

**DRAFT MINUTES
ENVIRONMENTAL QUALITY BOARD
February 24, 2006
DEQ Multipurpose Room
707 North Robinson
Oklahoma City, Oklahoma**

For EQB Approval
~~June 20, 2006~~ August 22, 2006

Notice of Public Meeting The Environmental Quality Board convened for a regular meeting at 9:30 a.m. February 24, 2006 at the DEQ Multipurpose Room, 707 North Robinson, Oklahoma City, 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 December 5, 2005. The agenda was mailed to interested parties on February 10, 2006 and was posted on February 22, 2006 at the Department of Environmental Quality. Mr. Steve Mason, Chair, called the meeting to order. Roll call was taken and a quorum was confirmed.

MEMBERS PRESENT

Brita Cantrell
Mike Cassidy
Jack Coffman
Tony Dark
Bob Drake
David Griesel
Jerry Johnston
Sandra Rose
Terri Savage
Richard Wuerflein
Steve Mason

MEMBERS ABSENT

Jennifer Galvin
Vacancy

DEQ STAFF PRESENT

Steve Thompson, Executive Director
Jimmy Givens, General Counsel
Wendy Caperton, Executive Director's Office
Scott Thompson, Land Protection Division
Gary Collins, Env. Complaints & Local Services
Jon Craig, Water Quality Division
Ellen Bussert, Administrative Services Division
Jamie Fannin, Administrative Services Division
Myrna Bruce, Secretary, Board & Councils

OTHERS PRESENT

Ellen Phillips, Assistant Attorney General
Christy Myers, Court Reporter

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

Approval of Minutes Mr. Mason called for motion to approve the Minutes of the November 15, 2005 Regular Meeting. Mr. Johnston made the motion to approve as presented and Mr. Dark made the second. Roll call as follows with motion passing.

Brita Cantrell	Abstain	Jerry Johnston	Yes
Mike Cassidy	Abstain	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Election of Officers Mr. Johnston moved to retain the same officers from the past year. Mr. Drake seconded and called for nominations to cease and elect by acclamation. Roll call as follows with motion passing.

(see transcript pages 8-9)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:20 Emergency Planning and Community Right to Know

Ms. Judy Duncan advised that proposed rule would implement the Oklahoma Hazardous Emergency Planning and Notification Act as it relates to the DEQ requiring Tier II forms to be submitted to the DEQ electronically via the DEQ website and require inclusion of latitude/longitude information on the forms. She pointed out additional amendments that would clarify that submitting a paper Tier II report to the appropriate Local Emergency Planning Committee (LEPC) and the local Fire Department is no longer necessary since the DEQ will make the information available to those entities. Ms. Duncan explained that fee rules have been restructured to more closely reflect potential risk to the community, to fund DEQ costs for providing one-stop filing as requested by the regulated community, and to provide funds to assist LEPCs in using Tier II data. She further explained the extensive measures the staff had taken to assure input from the public.

Ms. Duncan fielded questions and comments. Mr. Mason related that this rule had not gone through a Council before being presented to the Board. He called for comments from the Board. Mr. Cassidy provided his comments and comments were received from the public. Mr. Mason called for action by the Board. Mr. Dark stated that staff had done a wonderful job on the proposed rule and made motion to approve as presented. Ms. Rose made the second. There was further discussion as to whether or not there had been enough outreach and whether or not it should be sent as presented for legislative discussion and approval. Mr. Thompson reminded the Board that in this particular case they could make any changes to the rule they deemed fit. Mr. Drake requested that the Chairman delay action on the rulemaking until later in the day. Mr. Mason asked Mr. Dark and Ms. Rose to withdraw their motion and asked staff to return with suggested language before the end of the meeting. *(see transcript pages 9-68)*

Ms. Judy Duncan returned to the podium with staff’s revised version of the rulemaking. Mr. Thompson reviewed the new changes proposed which included clarifying language plus the suggested amendment for a fee of \$12 per facility for agriculture chemical dealers which addressed concerns of the agriculture industry and the oil and gas industry. Other suggestions were made during comments so Ms. Duncan was asked to return to the table with a clean version before Board’s final approval. *(see transcript pages 125-138)*

Mr. Mason returned to the rulemaking for the third time with Ms. Duncan providing a ‘clean’ version of the proposal. Mr. Dark clarified his motion that was still on the floor and Mr. Coffman made the second. Mr. Mason commented that this exercise was good as it reminds the Board how hard it is to work on a Council. Roll call as follows with motion passing.

(see transcript pages 142-144) (latest version of the proposal is attached)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:100 Air Pollution Control Presenting the first three proposed amendments, Ms. Sharon Myers explained that proposed amendments to Subchapter 4 would incorporate by reference federal New Source Performance Standards

(NSPS) in 40 CFR Part 60. The proposed amendments to Subchapter 41-15 would incorporate by reference National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Part 61 and Part 63. And proposed amendments to Subchapter 8 would incorporate EPA's revisions to the NSR permitting program under the federal Clean Air Act. The amendments include revisions to the method of determining if a modification to an NSR source is a major modification. Other amendments update and clarify language and move definitions to more appropriate locations within Chapter 100. Hearing no comments from the Board or the public, Mr. Mason called for motion to approve those three with one vote. Mr. Griesel made the motion and Ms. Cantrell made the second. Roll call as follows:

(see transcript pages 68 - 74)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Ms. Myers continued with staff's proposed of a new Part 11 of Subchapter 8 which would incorporate the federal Best Available Retrofit Technology (BART) requirements which are part of the Regional Haze State Implementation Plan (SIP). She advised that the rule as proposed had been passed by the Air Quality Council at its January 18 meeting but in the weeks following, staff discovered that some of the language in the rule was unintentionally limiting. Ms. Myers added that staff felt the rule should be remanded so that revisions could be made for Council approval at their April 19 meeting. Mr. Dark made the motion to remand and Mr. Coffman made the second. With no comments from the Board and public, Mr. Mason called for a vote stating that a yes-vote would remand back to the Council.

(see transcript pages 68-79)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:300 Laboratory Accreditation Mr. Brian Duzan, Chair, Laboratory Services Advisory Council advised that proposed changes would clarify the accreditation exception for certified laboratory operators; update method references for drinking water laboratories; add new detailed requirements for standard operating procedures and methods manuals; and add methods for the petroleum hydrocarbon laboratory category. Questions were fielded by Ms. Judy Duncan, and then Mr. Mason called for a motion. Mr. Griesel moved for approval and Mr. Dark made the second. Roll call as follows with motion passing.

(see transcript pages 79- 83)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:305 Laboratory Services Mr. Brian Duzan advised that the proposal relates to the fees for laboratory analysis which are charged by the DEQ's State Environmental Laboratory adding that DEQ has proposed changes based upon a review of

actual costs, comparison of similar fees in other states and in the private sector and projections of equipment needs for the future. Mr. Duzan, Ms. Duncan, and Mr. Thompson fielded questions. Mr. Johnston made motion for approval with Mr. Griesel making the second. Roll call as follows with motion passing.

(see transcript pages 84-96)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:410 Radiation Management Mr. Steve Woods, Vice-Chair of the Radiation Management Advisory Council, presented the proposal in Dr. Gooden’s absence. Mr. Woods advised that revisions in Appendix A would change the fee schedule for radiation machines. He provided details as to the fees that would be reduced and the ones that would be increased stating that the new fees are designed to vary based on risk posed by the machine. Following questions and comments, Mr. Mason called for a motion. Mr. Coffman made motion for approval and Ms. Cantrell made the second. Roll call as follows with motion passing.

