

**MINUTES
ENVIRONMENTAL QUALITY BOARD
NOVEMBER 19, 2009
ECU REGENTS ROOM
ADA, OKLAHOMA**

EQB approved
February 26, 2010

Notice of Public Meeting The Environmental Quality Board convened for a regular meeting at 9:30 a.m. in the East Central University Regents Room in Ada, 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 September 8, 2008; July 23, 2009 to add the location; and August 26, 2009 to change the date. The agenda was mailed to interested parties on November 6, 2009 and was posted at the Department of Environmental Quality and the meeting facility on November 17, 2009. Jerry Johnston, Vice-Chair, called the meeting to order. Mr. Duane Anderson, ECU Provost, welcomed the Board to the campus and introduced his staff. Roll call was taken and a quorum was confirmed.

MEMBERS PRESENT

Mike Cassidy
Tony Dark
Bob Drake
David Griesel
Jerry Johnston
Sandra Rose
Richard Wuerflein

MEMBERS ABSENT

Brita Cantrell
Jennifer Galvin
Steve Mason
Terri Savage
Kerry Sublette
John Wendling

OTHERS PRESENT

Whitney Weingartner, Assistant Att'y General
Wes Anderson, HWMAC Vice-Chair
Christy Myers, Court Reporter

DEQ STAFF PRESENT

Steve Thompson, Executive Director
Jimmy Givens, Deputy Executive Director
Martha Penisten, General Counsel
Wendy Caperton, Executive Director's Office
Shellie Chard-McClary, Administrative Services Div.
Eddie Terrill, Air Quality Division
Judy Duncan, Customer Service Division
Gary Collins, Env. Complaints & Local Services
Scott Thompson, Land Protection Division
Jon Craig, Water Quality Division
Chris Armstrong, Customer Service Division
Jon Roberts, Land Protection Division
Don Maisch, DEQ Legal
Rick Austin, ECLS North Central Region
Roy Walker, Administrative Services
Ellen Bussert, Administrative Services
Skylar McElhaney, Executive Director's Office
Karl Heinzig, Administrative Services
Myrna Bruce, Secretary, Board & Councils

The Attendance Sheet becomes an official part of these Minutes.

Approval of Minutes Mr. Jerry Johnston, Vice-Chair, called for motion to approve minutes from the August 24, 2009 Regular Meeting. Mr. Dark made the motion and Mr. Drake made the second.

transcript pages 5 - 6

Mike Cassidy	Yes	Sandra Rose	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Jerry Johnston	Yes
David Griesel	Yes		

Rulemaking – OAC 252:020 Emergency Planning and Community Right-to-Know

Ms. Judy Duncan, Director, Customer Services Division, advised that the proposal would amend the Emergency Planning and Community Right-to-Know rules to update the incorporation by reference of the federal emergency planning rules from July 1, 2004 to July 1, 2009. In 2008, EPA finalized several minor changes to the emergency planning and notification sections of the federal rules. For hazardous chemical reporting

regulations, the Tier I and Tier II forms have been removed from the CFR. In addition, reporting requirements for hazardous chemicals in a mixture have been clarified. Hearing no questions or comments, Mr. Johnston called for a motion. Mr. Griesel made the motion to approve as presented and Mr. Dark made the second.

transcript pages 8 - 11

Mike Cassidy	Yes	Sandra Rose	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Jerry Johnston	Yes
David Griesel	Yes		

Rulemaking – OAC 252:205 Hazardous Waste Management Mr. Wes Anderson, Vice-Chair, Hazardous Waste Management Advisory Council, advised that the proposal would amend the Hazardous Waste Management Rules to update the incorporation by reference of the federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279 from July 1, 2008 to July 1, 2009, except for the federal rules previously exempted. Mr. Anderson advised that two substantive federal rules were being incorporated: the Academic Lab Rule and the Emissions Comparable Fuel Rule. The definition of Solid Waste Rule was not being incorporated. Following discussion, Mr. Johnston called for action by the Board. Mr. Drake moved for adoption and Ms. Rose made the second.

transcript pages 11 - 19

Mike Cassidy	Yes	Sandra Rose	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Jerry Johnston	Yes
David Griesel	Yes		

OAC 252:611 General Water Quality In the absence of both the Chair and the Vice-Chair, Mr. Don Maisch, Supervising Attorney for the Water Quality Division explained that the proposal amends the date of incorporation by reference of federal rules pertaining to entities required to receive a water quality certification from the Department pursuant to Section 401 of the Clean Water Act when the entity is required to obtain a federal permit. This rule change updates the incorporation by reference from July 1, 2008 to July 1, 2009. Mr. Maisch advised that there are no substantive changes in the federal rules and that no public comments had been received. Mr. Johnston called for a motion. Mr. Wuerflein moved adoption and Mr. Dark made the second.

transcript pages 19 - 22

Mike Cassidy	Yes	Sandra Rose	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Jerry Johnston	Yes
David Griesel	Yes		

OAC 252:623 – Pretreatment For Central Treatment Trusts In the absence of both the Chair and the Vice-Chair, Mr. Don Maisch, Supervising Attorney for the Water Quality Division explained that the proposal would amend the date of the incorporation by reference of federal rules pertaining to the Central Treatment Trusts [Oklahoma Ordnance Works Authority (OOWA)] from July 1, 2008 to July 1, 2009. These rules apply only to OOWA, which is located in the industrial park in Pryor, Oklahoma. There are no substantive changes in the federal rules. Hearing no comments, Mr. Johnston called for a motion. Mr. Rose moved for adoption and Mr. Griesel made the second.

transcript pages 22 - 24

Mike Cassidy	Yes	Sandra Rose	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Jerry Johnston	Yes
David Griesel	Yes		

OAC 252:631 – Public Water Supply Operation In the absence of both the Chair and the Vice-Chair, Mr. Don Maisch, Supervising Attorney for the Water Quality Division explained that the proposal would amend the date of the incorporation by reference of federal rules pertaining to public water supplies, except for the federal rules previously exempted, from July 1, 2008 to July 1, 2009. There are no substantive changes in the rules being incorporated in this rulemaking. The update is necessary for the Department to retain primacy and to implement primary drinking water standards pursuant to the federal Safe Drinking Water Act in Oklahoma. Hearing no comments, Mr. Johnston called for a motion. Mr. Dark made the motion and Mr. Drake made the second.

transcript pages 24 -26

Mike Cassidy	Yes	Sandra Rose	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Jerry Johnston	Yes
David Griesel	Yes		

Consideration of and Action on the Annual Environmental Quality Report

Mr. Jimmy Givens, Deputy Executive Director, advised that the Oklahoma Environmental Quality Code requires the DEQ to prepare an “Oklahoma Environmental Quality Report” and to submit it to the Governor, Speaker of the House and Senate President Pro Tem by January 1st of each year. The statutorily prescribed purpose of this report is to outline the DEQ’s annual funding needs for providing environmental services within its jurisdiction, reflect any new federal mandates, and summarize DEQ-recommended statutory changes. The Environmental Quality Board is to review, amend if necessary, and approve the report. Mr. Givens provided a presentation outlining the items included in the DEQ Annual Report. Following discussion, motion was made by Mr. Drake for approval and the second was made by Mr. Griesel.

transcript pages 26 - 55

Mike Cassidy	Yes	Sandra Rose	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Jerry Johnston	Yes
David Griesel	Yes		

Executive Director’s Report – Steve Thompson, Executive Director, had several items to bring to the Board:

