

**DRAFT MINUTES
ENVIRONMENTAL QUALITY BOARD
November 18, 2003
Quartz Mountain Lodge
Lone Wolf, Oklahoma**

Approved
February 27, 2004

Notice of Public Meeting The Environmental Quality Board convened for a regular meeting at 9:30 a.m., November 18, 2003 in the Caddo Room at Quartz Mountain Lodge, Lone Wolf, Oklahoma. This meeting was held in accordance with 25 O.S. Sections 301-314, with notice of the meeting given to the Secretary of State on October 13, 2003. The agenda was mailed to interested parties on November 7, 2003 and was posted on November 14, 2003 at the Department of Environmental Quality and at Quartz Mountain Lodge. Mr. Richard Wuerflein, Chair, called the meeting to order. Roll call was taken and a quorum was confirmed.

MEMBERS PRESENT

Richard Wuerflein
Brita Cantrell
Mike Cassidy
Jack Coffman
Bob Drake
Jennifer Galvin
Jerry Johnston
Steve Mason
Herschel Roberts
Don Ukens
MEMBERS ABSENT
Roger Miner
Lee Paden
Terri Savage

DEQ STAFF PRESENT

Steve Thompson, Executive Director
Jimmy Givens, General Counsel
Craig Kennamer, Chief of Staff
Eddie Terrill, Air Quality Division
Scott Thompson, Land Protection Division
Jon Craig, Water Quality Division
Judy Duncan, Customer Service Division
Gary Collins, ECLS Division
Myrna Bruce, Secretary, EQ Board/Councils

DEQ STAFF PRESENT

David Dyke, Administrative Services Division
Pam Dizikes, Air Quality Division Legal
Ellen Bussert, Administrative Services Division
Jamie Fannin, Administrative Services Division
Don Pendergraph, ECLS District Manager

OTHERS PRESENT The Attendance Sheet is attached as an official part of these Minutes.

Approval of Minutes Mr. Wuerflein called for motion to approve the Minutes of the September 9, 2003 Regular Meeting. Mr. Johnston made motion to approve the Minutes as presented. The second was from Mr. Coffman.

Roll call.		Jerry Johnston	Yes
Brita Cantrell	Yes	Steve Mason	Yes
Mike Cassidy	Yes	Herschel Roberts	Abstain
Jack Coffman	Yes	Don Ukens	Yes
Bob Drake	Yes	Richard Wuerflein	Yes
Jennifer Galvin	Yes		Motion carried.

Rulemaking - Air Pollution Control

OAC 252:100-41 and Appendix E and F -- Ms. Sharon Myers, Air Quality Council Chair, advised that the proposed amendments to OAC 252:100-41 would incorporate by reference any changes that were made in federal standards that effect the NESHAPS to bring the rules in line with the federal rules. Ms. Myers added that changes to Appendix E and F would bring the Ambient Air Quality Standards for ozone in line with the federal standards. Hearing no discussion, Mr. Wuerflein called for a motion. Motion was made by Mr. Mason to accept the proposals as presented. Second was by Mr. Drake. Mr. Eddie Terrill, Air Quality Division Director, asked for confirmation from Ms. Krug, Assistant Attorney General, as to whether two votes should be taken; one for SC 41 and

another for Appendix E and F. Ms. Krug advised that one vote would be sufficient as both proposals are in Agenda Item #4. Mr. Wuerflein requested roll call.

Roll call.		Jerry Johnston	Yes
Brita Cantrell	Yes	Steve Mason	Yes
Mike Cassidy	Yes	Herschel Roberts	Yes
Jack Coffman	Yes	Don Ukens	Yes
Bob Drake	Yes	Richard Wuerflein	Yes
Jennifer Galvin	Abstain		Motion carried.

Consideration of and Action on the Environmental Quality Report - Mr. Wuerflein called upon Mr. Craig Kennamer, Chief of Staff. Mr. Kennamer outlined the DEQ’s needs for providing environmental services within its jurisdiction, gave an update on new federal mandates, and an update on recommended statutory changes. Those statutory proposals included:

- 1) A request to repeal the statute concerning the biomedical waste facility Certificate of Need to make it consistent with all the other programs;
- 2) A proposal to change the statute to exempt small air emissions sources emitting under 40 tons per year from the requirement to obtain a permit;
- 3) Addition of a definition of 'Prior Converted Croplands' to the definition of "waters of the state" to be consistent with the federal program;
- 4) Correction of a scrivener's error in last year's Laboratory Services bill, to make it clear that DEQ can supply laboratory services to public water supplies;
- 5) Based on a liability case at a Superfund site, addition of an exemption in the Tort Claims Act for immunity from liability for remediation activities when the government is acting in a capacity to protect its citizens;
- 6) Legislation that clarifies DEQ’s access to Superfund sites;
- 7) In the Brownfield Program, a proposal for a deed restriction on property so that a new owner has to preserve the integrity of the cleaned-up site; and
- 8) Adding (e.g.) petroleum sites and mining sites to eligibility under the Brownfield program.

Mr. Kennamer and Mr. Thompson fielded questions and comments regarding the legislative proposals. Mr. Wuerflein called for motion to accept the Environmental Quality Report as presented. Motion was made by Mr. Johnston and seconded by Ms. Galvin.

Roll call.		Jerry Johnston	Yes
Brita Cantrell	Yes	Steve Mason	Yes
Mike Cassidy	Yes	Herschel Roberts	Yes
Jack Coffman	Yes	Don Ukens	Yes
Bob Drake	Yes	Richard Wuerflein	Yes
Jennifer Galvin	Yes		Motion carried.

New Business -- Mr. Wuerflein recognized Senator Robert Kerr who welcomed the Board to Senate District 38 and expressed his appreciation for the very important and difficult job that the Agency does and the accomplishments it has made.

Executive Director’s Report -- Mr. Thompson provided members a copy of the 2003 Environmental Quality Report and commended Denise Harkins for the graphics, Wendy

Caperton as coordinator, and Division staff for contributions. Mr. Thompson announced that he is now Vice-President of ECOS and would leave immediately following the meeting to attend a meeting in Washington DC where he hoped to discuss funding to meet the needs of Water/Wastewater infrastructure; talk about impacts new drinking water requirements will have on small communities; discuss with President's Council relations between states and EPA; and, to meet with new EPA Administrator, Michael Leavitt.

Mr. Thompson stated that he is proud of the work being done at Tar Creek by the Land Protection Division, particularly Mary Jane Calvey's extraordinary job as coordinator.

