 leaves, you know, the owner then doesn't necessarily have
16 access to any of these records anymore. It seems like
17 there should be some provision for a contract operator to
18 provide that record to the owner so the owner can ensure
19 compliance.

20 Now, maybe that's something they will just do
21 in a contract. But it just seems like you're putting
22 this burden on the operator, when the owner has to make
23 sure that this compliance happens and that, you know,
24 those records should maybe be at the operating facility,
25 as opposed to just being left with the contract operator

0038

1 who's somewhere else or whatever. Because oftentimes
2 when facilities have certain standards they have to meet,
3 they can be inspected, and those records are typically at
4 the facility and can be viewed. And here, I'm getting
5 the impression that nothing is at the facility, that the
6 contract operator has a file cabinet somewhere else. And
7 when that relationship disappears, they may or may not be
8 with the owner.

9 And so I'm concerned about the owner
10 responsibility and the operator responsibility in this
11 particular regard. So the operator keeps records for no
12 less than five years as far as what's done at the
13 facility, time spent, duties and so forth. But the
14 continuing education records, is that then the same for
15 contract operators as any other operator, I assume from
16 Items A and B.

17 And again, Dave mentioned in Section 10(a) that
18 he believes it should say operators who have
19 certification. That would apply to Section 10(b), as
20 well, operators who have certification, the same thing.

21 There was one comment where -- and I forget
22 which specific number it is in the comment
23 packet where -- I think perhaps it was Bud Spillman with
24 BOPU who said that the terminology that says continuing
25 education, he suggested putting the word "hours" into the

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1 internet portal. And you indicated that it's more than
2 hours, so we can't just put hours. But I think Bud is
3 correct that you can't enter education. You can enter
4 information about the education. So rather than putting
5 hours, if you could just put in in Section 13(b),
6 operators with certification shall enter their pertinent
7 continuing education information into an internet portal.

8 Same thing with Item (c), same words to make it
9 kind of grammatically correct there. Failure of
10 operators to enter their pertinent continuing education
11 information prior to certification expiration, I think
12 would be appropriate.

13 In general, I think it's -- the comments about
14 the definitions that have been made so far by Dave are
15 appropriate as far as going back through the rule and
16 looking at where you're saying certified operator and
17 where you're saying responsible charge operator. Because
18 of various comments, it was difficult to determine who
19 you might be talking about. In Mr. Pepper's comments, he
20 said, well, the responsible charge operator is the one
21 who's there at the time. And then I read the definition,
22 and I'm not sure that is the one who's there at the time
23 when I read the definition, if that's really the same
24 meaning. And so we should be all on the same page about
25 that.

0040

1 I think the definition of operating shift
2 confuses me, because it says it means the period of time
3 during which operator decisions that affect public health
4 are necessary for proper operation of the facility.
5 Well, so that definition on page 5-3 seems to me that
6 that would be all the time for a lot of water suppliers,
7 you know. And maybe they don't have to make a decision
8 to run it all the time. But if anything is not operating
9 correctly in the system and they're a remote operator,
10 their decision of what to do, you know, would be

11 necessary 24/7 for the operation.

12 So I guess I don't understand this definition
13 of operating shift, because operating shift seems to me
14 that it would be a period of time where the facility
15 personnel change. If you actually need decisions 24/7
16 and you change personnel every eight hours, then that
17 would be an operating shift. But this definition says
18 the period of time where decisions are necessary. And I
19 would like to think that, you know, all water systems, if
20 you're going to get a drink of water in the middle of the
21 night, that you have the potential for needing a decision
22 24/7.

23 So I'm wondering if you could take a second
24 look at where you utilize the term "operating shift"
25 within the rule. So, in other words, if you say multiple

0041

1 operating shifts is -- is it necessary to define shifts?
2 Is there another way to determine when you really need
3 that extra level, which I think you're conferring with
4 the explanation that it's a specific, you know, case
5 where you're more concerned about it if there's multiple
6 operating shifts or whether that might be sort of an
7 antiquated terminology based on the fact that so much we
8 have is automated, that people are still available to
9 respond and make decisions.

10 And maybe this is kind of a terminology from
11 the past in some respects, and there might be another way
12 to do it and still get that same level of increased
13 concern about those particular facilities. So I would
14 ask you to look at that.

15 In general, just a little thing on 5-3. I
16 think your red line, I would think it would be permitted
17 in accordance with DEQ WQD instead of --

18 MS. WALKER TOMPKINS: I'm sorry. Page 5-3
19 or Section 5?

20 MS. BEDESSEM: Page 5-3 in the publicly
21 owned wastewater treatment or collection system. Can you
22 just change out the word "to" and put in "in accordance
23 with"?

24 MS. WALKER TOMPKINS: Oh, you want "to" to
25 become "with." I'm sorry.

0042

1 MS. BEDESSEM: Yeah.

2 MS. WALKER TOMPKINS: I just now found
3 that. Thank you.

4 MS. BEDESSEM: And then in general, is
5 the -- in the red lines on page 5-5 and 5-6, is a Level 1
6 water -- by the way, I want to compliment you. I'm happy
7 that you moved this description so that someone reading
8 the different levels of certification can figure out that
9 a water treatment operator can operate a distribution
10 facility. I think that's easier to find that
11 information.

12 But in the red line, Part E, and E on the next

13 page, 5-6, do we not say may operate a Level 1 water
14 distribution facility, because you are concerned that
15 they would only be allowed to operate one, or was that
16 why that was left out?