- update on the water ruling for Tarrant County, Texas (*pages 55 – 57*)
- the retirement of Jon Craig, Director of the Water Quality Division (*pages 57 – 59*)
- roll-out of the 2009 DEQ Annual Report congratulating Skylar McElhaney for her efforts as the editor and writer (*pages 59 – 60*)
- an update on ARRA, the stimulus act, and congratulated staff for the speed and diligence in getting that money spent where needed (*pages 60 – 62*)
- the ECOS meeting (*pages 62 – 64*)

- the New York Times article regarding Clean Water Act enforcement (*pages 64 – 65*)
- the Brownsfield Conference in New Orleans (*pages 66 – 67*)
- mercury issues (*pages 67 – 68*)
- presentation before the Senate National Resources Appropriations Committee on budget issues (*pages 68 – 76*)

New Business None

Next meeting February 26, 2010 in the DEQ Multipurpose Room at 9:30

Adjournment At 11:15 a.m. Mr. Johnston called for a motion to adjourn the meeting. Motion was made by Mr. Griesel and second by Mr. Dark.

transcript pages 76 - 77

Mike Cassidy	Yes	Sandra Rose	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Jerry Johnston	Yes
David Griesel	Yes		

The transcript becomes an official part of these Minutes.

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA**

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**TRANSCRIPT OF PROCEEDINGS
OF THE ENVIRONMENTAL QUALITY BOARD
REGULAR MEETING
HELD ON NOVEMBER 19, 2009, AT 9:30 A.M.
IN ADA, OKLAHOMA**

*** * * * ***

BOARD MEMBERS

JENNIFER GALVIN - MEMBER, ABSENT

MIKE CASSIDY - MEMBER, ABSENT

TONY DARK - MEMBER

DAVID GRIESEL - MEMBER

JERRY JOHNSTON - VICE-CHAIR

STEVE MASON - MEMBER, ABSENT

SANDRA ROSE - MEMBER

RICHARD WUERFLEIN - MEMBER

TERRI SAVAGE - MEMBER, ABSENT

KERRY SUBLETTE - MEMBER, ABSENT

JOHN WENDLING - MEMBER, ABSENT

STAFF MEMBERS

STEVE THOMPSON - DIRECTOR

JIMMY GIVENS - ATTORNEY

ELLEN PHILLIPS - AG'S OFFICE

MYRNA BRUCE - SECRETARY

ELLEN BUSSERT

PROCEEDINGS

MR. JOHNSTON: Okay. Welcome. It looks like we've got a tremendous crowd here this morning. Glad to see everybody here.

My name's Jerry Johnson and I'm some kind of Vice-Chair or Co-Chair or something.

The November 19, 2009 Regular Meeting of the Environmental Quality Board has been called according to the Oklahoma Open Meetings Act, Section 311 of Title 25 of the Oklahoma Statutes.

Notice was filed with the Secretary of State on September 8, 2008; it was amended on July 23, 2009, to add location and on August 26, 2009, to change the date.

Agendas were mailed to interested parties on November 6, 2009, and posted at this facility and the Department of Environmental Quality, at 707 North Robinson, Oklahoma City on November 17, 2009. Only matters appearing on the posted agenda may be considered.

If this meeting is continued or reconvened, we must announce today the date, time and place of the continued meeting and the agenda for such continuation will remain the same as today's agenda.

Call to order, and roll call.

MS. BRUCE: Good morning, we're trying to use the sound system so you may have to push that blue button twice or four times, we don't know yet. Try to use it, let me put it that way.

Okay. Mr. Cassidy.

MR. CASSIDY: Here.

MS. BRUCE: Mr. Dark.

MR. DARK: Here.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Here.

MS. BRUCE: Ms. Rose.

MS. ROSE: Here.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Here.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Here.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Here.

MS. BRUCE: And for the record, absent are Dr. Galvin, Mr. Mason, Ms. Savage, Dr. Sublette, Mr. Wendling, but we do have a quorum.

MR. JOHNSTON: Thank you. We'll have the Approval of the Minutes of the August 24, 2009 Regular Meeting.

MR. DARK: I move for approval.

Bd: Second.

MR. JOHNSTON: Roll call.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

Bd: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Okay. Motion passed. Thank you.

MR. JOHNSTON: At this time I'd like introduce Duane Anderson, the East Central University Provost and he's going to say a few words, and hopefully welcome us.

MR. ANDERSON: Hello. On behalf of President John Hardgrave and the faculty and staff of East Central University, I would like to welcome you to campus. We're particularly pleased to have the Members of the Board here and your staff members. I believe East Central University has a long history with the Department of Environmental Quality going back to the days of Professor Micky Rowe who started our program in environmental science at this institution.

A number of your staff members and others have degrees from East Central and we welcome you back. We're very pleased that you're here today and welcome all of your guests.

I'd like to take just a couple of minutes to introduce some of my faculty and staff who are still involved in this area.

To the left over here, Dr. Bruce Weemes is the Dean of our College of Health and Science. Dr. Weemes.

To his right is Dr. Doug Wyrick who is the Chair of our Department of Environmental Science.

And then in the audience is Dr. Viven Whitney who's the Director of our Institute of Environmental Science Research and Education.

We're all very pleased that you're here today. Hope everything goes well. If you need anything during the course of the day, please feel free to call the President's office or my office.

And then finally there's another faculty member coming in, Dr. Guy Sewell. Dr. Sewell.

Dr. Sewell is Professor of Environmental Science and holds the Robert S. Kerr endowed Chair in Environmental Science at East Central University, he's one of our very productive researchers and faculty members.

And then finally, I can't leave the podium without saying what a great pleasure it is to have Ellen Bussert on campus again. Some years ago her husband was the Vice-President for finance here at the University, it's always good to have you back on campus.

Thank you, and I hope you have a good day.

MR. JOHNSTON: Thank you. Okay.

We'll go to Number 4, rulemaking Emergency Planning and Community Right To Know. Our very own Judy Duncan.

MS. DUNCAN: Thank you, Mr. Johnston.

In 2008, EPA finalized several changes to the Emergency Planning and Community Right To Know or EPCRK, regulations that are found in 40 CFR Parts 355 and 370. These changes are being incorporated by reference in this rule amendment by changing the date from 2004 to 2009. The Tier I and Tier II forms and their instructions have been removed from the code of federal regulations and they may now be found on EPA's website.

Requirements for Tier II and Tier I are still included in the regulation itself. Facilities are now required to report their National American Industrial Classification System or NASICS code on their Tier I and Tier II forms and also their chemical and more common name of the chemical is provided by the material safety data sheet that must be provided on the Tier II form.

When determining whether threshold quantities of extremely hazardous chemicals or EHS have been met, facilities must include the total

quantity of that EHS present in the pure form as well as in any mixture, even if the mixture including the EHS is also being reported as a hazardous chemical. For hazardous chemicals that are mixtures and do not contain any extremely hazardous substances facilities have an option when determining whether the threshold quantity is present to either add together the quantity present in its pure form as a component of all mixtures, even if the mixture is being -- also being reported as a hazardous chemical or to consider the total quantity of each mixture separately.

These regulations will have a minimal effect upon our people who report through the Tier II system. The forms are typically not used in Oklahoma because we have an electronic reporting system, but we did need to incorporate by reference the changes in the regulations themselves.

MR. JOHNSTON: Do we have any questions or discussion by the Board? Questions by the Board?

Any comments or discussion by the public?

Comments or discussion by the public?

Okay. There's possible action by the Board.

MR. GRIESEL: I'll make a motion.

MR. JOHNSTON: Motion by David.

MR. DARK: Second.