He related that future 'big ticket' issues would include all issues surrounding Grand Lake and treatment of State status with tribes.

Mr. Thompson pointed out that DEQ is the recipient of an award for its Reclamation Program where old dilapidated buildings and property are turned into soil conservation programs that we call rural Brownfield program. He commended Marvin Boatright of the Land Protection Division for his work on that program.

Mr. Thompson stated that OGE had received an award for their effort in ScienceFest 2003 at the Oklahoma City Zoo; and they, in turn, recognized the DEQ for its participation in this day of environmental education and learning about environmental issues.

The floor was opened for questions, comments, and discussions regarding the above-mentioned items.

Jimmy Givens, General Counsel, advised that the Agency had received a rulemaking petition from the PACE Union, Ponca Tribe, and Concerned Citizens of Ponca City asking for a significant additional stringency in the fugitive dust rule. Mr. Givens stated that the proposal was presented in October to the Air Quality Council. The Council instructed staff to proceed with the rulemaking process and that item will be on the agenda for the January 14, 2004 Air Quality Council meeting.

With no further questions or comments, Mr. Wuerflein called for a motion to adjourn. Mr. Coffman made that motion with the second from Mr. Drake. The meeting adjourned at 10:30 a.m. with public forum following.

A copy of the transcript and the attendance sheet are attached and made an official part of these Minutes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPARTMENT OF ENVIRONMENTAL QUALITY BOARD
STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS
OF REGULAR MEETING - ITEM NUMBERS 1-6
HELD ON NOVEMBER 18, 2003, AT 9:30 A.M.
QUARTZ MOUNTAIN LODGE
LONE WOLF, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MEMBERS OF THE ENVIRONMENTAL QUALITY BOARD

- MS. CANTRELL - MEMBER
- MR. CASSIDY - MEMBER
- MR. COFFMAN - MEMBER
- MR. DRAKE - MEMBER
- MS. GALVIN - MEMBER
- MR. JOHNSTON - MEMBER
- MR. MASON - VICE CHAIR
- MR. MINER - MEMBER
- MR. PADEN - MEMBER
- MR. ROBERTS - MEMBER
- MS. SAVAGE - MEMBER
- MR. UKENS - MEMBER
- MR. WUERFLEIN - CHAIR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STAFF MEMBERS

- MS. MYRNA BRUCE - SECRETARY
- MR. STEVE THOMPSON - EXECUTIVE DIRECTOR
- MR. EDDIE TERRILL - DIRECTOR/AIR
- MR. JON CRAIG - DIRECTOR WATER QUALITY
- MS. ELLEN BUSSERT - ADM SERVICES
- MR. CRAIG KENNAMER - CHIEF OF STAFF
- MR. JIMMY GIVENS - AGENCY COUNSEL
- MS. SUSAN KRUG - ASST. ATTORNEY GENERAL

1

2

3

PROCEEDINGS

4

5

MR. WUERFLEIN: Good morning.

6

Welcome to the DEQ meeting.

7

The regular meeting of the

8

Environmental Quality Board has been called

9

according to the Oklahoma Open Meeting Act,

10

Section 311 of Title 25 of the Oklahoma

11

Statutes. Notice was filed with the

12

Secretary of State on October 8, 2002.

13

Agendas were mailed to interested parties

14

on August 27, 2003.

15

The agenda for this meeting was

16

posted at the Quartz Mountain Lodge and the

17

DEQ, 707 North Robinson in Oklahoma City,

18

Friday, November 14, 2003.

19

Only matters appearing on the posted

20

agenda may be considered.

21

If this meeting is continued or

22

reconvened, we must announce today the

23

date, time and place of the continued

24

meeting and the agenda for such

25

continuation will remain the same as

1 today's agenda.

2 I hope everybody had a chance to
3 meet Representative Walker. We are sure
4 glad to have you here. Do you have any
5 comments to make or something, we would
6 sure entertain them.

7 REPRESENTATIVE WALKER: I want to
8 welcome everyone here to southwest
9 Oklahoma. And I hope you enjoy your stay.
10 I'm just sitting in this time and seeing
11 what's going on and maybe I'll learn
12 something. I'm sure I will.

13 MR. WUERFLEIN: We appreciate
14 having you.

15 REPRESENTATIVE WALKER: Thank
16 you.

17 MR. WUERFLEIN: Call the roll
18 call.

19 MS. BRUCE: Good morning. Ms.
20 Cantrell.

21 MS. CANTRELL: Here.

22 MS. BRUCE: Mr. Cassidy.

23 MR. CASSIDY: Yes.

24 MS. BRUCE: Mr. Coffman.

25 MR. COFFMAN: Here.

1 MS. BRUCE: Mr. Drake.

2 MR. DRAKE: Here.

3 MS. BRUCE: Ms. Galvin.

4 MS. GALVIN: Here.

5 MS. BRUCE: Mr. Johnston.

6 MR. JOHNSTON: Here.

7 MS. BRUCE: Mr. Mason.

8 MR. MASON: Here.

9 MS. BRUCE: Mr. Roberts.

10 MR. ROBERTS: Here.

11 MS. BRUCE: Mr. Ukens.

12 MR. UKENS: Here.

13 MS. BRUCE: Mr. Wuerflein.

14 MR. WUERFLEIN: Yes.

15 MS. BRUCE: For the record,

16 absent are Mr. Minor, Mr. Paden, and Ms.

17 Savage.

18 MR. WUERFLEIN: Okay. First on

19 the agenda is the approval of the minutes

20 of our September Meeting.

21 MR. JOHNSTON: Move to approve.

22 MR. COFFMAN: Second.

23 MR. WUERFLEIN: Move by Jerry

24 Johnston, second by Jack Coffman. Any

25 discussion? Any other comments on minutes

1 as printed? Vote.

2 MS. BRUCE: Ms. Cantrell.

3 MS. CANTRELL: Yes.

4 MS. BRUCE: Mr. Cassidy.

5 MR. CASSIDY: Yes.

6 MS. BRUCE: Mr. Coffman.

7 MR. COFFMAN: Yes.

8 MS. BRUCE: Mr. Drake.

9 MR. DRAKE: Yes.

10 MS. BRUCE: Ms. Galvin.

11 MS. GALVIN: Yes.

12 MS. BRUCE: Mr. Johnston.

13 MR. JOHNSTON: Yes.

14 MS. BRUCE: Mr. Mason.

15 MR. MASON: Yes.

16 MS. BRUCE: Mr. Roberts.

17 MR. ROBERTS: Abstain.

18 MS. BRUCE: Mr. Ukens.

19 MR. UKENS: Yes.

20 MS. BRUCE: Mr. Wuerflein.

21 MR. WUERFLEIN: Yes.

22 Move right on to Item No. 4.

23 Rulemaking for Section 252:100. Call on

24 Sharon Myers to make the presentation.

25 MS. MYERS: Good morning, Mr.

1 Chairman.

2 MR. WUERFLEIN: Good morning.

3 MS. MYERS: Mr. Thompson.

4 MR. THOMPSON: Good morning.

5 MS. MYERS: The rulemaking
6 presented at this time is affecting
7 Subchapter 41 which is the Air Toxic rule
8 incorporation by reference. It's pretty
9 straightforward incorporating what the
10 federal standards are and there's a list of
11 all those standards in the documents.