(see transcript pages 96-105)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	No	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	No
David Griesel	Yes		

Rulemaking – OAC 252:515 Solid Waste Management Mr. Bill Torneten, Chair, Solid Waste Management Advisory Council, stated that Council had voted to recommend approval of proposed rule changes in three rulemaking actions which included minor language clarifications, corrections of legal citations and typographical errors; proposed waste tire rule changes; and a five-year update, as required by rule, of the unit costs and worksheets in Appendices H and I related to annual estimated financial assurance costs for closure and post-closure of solid waste facilities. He advised that no public comments were received on any of the revisions. Mr. Griesel made motion for approval as presented and Ms. Rose made the second. Roll call as follows with motion passing.

(see transcript pages 105 - 109)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:606 Oklahoma Pollutant Discharge Elimination System Mr. Jeffrey Short, Vice-Chair Water Quality Management Advisory Council, introduced his environmental regulations class from Southwestern Oklahoma State University. Presenting the water quality issues, he advised that this proposal would update the incorporation by reference of certain federal regulations to July 1, 2005 which would include the adoption of the Phase II Cooling Water Intake Rules. With no questions or comments,

Mr. Dark made motion to approval and the second was made by Mr. Wuerflein. Roll call as follows with motion passing.

(see transcript pages 109 – 112)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:611 General Water Quality Mr. Jeffrey Short advised that this proposal would update the incorporation by reference of certain federal regulations to July 1, 2005 and that no comments had been received. Mr. Bob Drake moved for approval and Mr. Dark made the second. Roll call as follows with motion passing.

(see transcript pages 112-113)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:616 Industrial Wastewater Systems Mr. Jeffrey Short stated that the proposal amends the rules concerning the conditions under which sand and gravel mining operations to obtain a permit. Mr. Jim Rodriguez with the Oklahoma Aggregates Association spoke in support of the change. Mr. Coffman moved for approval and Mr. Johnston made the second. Roll call as follows with motion passing.

(see transcript pages 114-119)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:631 Public Water Supply Operation Mr. Jeffrey Short stated that this proposal would to update the incorporation by reference of certain federal regulations to July 1, 2005. Mr. Griesel moved to approval and Ms. Rose seconded. Roll call as follows with motion passing.

(see transcript pages 119 -121)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:690 Water Quality Standards Implementation Mr. Jeffrey Short advised that the Department’s proposal would update the incorporation by reference of certain federal regulations to July 1, 2005 and includes the adoption of the Phase II Cooling Water Intake Rules. Mr. Johnson moved for approval and Mr. Cassidy made the second. Roll call as follows with motion passing.

(see transcript pages 121-122)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Rulemaking – OAC 252:710 Waterworks & Wastewater Works Operator Certification Mr. Allen McDonald, Chair, Waterworks & Wastewater Works Advisory Council, expressed that these proposed amendments would reflect language clarifications and corrections of typographical errors; and also included clarification of the certification requirement for plumbing contractors. Hearing no questions or comments, Mr. Mason called for a motion. Mr. Coffman moved to adopt as presented and Mr. Johnston made the second. Roll call as follows with motion passing.

(see transcript pages 123-125)

Brita Cantrell	Yes	Jerry Johnston	Yes
Mike Cassidy	Yes	Sandra Rose	Yes
Jack Coffman	Yes	Terri Savage	Yes
Tony Dark	Yes	Richard Wuerflein	Yes
Bob Drake	Yes	Steve Mason	Yes
David Griesel	Yes		

Briefing on and discussion of current Board vacancy and factors affecting candidate field Mr. Mason conveyed that the discussion was informational in nature to let the public know of the difficulties faced in filling the Board’s vacant position due to different criteria and that the Department is continuing search for new members.

(see transcript pages 139-141)

Discussion of need for four regularly scheduled Board meetings per year Mr. Mason related that staff will bring rulemaking before the Board to reduce the number of required Board meetings from four to three should there not be business to be addressed.

(see transcript pages 141)

New Business None

Executive Director’s Report Mr. Thompson distributed the Key Bills (2006 Session) and the 2006 Legislative Calendar. He provided an update for each of the bills.

Adjournment The meeting adjourned at 12:50 and the Public Forum followed.

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE ENVIRONMENTAL QUALITY BOARD
OF THE REGULAR MEETING
Agenda Items 1-21
HELD ON FEBRUARY 24, 2006, AT 9:30 A.M.
IN OKLAHOMA CITY, OKLAHOMA

* * * * *

MYERS REPORTING SERVICE
Christy A. Myers, CSR
(405) 721-2882

MEMBERS OF THE BOARD

ROBERT WUERFLEIN - MEMBER

BRITA CANTRELL - MEMBER

MIKE CASSIDY - MEMBER

JACK COFFMAN - MEMBER

BOB DRAKE - MEMBER

JENNIFER GALVIN - VICE-CHAIR

TERRI SAVAGE - MEMBER

JERRY JOHNSTON - MEMBER

STEVE MASON - CHAIRMAN

SANDRA ROSE - MEMBER

TONY DARK - MEMBER

DAVID GRIESEL - MEMBER

STAFF MEMBERS

STEVE THOMPSON - DIRECTOR

JIMMY GIVENS - STAFF ATTORNEY

SCOTT THOMPSON - DEQ

JON CRAIG - DEQ

EDDIE TERRILL - DEQ

GARY COLLINS - DEQ

JUDY DUNCAN - DEQ

ELLEN BUSSERT - DEQ

DAVID DYKE - DEQ

MYRNA BRUCE - SECRETARY

PROCEEDINGS

MR. MASON: This regular meeting of the Environmental Quality Board has been called according to the Oklahoma Open Meeting Act, Section 311 of Title 25 of the Oklahoma Statutes.

Notice was filed with the Secretary of State on December 5, 2005. Agendas were mailed to interested parties on February 10, 2006.

The Agenda for this meeting was posted Wednesday, February 22, 2006 at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma.

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.

We have a new communication system. Steve has explained to me that when I want to talk, I press this talk button and I get

a little red light that turns on. And I guess we're supposed to press the button before we talk, so everyone can hear us.

Myrna, let's see if we have a quorum, please.

MS. BRUCE: An additional instruction would be press it again when you're through talking and your red light will go off. And if you don't do that, though, it will go off by itself.

For the audience members, if you would remember to push the blue button, that would be great. One more thing, if your personal speaker is too loud, there is a volume button under -- on the side.

MR. THOMPSON: And if you're wondering what the little thing out in the middle is, that's a television camera hooked directly to Miles Tolbert.

MS. BRUCE: And for roll call, Brita Cantrell.

MS. CANTRELL: Here.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Here.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Here.

MS. BRUCE: Mr. Dark.

MR. DARK: Here.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Here.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Here.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Here.

MS. BRUCE: Ms. Rose.

MS. ROSE: Here.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Here.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Here.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: And for the record,

absent --

MR. MASON: Yes.

MS. BRUCE: -- Ms. Galvin is

absent and we have one vacancy.

MR. MASON: All right. Our next

Agenda item is Approval of Minutes. Is there any comments or a Motion?

MR. JOHNSTON: Move to approve.

MR. DARK: Second.

MR. MASON: Is there any discussion from the Board or the public?

Myrna, can we have a roll call vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Abstain.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Abstain.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Approved.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes, approved.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: Agenda Item 4 is

Election of Officers. Are there any thoughts, guys?

MR. JOHNSTON: I would move that we retain the same officers we had for 2005 and 2006.

MR. DRAKE: I will second that, further call nominations to cease and we elect by acclamation.

MR. MASON: Thank you, guys. Any discussion from the Board or the public? Do we have to vote on an acclamation? I guess so. Can we vote?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: Thank you, guys, for
your confidence in Jennifer and I.

Item 5 is Rulemaking regarding OAC
252:20, Emergency Planning and Community
Right to Know. Judy Duncan.

MS. DUNCAN: Thank you.

Amendments are proposed today to OAC 252:20, the Emergency Planning and Community Right to Know Rules. The purpose of these rules is to implement the Oklahoma Hazardous Emergency Planning and Notification Act, as it relates to the Oklahoma Department of Environmental Quality.