MR. JOHNSTON: Second by Tony. Roll call.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

We'll go to Number 5, rulemaking OAC 252:205 Hazardous Waste Management.

Wes Anderson, Vice-Chair of the Hazardous Waste Management Council is going to present it.

Hi, Wes.

Wes: How are you?

MR. JOHNSTON: Fine.

Wes: Good morning. I'm Wesley Anderson, Vice-Chairman of the Hazardous Waste Management Advisory Council. The rulemaking before you today is to incorporate most of the July 1, 2009, version of the federal Hazardous Waste Management Regulations in 40 CFR Parts 124 and 260 through 279.

As you know, DEQ is fully authorized by EPA to maintain a hazardous waste management program in lieu of EPA, and DEQ does this by incorporating the federal regulations to the state regulations.

While the July 1st version of the federal regulations contains three new rules that could have an affect on Oklahoma businesses, only two are being incorporated by the rulemaking.

These are the Academic Lab Rule and the Emissions Comparable Fuel Rule. The one not being incorporated is the definition of Solid Waste Rule.

Let me briefly explain each of these. The Academic Lab Rule establishes a new Subpart K within 40 CFR Part 262 to provide a flexible and protective set of regulations that addresses the specific nature of hazardous waste generation and accumulation of laboratories at colleges -- did that go off -- sorry about that -- at colleges, universities and other entities formally associated with colleges and universities.

Eligible laboratories have the option of operating either under the Academic Lab Rule or current hazardous waste management -- management regulations.

The Emissions Comparable Fuel Rule or ECF Rule excluded certain hazardous fuels from the definition of solid waste. When they are burned for energy recovery provided that the fuel meets conditions that assure emissions from industrial boilers burning ECF are comparable to emissions from industrial boilers burning fuel oil.

The rule further ensures that ECF is handled as a valuable commodity and includes conditions for tanks and containers storing ECF to assure that discard does not occur.

The one federal regulation not being incorporated in the DEQ's hazardous waste program is the Definition of Solid Waste Rule or DSW.

The federal rule revised the definition of solid waste to exclude hazardous secondary materials from regulation of solid and hazardous waste if they are reclaimed.

Shortly after DSW Rule became effective at the federal level, DEQ received a petition for emergency rulemaking to adopt the federal rule as is at the January 2009 Council meeting.

DEQ expressed concern about what it perceived to be several significant flaws in the federal rule. The Council declined to approve the petition on

the basis that an emergency did not exist that directed DEQ to work on rules to address the flaws.

Over the course of the next several months, DEQ developed rules it believed would alleviate many of the flaws in the federal regulations and these were presented at the October 2009 Council meeting.

Coincidentally, on the same day as the January Council meeting the federal DSW Rule became the subject of a legal challenge by public interest groups. As a result of the legal challenge, EPA has committed to an additional study of the rule.

Due to the perceived flaws in the federal rules and the uncertainties brought about by the legal challenge, few states have adopted or are planning to adopt the federal rule until these issues are resolved.

Because of these issues at the federal level, the Council declined to approve that portion of DEQ's proposed rules to incorporate the DSW rule. It is important to note that because the DSW rule is less stringent than current federal hazardous waste regulations, DEQ is not required to pick up the rule to maintain its authorized program.

Therefore, not incorporating the DSW Rule at this time will have no effect on DEQ's ability to operate the hazardous waste program in lieu of the EPA.

The Council asks that the Board approve the rule presented to you today. And now if you have any questions, I'll be happy to take them at this and DEQ staff is also available for questions.

MR. JOHNSTON: Any questions from the Board? Any questions from the Board?

MR. WUERFLEIN: Mr. Johnston.

MR. JOHNSTON: Richard.

MR. WUERFLEIN: I didn't realize we had that much leeway in not incorporating by reference. Is this only because he mentioned that the new rule is less stringent than the old rule? We can stay with the old rule because it's more stringent than the proposed new rule that's incorporated by reference.

MR. ANDERSON: I'm going to defer to Jon.

MR. JOHNSTON: Sure.

MR. THOMPSON: It's my understanding Richard, that the (inaudible) -- and Jon can explain this more thoroughly than I can.

MR. ROBERTS: I'm sure you'll do fine, Steve.

MR. THOMPSON: Thank you, Jon. I think the staff had concerns with the new proposed federal rule was less stringent than the old rule and there were some concerns relative to control this waste that, that rule (inaudible).

So I think because of that what I understood was, the Council chose to pass the rule without that provision because it came under court challenge. Now those provisions may be back to you at some point, but we didn't -- we weren't threatened with loss of our delegated programs by doing that, so that's what we chose to do. Is that a fair explanation, Jon?

MR. ROBERTS: Yes, that's correct. And just let me also further clarify that anytime that EPA proposes rules that are less stringent than current rules, generally states aren't required by EPA to pick those up. If they proposed rules that were more stringent then we would be required to pick those up, anytime that they relax standards we're not required to pick those up as part of our authorized programs.

MR. THOMPSON: In this -- it is fair to say that because a federal rule became less stringent, it is fair to say that we might adopt that rule. But in this case I think there were some issues that we -- that the staff was concerned about, so we have sort of taken the middle -- or the Council has taken the middle

ground here of proving it outside that provision. Then when the court case is over and the new review by EPA is completed, that will be back to you.

MR. WUERFLEIN: Okay.

MR. JOHNSTON: Anymore questions by the Board as long as we've got one of our experts up here.

Any questions by the audience?

No questions from the audience.

Discussion of possible action by the Board.

MR. DRAKE: Move adoption.

MS. ROSE: Second.

MR. JOHNSTON: Moved by Bob. There's a motion and a second. Roll call.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

MR. JOHNSTON: Thank you.

Number 6, General Water Quality. Don Maisch.

MR. THOMPSON: Let me say to the Board that Mike Paque sends his apologies for not being here. He is going through a procedure for kidney stones which I understand may be more painful than serving on one of DEQ's Advisory Councils. So anyway he sends his apologies.

MR. MAISCH: Thank you, Mr. Chair. This rule is -- the three rules that are coming up through the Water Quality Management Advisory Council basically all three do the same thing just in different parts of the rule.

In Chapter 611, these rules just apply to general water quality specifically to how the Agency issues certifications that water quality standards are going to be met when a federal entity has to issue a permit for the activity. In this matter here, the only change that is happening to the rules is the update to the incorporation by reference. We're changing that date for certain provision in 40 CRF Part 30. We're just changing that date of the incorporation by reference from July 1, 2008 to July 1, 2009.

The Agency received no comments to this rule change, none were taken during the Council meeting and the Council unanimously approved adoptions -- or recommending adoption of the rule change to the Board.

I'll be happy to take any questions.

MR. JOHNSTON: Any questions from the Board? Any questions from the Board?

Any questions from the audience, public?

Any questions from the public?

Back to the Board. Do I hear a motion?

MR. WUERFLEIN: I move adoption of the proposal.

MR. DARK: Second.

MR. JOHNSTON: Roll call.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

**MR. JOHNSTON: Okay. While Don is still up here, we have
OAC 252:623, Pretreatment for Central Treatment Trusts.**

MR. MAISCH: Thank you, Mr. Chair.