17 MS. WALKER TOMPKINS: I'm sorry?

18 MS. BEDESSEM: A Level 1 water treatment
19 operator may operate a Level 1 water distribution
20 facility? I just didn't know if that was purposeful so
21 that you didn't say one or --

22 MR. WAGNER: Right. Let me make sure I
23 understand your question. I think your question is,
24 let's say the Town of Baggs' water treatment plant, let's
25 say it's a Level 1, even though it's not. Would they

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1 only be allowed to operate the one Baggs distribution
2 system, or are we saying they can operate any
3 distribution system in the state that's Level 1, and you
4 want clarity on that?

5 MS. BEDESSEM: Uh-huh.

6 MR. WAGNER: Fair enough. We will do
7 that.

8 MS. BEDESSEM: Yeah. It's just a semantic
9 thing, but I was wondering if it was purposeful.

10 Let me go through to make sure there's not
11 anything else.

12 MS. CAHN: Marge, I'm wondering if just
13 taking the "a" out of the sentence works. Just say Level
14 1 water treatment operators may operate Level 1 water
15 distribution facilities.

16 MS. BEDESSEM: Yeah. Can you just make
17 them both plural, and that would cover your meaning?

18 MR. WAGNER: Yeah. I think we need to
19 think about it a little bit, but that may work.

20 MS. BEDESSEM: Because it reads oddly
21 right now.

22 MR. WAGNER: Like I said, we need to think
23 about it just a bit.

24 MS. BEDESSEM: There were a lot of
25 questions or comments, it seemed to me, about sort of the

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1 the ABC, the Associated Boards of Certification.

2 CHAIRMAN WELLES: Can you reference your
3 page, please?

4 MS. BEDESSEM: Okay. Page 4 of 17 on the
5 comments.

6 And there's just a number of different pages
7 where people were concerned about the fact that, you
8 know, in the rule there was a more generic description
9 and not describing the exact certification process. And
10 from our discussions at the last meeting, sort of
11 educated us on the fact that this is the national
12 recognized system, but it may change its name or
13 whatever. That was the specific reason it was not put in
14 there. And that all sounded fine to me.

15 Is it possible -- and a lot of these things say
16 that -- well, a lot of the questions people had as far as
17 the facility, you know, the classifications and so forth,
18 where that information would be available. Is there any
19 way to put within the rule sort of a burden on the Agency
20 to make sure that information is provided via website or
21 guidance material or whatever so that somebody who reads
22 the rule can say, oh, if I want to know the details of
23 what I would need to operate such and such facility, I
24 can look here and here and here, without being specific
25 about where they have to look, because that may change,
0045

1 but just the obligation to do so? Because there seems
2 like there was a lot of sets of comments about, well, if
3 you're not telling me specifically anymore, then how do I
4 know when you might change that? Just so that they know
5 that that information is out there and available easily
6 for reference.

7 I mean, it was clear that that is available for
8 reference. But someone reading the rule might not know
9 that that information is there and doesn't change every
10 six months and that sort of thing. I just think that
11 would -- that would address a lot of the comments about
12 materials that are posted on the OpCert web page.

13 I think that might be it. Oh, and then just
14 one last question for my education as far as your intent.
15 On page 10 of 17, Comment Number 22, you responded that
16 the restriction about double counting a continuing
17 education course, you decided that that wasn't worth
18 bothering with from an administrative and database point
19 of view. So is it your intent, then, that someone can
20 double count or not?

21 MR. WAGNER: Our intent is that they
22 cannot. We decided that, you know, there was -- first of
23 all, there was opposition. There was some opposition to
24 the concept. And then we got to looking at, okay, when
25 we really tried to -- how are we going to track that and
0046

1 keep it all separate and be able to figure it out? We
2 decided it was just going to be really, really
3 complicated. And we decided, you know, that was an idea
4 that maybe it was not that good of an idea. And so we
5 backed off.

6 MS. BEDESSEM: It was just something you
7 thought you might perhaps be able to use, but then being
8 able to manage, being able to check when it's being cross
9 used is rather difficult?

10 MR. WAGNER: That's right.

11 MS. BEDESSEM: So, essentially, the result
12 is you can't double count anything?

13 MR. WAGNER: That's correct. And if
14 that's not -- if that's not clear in the draft rule, we
15 need to take another look at it. But we thought we
16 made -- we thought we made the changes for the draft rule

17 to make it clear that that's --

18 MS. BEDESSEM: I know that you took out
19 that. But taking out that one, I don't recall -- can you
20 point me to the right section? Because I don't recall
21 another line saying -- specifically saying you can't
22 double count. But I could have missed it.

23 MS. WALKER TOMPKINS: You want to know
24 where in the rule?

25 MS. BEDESSEM: Yeah.

0047

1 MS. WALKER TOMPKINS: That particular
2 statement should be under continuing education.

3 MR. WAGNER: Section 13 on page 10.

4 MS. BEDESSEM: So you took out (d) that
5 talked about double counting. But all you did was take
6 it out so that it doesn't address the question at all.
7 So if somebody did have multiple certificates, they would
8 still wonder if they could double count, because it
9 doesn't specifically say you can't.