The proposed rule changes include requirements on how reports under 40 CFR Part 372 shall be submitted to DEQ, and how these reports shall be distributed to the Local Emergency Planning Committees, or LEPCs, and local fire departments.

The rules have been rewritten to utilize new technology for filing reports electronically via the DEQ website and to provide one-stop reporting to DEQ, LEPCs and fire departments, which satisfies the requirements of the federal law. In addition, the latitude/longitude to the report -- the addition of the latitude/longitude to the reports has been

included in the rule.

The Tier 2 fee structure would change from a per facility basis to a per chemical basis with a higher charge for Extremely Hazardous Chemicals. This would make a better alignment between fees and the risks posed by storage of chemicals in communities and provide funds to assist LEPCs in using the Tier 2 data for emergency planning.

As you may recall, these rules do not go through a Council before coming to the Board. So I'm going to describe the Agency's activities to assure input from those who are impacted by the proposed changes. These proposed rules were suggested by the Oklahoma Hazardous Emergency Response Commission and there has been extensive outreach to the regulated community on the proposed changes.

Voluntary submittal of Tier 2 forms over the internet has been available since 2005 and over one-half of the regulated owner/operators filed that way last year.

In the early summer of 2005, we mailed surveys to the 1,974 owner/operators who submitted Tier 2 reports in March of 2005, soliciting their opinions on the possibility of mandatory internet filing.

In addition, three public meetings were held: June 9th, in Oklahoma City; June 28th, in Tulsa; and July 12th, in Oklahoma City; with a total of 62 persons in attendance. From these mailings and meetings, a total of 405 comments were received by DEQ. Of these, 273 supported mandatory internet filing, 104 opposed mandatory internet filing, and 28 were neutral. Over 50 percent of those who opposed, gave lack of computer or internet access as their reason for opposition.

Also of interest was the fact that many commenters suggested that a real benefit could be derived from one-stop filing. Federal law mandates that Tier 2 reports be -- information go to LEPCs and local fire departments, as well as to the State. Commenters asked for a rule which

would make DEQ the central repository that provided distribution to the other entities.

So to be responsive to these commenters, DEQ proposed to add a mechanism to the internet filing which would accomplish this goal. This requires DEQ to collect latitude/longitude information for each facility in order to determine which fire department should receive the reports.

In addition, inclusion of latitude/longitude in the Tier 2 database makes accurate mapping possible which enhances emergency planning, including plume modeling for first responders. However, in order for DEQ to undertake that task, additional funding is necessary.

A concern that's been expressed many times over past years, especially from legislators and the oil and gas industry, is the inequity of the current Tier 2 fee structure. Currently, the structure is \$10 per facility for 10 facilities, \$29 per facility if you have 11 to 14 facilities,

and a flat \$500 for 25 or more facilities. The result of that is that an oil and gas operator with 10 facilities pays \$100, and one with 11 facilities pays \$220. In addition, a large facility, such as a refinery with many, many chemicals on site, only pays \$10. So the risk to the community is not reflected in the current fee structure.

What we're proposing is a fee structure based on the number of chemicals present at a facility and the hazards posed by those chemicals. The proposed fee structure would charge \$15 per hazardous chemical stored at a facility and \$30 per extremely hazardous chemical stored at a facility. The fee cap would increase to \$1,000.

An assumption would be made that an oil and gas production location would have a single hazardous chemical, which produced hydrocarbons. Facilities reporting under SIC Code 1113, oil and gas production, would be charged \$12 per facility, since

each location would be assumed to have one reportable chemical on-site.

The present fee structure provides about \$1,500 per year to DEQ to administer the SARA program, including verification of reports. I'm sorry, \$150,000. So the current fees provide \$150,000 instead of \$1,500. Based on 2005 numbers for owner/operators and the chemicals they reported, the proposed fee structure would generate approximately 163,000 additional dollars. Of this, we would allocate up to \$90,000 to provide funding to LEPCs, if they agree to provide Tier 2 information to the fire departments in their counties. We will -- and DEQ will distribute that money from the fee change. LEPCs are unfunded federal mandates and this will provide some funding for their activities.

DEQ will also hire one additional staff person to assist the reporting community with on-line filing, as well as to coordinate distribution of Tier 2 reporting information to LEPCs and to those

fire departments whose LEPCs choose not to distribute the information in their area.

In September 2005, we undertook another public participation effort and letters requesting comments on this expanded fee -- proposed rule change, including the fee change, were mailed again to the 1,974 owner/operators who filed Tier 2 forms. In addition, three more public meetings were held to discuss the proposals: September 23, in Oklahoma City; October 11th, in Tulsa; and November 1st in Oklahoma City. We had a total of 38 people who attended those meetings.

Twenty comments were received, either through mail or at the meetings. Seventeen supported the proposed changes and three opposed the changes. Of the three opposing, two were opposed to any increase in their fees and one was opposed to reporting latitude/longitude.

We've taken the following steps to address concerns from comments on the proposed rule changes.

First, there would be a two year grace period for mandatory internet reporting for small businesses with five or fewer employees, as well as oil and gas operators with fewer than 20 wells.

In addition, we will make computers and internet access available throughout the State at local offices, by appointment, along with assistance on internet filing.

So, if someone needs some assistance, they can call up, make an appointment with one of our local offices, go in, use our DEQ computer, and have the assistance of our staff to file their report.

We will also assist facilities, which do not know and do not have the technology to find latitude/longitude by using a GIS Locator to determine this information. And this will be done either through the LEPCs assisting, because many of them have the ability to do GIS locations, or again through our local offices.

One thing I need to call to your attention is we've noted that the proposed rule, as it was sent to you, it contains an extra word in Section 20-1-4(b). And in the underlined -- the line number two, it says "DEQ Internet website using utilizing DEQ approved software." We don't need both using and utilizing and we would ask that the "using" be removed from the final rule.

Finally, in the last few days, we received comments from the Agricultural Chemical dealers expressing concern about the impact of the proposed fee increase on this segment of the regulated community. When we investigated these issues, we found that these facilities may have been reporting chemicals that are below the threshold levels of the statute. In other words, things that aren't required to be reported.

In addition, there is a specific exemption for fertilizer dealers if a fertilizer is held for sale by the retailer to the ultimate customer. So if a grain

company or a co-op retails a fertilizer directly to the consumer, doesn't wholesale it or sell it to someone who blends and then sells, then that is exempt from the reporting requirement.

For everybody, not just Agricultural Chemical dealers, we want to encourage folks to let their LEPCs and local fire departments know what's on site, but we don't want to charge folks if they choose to report chemicals that are not required to be reported. So, all chemicals reported in quantities below threshold will be eliminated from the fee structure and there will be no fees charged on those reports.

And, as I noted, for Ag dealers there is a specific exemption for fertilizer retailed directly to the consumer. Again, we appreciate the dealers letting emergency responders and planners know about the presence of the fertilizer, because it is a hazard, in case of fire. But we don't wish to change voluntary reporting of the chemical. We plan to

provide an outreach to the Ag dealers to encourage them to report such fertilizer retailed directly to the consumer with the word "retail" in the chemical name. And anything that's reported with the word "retail" in the chemical name will not be fee'd.

I will be happy to answer any questions you have. In addition, Monty Elder and Tom Bergman are here to help me with anything and you can tell Monty already did, whenever I moved the decimal two places to the wrong direction. So I'll be happy to entertain any questions you all may have.

MR. MASON: Thank you, Judy. This is somewhat a unique rule in that, to my knowledge, all our other rules are always passed by a Council. But because this rule doesn't have a home, it's coming to us first and it never went to a Council. No one else has approved it and that's why Judy is presenting it first, as a citizen that's on a Council.

Comments from the Board? Questions?

MR. CASSIDY: I do. Excuse me.

Judy, thank you, I appreciate the generosity and the information you've given me this week on all this. But I think you know that I still have some concerns, mostly about the amount of funds generated and the use of these funds.