12 MR. THOMPSON: She needs to speak
13 into the microphone.

14 MS. MYERS: (Inaudible).

15 MR. WUERFLEIN: Could we move the
16 microphone? There we go. It's still
17 pointing sideways, I think.

18 MS. MYERS: Do you need me to
19 repeat that?

20 Basically, this rule is just
21 incorporating by reference any changes that
22 have been made in the federal standards
23 that affect the NESHAPS to bring our rules
24 in line with the federal rules. It effects
25 Subchapter 41 and also Appendix E and F.

1 And E and F is -- it's bringing the Ambient
2 Air Quality Standards for ozone into what
3 the National Air Quality Standards are.
4 We're just bringing our rules in line with
5 federal standards. Any questions?

6 MR. WUERFLEIN: Any questions
7 from the Board? Nothing controversial that
8 we can't argue forever.

9 MS. MYERS: No.

10 MR. WUERFLEIN: Seeing no
11 questions from the Board, are there any
12 questions from the public? I don't see any
13 from the public. Come back to the Board,
14 is there a motion to accept the proposal.

15 MR. MASON: So moved.

16 MS. BRUCE: I'm sorry, I didn't
17 get who?

18 MR. WUERFLEIN: Steve Mason.

19 MR. DRAKE: Second.

20 MR. WUERFLEIN: Second by Bob
21 Drake. Any other discussion? If not,
22 we'll have roll call on it.

23 MR. TERRILL: Excuse me, do we
24 need to take two votes on this? Susan, do
25 we need to vote on this twice?

1

2 MS. KRUG: That's what I was sitting
3 here trying to figure out.

4 MR. TERRILL: They are two
5 separate things. Subchapter 41 is one
6 change and then Subchapter -- Appendices E
7 and F is another.

8 MS. KRUG: But they are both Item
9 No. 4.
10 So, that would be fine.

11 MR. WUERFLEIN: The motion is to
12 accept all of agenda Item No. 4. Go ahead
13 with the roll call.

14 MS. BRUCE: Ms. Cantrell.

15 MS. CANTRELL: Yes.

16 MS. BRUCE: Mr. Cassidy.

17 MR. CASSIDY: Yes.

18 MS. BRUCE: Mr. Coffman.

19 MR. COFFMAN: Yes.

20 MS. BRUCE: Mr. Drake.

21 MR. DRAKE: Yes.

22 MS. BRUCE: Ms. Galvin.

23 MS. GALVIN: Abstain.

24 MS. BRUCE: Mr. Johnston.

25 MR. JOHNSTON: Yes.

1 MS. BRUCE: Mr. Mason.

2 MR. MASON: Yes.

3 MS. BRUCE: Mr. Roberts.

4 MR. ROBERTS: Aye.

5 MS. BRUCE: Mr. Ukens.

6 MR. UKENS: Yes.

7 MS. BRUCE: Mr. Wuerflein.

8 MR. WUERFLEIN: Yes.

9 MS. BRUCE: The motion passed.

10 MR. WUERFLEIN: Agenda Item No. 5

11 is the Environmental Quality Report. I

12 understand Craig Kennamer is making that

13 presentation.

14 MR. KENNAMER: Good morning, Mr.

15 Chairman. I have the Environmental Quality

16 Report and at the last meeting part of that

17 report was presented, so I'm not going to

18 go over the budget part or the mandate

19 part. But as Paul Harvey says, I have the

20 rest of the story. And this morning I'm

21 going to go over the legislation, the

22 proposed legislation, and we have a couple

23 of items.

24 The first is the biomedical waste

25 facility Certificate of Need which you all

1 are familiar with. We are proposing the
2 repeal of that Statute and the reason for
3 that repeal is that the Certificate of Need
4 that is required by the Board to approve.
5 This is the only instance where the Board
6 does that. It puts the Board and the
7 agency in a position where we are
8 determining market place competition and
9 economic liability. So we propose that we
10 repeal that Statute and make it consistent
11 with all the other programs. Are there any
12 questions on that?

13 MR. THOMPSON: Well, let me just
14 add, I think at the last Board meeting we
15 had discussed making that an opportunity
16 rather than seeking a bill on that. I had
17 conversations with the Solid Waste
18 Industry. There is no one that is opposed
19 to the legislation at all that we've been
20 able to contact. They understand the
21 dilemma that it puts the Board in and so we
22 decided that probably it would be best just
23 to recommend to you that we go forward with
24 legislation to revoke that provision of the
25 law.

1

2 MR. KENNAMER: The second piece is
3 the Air Quality Permit, Exempt Facilities.

4

5 We are proposing that we change the
6 Statute to exempt other sources, small
7 sources, from the requirement to obtain a
8 permit. And these would be facilities that
9 emit under forty pounds per year -- I mean
10 tons per year. And the current exemption
11 is limited to de minimis sources. This
12 would expand that but it would mean about
13 three percent of the total tons emitted per
14 year. So it's not a large pollutant but
15 what it does, it saves in staff time
16 regulating these facilities by issuing
17 permits. They are still subject to the
18 National Emissions Standards, they just
19 wouldn't be subject to the permitting
20 requirements and the fees. So we're
21 proposing this legislation to allow staff
22 to adjust their time to work on the more
23 important emitters which represent about
24 ninety-seven percent of the emissions that
25 are emitted each year.

1 Questions on that one?

2 MR. COFFMAN: Can you give us an
3 example of what a small emitter under that
4 less than forty tons, would be?

5 MR. TERRILL: The bulk of them
6 are going to be E and P sources,
7 Exploration and Production sources. We've
8 got probably -- the industry estimates
9 somewhere between 75 and 150 thousand small
10 sources out there that are not in our
11 system anyway and we just needed a way to
12 get them out -- either that or we need to
13 permit them. And it was just felt that it
14 was easier to do this because we really
15 don't do anything as far as reductions or
16 anything that would just fee them and
17 permit them and we just feel like our
18 resources can be used for better purposes.
19 It's not fair just to take that one
20 segment, so we thought we would include
21 this as a broad exemption, if you will, to
22 include all small business-type sources
23 like that. But the greatest bulk of them
24 are Exploration and Production sources.