**This set of rules only apply to the Oklahoma Ordinance Works
Authority. It is an entity and you've all had a Board
meeting out there several years ago in Pryor, Oklahoma at the Industrial Park. That
is a specially created entity under state law. There are specific federal rules that
apply to that as well that have that entity treated, even though it's an industrial type
park have that entity treated as a publicly owned treatment works and treats it as a
pretreatment facility. What these rules pertain to is adopting certain provisions of
40 CFR Part 403 that was -- we applied to the regulation of that entity.**

Again, all this rule does is change the incorporation by reference of those rules from July 1, 2008 to July 1, 2009. Again the Agency received no comments concerning that rule change, there were no comments made during the Council meeting and the Council unanimously recommended approval of this rule change to the Board. I'll be happy to take any questions.

MR. JOHNSTON: Any questions by the Board?

Any questions by the Board?

Any questions by the public? Questions by the public? It's your meeting guys and girls.

Back to the Board for action.

MS. ROSE: I move approval.

MR. GRIESEL: I'll second.

MR. JOHNSTON: David. Roll call.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Excuse me, yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

MR. JOHNSTON: Number 8 is OAC 252:631 Public Water Supply Operation. Again, Don.

MR. MAISCH: This is my last one. Again all this change does is change the adoption date of the incorporation of the rules by reference from July 1, 2008 to 2009.

This adoption under 631 is the adoption of the primary drinking water standards under 40 CFR Part 141. This is necessary for the Agency and the state to maintain primacy to implement and to enforce the Safe Drinking Water Act.

Again, the Agency received no comments concerning this rule change, the Council received no comments during the Council meeting, and the Council unanimously recommended adoption of this rule change to the Board. Be happy to take any questions.

MR. JOHNSTON: Any questions from the Board? Questions from the Board?

Questions from the public? Questions from the public?

Back to the Board.

MR. DARK: Move adoption

MR. JOHNSTON: Move from Tony.

MR. DRAKE: Second.

MR. JOHNSTON: Second by Bob. Roll Call.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

MR. MAISCH: Thank you, one and all.

MR. JOHNSTON: At this time I would like to take a five minute break while Jimmy gets his charts back together.

(Break)

MR. JOHNSTON: Call this meeting back to order and anybody that's in the front here that can't see this and wants to move back, that's fine, so they can see it.

We're actually on the Annual Environmental Quality Report and it's presented by Jimmy Givens, Deputy Executive Director. Jimmy.

MR. GIVENS: Thank you, Mr. Chairman, Members of the Board and guests today. It's my pleasure to be able to present the Environment Quality Report to you.

Let me begin by offering just a little bit of context and I'll try to make this -- or I'll try to make the entire presentation as concise as possible. What you may recall if you've been around for very long, that we actually have two Agency-wide reports.

One is the Annual Report. That is the document that takes a look back at what the DEQ has done over the course of the previous fiscal year. It's

mainly informational in nature, it reports a lot of statistics and offers stories about what the DEQ has been involved in.

The Environmental Quality Report on the other hand is more forward looking. What we are doing is presenting to you some of the things that are coming down the pike that we are required to handle by EPA as well as some proposals that we have for possible legislation; and I will also briefly reiterate the appropriations request that we presented to you last time. So you can see the three primary items that fall under Environmental Quality Report here.

I'll start out with the annual needs part. You will recall if you were at the August Board meeting that you have actually already approved this particular portion of the report. And the reason for that is even though the Environmental Quality Report itself does not have to be presented to the Governor and Legislature until January 1st. The appropriations request has to be to the Office of State Finance by October the 1st. So we had to bring -- we always have to bring this piece to you in advance of the rest of the report, and in August you did to approve this particular part.

Just briefly recapping what we talked about in August, we have a baseline request for general appropriations that will go to the Legislature of about 10.6 million dollars. Now what that represents is actually carrying over the current year budget with the 4.4 percent decrease that we had from the FY-'09 budget.

You will recall near the end of last year it was announced that all agencies would receive approximately a 7 percent cut. Well we were able to come out with a 4.4 percent cut for DEQ. This baseline request takes that reduced amount and adds to it 1.3 million dollars. That 1.3 million dollars represents the increased cost that is legislatively mandated for the DEQ to absorb for retirement, for employees, and for insurance. The retirement goes up 1 percent per year and has for the past few years by legislation that was passed several years ago. And of

course, every year the insurance cost go up a little bit more. So 1.3 million represents simply the additional cost to us for retirement and the insurance in FY-'11, what we estimated that will be.

On top of that the baseline request, which basically just keeps us at a stand still, we proposed and you approved a request for a million dollars to accelerate an e-permitting and e-complaints management program.

Realistically, that probably is not going to happen this year but we felt like it was important to put it in front of the Governor and Legislation for consideration. If we don't get all or any part of it this year, then at least it's on the table for further discussion and it does represent the sort of thing that the Legislature tends to be particularly interested in and that's government modernization.

Let me pause because we're going to switch gears here. Any questions about this particular appropriations request? Now I should mention, I think Steve's going to talk more in depth about our current budget situation in his Executive Director's Report.

But any questions about this particular request for 2011?

MR. JOHNSTON: Any questions?

MR. GIVENS: Okay. Moving ahead then, the second element of the Environmental Quality Report is to make you aware of some of the major federal mandates that are coming down the pike. Now obviously we can't cover every single new proposal or final rule that's anticipated in the next year or so from EPA, but we're trying to hit the highlights.

And I think this is useful because it lends some context to some of the rules that you have considered today and you will be considering in the future. You have some sense of what we are likely to be bring to you in the next year or two for consideration.

First of all, a large part of these will fall under the Air Quality area. I'll confess right up front, the air quality is probably one of the areas that I know least about, but I did stay at a Holiday Inn Express last night. So maybe I can answer them; if not, I'll probably punt to Eddie to help answer any questions you have about these.

First of all, you probably are well aware that there is consideration of a revision to National Ambient Air Quality Standard for ozone. Only about a year ago it was set at 75 parts per billion, but the new administration has indicated its intention to take another look at that, 60 to 70 parts per billion appears -- that says possible, I would say likely may be a more apt term. And, of course, if we do have a more stringent standard that means that our metropolitan areas in particular and even other areas of the state, face the prospect of non-attainment which, of course, means that we would have to take additional steps, submit a revised State Implementation Plan and try to come up with some ways to meet the new standard. But it will be problematic if the standard is lowered and especially if it is lowered down toward the lower end of that range.

Another NAAQS that is under consideration, there's a proposal out for a new one hour standard for nitrogen and dioxide. The proposal indicates that we can expect a range in 80 to 100 parts per billion; also adds the prospect of near road way monitoring -- in other words, more monitoring near highways. Last I heard that was still up in the air about whether that actually was going to happen but in particular if it does that means that levels of concern for that particular standard are also likely to come about. Again sulfur dioxide, another NAAQS standard that -- proposal actually just came out literally two days ago, it includes the new one hour maximum of 50 to 100 ppb, adds monitoring and reporting requirements, and especially if there is a final rule that should come out on the lower end of that 50 to 100 ppb range. Our previous monitoring indicates that

Tulsa and Muskogee in particular would be at risk for meeting that standard. All three of these are due for finalization as things now stand sometime in the next calendar year.

Let me go ahead and cover one more slide before I pause and see if you have any questions about the air quality part because we have a few more to talk about.

Probably the most widely discussed in the news is climate change legislation and regulation, I'm sure you're well aware there are a couple of bills floating around in Congress right now to regulate greenhouse gases.

EPA also has a couple of things on the table.

One is a greenhouse gas reporting rule that will go into effect in January. Another is a proposed rule that is a fall back position for the administration, EPA, if Congress does not act on one of the greenhouse gas bills. And that proposed rule would regulate greenhouse gases. It's on hold right now while EPA waits to see what Congress is going to do. But we do expect that it would move forward if there is not congressional action on one of the bills.