First of all, I just don't feel like adequate notice was given to the industry to justify these type of increases. It didn't draw attention to itself. I think it was listed in one of the letters that was sent out, but I certainly never saw it, didn't know anything about this until I got the Agenda packet on this meeting.

I certainly don't disagree with the one-stop shop and the electronic filing, I think it's wonderful. But I've always thought that technology should enable us to reduce staff, instead of add staff.

When I looked at the \$150,000 coming in now and another \$163,000 for this increase, for a total of \$313,000, and then

you're going to be saving something filing electronically, rather than paper. And that's been calculated as high as \$225,000. Let's just take half of that. That's over \$425,000 that you're going to have coming in.

The Ag community, of course, doesn't like going from \$20 to \$200, but that's -- that's -- percentage-wise, that's a huge increase. Huge. And I would like to see them have more input on the fee structure.

I think there's other problems with this. For instance, under reporting, I think when you go to a per chemical basis, you're going to have people under reporting what they have. For instance, in my business, we report certain things that we don't have to, but we let the fire department people know. I think you see a lot of that happen.

The use of these funds that you're planning on giving the LEPCs, I think they should be held accountable for, and there's nothing in here that does that. Our --

personally, our LEPC is more into storm spotting than they are chemical inventories. I would like to see them have to budget for this money and tell you where it's going, if they end up getting it. Plus, very little of it will go to rural areas, anyway, but that's another matter.

As far as parity in the fees that are charged, it appears to me when you go and charge an oil site \$12 per location for hydrocarbons and for a 10,000 pound pile of sand, it's \$15, something's wrong there. So, I feel like the structure needs revising. And I would recommend this proposal be remanded back to Committee with more industry input and reconsideration for additional public comment and input. Thank you.

MR. MASON: Other Board comments? Comments from the public? When you -- would you be sure to introduce yourself, also, please?

MS. BURKHALTER: My name is Angie Burkhalter and I represent the Oklahoma

Independent Petroleum Association. We have over 1,600 members that would be directly impacted by this rulemaking.

I just want to commend DEQ's staff for working so closely with industry. We felt like that they provided numerous technical meetings over the past eight months, allowing industry to have good feedback and an opportunity to provide input into the development of this rule, and we greatly appreciate working with them.

We had one comment after the rules were proposed, that I understand that we provided that in advance so that change -- it was a one-word change. And as I understand it, from talking with Monty, that change was made in advance, so it didn't even show up in your copy. So anyway, I won't even talk about that, but we did provide one comment on that.

Anyway, once again, I just appreciate working with staff and we feel like that we had ample opportunity with

input. Thank you.

MR. MASON: Any other public comment? Board comments?

MR. JOHNSTON: I just have one comment. Jerry Johnston. In fact, I didn't even get here with it, because I ran it by my fire chief and we have so many things that we have to do and this adds another thing that we have to do, when we already are doing part of this.

But the problem is, I'm like Mike, this money that comes back, never trickles down to rural America, it doesn't seem like. We have a lot of costs in small towns to maintain a fire department, a rural fire department, and there are a lot of fires. And we do have one new truck, but the others are all late '70 models and you get out in a bunch of fires and pretty soon they OD because they've sat around a lot of times and not get to work. But we would like to see more how this money might come back to local fire departments who are responsible for all this stuff in a small

town.

MS. DUNCAN: Our proposal at this point is to give each LEPC \$1,000, if they will enter into a Memorandum of Agreement with the DEQ that they will distribute the information to all their local fire departments. We, at this point, didn't plan on having any strings on how they used that \$1,000, because we feel that the local people know best how the money can most effectively be used to promote emergency planning and support emergency response in their area.

MR. CASSIDY: Judy, I'm just afraid they're going to use that for gasoline to spot storms instead of using it productively. I mean, I don't know how they're going to use it. Something else I wanted to point out, also, is in your Committee meetings, when you had two people oppose the fee increase, one of those persons represented over 70 Ag retailers and chemical dealers and I wanted to make that clear, too, that there was opposition,

strong opposition to the fee increase.

Thank you.

MS. DUNCAN: And that's true.

That was opposed to, and it was opposed on the basis of an objection to any fee increase at all.

MR. MASON: Judy, two questions.

If we don't pass the rule, what happens?

And second, if I go to the last page of this handout, which I think is where you compared the effect on a lot of people, which line describes the effect that Mike's talking about?

MS. DUNCAN: I'm sorry, I don't have your handout with me, but the line that would explain that would be -- there's a -- the second heading that says Effect of Proposed Tier 2 Fee Change on Typical Industry, Owner/Operator, and the fee for an Agriculture Co-op with two locations, six Chemicals, Extremely Hazardous Chemicals. Current fee is \$20, the proposed fee would be \$120.

Now, since then, and after our

discussions with the industry over the last few days, we have looked at the reports from the last year and there were 60 companies who reported on 163 locations. And using the information they reported for the last year, two companies would pay over \$500. Those are companies that have multiple locations and have some big areas where they store large quantities of chemicals. Eight companies would pay between \$200 and \$500. Eighteen companies would pay between \$100 and \$200. And 32 companies are 53 percent of those reporting, would pay less than \$100. The median fee paid, in other words the one that -- half are above and half are below would be \$100. The most -- the fee that most people would be paying most often would be \$30.

MR. MASON: And is that for Agricultural folks or is that everybody?

MS. DUNCAN: No, that's just for the Agriculture and Chemical dealers.

MR. MASON: What happens if we

don't pass this rule?

MS. DUNCAN: If we don't pass this rule, we go to business as usual with the fee of \$10 per location and with a combination of filing -- not requiring internet filing and with -- there's something I'm forgetting.

MR. THOMPSON: No one-stop filing.

MS. DUNCAN: And no one-stop filing. No one-stop filing. And really, of the people who attended our public meetings, the thing that they wanted most from DEQ was one-stop filing, because it's hard for people, someone who has -- particularly people who have facilities in different locations, it's hard for them to keep track of who's the fire department, where do you send that and all that sort of thing. And they just really want the one-stop filing.

MR. CASSIDY: Judy, what would happen if we passed part of this, say, we passed the one-stop filing without the fee

increase?

MS. DUNCAN: Then you place the Department in a position of requiring something that we don't have the staff to support.

MR. CASSIDY: Do you have an estimate -- can you tell me again how much money we'll save by electronic filing?

MS. DUNCAN: We have on a per form -- we figured on a per form basis what it costs us to file per form. And it costs electronically or on paper. And to handle an electronically filed report costs about \$3.57. The (inaudible) form filed on paper costs about Sixteen Dollars and some Cents per form.

MR. CASSIDY: Okay.

MS. DUNCAN: Now, the thing that's difficult for us to -- it's difficult for us to give you exact numbers about savings, because we have numbers of locations. There's 35,000 locations in the State. And last year, 17,000 of those filed electronically and 18,000 were filed

on paper. I My have that backwards. And if you used those figures, that's how you come up with the savings of \$225,000. But because -- the 28,000 of the reporters are oil and gas companies and they all file on -- they all file for multiple locations, as do the Ag Chemical dealers file for multiple locations. And so we don't really have an exact number on the forms.

But right now, the -- we directly pay for the staff that work in this program and the fee also pays for the toxic release inventory staff. And the Agency -- what we don't pay for but what we receive from the Agency's support of the program is the clerical support that we have and the mailroom support. And when you get 17,000 or 18,000 or even half that much, you get several thousand reports coming in within a month's time, there is a significant -- work for the mailroom.

MR. CASSIDY: Correct me if I'm wrong, but the savings from filing electronically could equal what this

increase in the fees is.

MS. DUNCAN: No, that's not the case.

MR. CASSIDY: The difference between \$3.57 and \$15?

MS. DUNCAN: That's not the case.

MR. CASSIDY: That's not correct?

MR. DARK: I have a question that may help me understand that very subject.