25 MR. COFFMAN: So small gas

1 engines or small diesel engines, stationary
2 sources, mud pumps, those devices?

3 MR. TERRILL: Yes. Anything
4 where the (inaudible) is forty tons or less
5 of the criteria, we're going to exempt
6 them. But as I said, the only thing we're
7 concerned about -- we're going through the
8 rulemaking and have been for about a year
9 with the Council though we still haven't
10 got EPA approval yet to do this. But our
11 only concern is the inventory, we need to
12 have a way to make sure we know what the
13 inventory is when we need it. We aren't
14 doing anything for these folks anyway,
15 other than feeing them. And we just feel
16 like we have a better use of our resources
17 to turn our attention a way to other
18 things.

19 MR. COFFMAN: Thank you.

20 MR. WUERFLEIN: Thank you, Eddie.

21 MR. KENNAMER: This next one is
22 Prior Converted Croplands Definition. Last
23 year you may remember that we changed the
24 definition of "waters of the state" to
25 specifically clarify that surface

1 contaminants, wastewater surface
2 contaminants, that are exempted from the
3 regulations and also what was included with
4 prior converted croplands were exempted
5 from the definition of "waters of the
6 state".

7 So at the time we did that we were
8 supposed to also include or were requested
9 to include a definition for what prior
10 converted croplands meant. And that
11 definition did not make it into the
12 legislation. So we're proposing to add --
13 re-open that and add that definition of
14 "prior converted croplands". That will
15 make it consistent with federal law which
16 is the "Swampbuster" legislation which has
17 the definition of "prior converted
18 croplands". That will make it consistent
19 with federal law and will enable us to keep
20 our delegation program pretty consistent
21 with the federal program. Questions on
22 that one?

23 The next one is Laboratory Services
24 Statutes "Cleanup". Last year when that
25 Laboratory section was opened up and they

1 did some clean-up work, they made a
2 scrivener's error. And they changed the
3 language so that when we provide laboratory
4 services to public water supplies, it now
5 has to be done under a pollution context,
6 which isn't correct. We don't always
7 address or we don't always provide
8 laboratory services to public water
9 supplies under a pollution context. So we
10 just went back and clarified that language
11 so that it makes it clear that we can
12 supply laboratory services to public water
13 supplies without having a pollution element
14 to it.

15 MR. THOMPSON: Let me --

16 MR. KENNAMER: That also
17 eliminates some other language, some
18 outdated language.

19 MR. THOMPSON: And let me just
20 tell the Board that that scrivener's error
21 was not an error in the agency, it was done
22 by someone trying to be helpful to us. And
23 so we're going to go back and see if we
24 can't clarify that language.

25 MR. KENNAMER: The other thing

1 that that part does, is it identifies that
2 we can provide public water supplies
3 services to tribes. That was not clearly
4 stated, the laboratory services for tribes.

5 The next area is in the area of
6 Environmental Cleanups. And this is a
7 situation where we actually had a real live
8 incident that occurred out by Henryetta.
9 And what we're trying to do is amend the
10 law so that Tort Claim liability doesn't
11 occur when a state or municipality is
12 involved in a superfund type clean up. And
13 in the Henryetta site, the remediation
14 involved a large area and a new property
15 owner came in and bought some property next
16 to it and then claimed that the remediation
17 work was damaging -- or had damaged his
18 property.

19 And, under federal law, the State
20 and the federal government are shielded
21 from liability, but the municipality is
22 not. And if it's a State operated site,
23 it's not clear whether the State can also
24 be shielded from liability. So what we've
25 done here is clearly, under the Torts

1 Claims Act, clearly exempted governmental
2 entities from who perform these remediation
3 efforts, because they've already extended a
4 tremendous amount of dollars and then to be
5 caught up in litigation defending something
6 that they had done on the property to
7 protect human health and the environment is
8 wrong. And Henryetta is still -- while we
9 received summary judgment and were let out
10 of the case, Henryetta is still tied up in
11 the case.

12 MR. THOMPSON: This kind of thing
13 has a very chilling effect on what -- the
14 way the agency tries to operate. It is our
15 desire to clean up these sites and then
16 turn them over to the municipality through
17 some -- through a variety of arrangements
18 so that it can be used as an economic
19 development tool for that community.

20 We've done that in a number of
21 places. We're doing it at Okmulgee, we're
22 doing it at Duncan, we've done it at
23 Henryetta. There's a range of these kinds
24 of activities that are going on and when a
25 community -- when they are brought

1 litigation on this thing it has a sort of a
2 chilling effect on their desire to do that.
3 So it's a good effort and I think they just
4 need extra protection.

5 MR. MASON: Throughout
6 government, is government generally exempt
7 from tort claims.

8 MR. THOMPSON: I'm going to turn
9 to my legal staff to try to answer that.

10 MR. WUERFLEIN: Are you looking
11 at Jimmy or Susan?

12 MR. THOMPSON: I'm looking at
13 Jimmy or Susan or Craig for that matter.

14 MR. JIMMY GIVENS: I'll start it
15 off and let the others chime in.

16 I guess the answer to your question
17 is, yes, in the sense that the State enjoys
18 sovereign immunity except to the extent
19 that it waives it. What we have done in
20 this particular legislation is add this
21 exemption to a set of exemptions in the
22 Tort Claims Act that make very clear that
23 when the government is acting in a capacity
24 in essence to protect its citizens that it
25 should enjoy some immunity from liability

1 for those sorts of activities. So under
2 some circumstances the government can be
3 sued, but generally speaking the government
4 has to give you permission to sue. Does
5 that make sense? You want to elaborate on
6 that?

7 MS. KRUG: No, that's fine.

8 MR. COFFMAN: Steve, was your
9 question then why Henryetta is tied up in
10 this?

11 MR. MASON: I think, yes.

12 MR. CRAIG KENNAMER: Well, I
13 think one of the things is that while
14 Henryetta probably will prevail on this
15 issue -- it's not as clear when you get
16 down to the municipality/local government
17 areas. So they've still got all the
18 litigation expense of defending their
19 position.

20 MR. JIMMY GIVENS: Yes. It's
21 probably better to say that you enjoy
22 immunity from liability than it is to say
23 that you can't be sued. Because you can be
24 sued.