I mentioned other possibilities on here. I won't spend much time on these but for those of you who deal in air quality issues, you should be aware that there's consideration of a new Clean Air Interstate rule. What that relates to SOx and NOx, the nitrogen oxides and sulfur dioxides. Right now it only applies in 28 states but I think the consideration of the new rule may apply to the entire country if I understand correctly. There's consideration by EPA of a new standard for Maximum Achievable Control Technology if memory serves me of what MACT stands, for utilities that would impose requirements for a wide range of hazardous air pollutants.

Again there is consideration being given to still more revisions to National Ambient Air Quality Standards for lead and small particulate matter.

There is a proposal that is floating around for additional Maximum Achievable Control Technology requirements for area sources which are basically the sources that emit but are too small to meet the major source category. So while all of those are in the discussion stage right now many or most of those are likely to move forward in the next year or two; so those are other things that may well appear on this Board's Agenda in the next couple of years or so.

Let me pause there before we move on to one more slide on the federal mandates. But that's kind of what I wanted to throw out on the table as far as air quality goes and see if there are any questions about any of those so far.

**MR. JOHNSTON: Any questions for Jimmy at this time?
Any questions?**

MR. THOMPSON: If you look at what's going on in climate change, what's occurring is, is that the administration in EPA are playing a game of chicken with Congress. Everybody agrees that if you're outside of a debate of whether you should regulate greenhouse gases or not, that regulating greenhouse gases under the Clean Air Act is a terrible idea. It would be a straight regulatory program as opposed to a market based cap and trade kind of system that might, I think, the legislation in Congress anticipates.

So I guess for the -- this interested observer which clearly we are not, it will be interesting to see how that comes out, because that's precisely what's going on. And it would appear that one way or the other, there is going to be regulation of greenhouse gases, it's just a matter of what form it takes.

MR. DARK: I think they take the form of cap and trade because (inaudible).

MR. THOMPSON: I'm sorry, say that again.

MR. DARK: Do you think we're taking that approach of cap and trade just because that's what they've always done on the (inaudible) side?

MR. THOMPSON: I think most of the -- the question was why are they taking the cap and trade approach. And I think they had pretty good success in the acid rain program with the cap and trade system. And so they -- people are -- liked that (inaudible). For ground level ozone there was a proposal under the Clean Air Interstate rule to do a cap and trade system for ozone by the Bush Administration but that rule was set aside by the DC circuit because they believed it was outside the purview of the Clean Air Act to have a cap and trade system in that particular arena.

So apparently there's -- that same feeling is occurring with the administration relative to the greenhouse gases. So that's why they're probably going to promote a strict regulatory system as opposed to a cap and trade system in the regulation. So it's going to be an interesting several months.

MR. JOHNSTON: Does this bring up any new questions? Go ahead, Jimmy.

MR. GIVENS: Let me mention just a few other things that again are on the radar screen.

First of all, relating to our environmental lab which is in our Customer Services Division, there is a new requirement that came out in August of this year that provides for a new analytical method for volatile organic compounds; also requires that additional compounds be analyzed for in drinking water which not only is obviously an additional burden on drinking water systems but also, as you might expect, causes some changes in the way our lab has to operate. That alone will cost an additional \$25,000 to us in lab equipment modifications. And believe it or not -- Jimmy correct me if I'm wrong, but I don't think EPA wrote us a \$25,000 check for that.

Land protection, probably the most visible issue right now both literally and figuratively, is coal combustion waste. This really had been kicked

around some for quite a while but renewed attention was brought to it by the failure of the impoundment out in Tennessee a few months back and caused EPA to look more aggressively at what to do with coal combustion waste.

Where we are right now is, frankly, we're waiting to see what's going to happen. What appears to be almost certain is that there will be a proposal for more stringent regulation that will come out next month. What we don't know for sure as far as I know unless there's been a late development is whether EPA will decide to regulate it as a hazardous waste, or to regulate somehow under Subtitle D or to defer to the states for their own regulatory scheme that may already be in place. There seems to be quite a bit of discussion about regulating it as a hazardous waste. And, frankly, the states for the most part have had a concern with that because right now this waste many times can be put to a useful purpose in construction, for example. But if it is regulated as a hazardous waste that will complicate matters, to say the least, for using it in that fashion.

So the states in general have expressed a concern about the possibility of its regulation as a hazardous waste. We'll know more presumably next month.

MR. CASSIDY: Jimmy.

MR. GIVENS: Yes.

MR. CASSIDY: Can you fill us in on what happened in Tennessee?

MR. GIVENS: There was a -- Tennessee Valley Authority has a facility out there in which they had an impoundment that stored waste in a slurry form. And because of some structural deficiencies in the dikes that contain that impoundment there was dike failure, a breach, it caused this slurry to literally cover -- I don't remember the area now, but scores and scores of acres were essentially wiped out because of the failure of this surface impoundment and the spread of this coal slurry over a wide swath of property out there.

MR. CASSIDY: So the problem wasn't the material, it the was the failure of the dike.

MR. GIVENS: That's right.

MR. THOMPSON: I was going to talk about this in my report but I'll mention it now. Apparently, the latest thinking on this issue is that this same material would be regulated three different ways.

If it's -- it could be declared a product for beneficial use if it was a dry process then it would be regulated under Subtitle D as a solid waste; and if was a slurry like the one in Tennessee, it would be regulated as a hazardous waste.

So you have the same constituents, being regulated three different ways. It will be interesting to see how that comes out.

One of the issues we -- when I -- that was one of the issues that was discussed at some length with EPA at the ECOS meeting that I attended recently.

MR. GIVENS: The only other thing that I wanted to mention on this slide under the Water Quality category, is storm water discharges. Again next month we are expecting to see a final rule having to do with storm water at construction sites.

In general, what we think it will contain is a requirement to continue to use best management practices for sites that disturb an acre or more up to ten acres. For ten acres it appears that there will be a requirement for a sediment basin, if nothing changes from the proposal. And then above 30 acres and under certain other conditions there would be potentially numeric limits on turbidity and a requirement then for either chemical treatment or some form of filtration.

What that means in terms of the DEQ, of course, is that anytime these sorts of things come into play we have more staff time involved both in terms of regulatory perspective itself but also in terms of technical assistance that we provide to help people understand what these new requirements are.

Let me pause there because we're going to switch gears to the final one, of the three components, of the Environmental Quality Report.

Anymore questions on the federal mandates that I've mentioned?

MR. JOHNSTON: Any questions for Jimmy from anyone?
Go ahead, Jimmy.

MR. GIVENS: The final component is the legislative recommendations. This is what the DEQ is proposing to request in terms of bills to go before the Legislature in the coming legislative session that will begin in February; at least, the regular session will begin in February. There's some discussion about them coming back a little bit early to talk about budget.

But in the regular session what we will be proposing are three bills. The first -- actually the first two relate to our customer -- not Customer Service, ECLS Division. And the first of those relates to installation of onsite waste water systems.

What we have run into is that many times the person who contracts with the installer of an onsite system, the type you would have for a residence, where it's not served by a municipality or a rural water sewer district. Many times what will happen is the person who contracts with that installer, which will normally be the builder of the house, either will not be entirely forth coming with how large the house is going to be or else the installer for some reason puts in a system that is undersized for the house.

Right now we have no good way of getting a handle on who to go after in that situation, because there's really no documentation of what the builder has told the installer.

What we are proposing is to require in writing in a form that comes to the DEQ already, a certification from the builder to the installer, basically, how big

is this house going to be. That way the installer knows what size system needs to go in to service that size house.