It seems to me what we're doing here is that the DEQ is, in fact, taking some of the administrative burden off of the private sector and by doing that, then it would seem that we're really shifting costs. We're not -- it's not costing us more to do it electronically, but rather we're helping the private sector with this one-stop system; is that correct?

MS. DUNCAN: Yes, sir.

MR. DARK: Okay. I just need to understand that. (Inaudible).

MR. CASSIDY: The way that you're saying you're helping the private sector, is that we punch it in on a computer

instead of having to fill out a form and make two copies of it and mail it.

MR. DARK: Well, an industry that may have -- I don't know how many locations, 1,000 or 500 locations, and they're doing that 1,500 times or 15,000 times, then (inaudible).

MR. CASSIDY: That's what they read the extra funds to do. Somebody to do that.

MR. DARK: Right. So it seems to me that those costs are being actually just shifted over and we're helping the private sector do their filing. But I guess the advantage to that -- philosophically, I guess we could debate that all day long, but the advantage to that would be us having some control or oversight as to making certain that all those reports are being filed properly. Is there an advantage there?

MS. DUNCAN: Yes. What we would be doing with the additional person is, first of all, doing outreach to help people

learn -- the people who had problems filing electronically, learn to use the electronic system, and to assist them in doing that.

But then we would also be using that person to go out and work with LEPCs and with local fire departments to use the data.

And in some small LEPCs and a large number -- a fairly large number of LEPCs, the fire departments get the reports on paper and they put them in a drawer. And there's never really -- yes, they know where the hazards are, but there's no real planning done for what to do if there's a release or if there's a fire in that area.

And so what we would be doing is going out and using Tom Bergman, freeing him up from some of the administrative burden of dealing with the paper forms and using him more effectively to train fire departments to model, using that data, to plan, if they needed to have an evacuation, who they needed to evacuate, where they need to evacuate to, and to do all those things that help them be prepared for

emergency response.

So what we would be doing with the money is assistance to the reporting community and then assistance to the users of the Tier 2 information in planning for emergency response. And then we would be taking on the additional burden of making sure that all the reports that are filed get to the right people.

MR. DARK: Along with that, it seems like every time that one wants to help, they also accept a liability. Has that been reviewed? Is there a liability that DEQ staff is taking on by having that responsibility that is now on the private sector's plate, if you will?

MS. DUNCAN: I don't know that we've reviewed that specifically.

MR. THOMPSON: I think that's correct. I don't think we've specifically reviewed that, but we also know that it is both -- correct me if I'm wrong, Judy, but both the one-stop shop electronic filing and the risk based assessment is pretty

common throughout, at least, this region. We benchmarked what we were doing against other states in the region that have already adopted this kind of process.

So I wouldn't say that we've done that specific legal review, but I think we were somewhat comforted by the fact that it is occurring in other states. Is that good, Mr. Chairman?

MR. DRAKE: Well, you're probably going to answer it, but I was -- I had some questions and I'm assuming that's probably what you're about to do -- I'm sorry -- about some timing and what we need to do and what we can do and can't do, if you could share that.

MR. THOMPSON: Well, a couple of things.

First, let me respond to that. We bring fee issues to the Board early in the Legislative Session. We schedule this specifically, because in order for fees to go into effect, they have to be passed by Boards and Councils during the Legislative

Session. And particularly, early -- Jimmy knows the timing of this better than I do but, in fact, that's why we bring these issues for your disposition at this time.

Again, if the rule fails to pass, we'll do exactly as Judy said, we'll go back to business as usual.

The second thing that I wanted to say about this thing is that I have no -- I find no fault with the outreach effort that Judy and her folks did, but I think it clearly indicates the importance of the Councils in this process. When you have people that are particularly invested in an issue on a Council, you have much greater opportunity for input from the -- from all interested parties. And so I -- while I think it's somewhat unfortunate that this is an issue that the Agency is bringing, it's the only thing we knew to do.

And finally, Mr. Cassidy -- Mike, the other day when I was over at the Capitol, Joe Neal Hampton tackled me over this issue on the fourth floor rotunda.

And I think that we have committed to work extensively with the Ag dealers in the State, to try to mitigate the cost of this thing. But I think it is also fair to say that there will be -- when you go to a risk based system, there will be an increase. I mean, there is no argument from us that that will occur for Ag dealers. But if we -- I think there was some concern that we were having up to a, I don't know, 1,000 percent increase, and I don't think that -- based on what we know now and our willingness to work with -- fairly intensely with Agricultural dealers to try to mitigate those costs as best we can, they're not as much as they once were thought to be. But I -- it would be unfair to say that there is not an increase in cost to them.

MR. CASSIDY: Well, I would just like to say that, at this time, we're going from \$20 to \$200, and \$200 isn't a lot of money, but that's a thousand percent increase at a time when Agriculture is on

its knees already. And you're shifting, it seems a little bit more to Agriculture and off the oil and gas industry, who evidently does need some adjustment on that, and I wouldn't argue with that. But again, I want to reiterate, hydrocarbons versus a pile of sand, a pile of sand is going to cost you more than an oil well. There's something not right about that. But, yeah, we don't mind the \$200, it's just the idea of a thousand percent increase. One guy is going from \$60 to \$760, and it is a substantial increase at this time of the situation the Agriculture is in right now.

MR. DARK: Comment. I agree.

It's very unfortunate that we don't have a Committee to review this, that's a tough thing. The political realities of the situation, I think we can sit here and debate all day long and end up just allowing that debate to happen one more time over at the Capitol.

Based on the fact that we meet four times a year and based on the fact that

Session will be out subsequent to our next meeting, I'm inclined to go ahead and submit this over there with, probably, our apologies for what it will take in debate on the floor to get this solved. Based on what I hear between the OML and the Agriculture industry, I wouldn't make a large bet that this Bill is going to go anywhere at all, in terms of the fees. And I think it's unfortunate because it shows that we, as a Board, are not doing our job in making certain that policy is in good shape before it goes over there for Legislative approval. So I think it's a comment on our work here. But I don't know that we have much of a choice as a Board if, in fact, we go that direction. It seems as though we do need to go that direction. We should at least ask and see if the parties that are concerned can get that worked out at the Capitol.

MS. BURKHALTER: I would like to make just one more quick comment. I think the one-stop shopping for many of our

Members is a benefit. I know we have some very small operators, but we also have some larger operators that have a number of sites, so that whenever filing time comes around, they spend enormous time and effort filing it to DEQ, filing it with the LEPCs and filing it with the fire departments that it takes a tremendous amount of time, especially if you're looking at a company that possibly has anywhere from 2,000 to maybe four or 5,000 well sites. You know, this one-stop shopping for them is a significant reduction in time and effort. That's all I have. Thank you.

MR. MASON: I guess we've got three options. We can not pass the rule, we can pass the rule or, at this point, we can try to change some of the fees a little bit.

MR. DARK: I don't think -- I disagree with option three. I don't think this Board has the ability or the knowledge, frankly, to adjust fees at the time -- at this time. I think we have two

options, we either send it or we don't send it.

I'll throw a Motion out and see where we go. I'd propose that we send this over and approve it as it is. I think staff has done a wonderful job, they've done everything they can to get this in the best shape it can be, and I certainly can see the Agriculture's position on it. Hopefully, that position can be voiced and worked out, as well as municipal's position at the State Capitol. So I would propose that we pass these rules.

MR. MASON: Is there a second?

MS. ROSE: I would second that.

MR. MASON: Discussion from the Board?

MR. CASSIDY: I just don't want this to seem like a purely Agriculture issue, because it's not exactly.

MR. DARK: I understand, but it is one of the more affected parties here, I can see that.

MR. CASSIDY: It is.

MR. DARK: Municipalities, as well. That's another deal.

MR. MASON: Any other discussion?

MR. COFFMAN: Just -- excuse me. Just a comment. In listening to the discussion, it strikes me that your original observation, Tony, is right. It is cost shifting.