25 MS. KRUG: Anybody can always be

1 sued. It's just the (inaudible) and the
2 details of to what extent and for what
3 activities.

4 MR. THOMPSON: I guess the way I
5 would explain this is that it makes it much
6 simpler for municipalities to seek summary
7 judgments against these kinds of activities
8 because it is clarified, it is more clear
9 in the law that they are not held
10 accountable. Is that reasonable?

11 MS. KRUG: Yes.

12 MR. KENNAMER: They'll be able to
13 go the same speed that would --

14 (Multiple Speakers)

15 MR. WUERFLIEN: Is there any
16 other questions?

17 MR. MASON: Let me ask you
18 another question. Let's say we had botched
19 the cleanup in Henryetta. What can the
20 public do?

21 MR. KENNAMER: That was the
22 discussion we were having earlier.

23 MR. JIMMY GIVENS: Let me begin
24 by saying that's not the situation here.

25 MR. MASON: I appreciate that it
is not here but as a citizen.

MR. GIVENS: It is the same as

1 what we were talking about earlier, in the
2 sense that there are times the government
3 simply says that the concerns of the
4 government in protecting its citizens are
5 more important than the private rights that
6 a citizen might otherwise have to recovery.
7 And that's what we're dealing with here.
8 It's like a number of other exceptions in
9 the Statute.

10 MR. MASON: Thank you.

11 MR. KENNAMER: The next area is
12 also in the Superfund Brownsfield area of
13 legislation. And we are proposing to have
14 legislation that allows us to have access
15 to Superfund -- proposed Superfund sites.

16 Part of the problem that we are
17 faced with now -- now that the program is
18 shifting more into a State Superfund
19 Program and we have less involvement with
20 the federal government, the federal
21 government had an access statute, an access
22 ability under their law. And now that we
23 are doing more State-led programs, we need
24 to be able to have that same access
25 capability because often times we need to

1 react and get into the property and do
2 something pretty quick before there's a
3 threat to human health and the environment.
4 We had an instance recently where it took
5 us over a year to get access to a piece of
6 property and in order for us to get in and
7 investigate this property and make sure we
8 protect the property and protect human
9 health from exposure, we need to get that
10 access pretty quickly.

11 And I was involved early on in the
12 Harsh-Crimer site and that was one of the
13 key problems there, was getting access to
14 prevent further releases and further
15 exposure. And so this would definitely
16 benefit the State and local entities to
17 have access to these kinds of properties.

18 MR. WUERFLEIN: You said
19 something about State-led programs, does
20 that mean State Director or does that mean
21 the lead cleanup, that you're having
22 trouble getting access?

23 MR. KENNAMER: What I mean by
24 that is, that we take the lead.

25 MR. WUERFLEIN: Okay.

1 MR. KENNAMER: Another area that
2 we're looking at the Superfund Brownsfield
3 is that we're looking to put deed
4 restrictions on property so that if a
5 subsequent owner comes in and takes the
6 property through a sheriff sale or
7 whatever, they see that the property has
8 had a clean-up and they can preserve the
9 integrity of the clean-up.

10 We've had another real life
11 circumstance where a subsequent owner came
12 in and purchased the property and then
13 operated on the property to destroy the
14 remediation that had already occurred.
15 They affected the cap over the Superfund
16 site. So what we're trying to do here is
17 have a notice that's put on the deed so
18 that anybody who buys the property knows
19 there's some responsibilities that come
20 with the property, that they have to
21 protect the integrity of the cap and they
22 have to operate on that property so that
23 there is no future exposure. Because it's
24 very expensive to spend hundreds of
25 thousands and millions of dollars on these

1 pieces of property and then have somebody
2 come in and within months do enough damage
3 that you've got to go back and do extensive
4 repair costs.

5 So we're looking at trying to do
6 something along those lines. We've already
7 had in the law a notice requirement, this
8 would just expand the notice requirement to
9 put everybody on notice that if you do do
10 damage that you can be liable for it.

11 The last thing is the Brownsfield
12 law. What we're doing is just expanding
13 the scope of what can be included in those
14 projects. Under federal law they have a
15 specific list of items that can (inaudible)
16 with Brownsfield program. What we'd like
17 to do is be able to react more quickly to
18 that. For example, we'd like to be able to
19 add petroleum sites and mining sites to the
20 Brownsfield program. Current law is
21 limited it to regulated substances which is
22 a defined term. We're proposing to change
23 that to pollution, which would expand our
24 scope and enable us to move quicker on
25 those kinds of Brownsfield sites.

1

2 And that's pretty much it for
3 legislation.

4 MR. THOMPSON: Keep in mind on
5 the Brownsfield sites, those are all
6 voluntary projects. People come into the
7 Brownsfield area with a desire to clean up
8 an area. So I suspect sometime during the
9 session we'll be asked if we're trying to
10 encroach through this program on other
11 folks. And we're just trying to expand the
12 opportunity for people to be involved in
13 the voluntary program.

14 MR. KENNAMER: Thank you.

15 MR. WUERFLEIN: Thank you, Craig.
16 Open it up for further questions from the
17 Board. Jack.

18 MR. COFFMAN: Steve, I guess,
19 maybe that concept though would -- do you
20 think that would expand the number of
21 property owners coming to DEQ asking for
22 funding and then do you think the State has
23 the resources to step up to that?

24 MR. THOMPSON: Well, there are
25 grants -- federal grants that are sometimes

1 available for these things. We have never
2 promised grant money for Brownsfield
3 projects and when somebody comes to us and
4 wants us to supervise a Brownsfield clean
5 up, our costs are a part of those
6 negotiations. So we cover our costs pretty
7 well.

8 MR. WUERFLEIN: Anyone else? If
9 not, I'll open this up to questions or
10 comments from the public. Any questions or
11 comments from the audience.

12 REPRESENTATIVE WALKER: I've
13 heard the term Brownsfield but I'm not sure
14 what that is?

15 MR. THOMPSON: Brownsfield
16 project is an old, generally, industrial
17 site that because of concerns for liability
18 people shy away from those sites, or have
19 in the past. Now, through a program that
20 is operated both at the State and federal
21 level, the State of Oklahoma, the
22 Department of Environmental Quality has the
23 ability to certify that a site is clean for
24 a specific use. So if you have a project
25 that you want to take a piece of property

1 that you would otherwise be concerned about
2 the liability, come to the Department with
3 an idea for use, we can develop with you a
4 risk-based assessment for that use. And if
5 that is cleaned up to the appropriate
6 level, we will certify that it is
7 appropriate for that use.