10 MS. WALKER TOMPKINS: Current Chapter 5
11 does not allow that. This was a new addition to this
12 proposed rule. It was not manageable from a database
13 standpoint. The programmer said, oh, no, we can't --

14 MS. BEDESSEM: I understand that, and I'm
15 fine with that. What I'm saying is that if someone's
16 reading the continuation education requirements and they
17 have multiple certificates, I'm not sure that they would
18 understand that they can't double count, because there
19 isn't a line here replacing (d) that says that you can't.

20 MR. WAGNER: I think that's fair. And we
21 can always add a paragraph, replace (d) with language
22 that says you can't double count.

23 MS. BEDESSEM: Yeah. If you hold multiple
24 certificates, you know, your continuing education applies
25 to each certificate independently. And so then it's just

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1 clear, as opposed to someone with multiples going, "It's
2 not addressed in here. I don't know." So if you'd add
3 that back in.

4 MR. WAGNER: We understand.

5 MS. BEDESSEM: I'm done. Thank you.

6 CHAIRMAN WELLES: I think I understand. I
7 hope DEQ understands.

8 MR. WAGNER: I think we do.

9 CHAIRMAN WELLES: Lorie, do you have
10 comments, please?

11 MS. CAHN: Yes, I do. But I'd request --
12 could we have like a five-minute break?

13 CHAIRMAN WELLES: Request approved.

14 (Hearing proceedings recessed

15 10:17 a.m. to 10:25 a.m.)

16 CHAIRMAN WELLES: We will reconvene this
17 meeting of the Water and Waste Advisory Board.

18 Are the folks in Jackson ready to reconvene?

19 MS. CAHN: Yes, we are.
20 CHAIRMAN WELLES: Go ahead.
21 MS. CAHN: We'll go around the room and
22 introduce ourselves. I'm Lorie Cahn. I'm the Water and
23 Waste Advisory Board representing the public at large.
24 You might have to spell your names for the
25 court reporter.

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1 MR. EATON: I'm Ernie Eaton. Last name is
2 E-A-T-O-N. I'm a water operator for about four different
3 water systems in the Star Valley region.

4 MR. HUISMAN: I'm Peter Huisman,
5 H-U-I-S-M-A-N. I'm an employee for the Teton Village
6 Water and Sewer District. I also run a contract
7 operations company and operate nine drinking water
8 systems, one wastewater system, and it's called
9 Clearwater Operations.

10 MR. CHAMBERLAIN: My name is Dan
11 Chamberlain, C-H-A-M-B-E-R-L-A-I-N. I work for Wyoming
12 Association of Rural Water Systems. I work in source
13 water.

14 MR. PILGRIM: Ray Pilgrim, P-I-L-G-R-I-M,
15 former water and wastewater operator, now retired.

16 MS. CAHN: Five years with Grand Teton
17 National Park.

18 MR. PILGRIM: 20 years.

19 MS. CAHN: 20 years with Grand Teton
20 National Park.

21 I'll go ahead and get started with my comments
22 if we're ready. The first thing, I think it's really
23 important. I'm getting some conflicting information, I
24 think, from John and from what I'm reading. In the
25 very -- on page 5-2, Section 1, "authority," the

0050

1 authority is from Wyoming Statute 35-11-101 through 1904.
2 It says specifically 302(a)(iv), or little four. And
3 when I look at that in the statute, the siting act, I
4 read, "Standards for the definition of technical
5 competency and the certification of operating personnel
6 for community water systems and nontransient noncommunity
7 water systems, sewerage systems, treatment works and
8 disposal systems and for determining that the operation
9 shall be under the supervision of certified personnel."

10 So I guess I'm confused, because I hear John
11 saying -- and maybe it's because I'm in here and not
12 hearing as well. I thought I heard John say that these
13 proposed rule changes to the rule apply only to publicly
14 owned treatment works or publicly owned systems. And I'm
15 reading in the statute that it's also nontransient
16 noncommunity water systems. So I guess I need
17 clarification from John. Do these or don't these apply
18 to a mine that has -- is only supplying water for
19 employees?

20 MR. WAGNER: Mr. Chairman, Lorie, first of

21 all, let me -- let's split it out into wastewater, versus
22 water. And let me talk about wastewater first. The
23 requirements on the wastewater side only apply to
24 publicly owned systems, so that, for example, a
25 wastewater treatment system within an oil refinery, you
0051

1 know, they have a very sophisticated treatment system,
2 but it does not require a certified operator. They have
3 a discharge permit. They got to meet the quality of the
4 water coming out the end of the pipe.

5 MS. CAHN: John, I can't -- John, I can't
6 hear you.

7 MR. WAGNER: Okay. Well, I guess we got
8 to move the microphone again.

9 Okay. Let me start over, since I practiced
10 now.

11 It probably is best to divide things into water
12 and wastewater. So let me talk about wastewater first,
13 because it's the easiest. The rules only apply and have
14 only ever applied strictly to publicly owned wastewater
15 systems. Basically, we're talking about municipal
16 sewerage treatment plants, water and sewer districts,
17 that sort of thing. It doesn't apply to any industrial
18 kind of wastewater treatment at all.

19 On the water side, it applies to every public
20 water supply as defined as a public water supply in the
21 Act. Public water supplies are defined as any system
22 which provides water to 15 service connections or 25
23 people over a period of 60 days, I think is what it is.
24 So that's really the easy way to think about it. We're
25 only talking about publicly owned systems on the
0052

1 wastewater side, and we're only talking about systems
2 that are defined as public water supplies on the water
3 side.