The other one that strikes me is, you're trying to do some outreach to communities that may not want outreach. And I'm not sure that -- that discussion has probably gone far enough, so it's going to be my recommendation that we reject this because of those reasons.

If you get your fee structure right, then cost shifting is all right, so long as you get Quid pro quo. I don't -- it strikes me that we haven't heard that this morning. You're getting maybe an unfair piece of that and somebody else is getting a lot of things happening that will help them reduce their costs. But -- so I -- but to me, it says the fee structure is not

right. And I'm not sure if we addressed this issue of how much -- communities right now are putting this information in the file cabinet and not looking at it, I'm not sure how much you're going to encourage them to drag that out and look at it, just because you're going to do an outreach.

MR. DARK: I see your point completely. I do have a lot of faith in the staff and their research and the length that they have to go through to try to figure this out. And I guess that our only differences, I'm willing to let the Capitol work it out and you're saying we should stop it here. It's a tough decision. But it is. I think it's a worthwhile debate. I certainly see your point.

MR. CASSIDY: I just want to agree with Jack, of course, and to reemphasize one more time, that \$12 for an oil well and \$15 for a pile of sand, something's not right there. And when it goes to the Legislature, that will be but the oil and gas has a strong lobby so, if

that's what you guys want to do --

MR. DARK: If I put oil and gas against OML, I think I would bet on OML.

MR. MASON: All right. Any other discussion?

MS. SAVAGE: In the macro, I have no problem with it because, in the main, you have DEQ coming -- the staff coming with a problem. But I always focus -- my focus has always been kind of narrow. And I see this, this reminds me of the time that we were asked to set precedents for a glass factory, and it's huge. And what we do here, I mean, we're a government body making decisions that affect everybody in the State. And I mean, it's -- this is so big. And we're discussing this and making a decision in an hour, a half hour, and I mean, I think, you know, this is just one of those things where you've got so many good points all around. And I am concerned. I think Mike's comments are legit -- they're totally legitimate. And I guess I have no problem if we send it on

and it gets -- if we're saying, let's move it on and let the Legislature hash it out and let the lobbyists at the capitol, and maybe they are more qualified than we are to discuss fees, then maybe that -- is that what -- is that going to happen?

If we pass it, because I don't know that all of us are really qualified. I'm not qualified to make decisions about Agriculture fees or anybody's fees. I mean, it's out of my area. But if we pass it and it does go to the Legislature, will it then get -- will it get chewed on and will it get just chewed on ad nauseam? And at the end of the day, will they do the right thing? Will they be able to bring the expertise? Because we don't have a Council here telling us.

MR. THOMPSON: Well, without comment on whether they'll do the right thing --

MS. SAVAGE: Well, no, I mean, talk about -- I mean, we're talking 15 minutes of discussion. I'm saying, will

all of the lobbyists get -- throw it out in the middle of the floor and let them jump in the middle and hash it out, will -- is there a reasonable expectation of information coming out and people getting to talk and --

MR. THOMPSON: I think there's no question that the Agriculture lobby will bring it to the attention of the Rules Committee Chairman and there will be a -- you know, they can proactively deny a rule.

And I suspect that, given the interest by differing bodies on this thing, there will be a full debate and then the Legislature will make the decision. So, yes, I don't -- and in addition, they go to the Governor's office. And so there is a decision that's made there, relative to rules. So I --

MS. SAVAGE: So the buck doesn't stop here?

MR. THOMPSON: It doesn't necessarily stop here, no. I mean, it doesn't stop here, of course not. Every

rule that the Board passes is subject to gubernatorial and Legislative review, every one of them. This is no different than any of those rules. I would suggest to you that fee rules are probably subject -- by their nature, are subject to greater scrutiny than other rules.

MR. MASON: It's my understanding, at the next review step, it's either yes/no, they can't change it?

MR. THOMPSON: I don't think they -- I'll defer to Jimmy. I don't think they can necessarily change the rule. Now, they could -- anyone can cause legislation to be introduced that would be in effect as opposed to a rule. So anything could happen that way. But I think the answer is, yes, they either approve or deny the rule.

MR. GIVENS: I should defer to Ellen on that, because she would be the expert.

MS. PHILLIPS: The Governor, if he decides to approve or disapprove, he has

to do it in whole. The Legislature could decide to disapprove just a part of it, including a particular part of the fee. If they did that, it would be by a resolution. they do it before the Governor approves, it would just be concurrent and they could send it back in the resolution, suggest to the Agency what they would like to see done.

Does that answer your question? So the Legislature can disapprove just a particular part of the fee and can suggest to the Board what they would like to see done.

MR. DARK: Which is a risk for us. That very change is a risk for us in our doing our business, because it's a cost to us. In fact, they could take a piece of that fee and that is a change. They're not literally changing the rule but, in essence, it's a huge change in what we're trying to accomplish and what may come out on the other end. My sense of it is that the Bill would be killed or it will be

passed.

MS. SAVAGE: So the prudent thing would be if we pass this on, that we look at this in the macro, pass it on and let others take a stab at it, because there are more steps in the process of --

MR. DARK: I've always been of a mind that you do the best you can and you pass it on. This is the best that we could do on this and we've passed it on. We should sleep well with that. The realities of it are that we have, in essence, we're doing it consciously, passing this on and allowing special interests. But those special interests are the ones that would be coming to those public meetings. So we're basically taking that Committee and shifting it to the Capitol.

MS. SAVAGE: But if we stop it here, I mean, that's really final.

MR. DARK: If we stop it here, we do stop it.

MS. SAVAGE: Okay.

MR. DARK: It is completely and

totally final and then it's a year down the road before we catch up with other states that are already doing it.

MS. SAVAGE: So the fairest thing probably for the citizens and business of Oklahoma, everyone, it would be that we then pass it on and then let others get into the --

MR. DARK: It's totally your decision on how you think we are representing the public, good. That's our job here, is to see how best we can do that.

MS. SAVAGE: No, I'm just talking about this specific -- in this specific manner, when we've got something that -- in the main, is reasonable, but that will effect one group. But since we don't have all of those people coming here and Council advice, perhaps that is -- in this particular thing, that is the prudent thing that will then get the discussion and let someone else hash over the fees.

MR. DARK: Obviously, I believe

that is, because I made a Motion to do that, but I can understand the other side. I have a faith in that process, as convoluted as it may be over there, it does tend to bubble up some pretty good legislation in the end. Some of it is odd, but it's one of those things that can be changed, too. It is not life-threatening, what we do here, so that's an argument through (inaudible). There is nothing going to affect our public any differently than it's been effected today, we're trying to make it better. I personally think it could be worked out over at the Capitol.

If we had a contingent -- if we weren't a rural State, I don't think I'd be willing to pass that over there. But since Oklahoma is a rural State, the Agriculture community has a huge, huge voice. The petroleum industry obviously has a huge voice --

MS. SAVAGE: Right.

MR. DARK: -- and the Municipal League who is every vote for every

legislator over there, has a huge voice, so I'm willing to throw it out and let those three boys work it out.

MS. SAVAGE: So we have a seconded Motion on the floor. Now, Jack's was not a -- okay. So we just have a -- we have a seconded Motion; is that correct?

MR. MASON: Yes, ma'am.

MS. SAVAGE: So we can now vote to -- up or down?

MR. MASON: Yes, ma'am. And I think Brita had a -- yes, sir.

MR. CASSIDY: One more comment and I'll leave it alone.

MR. MASON: I think Brita wanted to say something. She hasn't spoken. Let me allow her to speak.

MR. CASSIDY: Well, I just want to make sure this is not an Agricultural issue again. Manufacturing plants are going from \$10 to \$1,000. You ve got refineries going from \$10 to \$1,000. You ve got Chemical warehouses going from \$10 to \$1,000. It's not just an

Agriculture issue.

MR. MASON: Thank you. Brita.

MS. CANTRELL: I was going to say, I yield to the gentleman from -- yield my time. I hate to leave -- thank you, Steve.