Instead of having a he-said/she-said sort of situation as we do now, we have some grasp of where the fault lies if a system is installed that is undersized and fails. So that's the first proposal that we will taking to the Legislature with a request that they pass a bill to address that sort of a problem.

Any questions on that particular proposal; or anything you want to add to that, Steve?

MR. JOHNSTON: Any questions for Jimmy? What Jimmy's telling you is that all the things that come down the EPA and are not funded by the state and you -- anybody that understands what's happening to the state finances this year is that nothing is going to be funded. No new money is going to be funded. In most cases end up being, what I call, a man user (inaudible). It means it's going to come out of your pocket, a lot of it. So we need to look at this very closely.

Sorry, that's the gospel according to me.

MR. GIVENS: Second proposal that we have also relates to our ECLS Division and also relates to waste water. What we're talking about here is a situation where we have developments put in. We have shared waste water systems. And what we have faced in the past is that many times a developer will come in and put in an addition and will have a waste water system that is not tied in to a municipality or a water or sewer district.

And generally speaking, once the developer gets the development done, what they like to do is to turn over the waste water system that has been put in to a Home Owners Association, for example. That, many times, does not work particularly well. The Home Owners Association doesn't have the expertise to maintain and run the waste water system in many cases and often, frankly, doesn't have people who are particularly interested in keeping up with that sort of thing.

So what we are proposing to try to address this growing problem is to limit the ownership of those sorts of systems to municipalities or rural water or sewer district.

In order to accommodate that to make that a more viable option, what we would propose is to make the formation of such a district, either, if there is a district that already exists that would serve that particular area they get the right of first refusal to operate this shared system. If there is not one or if they don't want to service it then there has to be one created to service this shared system over time so that we don't run into the problem of it falling into disrepair and pretty soon we have a serious problem on our hands with nobody really in a position to fix it.

That's the gist of what we are proposing. Frankly, among the three that we are proposing, I suppose has the potential to cause either the most concern or at least the most questions.

So let me pause again and see if you have any questions about that.

MR. JOHNSTON: Questions for Jimmy? Tony.

MR. DARK: On this particular last item that you talked about, have you looked at other state models on how they addressed this? I mean all states have this problem. Have you looked at other states and how they would address this problem?

MR. GIVENS: I know that --

MR. JOHNSTON: Repeat the question, Jimmy, please.

MR. GIVENS: Okay. The question is whether we have looked at other states and how they have addressed the problem. I know that Gary, who's the Director of ECLS, and his staff did look at what other states are doing.

To the best of my knowledge we did not run across this particular approach. But, Gary, help me out with some of the other things that you all saw in looking.

MR. THOMPSON: While Gary is on his way up, let say this. There's a lot of these that are now failing; worked fine when we started, now failing. And in one case, what we ended up having to do was take individual actions against -- enforcement actions against every homeowner in that development to require them to put in individual systems. And that was not a happy time. So we want -- and we've got a whole list of these things where there's a problem. And I don't know that we'll ever get those problems solved but what we're trying to do here is create additions -- not creating additional problems in the future.

Gary, go ahead. I'm sorry.

Gary: Yeah, that's correct. As far as what other states are doing, they're really -- we really haven't found any other states that addressing this. Some of the conferences we have been to that's -- it's been a hot topic at some of the conferences in how do we address this issue.

EPA has no regulatory authority over onsite systems. But they have some -- they've published some guidelines. And their guidelines say that you need to come up with a regulated management entity they call it; whatever that is. And for us we thought the rural water district/rural sewer district is already there, so why not use what's existing.

So we've talked to the Oklahoma Rural Water Association, they said they could support this legislation. We've talked to the Oklahoma Homeowners Builders Association, who includes a lot of developers, and they don't seem to really care whether we turn it over -- once we get it built we want to turn it over to somebody, they don't care if they turn it over to a home builder or rural sewer district. It doesn't seem to make any difference to them. But to us it makes a lot of difference. Like Steve was saying, you know, and Jimmy said, homeowners associations just aren't able to operate these things. But a rural sewer district would have the support of the Oklahoma Rural Water Association. And another

advantage would be they would also qualify for funding through SRF and rural development and those sorts of things, because they're a public entity. A homeowner's association wouldn't. They don't qualify for any of this low interest loans and grants that are available.

MR. THOMPSON: In anticipation -- we like to do our own ground work before we seek your approval for this legislative package. And Gary talked to the Home Builders Association and then the Rural Water Association and then he left me to talk to OML and, of course, as a result of that rural water and the home builders are supportive and OML will not oppose it; which is sort of a different thing.

So we tried to run the traps with the people that we thought would have interest in this and so far we have not run into active -- so far, we've not run into active opposition by the people we believe will be most interested. Remains to be seen, especially -- and so far we've not got any negative comments from anyone.

MR. JOHNSTON: If you don't know what OML is, it's the Oklahoma Municipal League, which is a voice for cities and (inaudible) in Oklahoma.

MR. GIVENS: Anymore questions on this one while we have Gary up here?

Okay, the last one that we are proposing relates to our state environmental laboratory. I think this will be non-controversial. What we're simply seeking is to clarify the authority to act as an accrediting body for the NELAC institute which as the parenthetical indicates is the National Environmental Laboratory Standards Organization.

In essences, what we are wanting to make sure that we can do is to recognize other states that are accredited by NELAC. When ever they accredit a particular lab we can recognize that accreditation in Oklahoma and vice-versa.

And while we may have the authority to do that under statues right now, we think it's safer to go ahead and clarify that. So this is simply a proposal to make it a little bit easier for us work with the national organization on laboratory accreditation. Environmental analytical work.

Any questions about that?

MR. JOHNSTON: Any questions for Jimmy? Is that your presentation, Jimmy, or do you have more?

MR. GIVENS: No, this is it. Let me just wrap up by saying though that because this is forward looking and is more in the nature of policy-making and aspirational, if you will, instead of informational it does require the Board to approve it. Once the Board approves it, it is forwarded to the Governor and the Legislature on or before January 1st.

Thank you for your time and your attention.

MR. JOHNSTON: Thank you, Jimmy. Very well done.

MR. GIVENS: Thank you.

MR. JOHNSTON: Questions from the Board? Questions from the Board?

Questions from audience?

Back to the Board. Do we have a motion?

MR. DRAKE: I would move that we forward this over to Legislature and the Governor (inaudible).

MR. GRIESEL: I'll second it.

MR. JOHNSTON: Motion by Bob, second by David. Roll call, please.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

MR. JOHNSTON: Okay. At this time our very competent Executive Director, Steve Thompson, is going to give his report.

MR. THOMPSON: Thank you, Mr. Chairman. I have a little late breaking news. For those of you that haven't heard, the court apparently yesterday ruled that the water that Tarrant County, Texas was seeking from Oklahoma, the Judges ruled that that water has already been apportioned as a portion of the Red River Compact. Which is an artifact of the legislation that was passed by the Legislature last year to replace the moratorium.

Now it's -- apparently the Judge did not dismiss the case. They gave Tarrant County 30 days to amend their appeal. So while the court case is not dismissed, it's a pretty significant victory to have support of the legislation that was sponsored last year to solve this problem for Oklahoma, that the court has ruled in our favor on that. So that's good to know.

MR. DRAKE: Are they saying that they already have -- the Red River has already been apportioned out for years, year-to-year and all that this --

MR. THOMPSON: That's what they are saying.

MR. DRAKE: -- and that instead of coming after us and coming up above, stay down below and use what they already have. Isn't that what they are saying?