4 MS. BEDESSEM: John, can I ask a question?
5 So that means if you have a workforce facility where
6 you're operating a wastewater treatment facility for
7 employees that live on site, that there's not an operator
8 certification requirement for that wastewater treatment
9 facility?

10 MR. WAGNER: That is correct.

11 MS. CAHN: John, could you please repeat
12 the question? We couldn't hear Marge.

13 MR. WAGNER: Marge wanted clarification
14 about wastewater systems at a work site and whether --
15 like at a mine, for example -- and whether the operator
16 of a wastewater system like serving -- like a small
17 package treatment plant serving a wastewater system at a
18 mine, whether that requires a certified operator. And
19 the answer to that is no, it does not, because that
20 system is not publicly owned.

21 Now, you go to that same mine, though, and the
22 water system very well may be a public water supply

23 because it's serving -- it's providing water to more than
24 25 people. As a matter of fact, that would be very
25 common for an industrial -- and that would be the -- what

0053

1 do they call it? Nontransient system.

2 MS. PARKER: John, may I make a comment?

3 MR. WAGNER: Sure, Kim.

4 MS. PARKER: This is Kim in Cheyenne. I
5 wanted to clarify. You mentioned the definition of a
6 public water system for the State of Wyoming is 60 days
7 or more. It's actually six months or more.

8 MR. WAGNER: Okay. Sorry.

9 MS. PARKER: We do not require certified
10 operators for what they call transient systems, which
11 typically only have to be open for 60 days. That would
12 be like your dude ranches and your restaurants and all
13 that sort of thing. So what we're looking at having
14 certified operators for are either community systems,
15 where people live there, or nontransient noncommunities,
16 like schools, mines, office buildings, that sort of
17 thing, where the folks are exposed to the water over a
18 long period of time.

19 MR. WAGNER: And just for the record, that
20 was Kim Parker with the DEQ staff in Cheyenne.

21 Thank you, Kim, for helping me out.

22 MS. PARKER: Sorry.

23 MR. WAGNER: And, Lorie, did I answer your
24 questions, or did we get your answer to the question --
25 the answer to your question taken care of?

0054

1 MS. CAHN: Yes. That definitely clarifies
2 things. And my suggestion is that right up in the very
3 first, Section 1 or 2, with "authority" or "objective,"
4 that that type of clarification be put in there so it's
5 very clear what this applies to. Because as I read it,
6 on page 5-2, Section 2, under "objective," it says, "This
7 rule requires all public water supplies and publicly
8 owned wastewater treatment and collection systems be
9 operated by." And you've provided a lot more
10 clarification in what you've just told me than what is
11 written in here, because I think that clarifies what's a
12 public water supply.

13 MR. WAGNER: Right.

14 MS. CAHN: And then -- and then beyond
15 just saying that this rule requires that all public water
16 supplies and POTWs and collection systems be operated by,
17 I think it says this rule applies to. So it's not just
18 this rule's requiring these guys to do this. We need the
19 application of this rule, I think, in here for clarity,
20 who this applies to.

21 MR. WAGNER: Okay. We've got your
22 comment, and we will think about it.

23 MS. CAHN: Okay. And then on 5-2, in
24 "definitions," available means based on system size,

25 complexity and source water, available means -- let me
0055

1 start over again. "Available" means based on system
2 size, complexity and source water, a certified operator
3 shall be on site or able to be contacted as needed to
4 initiate the appropriate actions in a timely manner."

5 And I think if you have some ideas about system
6 size, complexity and source water, that this is a
7 definition. This is the place to put specificity,
8 because this is your definition. And this definition,
9 what you've added doesn't really tell me anything
10 specific. So I would -- if you know that -- anyway, so
11 that's where I think it would be helpful. I don't know
12 what you're thinking. It would be nice to have it be
13 specific.

14 MR. WAGNER: Mr. Chairman and Lorie,
15 frankly, it's one of those cases where we're trying to
16 give ourselves a little bit of wiggle room. We realize
17 that you don't always want or always need to have an
18 operator right there, and we want to be able to -- when
19 we're making a professional judgment, we want to take
20 into account system size, complexity and what the source
21 of the water is.

22 For example, a service water source is normally
23 a lot more concern to us than a groundwater source. So
24 it's the age-old conundrum that we have. With a rule,
25 the more specific you get, the more some people are going
0056

1 to be happy. And the more general it is, the better we
2 like it, because we -- it gives us a little more to work
3 with. So we will take another look at it and do what we
4 can do. We understand your comment.

5 MS. CAHN: On 5-3, under "operating" --
6 or, let's see. Under "facility," when it says means --
7 facility means the components of any public water supply,
8 sewerage or treatment works, including all infrastructure
9 associated with the water/wastewater treatment system, I
10 think it's not clear that the word "public" goes with the
11 treatment works. So I think I would be specific.
12 Facility means a publicly owned treatment works, public.
13 And then if you're defining what public water supply is
14 already, then I think you're okay with using that. And
15 same with the sewerage.

16 So I think a little more specificity, because
17 as I understood the responses to comments, the mines were
18 asking, are we -- are we required to do this? And I
19 think your response was no. In some cases, you're not a
20 facility. So I think the more specificity, again, you
21 can put into "facility" here, the easier it will be for
22 the regulated community to determine if they're regulated
23 or not for a particular situation they have.