I hate to leave a question on the floor that I thought should be answered. I thought Jack raised a good question, maybe that staff could speak more to.

Judy, he asked about the local communities. Because it strikes me that the real benefit of this rule is, one, making information more accessible, making the input of information more efficient. It seems to provide assistance at the local level, to the local responders, as well as to the community at large. And so I'm assuming because of all that, that we had some good contact with local folks who are at the front lines of this reporting system. And I thought maybe you could speak to that a little bit.

MS. DUNCAN: Yes. I mentioned in

my presentation that the Oklahoma Hazardous Materials Planning -- or that the Oklahoma Hazardous Materials Emergency Response Commission was -- worked with us to do outreach. And the Oklahoma Hazardous Emergency Response Commission -- Monty, you can help me, but it has representation from municipalities, from the Fire Marshal's Office, from the Emergency Responders across the State, from the Highway Patrol and the Emergency Management Agency.

So the people who actually are users of this data are all represented on the OHMERC. And the OHMERC was extremely supportive of the effort. They want more resources to help people use the data and to develop the LEPCs to be more robust.

In some counties, the LEPCs are very robust. They've done planning, they meet regularly, they do a lot of activities and they know what they're going to do when there is an emergency response. But in others, they don't.

And to correct one thing that Mike

said, certainly there is a potential for a manufacturing company to go to a \$1,000 fee, but a vast majority of them will not, or for any of these others. Refineries probably will.

MR. MASON: Mike, I think we all like this thought of, one, we submit the data electronically to one-stop. That's a good idea, and we're stuck on the fees. Is there any way to tweak the fees that create more equity that we could think of today?

MR. CASSIDY: Well, I think there probably is, but I don't know that we'll be able to do that today.

MR. MASON: Okay.

MR. CASSIDY: And I don't think this is the place. I think it should go back to the Committee and let them work that out.

MR. THOMPSON: Let me say that I think, in this particular case, because there was no Council involved, that the -- Jimmy and Ellen, I'll defer to you. But I believe that the Board is free to make

those kinds of changes, if it wants to. I don't think there's anything in this situation -- typically, when you get fee rules -- you're going to get a couple of more today, bless your hearts -- those have been vetted through a Council. And so you -- at least with the Air Council and some others, you typically have referred those back to the Councils for further action, when you have issues.

In this particular case, since it did not go through the Council, you are free to change this rule any way that you deem fit. Now, you may not want to, but you are -- but there is nothing that would prohibit you from doing that. I would suggest to you that there's nothing that prohibits you from changing any rule that comes to you, except for those that come from the Air Quality Council, where there's this prohibition that you accept, reject or remand. But I -- it may not be the Board's desire to do that, I won't speak to that. But certainly, you should understand, I

believe, that you are free to do so; is that fair to say?

MS. PHILLIPS: Yes.

MR. DARK: Quick comment, if I may. Maybe this is a compromise that could work and it does put it back on staff, but if one-stop shop is the most important thing and we want to get that done and get it moving, I think everyone here would agree that none of us are expert enough to hash this out and get this fee structure right. That is a staff responsibility.

Would it make sense to consider just making this one-stop shop a go and send it back and we'll work on the fees and come back to them next year? I know what that does, it puts the burden back on our staff, because it's a cost to us to operate. But if, in fact, we're not comfortable with it, maybe that's a reasonable compromise that we can move forward on.

MR. CASSIDY: I think it's a very good compromise. But without the fee increase, maybe we just don't dole out the

90,000 to LEPCs this year, that can come next year, so that way we won't burden the staff so much.

MR. THOMPSON: Well, let -- if I can just comment, LEPCs or no LEPCs, we've calculated the burden, the additional burden to the Agency to be, what, \$90,000? Is that --

MS. DUNCAN: One staff person, about 55 or \$60,000.

MR. THOMPSON: Okay. Sixty thousand dollars. So we're -- I mean, we are -- we need to have a net increase in this of at least that amount, if the decision is to fund the staff and not fund those things that go to LEPCs, without comment of whether that's a good idea or not. But you are -- you would be asking us to take a \$60,000 hit if you don't do something about the fees.

MR. CASSIDY: See, that's where I get lost. It costs \$15 to do it by paper, and three and a half to do it electronically. So you're going to be

saving a Hundred -- something Thousand Dollars. Won't that make up for, you know -- doesn't that make sense.

MR. THOMPSON: Well, there's an increase -- there is an increased burden for these one-stop shopping activities on the Agency. I mean, I'll let Judy do some more --

MS. DUNCAN: There is an increased burden, first of all, in that half of our filers do not use electronic filing. So we are going to have to have an outreach to get these people -- we're going to go out and do training, do education, do all that sort of stuff to get them into a position. We're going to have to train our staff at our local offices so they can provide the assistance for people to go to the local offices to file. So there's an increased burden in that regard.

There is also an increased burden in us figuring out -- getting the latitude/longitudes and figuring out which reports go to which fire departments. Now, in

large communities, that's no big deal. But in the smaller communities of the State and in the counties of the State, that is a big deal because you have a myriad of fire department responsibilities, particularly for rural fire departments that may be volunteer fire departments. So there's a lot of work to be done to get all that figured out. And in order to do that, we have to get latitude/longitudes for each of the locations in order to do that.

And then the other thing is, and I probably didn't make this point well enough, the fee doesn't fully support the work that we do now. The fee supports the TRI program and it supports the staff that work directly with the Tier 2 things. But the Agency provides support through the mailroom and through -- my division provides support through clerical support and what have you. So there is no -- the idea that there is some big savings to be had from this is just not true. There will be some reallocation of where the workload

goes. And our plan was that, once we have everybody trained and once we have everybody reporting electronically, then that additional staff person would then focus on helping LEPCs to use the data for emergency response. And, you know, our desire is to make LEPCs across the State more effective in their planning efforts and in their response to emergencies.

MS. SAVAGE: I have no problem with the construct, whatever and I have utmost faith in Judy and in her shop and in everybody they bring to us. And I think that, having heard the extended discussion, it's just my opinion, I think that let the -- we send this on, I think that would be the prudent thing and then let the lobbyists at the Capitol hash out the fees and tear it apart and do what they want. But I think our responsibility probably, it appears to me, would be to send it on -- we do our job, send it on, and then let others tear it apart and destroy it or make it stronger.

MR. DARK: One other thing we could do is send it on and say, if you do this, we need \$60,000. I mean, there's no -- there's nothing that keeps us from doing that, I don't believe. I mean it's the one-stop shop, no fees, but to do this, this is what it's going to cost and there would be an appropriation for it.

MR. THOMPSON: Mr. Chairman, I asked the question of the staff, what's the fiscal impact -- fiscal impact of returning the Ag dealers fee to what it is now. And the answer to that question is \$8,000. I think there may be a reasonable compromise, since the one group of folks that have -- that I know of, that have raised concerns about this issue, it may be a reasonable compromise. We could take this up at the end of the day, as opposed to now, and have staff work on a compromised language in the rule that simply retains the Ag retailers fee as it currently stands and changes the others to accommodate the needs of the oil industry and others. I don't know about

the equity issue, but if you're talking about reality and the fiscal impact of that, I think we could live with an \$8,000 reduction and probably get -- not face a debate in the Legislature about the fee.

Now, that's a suggestion. I can't -- you know, you can think about that. But if it is, in fact -- that would be sort of this modified risk based thing, where we've made this exception because of the impact to the Agricultural dealers.

Nevertheless, if you're talking about Eight Grand, in order to get this -- what my sense is, that the Board thinks is a good idea, relative to helping LEPCs and one-stop shopping, if that gets us past that and gets the concurrence of the rule with the Ag dealers and the oil industry and everybody involved, it seems to me that might be a reasonable compromise.

MS. SAVAGE: Well, it sounds like it would make it cleaner, we send something a little cleaner to the Legislature, it sounds like that would --

MR. CASSIDY: Well, I know there's a Motion on the floor, but perhaps maybe we go with that and take this up at the end of the meeting to give us all time to chat.