8 So it brings some of these old
9 damaged properties back in to value. It
10 brings value back to those properties.
11 It's a really, really good program. We've
12 done a lot of work. I know we've done some
13 work in Tulsa with an old chemical plant.
14 We did some work with Sand Springs, there's
15 a Walmart property that sits there now.
16 There's some Home Depot properties. I'm
17 sure Scott can tell us. But that's the
18 kind of thing, this is property that nobody
19 would come near. Folks have come to us and
20 say if we clean it up to this level for
21 this use, can we use it? And we go through
22 the risk assessment and then we do a
23 certification that can be used for that
24 purpose. So it's a neat program.

25 MR. JOHNSTON: It's economic

1 development --

2 MR. THOMPSON: It's a good
3 economic development tool. It's a -- we
4 like it. We're just trying to expand it.
5 This legislation just expands it so that
6 other people can take advantage of it.

7 MR. WUERFLEIN: Any other
8 questions? Comments? While I'm going to
9 pause, I want to recognize Senator Robert
10 Kerr. We thank you for coming. I saw you
11 walk in during the discussion. Do you have
12 any comments to make to the group?

13 SENATOR KERR: Yes. I'd just
14 like to say that you have a very important
15 and difficult job and certainly I
16 appreciate all that you do. I want to
17 welcome you to Senate District 38 and our
18 beautiful Quartz Mountain Lodge and thank
19 you for picking this place as the site for
20 your meeting.

21 MR. WUERFLEIN: Thank you,
22 Senator. We've really enjoyed it here. If
23 there are no other comments, I'll return to
24 the Board and ask for a motion to accept
25 the report or to approve the call of

1 action.

2 MR. JOHNSTON: So moved.

3 MR. WUERFLEIN: Jerry Johnston

4 moved.

5 MS. GALVIN: Seconded.

6 MR. WUERFLEIN: Seconded by

7 Jennifer. Any other discussion? Call for

8 a roll call, Myrna.

9 MS. BRUCE: Ms. Cantrell.

10 MS. CANTRELL: Yes.

11 MS. BRUCE: Mr. Cassidy.

12 MR. CASSIDY: Yes.

13 MS. BRUCE: Mr. Coffman.

14 MR. COFFMAN: Yes.

15 MS. BRUCE: Mr. Drake.

16 MR. DRAKE: Yes.

17 MS. BRUCE: Ms. Galvin.

18 MS. GALVIN: Yes.

19 MS. BRUCE: Mr. Johnston.

20 MR. JOHNSTON: Yes.

21 MS. BRUCE: Mr. Mason.

22 MR. MASON: Yes.

23 MS. BRUCE: Mr. Roberts.

24 MR. ROBERTS: Aye.

25 MS. BRUCE: Mr. Ukens.

1 MR. UKENS: Yes.

2 MS. BRUCE: Mr. Wuerflein.

3 MR. WUERFLEIN: Yes.

4 Next on your agenda is new business.

5 Is there anything presented to the staff

6 since the agenda came out? Seeing none,

7 I'll call on Steve Thompson.

8 MR. THOMPSON: Thank you, Mr.

9 Chairman. First of all, I'd like to call

10 your attention to our annual report. This

11 is a document that I believe has gotten to

12 be a better and better document every year.

13 What we have tried to do with the document

14 is to tell some stories, some good stories

15 about what's going on with the agencies,

16 plus, list all the beancounts that we do,

17 all the activities that we do. This year

18 because of circumstances across the world

19 we wanted to honor the people that's served

20 in reserve units or in guard units that are

21 also employees of the department. So that

22 is our lead story.

23 This is a product of really a couple

24 of people. First, Denise Harkin, who is

25 our graphic artist is responsible for what

1 I think is a much improved, very slick,
2 very nice report. She works for Judy
3 Duncan, in her shop, in our customer
4 services shop, and has done a great job
5 with this. Wendy Caperton, of my staff,
6 coordinates the effort for the annual
7 report and, of course, we have
8 contributions from all the divisions in the
9 agency. So I would encourage you to look
10 through the report and if you have
11 questions about any of the articles or any
12 of the statistical information in there,
13 let us know.

14 Just to let you know, I think I
15 reported to you at the last meeting that I
16 had been elected as the Secretary/Treasurer
17 of the National Environmental Commissioners
18 Association which is called ECOS. Since
19 that time, the Vice-President has chosen to
20 seek other pastures and so I have moved up
21 to the position of Vice-President of that
22 organization. I hope I don't move through
23 the leadership positions that quickly as we
24 go along because I'll be out of office in a
25 year. But as a result of that I am leaving

1 this evening for Washington for a meeting
2 in the White House tomorrow evening with
3 the President's Council on Environmental
4 Quality, as an officer of that
5 organization.

6 We're going to tee up a number of
7 things that we have talked about here with
8 that Council, the increasing gap between
9 funding for water and wastewater
10 infrastructure and our capacity to meet
11 those needs which is growing daily. We are
12 going -- I am specifically asked to talk
13 about the impacts that all new
14 requirements, safe drinking water
15 requirements are going to have on
16 communities, particularly small
17 communities.

18 Our best estimate is that when we
19 get through all the safe drinking water
20 rules through the year, I think 2006, rate
21 payers are going to see a sixty percent
22 increase in their utility bills as a result
23 of those issues. So we're going to discuss
24 with the President's Council the impacts to
25 small communities and we'll also talk about

1 the relationship between states and the
2 Environmental Protection Agency which needs
3 some work.

4 Following that, at some time while
5 I'm up there, we are also scheduled to meet
6 -- I don't think the time is quite set --
7 we're scheduled to meet with the new
8 administrator of EPA, the former Governor
9 of Utah, Michael Levitt. I think our
10 discussion will probably be along the same
11 lines but we'll probably have more
12 discussion about our relationship and our
13 working relationship with EPA than anything
14 else.

15 So I'm excited to be a part of that
16 effort and hopefully we'll do some good.
17 You do these things to do good for Oklahoma
18 and hopefully we can do some good for
19 Oklahoma while we're up there.

20 I think you're all aware that the
21 issues surrounding Tar Creek continue to
22 make -- to be discussed. In spite of the
23 issues that are high on the discussion
24 list, I am extremely proud of the work that
25 Scott Thompson and the Land Protection

1 Division has done to provide, for all
2 policy makers, a common sense approach to
3 remediation of the land and some efforts to
4 remediate some water issues up there. We
5 have worked closely with the University of
6 Oklahoma. Senator Inhofe has committed 45
7 million dollars to that effort. And
8 regardless of what else happens, we believe
9 that is money that can be well spent in
10 that area and we're looking forward to that
11 effort.