24 Under "operating" -- am I going too fast?

25 MS. WALKER TOMPKINS: No.

0057

1 MS. CAHN: Under "operating shift" on the
2 same page, 5-3, same definition -- or "definitions,"
3 again, the word is, "Operating shift means the period of
4 time during which operator decisions that affect public
5 health are necessary for proper operation of the
6 facility." And I guess I would like specificity again on
7 public health, because I think of anybody who drinks
8 water, that's a public health issue. But it's really not
9 if that person's not drinking water from a public water
10 supply. So a little -- I think that, again, needs a
11 little more clarification.

12 MR. WAGNER: Mr. Chairman, Lorie, we
13 maybe -- we maybe could use some suggested language, if
14 you have some, on some of these, especially these
15 definitions. If you have some ideas in mind, that might
16 be helpful if you'd share those with us.

17 MS. CAHN: I'd be happy to. For public
18 water supply, I think if you just cite what's in the Act,
19 which was essentially what you told me, any system which
20 supplies 15 service connections or services 25 people, I
21 think that type of language would be helpful if that's
22 what you're referring to. And you could just do a
23 definition of what public water supply or public
24 health -- I mean, are you talking about anybody's health,
25 or are you talking about people -- the health of people

0058

1 that are serviced by the public water supplies?

2 So, I mean, when I think of public -- I mean,
3 I'm a member of the public. But when I'm at work and I'm
4 drinking water from our treatment system, I'm not on a
5 publicly owned treatment works. And we often shut
6 down -- you know, we can shut down water and provide --
7 we can provide bottled water to the workers. So it's a
8 little different. But I'm still public health.

9 MR. WAGNER: Right. Okay. Well, in
10 particular, you mentioned the definition of "available."
11 You mentioned the definition of "facility." And you've
12 mentioned the definition of "operating shift." I think
13 in those -- at least in those three cases, we could maybe
14 use a little bit of help as to exactly what it is you're
15 thinking. Because I think I generally follow your
16 comments, but I'm not sure I follow it in enough detail
17 to be able to rewrite the -- rewrite those definitions.
18 So, again, if you could --

19 MS. CAHN: Okay. You're putting me
20 between a rock and a hard place for "available," because
21 I say -- you're saying based on system size, complexity
22 and source water. And I'm saying, "I don't know what you
23 mean. Be specific." And you're saying, "I can't be
24 specific. I want to be flexible so that I have
25 flexibility." So I can't help you with "available"

0059

1 because you're not giving me any wiggle room to -- you're
2 not allowing me to -- because I don't know what you're

3 thinking, and you're not telling me. So I can't help you
4 there, John.

5 MR. WAGNER: Okay. Fair enough.

6 MS. CAHN: For "facility," I think I would
7 put "publicly owned treatment." I would add in "publicly
8 owned treatment works" for "treatment works," because I
9 think you're only talking about POTWs. Am I correct?

10 MR. WAGNER: That's correct, yes.

11 MS. CAHN: So I would add "publicly owned
12 treatment works." And then you mentioned some
13 definitions for what you were talking about sewerage, and
14 I think you're only talking about municipal sewerage. Is
15 that correct?

16 MR. WAGNER: Well, or community, like a
17 water and sewer district or something like that.

18 MS. CAHN: Okay. So I would probably say
19 municipal or community sewerage. And then -- and then
20 public water supply, I think you could put a definition
21 in for public water supply. You wouldn't have to put it
22 in this definition of facility if you add a definition
23 for public water supply. And that would be public
24 water -- it would come out of the Act. I'm just going to
25 paraphrase what you said. Any system which supplies 15

0060

1 or more service connections or services 25 people or more
2 or services at least for six months or more. Then that
3 gives a lot of specificity. That's all I'm looking for.
4 I'm looking for what's in the Act that comes in here or
5 what you're thinking.

6 Does that help, John?

7 MR. WAGNER: Yes. Thank you.

8 MS. CHAMBERLAIN: Could I go back and
9 revisit something here that Kim was saying? Dan
10 Chamberlain with Rural Water. Is it my understanding,
11 under public water supply, then, transient
12 noncommunities, like the hunting camps and recreational
13 facilities, et cetera, do not require an operator and
14 will not under the new Chapter 5?

15 MR. WAGNER: Kim, do you want to -- can
16 you answer that for us?

17 MS. PARKER: Sure. I wasn't sure if the
18 question was directed at me. That is correct, Dan. The
19 current Chapter 5 does not require transient systems to
20 have operators. Neither will new Chapter 5.

21 MR. CHAMBERLAIN: In meeting with the
22 Wyoming Environmental Health Association, they have
23 considerable -- and I shouldn't speak for them. But some
24 of our most infamous outbreaks have come from -- they're
25 probably the most -- I'm short for the right word here.

0061

1 They're a problem. And they present with problems that
2 probably bring publicity nationally. I don't propose to
3 know what the solution to this is. But it seems to me
4 that the (unintelligible) are some of the worst violators

5 we've had historically.

6 MS. PARKER: Dan, to respond to that, I do
7 believe that we are limited by the current definition in
8 the Environmental Quality Act as to what is a public
9 water system in the state of Wyoming.

10 MS. CAHN: Yes. And I can read that at
11 least from the siting act. That is -- yeah. It says
12 standard -- the requirement is to put in standards for
13 the definition of technical competency and certification
14 of operating personnel for community water systems and
15 nontransient noncommunity water systems. So it's been
16 excluded from the Act.