MR. THOMPSON: Well what they're saying is that if there is going to be a change in that apportion it requires a unanimous vote of the Compact. And since Oklahoma is a Member of that Compact, it doesn't mean that -- I suppose that we would never sell water to Texas but it puts us substantially in the driver seat in that sale as opposed to a simple moratorium which was at some great risk of being overturned by the Court because of the Interstate Commerce Act.

So it's a public policy decision above my pay grade as to whether we're going to sell water to Texas. But clearly if there is a sale because of this Compact decision because it's -- previous allocation decision it will be on -- it would seem to me Oklahoma's terms. Pretty good news. And we'll see what Tarrant County comes back with to the court.

I think most of you know by now that Jon Craig our Division Director for the Water Quality Division has announced his retirement, effective December 31st of this year. Some of you may also know that Jon was in charge of water issues for "Noah". He has --

MR. JOHNSTON: On the arc.

(Multiple conversations)

MR. DARK: I've got a question. I was wondering if his retirement announcement didn't come right after this announcement -- he was going to desalinate the Red River, I know that. Maybe his plans were just in time.

MR. THOMPSON: Yeah. Actually, it was before that but -- what I need to say that Jon didn't have a hand in any water quality policy issue in this state would be not correct. We're going to have a little get-together for his retirement on December the 17th, in the afternoon. If you haven't received notice of that, you will. Hope you can attend and honor 37 years of service to the state -- to the Health Department and DEQ in water quality issues. And a total of 40 years to the state, I guess; is that right, Jon?

MR. ROBERTS: Correct.

MR. THOMPSON: And it is true that you went to work for the Health Department on the day that the Clean Water Act --

MR. ROBERTS: Two days before.

MR. THOMPSON: -- two days before the Clean Water Act became law. So Jon is in fact older than the Clean Water Act.

MR. JOHNSTON: I've worked with him all those years and couple of times we've agreed on things.

MR. THOMPSON: Want to say something, Jon? Oh, come on.

(Comments)

MR. THOMPSON: A lot institutional memory there. So, anyway.

Let me bring to your attention this document that's in front of the Board. This is our -- Jimmy mentioned our Annual Report. Quite frankly, I think this is our very best effort.

What this document does is talk about -- the stories talk about what it was like 15 years ago at the beginning of the Agency, what's happened in the interim, and where we find ourselves today.

A lot of people have input into this document in the Agency but the main editor and writer for this document is Skylar McElhany, our public information officer. Skylar, would you please stand up. I know it's an effort, bless your heart. But she's done a terrific job. I would appreciate it if you all would applaud.

(Applause)

MR. THOMPSON: I really think this is our very best effort. So take a look at that when you get the chance.

As you all are aware -- there's copies out front for those that care to pick one up.

As you all are aware I think the -- I never remember what these -- this stands for; the stimulus money, the Act that created the stimulus money became effective on February the 17th of this year. The states were given money for the drinking water state revolving fund and the clean water state revolving fund and had one year until February 17th of 2010 to get that money spent. Well what we did in Oklahoma was take \$31 million in federal money and leveraged that against the existing revolving fund and created \$136 million in new infrastructure projects across the state, that included 23 new projects and 60 individual contracts. And just recently Patty Thompson who is the Chief of our Drinking Water State Revolving Fund Unit received a national award in Seattle for the speed with which the DEQ got that money allocated and out. And we have all but -- we have about a fourth of that -- all the processes done, about a fourth of the individual contracts have been approved and we have until February to get the rest of them done which should give us plenty of time to get those contracts. And what that does, apparently, not everybody has been as quick as the state of Oklahoma has or as thorough for that matter, so that gives us the opportunity that more stimulus money for these kinds of

projects may be coming back to the state. So we're hopeful that, that is the case because we've got plenty of work to do.

In addition, we received or she received an innovation award because as a part of the air funding we were able to set aside \$1.5 million of that funding for engineering projects for small communities. Many times small communities don't have the money to pay for the initial engineering work necessary to get them in the que for either grants or funding. And so it was -- that was a significant -- that's a significant bottle-neck in getting small community issues solved and now we have some money where we can , at least to some extent, open up that bottle-neck. So we are very proud of Patty and her efforts related to the air money.

As you're aware and you were kind enough to do some adjustment of the dates for the last two meetings so that I could attend some activities. First, being the ECOS meeting. Unfortunately, the Administrator wasn't able to come; all the Assistant Administrators came but it was unfortunate that the Administrator was not there because we have a lot to talk about. Some of the main topics that were discussed at the ECOS meeting is the coal combustion waste issue that -- and how that's ultimately going to be regulated, that Jimmy talked about.

We are -- it will be very interesting if there's a decision that all this coal combustion waste is hazardous waste. Very interesting.

As you are aware, we have a pretty active tire program in the state of Oklahoma for reclaiming (inaudible) tires. EPA is considering a rule that requires wastes -- solid waste to be processed before they can be utilized as a product which in and of itself is not necessarily a bad idea. But in the case of waste tires, what this rule anticipates is that you take a tire and that you must chop it up and use the emissions and the energy and the manpower to burn it in a kiln but you can't because it's not processed, burn a whole tire. Which is goofy. So we lead a resolution that said give me a couple of options, take it outside -- and if you don't

process it, it becomes subject to much more stringent federal air regulations. So we lead an effort to get a resolution from ECOS that says you got two choices; either consider this not to be a waste at the point of combustion or exempt it from the more stringent air regulations. This -- I'm not a big defender of EPA, but in this case they're reacting to a court decision, and they, I think, are struggling with this issues also.

So we wanted to make clear our position. We have some folks here I think today that are interested in the waste tire program and we don't need impediments to removing those wastes. So we'll see where -- again we'll see where that goes.

Finally, I'll mention as a result of some articles that appeared in the New York Times, there is an increasing focus on Clean Water Act enforcement and there will be the Administrator as a result of that. Those articles ask for a memo from the new head of the enforcement division in EPA about was going to be done about it. The response was that it was clear that there needed to be more transparency for the public, that the data systems needed to be reinvigorated and that the bar for enforcement in water, across the country, needed to be raised.

Now I will also tell you in testimony, before Representative Overstar's Committee, the Administrator when asked by one of our -- a delegation about the enforcement -- water enforcement program in Oklahoma, they essentially said we had a good program. But that doesn't mean that we don't try to make common sense out of our enforcement effort. In fact every -- in every meeting, not just water, but in Waste and in Air we're considered to have good state enforcement programs.

But then as a result of that -- and I don't mean to take a whole lot of time on this, but just yesterday EPA came -- their enforcement office came out with a 15 point process for addressing the issues that they've talked about in their response to the Administrator. And I think that what that means for me, since I am

-- I have been involved in enforcement issues across all the media with ECOS for a long, long, time while I'm not looking forward to it I suspect I will be involved in that issue in the future. So it'll take some time but we'll just have to work through that.

54:14:.3

MR. THOMPSON: The other meeting that I just returned from was the Brownsfield Conference in New Orleans. Oklahoma City was up for a number of awards at that Brown -- the MAPS project, metropolitan area projects in Oklahoma City was up for a number of very prestigious awards. Former Mayor, Kirk Humphrey; Assistant City Manager, Jim Thompson; and City Planner, Russell Krause was there representing Oklahoma City. And J.D. Strong and I were there representing the DEQ and the (inaudible, due to coughing) office. Oklahoma City won the regional award called the Phoenix Award for the Brownsfield effort, but they did win -- they also won the National Brownsfield Renewal Award for Economic Development. So they were up for I think three awards, they came back with two of the three, and so it was a good conference to be at to honor the work that Oklahoma City has done with the MAPS Project. So I was a little bit anxious about asking you to rearrange your schedules two meetings in a row, it was clear to me that it was important that I be there and I thank you for having done that and allowing me to do that.