12 I particularly want to mention Mary
13 Jane Calvy. The issues surrounding -- all
14 the issues surrounding Tar Creek are
15 extremely difficult for one person to get
16 their arms around and to be able to
17 discuss. And she has done an extraordinary
18 job as our Tar Creek Coordinator. So I
19 wanted to mention her particularly.

20 An issue that I think we're going to
21 be dealing with in the future, sort of one
22 of the big ticket items, is issues
23 particularly surrounding Grand Lake. There
24 is a lot of desire on the part of agencies,
25 legislators, citizens, to look holistically

1 at the impacts at Grand Lake not only from
2 area sources but from Tar Creek. I think
3 you are all aware that we did a fish study
4 at Tar Creek -- I mean at Grand Lake
5 although it was not actually in Grand Lake,
6 it was at the Neosho and Spring Rivers, and
7 found lead in the bones of fish there. So
8 there is great interest in taking a look at
9 all the issues around Grand Lake. And Jon
10 Craig, of our Water Quality Division, has
11 been instrumental in getting folks together
12 to look at that. So it is something that
13 we will be looking at in the future.

14 One of the issues that we are
15 becoming more and more involved in as an
16 agency is treatment of State status with
17 tribes. There are, depending upon who you
18 talk to, thirty-seven, thirty-eight,
19 thirty-nine, federally/recognized tribes in
20 the State of Oklahoma. The potential
21 impact for EPA giving all of those tribes
22 treatment as state status as far as air
23 quality and water quality and the ability
24 to meet water quality standards, we think
25 could be a nightmare. So we have devoted

1 more and more staff time to that issue. I
2 suspect that -- we think that the treatment
3 of state status the determination by EPA
4 will be made for the Cherokees in the air
5 program, very soon. And we will react to
6 that depending upon the determination that
7 EPA makes. The decision making authority
8 for that lies with the regional
9 administrator in Dallas. So we are waiting
10 to see what kind of determinations are made
11 there.

12 We were the recipient recently of an
13 award. It's an award for a program, our
14 reclamation programs, our building
15 reclamation programs where we take old
16 dilapidated buildings and turn them into
17 soil conservation programs. That is a
18 program that has gotten a lot of benefit
19 down in this part of the State and in other
20 parts of the State. It's what we call sort
21 of our rural Brownsfield program. Anyway,
22 Marvin Boatright, of also Scott's staff,
23 was sort of the Godfather of that program
24 and that program was rewarded at the recent
25 KOB banquet as being the outstanding

1 government program in the State. So we
2 were excited to receive that.

3 We also received some recognition
4 for an award that was received by our
5 friends at OG&E for their effort at
6 Sciencefest. I think Mr. Coffman talked at
7 the last forum about this effort that was
8 made where five thousand fifth graders were
9 brought into the Oklahoma City Zoo from all
10 across the country for a day of
11 environmental education and learning about
12 environmental issues. I told some folks
13 when I heard about this -- as many things
14 as I hear about or have to deal with in a
15 day -- I heard about this and they said
16 they were going to put it in my schedule.
17 My first thought was, well, here's another
18 thing to put in my schedule. And then, I
19 realized that about fifty percent of the
20 employees of the Air Quality Division had
21 been dedicated to this thing. So my second
22 thought was "Where are all my people
23 going?" But on the day what I arrived at
24 that thing and saw all these children, or
25 these students from all over the country

1 involved in that thing, it was really
2 marvelous and worth all the effort.
3 Anyway, OG&E was the leader of that effort.
4 They received an award and we congratulate
5 them for that and we were also recognized
6 as a part of that.

7 We have one other item we need to
8 mention then I'm going to turn it over to
9 Jimmy but I'll take any questions that you
10 all have. That concludes my report, but
11 I'll take any questions from the Board.

12 MR. MASON: When might we expect
13 EPA to rule about the Cherokee decision?

14 MR. THOMPSON: Well, keeping in
15 mind, Mr. Mason, that we're talking about
16 EPA here, there are -- as we've tracked the
17 issue of the Cherokees. They first began
18 with claiming fourteen counties in
19 northeastern Oklahoma including a pretty
20 significant piece of Tulsa. That
21 application was rejected. So their current
22 application has to do with dependent
23 communities, what they believe are Cherokee
24 dependent communities. We've done some
25 research on that. To be a dependent

1 community you have to have support from the
2 tribe to govern your community and we don't
3 see any evidence of that. Then there's the
4 issue of tribal allotments. And then
5 there's the issue of tribally owned
6 trustland.

7 We believe, in our research of the
8 past court cases, that EPA -- that the
9 courts have supported only the issue of
10 tribally owned trustland. We believe
11 that's the appropriate determination to
12 make but we are unable to have good
13 conversations with EPA about what their
14 determination is. So it could be the
15 dependent communities, individual
16 allotments, tribally owned trustland or it
17 could be any piece of that. We just don't
18 know.

19 UNIDENTIFIED: Mr. Chairman,
20 question of Steve. What on the water issue
21 -- what's driving those cost up.

22 MR. THOMPSON: Most particularly
23 the Safe Drinking Water Act requirements.
24 I have my cheat sheet here. There are a
25 range of requirements that are being -- for

1 cities to meet new drinking water
2 standards: the arsenic standard, the
3 surface water treatment standard, the
4 radionucleid standard, the radon standard,
5 disinfection by-product standard. The fact
6 that groundwater, which has traditionally
7 not had to be disinfected now has to be
8 disinfected. And I don't think we have an
9 argument, except maybe with the arsenic
10 standard, that these aren't necessary
11 standards, it's just the cost of meeting
12 all of those standards. You will recall
13 that -- when we talked about our budget
14 that we're going to ask the legislature for
15 \$850,000 to offset the analytical costs,
16 \$600,000 to meet our equipment needs and we
17 believe at the end of the day when all of
18 these kick in we're going to have seventy-
19 five percent of our communities out of
20 compliance. So we're asking for four
21 people -- for funding for four people to do
22 a technical assistance with these
23 communities. So we're trying to get at
24 least our piece of it a little bit under
25 control but that's not the big cost

1 element. The cost element is the change in
2 treatment. The change in the disinfection
3 material that you have to use. The change
4 in equipment. All of those kinds of costs
5 that are going to be faced by small
6 communities outside of the particular needs
7 that were part of our budget request.