17 MR. CHAMBERLAIN: Buyer beware, I guess.

18 MS. PARKER: Indeed.

19 MS. CAHN: On page 5-4, definition for
20 wastewater treatment, are we now -- it cites the -- I've
21 got to look at 103(c)(iv). I was just there. Treatment
22 works means any plant or other works used for the purpose
23 of treating, stabilizing or holding waste. But I thought
24 you were limiting this to -- maybe I'm confused -- but
25 publicly owned wastewater treatment.

0062

1 MR. WAGNER: Yeah. I see --

2 MS. CAHN: So I'm not --

3 MR. WAGNER: I see your point.

4 MS. CAHN: So this seems more generic than
5 maybe what this applies to. So I'm not sure you need
6 that definition, or maybe that definition goes underneath
7 publicly owned wastewater treatment or collection system.
8 I'm confused as to, are we talking about a different
9 animal here than a POTW?

10 MR. WAGNER: I see your point. And we'll
11 take a look at it and see what we can do to make it more
12 clear.

13 MS. CAHN: Okay. Thank you.

14 On page 5-4, Section 5(a)(i), about the
15 specific rating system -- this is under "facility
16 classification" -- I thought it would be helpful to just
17 add -- and I thought this would address some of the
18 comments you received during the public comment period --
19 just to add "and posted on DEQ's website." Because
20 people were saying, "We don't know what kind of rating
21 system you're going to use." I understand why you don't
22 want to say we're going to use ABC, because you may
23 change to something different. But I think as long as --
24 not just "identified by DEQ policy," but I would add "and
25 posted on DEQ's website." And that way people have some

0063

1 sense of security that they know they can go to your
2 website, and they'll find what it is that they're going
3 to be held accountable to.

4 MR. WAGNER: We understand.

5 MS. CAHN: On page 5-9, Section 9(b),
6 under "certificates," I found the wording a little bit

7 confusing about how long the certificate would be good
8 for. And so whenever you talk about -- it says, "The
9 first certificate from any level and category issued to
10 an operator shall be valid for the issuing year plus two
11 years and expire on December 31st." And I thought if you
12 could just say "for the remainder of the issuing year,"
13 that might make it more clear. Because that means that
14 at the end of that first issuing year, it will be the two
15 additional. So, anyways -- and I think that occurs in
16 several places. So maybe just a search for that and just
17 add "remainder of the issuing year" whenever you use
18 "issuing year."

19 On the owner responsibilities --

20 CHAIRMAN WELLES: What page, please?

21 MS. CAHN: I'm sorry. Operator

22 responsibilities, 5-9. I have a comment in the margin.
23 I'm not sure if this applies to the certificates of
24 Section 9 or the operator responsibilities of Section 10.
25 But it said -- okay. I guess it applies to Section 9,

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1 certificates. "The certificate will be provided through
2 an internet portal provided by the administrator." And
3 there was a lot of -- there was some comments on people
4 were concerned that they wouldn't know that they were
5 expiring. And it seems to me if you're going to be
6 having communication through an internet portal with your
7 operators or your certified -- people with certificates,
8 that you could -- it would be very easy for your IT folks
9 to program in that when somebody signs into their web
10 portal, they could get a warning that their certificate
11 was within one year of expiration.

12 And so I would just add something like, "A
13 warning that the certificate is within one year of
14 expiration will be provided through the internet portal."
15 That ought to be very easy for your IT folks. You know,
16 people coming in with a password coming into a site where
17 they document their training, it's very easy to have an
18 automatic thing that says something -- I think it is.
19 You could talk to your IT folks. But I guess my
20 question -- my request would be could you look into doing
21 something like that. Because I get -- I get warnings on
22 the internet that my training is about to expire, and I
23 get a 90-day warning and then a 60-day warning and a 30.
24 And it's helpful for planning on taking classes to get
25 refreshed.

0065

1 MR. WAGNER: Lorie, I believe we said
2 something to that effect. Diane is kind of scrambling
3 trying to find out where that is. Somewhere in the
4 comments.

5 MS. WALKER TOMPKINS: Page 9 of 17, very
6 top line.

7 MR. WAGNER: Did you get that? Page 9-17.

8 MS. WALKER TOMPKINS: Of the comments.

9 It's the very top line.

10 MR. WAGNER: She says it's the top line.

11 MS. CAHN: Okay. And so I have a comment
12 when we get to that response. And I'll go ahead and take
13 that now. I think it's a concern if you are sending a
14 notice to the valid e-mail address, rather than as
15 they're signing into their web portal. I think you're
16 not -- it's inadvisable to send notices to a valid e-mail
17 because people change their e-mail addresses. But if you
18 have a certification and you're going in through a web
19 portal to put in your training and to check on when
20 you're expiring, that's a much -- I think I wouldn't do
21 it -- advise doing it through an e-mail, because people
22 change their e-mail addresses, and they're going to
23 forget. "Oh, yeah, I've got to tell DEQ I've changed my
24 e-mail address."

25 So my suggestion -- that's why my suggestion is

0066

1 that you have your IT folks program that into the web
2 portal.

3 MR. WAGNER: Okay. We'll take it into --
4 we'll look into it.

5 MS. CAHN: On page 5-10, Section 12,
6 "renewal of certificates," I would strike the word "three
7 year," because I don't think -- unless you take your
8 certification the first of the year, you never have three
9 years. If you take your certification on December 31st
10 of the year, it's good for the remainder of that year and
11 two additional years. So I would just strike "three
12 year." I think it reads okay. "Failure to obtain 24
13 hours of pertinent continuing education within the time
14 period the certificate is valid shall result in the
15 expiration of the certificate." I would just strike
16 "three year," because I think there's only one date you
17 could take your exam and be good for three years.