Just a short update on issues related to mercury. The Customer Services Division and the Air Quality Division have been focusing their attention on our toxics program particular related to mercury contamination in Oklahoma fish. We've been testing indicator fish in 49 of the state's reservoirs. Indicator fish species are those which are most likely to accumulate mercury. What we have found so far is that while mercury levels in 47 percent of the lakes were well below EPA's recommended action levels, six percent of the lakes had mercury levels that

warrant consumption advisors for the general public and 32 of the lakes need consumption advisory for sensitive populations. And another 15 percent of the lakes had mercury levels near enough to the action level to follow up election. That's for the indicator species. Now, we're going to go back out and do another sampling round to determine where exactly we are on this issue. The sensitive population for this is women of child-bearing age, and children under 15 and we're not asking that they -- we would not ask that they stop eating fish altogether, it is just simply that they limit their consumption in those sensitive populations. So we're not through with this. We've got a general advisory out, just a very general advisory. We're going to be refining what we're going to be doing in the mercury program over the next year, assuming that we don't have to cut back because of budget constraints. And so I thought I would pass that information along to you also.

Finally, you all should have this document in front of you. We were asked last week to make a presentation to the Senate Natural Resources Appropriations Committee on budget issues.

This is an editorial comment. We're very lucky to have Senator David Myers as our -- the Natural Resources Appropriations Subcommittee Chairman, and Dale Dewitt in the same position in the House. They fight hard for the Natural Resource Agencies; for us, Conservation Commission and Agricultural and the Corp Comm and all the other natural resource agencies, they fight very hard for us. So we have stiff competition for appropriated dollars. Our competition is public safety and corrections and education, and that's tough. But they do a good job for us.

Let me run through this with you very quickly. Beyond the 5.4 percent we took at the beginning of the year based on legislative action, we have been taking a five percent reduction in our budget, our general revenue budget,

each month and we've been told by the Governor that at least that will continue for the remainder of the year.

When we went to the Budget Committee meeting last week, they asked us to come with projections for 7.5 percent reductions and ten percent reductions. And those numbers, if you look at this document, or the numbers at the top of the page; the 426, the 697 and the 929.

We also, of course, had to get our little dig in about the fact that this is on top of the mandates for insurance and retirement they were taking. Which as Jimmy mentioned, was taken as it totaled of about \$1.3 million of funding.

So what we did in this document is to represent in Table 1, on the first page, where we are taking the cuts; \$426,000 cuts that we know, at least, that we're going to take this year, unless things turn around really quickly. And those are in the program areas of onsite technical assistance, air toxics and environmental complaints. We are delaying hiring two people in environmental complaints. And that's what it is.

If you'll turn to Page 2, we couldn't help ourselves. We had to show the percentages of our budget that are general revenue over time.

In 1994, we were at about 23 percent of our total budget as general revenue. We were down after the cuts that we will take this year at five percent. No, that's not true. Those are the cuts after last years 4.4 percent reductions, we're down to about 14 percent of our budget as general revenue.

The joke around our shop was at some point we wanted to be a non-appropriated agency, we just never thought it would come as quickly as it has.

So then in Table 2 on Page 2, we talk about where and what expenditure categories those cuts are coming. As I mentioned delay in hiring of two positions, delay in purchases of hardware and software and training in those things, and out of state travel to make up those differences.

And then finally relative to the 7.5 and the ten percent proposed cuts or projected cuts or the possible cuts, we didn't just -- we put those cuts -- the potential for cuts into two categories; Table 3 called Options for Cuts.

And as you will see for air toxics and small public water supply, onsite technical assistance, and the direct laboratory cost offsets for small communities and the work that we talked about in mercury and in environmental complaints, that's where our cuts will come from. If we have to take further cuts that will -- on the next page, if you look at the top of the page, those are where we are -- we think the greatest negative impact will come at least to the Agency -- well really to the public -- and to the public. We have to have about \$2.8 million in maintenance of effort in general revenue money in order to leverage federal funds. And if we cut that money we take a two -- we cut the state funding and we cut the federal funding.

MR. DARK: How would you suggest that we (inaudible).

MR. THOMPSON: Well, we're just saying that we are not suggesting it. That's where those -- these two items are where the last ones (inaudible). If it gets bad enough, you've got to take it somewhere. But these are the last two things where we take the cuts.

MR. JOHNSTON: If you live in a small town and you look at three and four, if that comes about and you don't think your water bill is going up, you are just kidding yourself.

MR. THOMPSON: For the direct offset for those laboratory costs, when we started that -- when we first got that money we could offset the cost -- the increasing cost for facilities -- for towns up to 10,000. We're down to 1,300, and if we cut that, that means that -- Jerry's exactly right. Money that you haven't been paying because we're offsetting the cost of those laboratory analyses will now go to the communities and will be billed to their customers.

So the other area is we support the sampling of public water supply by -- we schedule it, we send them the materials they need, we help them get the samples in. If we weren't doing that we think that there would be a lot of problems in getting samples in on time and our enforcement costs would go through the roof. So we're trying to not only provide a safe public water supply system for people but trying to get it done efficiently. And we always have emergencies in the state. Unfortunately, that's the case and we have to have some money to go out and address those.

So when Senator Myers asked me about that, I said, look, you know I think I get hired to figure out at the point in time when these cuts get taken -- where along the line we can take them, so I'm not going to give you a specific number and be held to specific numbers for specific spending categories. If we take the cuts, we will just have to figure out where we think it's going to have the least impact on citizens and that's what we'll do. And they were apparently confident that that's what we'd do.

MR. DARK: (Inaudible).

MR. THOMPSON: I don't know. I can't think right off-hand. Shellie, do you have -- do you know?

MS. CHARD-MCCLARY: I think that was the first -- we had some increases in federal grant funding that were competitive grants that we were able to secure. So the overall federal funding was bumped up for those two years and when those projects were completed that money dropped back down and then that put the general revenue back where it was.

MR. THOMPSON: Oh, I see. So it's not an artifact of increases in other funding.

I should also say that it's fair to say that we're 14 percent general revenue funded and about 16 percent fee funded. The rest is federal funding. It's

fair to say that when we take cuts it's not as impactful as some states that are so general revenue and totally general revenue funded. But it is also fair to say that our fee numbers -- fee accounts are down by we project five percent, too, because of this slow down in activity in the general economy.

So we, I think, are going to have a meeting -- a budget meeting in the House early in December. There is discussion about a general -- I mean a special session relative to the budget in January before we get into regular session. But it's not a happy time for budgets.

So on that happy note, I will be happy to take any other questions that you might have.

MR. JOHNSTON: Questions for Steve?

MR. THOMPSON: Thank you.

MR. JOHNSTON: Thank you, Steve. Good report. Good/bad report or whatever.

At this time it's calling for new business. Any matter not known about in which could not have been reasonably foreseen prior to the posting of the Agenda. Is there any new business? Any new business?

The next meeting will be February 26, 2010, the DEQ multipurpose room, 707 North Robinson, in Oklahoma City.

And ask for -- to be adjourned if there is nothing else at this time.

MR. GRIESEL: So moved.

MR. DARK: Second.

MR. JOHNSTON: David, moved and Tony seconded. Roll Call.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Giesel.

MR. GRIESEL: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: We are adjourned.

(End of Proceedings)