8 MR. JOHNSTON: Could I speak to
9 that just a little. I was on an ALPACA
10 small community project committee that met
11 directly with EPA and I was on that for
12 about five years and up there when they
13 first started talking about arsenic and I
14 asked -- well, I don't know whether to say
15 this in this forum -- anyway, I thought
16 that everything they did to start with was
17 bogus and we visited quite vociferously
18 about that. But their costs figures were
19 figuring small towns \$26,000. And we had
20 what, nine or ten -- we have five hundred
21 and sixty or six hundred and forty towns
22 under twenty-five hundred. And to try to
23 explain this to those people in the
24 beltways is like -- I don't know what it's
25 like, it's very discouraging. Very

1 discouraging.

2 MR. THOMPSON: Well, if I could.
3 The American Water Works Association and
4 the ASDWA which is the Association of State
5 Drinking Waters Administrators have
6 estimated that the cost for removal of
7 arsenic for those communities faced with
8 that is a dollar and twenty-five cents a
9 gallon.

10 MR. JOHNSTON: One of their
11 answers was to go get an alternate supply
12 and blend with what you had. Well, if you
13 could go get an alternate supply, why would
14 you mess with what you had. You know, no
15 common sense -- excuse me.

16 MR. THOMPSON: That's fine. You
17 can be more direct about that than I can.

18 MR. JOHNSTON: I get upset about
19 that every time I think about it.

20 MR. THOMPSON: We have twenty-
21 eight communities in Oklahoma, mostly
22 associated with the Garber/Wellington
23 aquifer that are going to have high arsenic
24 levels. So I guess unless you live -- in a
25 sense we're fortunate. If you lived in New

1 Mexico, eighty percent of your wells would
2 be above the standard for arsenic. And I
3 have no idea what those folks are going to
4 do out there. But Senator -- also Jon has
5 been in contact with Senator Diminici from
6 New Mexico about getting federal aid for
7 communities that are impacted by the
8 arsenic rule. We thought we were going to
9 have the opportunity while I was in
10 Washington to talk with him, and Senator
11 Inhoffe, and Senator Nichols about this and
12 these issues but couldn't work out the
13 schedule. It's going to have a very severe
14 impact on communities, small communities
15 and their rate payers. And we just think
16 that while we're not -- I guess we're no
17 longer going to argue with the standard, we
18 certainly think that some help in meeting
19 those needs is important and so we're going
20 to make a pitch for that.

21 MR. WUERFLEIN: Noah?

22 NOAH: Where do rural water
23 districts fall regulation wise. Are they -
24 - I mean obviously they're small
25 communities but regulatory-wise?

1 MR. THOMPSON: Just like any
2 other water system -- like any public water
3 supply. All public water supplies in
4 Oklahoma are regulated.

5 MR. WUERFLEIN: I've got a
6 question about the tribal deal -- and I
7 know they set their own standard but we've
8 asked for all this legislative money for
9 air quality studies and TMDL water quality
10 studies, can I assume they are not wanting
11 to fund their own water quality studies
12 before they set their standards?

13 MR. THOMPSON: Traditionally,
14 tribal environmental efforts have been
15 funded, I guess one hundred percent by
16 federal funding. So they would -- they
17 could do studies, they would apply to the
18 federal -- to EPA for grant money to do
19 whatever studies they wanted that they
20 deemed necessary and would set standards
21 based on that. I think that the concern
22 that a lot of us have about particularly
23 water quality standards is that they won't
24 do water quality based standards, they
25 don't know how many people are familiar

1 with the issue that's going on in
2 Albuquerque where a tribe set a cultural
3 standard that was apparently an order of
4 magnitude less than the water quality
5 standards. And the city of Albuquerque
6 apparently has spent thirty million dollars
7 in an effort to meet that standard and
8 hasn't come close. And they're, I think
9 they are sort of on hold now. I don't
10 think anything is happening with that right
11 now but there's some estimates that they
12 will need to spend upwards of half a
13 billion dollars in an attempt to meet that
14 standard.

15 And so, if you take that situation
16 and multiply it by the opportunity of
17 thirty-seven, or thirty-eight, or thirty-
18 nine recognized tribes, federal tribes, in
19 Oklahoma and each one of them pursuing
20 treatment of state standards -- I think one
21 of the concerns a lot of people have is
22 this patchwork of standards that we could
23 have across the state and each upstream
24 discharger, whether industrial or
25 municipal, having to meet a standard like

1 that. I don't know that that would happen
2 but there is certainly the opportunity
3 there.

4 MR. WUERFLEIN: Are there any
5 other questions for Steve?

6 MR. THOMPSON: Thank you, Mr.
7 Chairman.

8 MR. WUERFLEIN: Thank you, Steve.
9 Jimmy?

10 MR. GIVENS: As you are aware,
11 when we receive a petition for rulemaking,
12 we are required by the Rule to report to
13 the Board on the status of the petitions
14 that we have received. I don't recall now,
15 I don't believe we mentioned at the Tulsa
16 meeting -- I can't recall now whether it
17 was filed immediately before or immediately
18 after the Tulsa Board meeting. But we have
19 received a petition for rulemaking from the
20 PACE Union, Ponca Tribe, and Concerned
21 Citizens of Ponca City. (Inaudible.) And
22 what they have asked for is a significant
23 additional stringency in the fugitive dust
24 rule. The essence saying that it no longer
25 matters whether the dust is visible when it

1 leaves the property (inaudible) regardless
2 of whether it is visible or not, that would
3 come under the rule and so it would be a
4 significant change in the fugitive dust
5 rule. As I have heard it described and
6 these are not my words but it would
7 essentially become a zero emission rule for
8 fugitive dust.

9 That proposal was presented to the
10 Air Quality Council at their October
11 meeting as our rules require for their
12 consideration about what to do. And the
13 Air Quality Council instructed staff to
14 proceed with the rulemaking process.
15 (Inaudible) but what it does is set the
16 rulemaking process in motion. There has
17 been a notice filed on this proposal that
18 will allow it to be formally considered at
19 the January Air Quality Council meeting for
20 a decision whether this rule should go
21 forward and whether it should be forwarded
22 to this Body for consideration or not.

23 MR. WUERFLEIN: Thank you, Jimmy.

24 That concludes the agenda. Is there
25 a motion to adjourn?

1 MR. COFFMAN: So moved.

2 MR. DRAKE: Second.

3 MR. WUERFLEIN: Jack. Bob Drake.

4 Do we need a roll call on that? All in

5 favor say, aye.

6 BOARD MEMBERS: (Unanimously).

7 Aye.

8

9 (End of Proceeding)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