18 MR. WAGNER: Actually, I think normally
19 they're a full three years. Because you just take the
20 exam once. And then that first -- and Kim and Diane are
21 going to have to help me here because I may be wrong.
22 But I think the first time you get certified, it may be a
23 little less than three years, because you may have passed
24 your exam in July, and then you get a half a year and
25 then the next two years.

0067

1 But after that, they're full three-year terms,
2 aren't they?

3 MS. WALKER TOMPKINS: Uh-huh.

4 MS. CAHN: But the first one's not.

5 MR. WAGNER: But the first one's not.
6 It's probably okay to take that language out.

7 MS. CAHN: Under Section 13, "continuing
8 education" -- sorry. Page 5-10, Section 13, "continuing
9 education," (b), it says, "Operators shall enter their
10 pertinent continuing education into an internet portal

11 provided by the administrator." And I think in the
12 example of somebody taking a certified course from Bill
13 Mixer or something like that, where the -- I think the
14 instructor should be entering this certified education
15 into the internet portal or something that -- and then
16 that the operator wouldn't be able to.

17 I mean, it just seems like it -- I mean,
18 typically instructors who are working through a certified
19 program have access to that portal to say, "Okay, these
20 people took my class and passed." And I don't know.
21 It's just a thought.

22 MR. WAGNER: Lorie, I think either Kim or
23 Diane can answer that. I think that's a lot of what
24 happens.

25 MS. WALKER TOMPKINS: Right now the portal

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1 doesn't exist because the database is being programmed in
2 concert with this rule, you may recall from our first
3 meeting. So that portal is not yet available. When that
4 portal is available, there will be something on line
5 telling you that the coursework that you enter will be
6 other than training provider training. And you are
7 correct. Training providers will enter their training
8 through the portal once that's up and running.

9 Right now we've got a Band-Aid where they're
10 sending us an Excel spreadsheet, and that's being entered
11 into the internal part that's working now. That outward-
12 facing part is not yet up.

13 MS. CAHN: Okay.

14 MS. WALKER TOMPKINS: So does that make
15 sense, or do you still feel there needs to be some
16 embellishment?

17 MS. CAHN: I think a little clarification.
18 I prefer to say clarification, rather than embellishment.
19 But I guess I would say if the instructor does not enter
20 this continuing education into the internet portal, the
21 operator will. Because this says operators shall enter
22 their pertinent CE into an internet portal provided by
23 the -- it says you shall do that. But if the
24 instructor's doing it -- so I just think we need a little
25 anticipation of when you have that portal working.

0069

1 MS. WALKER TOMPKINS: Okay. Thank you.

2 MS. CAHN: On page 5-12, (i) at the top of
3 the page, I know this is going to be an issue. We heard
4 from Ms. Goodnough and others. And I guess my question
5 is the word "facilities" here, I think there will be a
6 lot more specificity once you've -- or it will be more
7 clear once you specify what a facility is, the
8 definition. So I think hopefully that should take care
9 of some of the issues.

10 But again, there was some concern about
11 having -- I'll read what it says. "For facilities with
12 multiple operating shifts, an operator certified to the

13 level of the facility shall be on site for each shift."
14 And I guess it used to be designated per each shift, and
15 now it's on site. Are we talking about once in every 24
16 hours? Are we talking about having them within an hour's
17 drive? Or do they physically have -- somebody has to be
18 there 24 hours a day? And is this something that, if
19 they have a remote system that will dial up -- will shut
20 the system down, you know, an auto shutdown when there's
21 a failure and it alarms the responsible charge operator
22 or somebody to, "Okay, you better go to the facility"?
23 You know, that's -- I guess, you know, that "on site"
24 needs a little more discussion or definition.

25 And, you know, Marge made a comment which I

0070

1 agree with, that with SCADA systems and systems that are
2 automated and have auto shutdown, I think -- I think it
3 depends. If you've got a facility that has to provide
4 water all the time to -- for drinking water, that's a
5 different level than a facility that's shut down, you
6 know, for a time period that's okay.

7 So, anyways, there may still need to be some
8 discussion on -- or there may still be some current
9 concern from the public, I think, on what on site for
10 each shift means.

11 MR. WAGNER: Yeah. Mr. Chairman and
12 Lorie, I think the problem, again, I think we're maybe
13 having is a large municipal water treatment plant that
14 has -- works 24/7 and has operating shifts, I think
15 that's what we were aiming for here. But the problem is
16 that you also have small systems that are mostly
17 automatic serving a mine, for example. And so I think
18 that's what we're struggling with.

19 MR. CHAMBERLAIN: How about if you insert
20 it for facilities that require multiple operating shifts?

21 MR. WAGNER: Yeah. That's -- we're going
22 to -- obviously we need to -- we need to keep working
23 this and appreciate your suggestion.

24 MS. CAHN: Okay. I'm going to make some
25 comments on DEQ's responses to comments. So on page 3 of

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1 17, for Comment Number 5, the last -- and the response,
2 the last paragraph, first sentence, it says, "The
3 facility configuration guidelines are posted on the
4 OpCert web page." And again, if we could just refer --
5 that was where I thought, you know, if we could refer to
6 the web page in the regulation, then as ABC changes to a
7 different guideline, at least it's always in the --
8 because you're always going to have your web page, the
9 OpCert web page. So I just think that response could be
10 modified slightly if you would add that, what we talked
11 about before, into the rule itself.

12 MR. WAGNER: Okay.

13 MS. CAHN: And then page 8 of 17, Section
14 12, "renewal of certificates," in the response, this is

15 what we talked about where DEQ could have a notification
16 when the operator goes on line that their certs will
17 expire in blank months or starting at less than twelve.
18 So if you can get something like that with your IT folks
19 in the response to comments, might be nice to revise the
20 response to comment.

21 Okay. Page 14 of 17, it's the top comment,
22 Comment Number 29, that continues to the top of the page.
23 The commenter -- and I understand this concern about O
24 and M manuals. I imagine it's extremely frustrating for
25 an operator whose owner has the manual and the manual's
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1 not at the facility. And so it would be nice if there
2 could be some kind of requirement that the copy of the O
3 and M manual has to be at the facility. At least a copy
4 has to be there so that the operator -- if the owner's
5 not helping out with giving the operator that manual, if
6 the requirement is that it be at the facility, then I
7 think if the operator then who goes to the facility will
8 have access to that manual.

9 So I would like to see -- I mean, I know in the
10 treatment facility that I'm working at, operating, we
11 have to have our O and M manual there. It has to be
12 accessible. So I guess my preference is that there would
13 be some kind of requirement. That's where an O and M
14 manual belongs. If the owner wants an extra copy for
15 themselves or an operator gets an extra copy, great. But
16 the O and M manual that is being kept up to date as
17 something changes should be at the facility.

18 MS. BEDESSEM: Lorie, perhaps that
19 requirement to have the O and M manual on site is part of
20 the facility's permit for water and wastewater, as
21 opposed to being in the certification rule. That, I
22 don't know.

23 MS. CAHN: And then just on page 17 of 17,
24 it's Comment Number 37 and the response. I know in your
25 response you say, "In particular, we believe we have
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1 clarified that shift operation in these rules pertains to
2 shift operations at water/wastewater treatment plants,
3 not mines." I guess I feel -- I still feel there's
4 confusion there. And hopefully in the revision to the
5 rule that you'll come up with for our next meeting will
6 make that more clear. I think we talked about ways to
7 make that more clear. And I think hopefully -- you know,
8 I don't think at this point it's still real clear, but
9 hopefully it will be by the next time we see it.

10 And that's all I have.

11 CHAIRMAN WELLES: Okay. As always, we
12 thank you for your due diligence.

13 Are there any other comments from the board?

14 MR. WAGNER: Mr. Chairman, I had one thing
15 cross my mind. You voted earlier to open the comment
16 period for 30 days, and then I got to thinking, oh, we're

17 going to have to issue a public notice on that. And we
18 probably won't get that published in the newspaper until
19 late in the next week. So I wonder if I could ask if the
20 board would reconsider that and consider opening the
21 comment period for 45 days.

22 CHAIRMAN WELLES: Yeah. I think that's
23 probably a good point.

24 So did you understand that, Lorie?

25 MS. CAHN: (Nods head.)

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1 CHAIRMAN WELLES: I would suggest, then,
2 that we change the motion to reopen the comment period
3 for 45 days instead of 30 days.

4 MR. APPELATE: Would you entertain a
5 motion to that effect?

6 MS. CAHN: I have a motion to extend
7 public comment period for 45 days, rather than 30 days.

8 MR. APPELATE: Second.

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

11 (All members vote aye.)

12 CHAIRMAN WELLES: Hearing none opposed,
13 motion passes. So the comment period will now be
14 extended 45 days.

15 Is there any other comment from DEQ or public
16 or board?

17 MR. WAGNER: Mr. Chairman, I can -- I
18 think we can probably go off the record because it
19 doesn't have anything to do with the rule. But if you're
20 interested, I can bring you up to speed on a couple of
21 the Water Quality Division issues that are currently
22 going on, in particular the CBM work group and what
23 they've done and so on.

24 CHAIRMAN WELLES: Okay.

25 MR. WAGNER: But we may want to just go

0075

1 off the record on that. I don't know.

2 CHAIRMAN WELLES: Pleasure of the board.
3 We'll go off the record.

4 MS. CAHN: Can I stay on line and hear?

5 CHAIRMAN WELLES: Sure.

6 MS. CAHN: Can we keep Jackson open so I
7 can hear?

8 MR. WAGNER: Yes. I think it's just a
9 matter of the court reporter can finish his work.

10 MR. APPELATE: So are we ready to
11 adjourn? You want a motion to continue?

12 CHAIRMAN WELLES: Yeah. I guess we'll do
13 that. We'll have a motion to adjourn. Okay? But then
14 we will continue to hear a discussion with DEQ.

15 MR. APPELATE: I move we adjourn.

16 MS. BEDESSEM: Second.

17 CHAIRMAN WELLES: We have a motion and a
18 second to adjourn this meeting. All those in favor

19 please say aye.
20 (All members vote aye.)
21 CHAIRMAN WELLES: Opposed?
22 (No response.)
23 CHAIRMAN WELLES: Motion passes. So we
24 are officially off the record.
25 (Hearing proceedings concluded)

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1 C E R T I F I C A T E

2
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 16th day of February, 2011.

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15 RANDY A. HATLESTAD
16 Registered Merit Reporter

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