MR. THOMPSON: I think we can get -- maybe, Judy, if you can get -- grab a lawyer and look at this rule and make whatever the appropriate changes, so that at the end of the meeting we could come back with that suggestion. And I -- this is the Board's decision, I'm just teeing this up as a compromise that could be made.

MR. JOHNSTON: Could we possibly spend more time on this and maybe have a special meeting to approve this before -- and still get it over to the Legislature?

MR. THOMPSON: Well, what's our time frame, Jimmy?

MR. GIVENS: The Board would have to meet by the middle of March, the third week of March or so, because it would have to be to the Legislature by April 1st.

MS. SAVAGE: How can we -- how

would we do this procedurally with a Motion on the floor and then to satisfy that and then get what --

MR. THOMPSON: I think what would happen is, we could produce an amendment to the rule, based on that notion, that we return the fee for the Agricultural retailers back to what it is now, what the rule simply says now or delete that section that applies to them, however it works out. We would have staff work on that for you, to make you comfortable that that was the appropriate -- that that was appropriately reflected in the rule. You -- a Board Member would make the Motion to amend the rule in that way, it would be seconded, you would vote on the amendment and then you would vote on the rule as a whole.

MR. DARK: Procedurally, I think I would have to amend my Motion.

MS. SAVAGE: So do we do that now or do we -- if, assuming we want to do that, would we do it now or would we do it

--

MR. THOMPSON: I would suggest that someone ask the Chair to delay decision on this particular item until later in the meeting. I think -- and if that's the sense of the Board, I think that could happen.

MR. DRAKE: I would make the request of the Chair that we delay this, but that we do it today, because it's very difficult to get this Board together. And I would suggest that we do it today, but delay the decision until later.

MR. MASON: Okay. Tony and Sandra, if you want to table or withdraw your Motion, we would ask the staff to maybe come back with some suggested rule language, in an hour or so, to us.

MR. DARK: Certainly. Whatever procedurally is best or whatever is the right way to do this.

MR. MASON: So we're withdrawing or tabling a Motion, whatever we say.

MR. GRIESEL: And I'll second Bob's Motion.

MR. MASON: Okay. And can the staff come back with some suggested language in a little while, for us?

MS. DUNCAN: Yes.

MR. MASON: Okay. Thanks, guys. Okay. Do we want to take a five minute break or go into Air? Five minute break.

(Off the record for a Break)

(Back on the record)

MR. MASON: We are going to return to Item 6 about Air Pollution Control. And I think Sharon Myers has a presentation for us.

MS. MYERS: Good morning, Members of the Board and the public. My name is Sharon Myers, I'm Chair of the Air Quality Council.

We're bringing four items before the Board today. Three of those, we'll ask to have approved today and passed on. One of those, we will ask to have remanded back to the Air Quality Council, and I'll explain that in just a moment.

The first item on the Agenda is

Subchapter 4. The proposed amendments to Subchapter 4 incorporate by reference the federal New Source Performance Standards (NSPS) in 40 CFR Part 60.

The proposed amendments to OAC 252:100-4-5 would incorporate the federal New Source Performance Standards (NSPS). Subsection 5 would be amended to incorporate the NSPS specified in 40 CFR 60, as they existed on September 1, 2005, with the exceptions that are listed in your packet of information. And I'm not going to read all those exceptions. This rule is very straightforward and it's simply Incorporation by Reference. We ask for approval on it.

I'm going to go ahead and go through the ones that we're asking for approval, if that's all right.

The second item on the Agenda for Air, the proposed amendments to Subchapter 41, Incorporate by Reference National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Part 61 and

Part 63.

The proposed amendments to OAC 252:100-41-15 would update references to the federal National Emission Standards for Hazardous Air Pollutants (NESHAP). DEQ periodically updates these references in accordance with its Delegation Agreement with the U.S. Environmental Protection Agency.

Subsection 15(a) would be amended to incorporate the NESHAP specified in 40 CFR 61, as they existed on September 1, 2005.

Subsection 15(b) would be amended to Incorporate by Reference Maximum Achievable Control Technologies (MACT) Standards for Hazardous Air Pollutants in CFR Part 63. Again, this one is a straightforward rulemaking process in order to get our rules in alignment with the federal standards.

The third item on the Agenda for Air is proposed amendments to Subchapter 8, which incorporate EPA's revisions to the NSR permitting program under the federal

Clean Air Act. The amendments include revisions to the method of determining if a modification to an NSR source is a major modification. Other amendments update and clarify language and move definitions to more appropriate locations within Subchapter 21 -- or Chapter 21, excuse me, or 100. That's Chapter 100, I'm sorry.

The Department is proposing amendments to Subchapter 8, Part 70 Sources. The Department proposes to revise Parts 7 and 9 of Subchapter 8 to incorporate the Environmental Protection Agency's revisions to the New Source Review permitting program under the federal Clean Air Act. These proposed amendments contain revisions to the method of determining what should be classified as a modification subject to major NSR. The proposed amendments should result in fewer modifications to major NSR sources being considered major and, therefore, requiring a Prevention of Significant Deterioration, PSD permit, and the use of Best Available

Control Technology (BACT). The proposed amendments also include other NSR revisions not previously incorporated by the Department and relocate some definitions. Some definitions will be moved to Subchapter 1. The Department proposes to revise the definition of "insignificant activities" in Section 8-2 of Part 5 to reflect the changes made to Subchapter 41 and the new Subchapter 42.

MR. MASON: Is that everything, Sharon?

MS. MYERS: Yes, it is. There is additional analysis included in your packet that basically just states what I did.

MR. MASON: All right. We're talking about the first three bullets on this Agenda item. Questions from the Board?

MS. CANTRELL: Steve, I wonder if it would make sense to separate out these provisions piece-by-piece, since some of them will have a different analysis than others for the Board. Am I -- is that what

we're doing?

MR. MASON: As far as a Motion?

MS. CANTRELL: As far as a
Motion.

MR. MASON: I think what Sharon's
thought was, absent -- I don't think Sharon
anticipates any comments on these. And if
there's not, we'll just do them as one.

MS. CANTRELL: Okay.

MR. MASON: If there's comments,
we'll break them out.

MS. CANTRELL: Okay.

MR. MASON: If that's all right?

MS. CANTRELL: Yes, absolutely.

MR. MASON: Okay. Are there
comments from the Board? Comments from the
public? All right. We need a Motion to
pass the three items that Sharon has
presented.

MR. GRIESEL: So moved.

MS. CANTRELL: Second.

MR. MASON: Is there any
discussion from the Board? May we have a
vote, Myrna.

MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Yes.
MS. BRUCE: Mr. Coffman.
MR. COFFMAN: Approved.
MS. BRUCE: Mr. Dark.
MR. DARK: Yes.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Motion approved.
MR. MASON: Thank you. Sharon,

you have one more item to present.

MS. MYERS: The fourth item for Air on the Agenda is referred to as the BART rule, new Part 11 of Subchapter 8.

I will tell you that we have found an error in this rule and we're asking the Board to remand it back to the Air Quality Council so that we can get it fixed. I've been on the Air Quality Council now, this is my tenth year, and it's the first time we've asked for something like this. It was an oversight in some language that had bigger implications than any of us realized at the time we were reviewing the rule.

It has been before the Council, I think, three times, four times. And the wording that was changed was based on an EPA recommendation. And apparently, they didn't think about the impact, as well. So we would like to ask this one be remanded back to us. For some reason, the rule is that on January 18, 2006, the Air Quality Council voted to recommend the proposed OAC 252:100-8, Part 11, to the Environmental

Quality Board. Part 11, Visible Protection Standard, is the DEQ's adoption of the federal Best Available Retrofit Technology or BART rules. States are required to implement the federal BART requirements as part of the State Regional Haze Implementation Plan, SIP, no later than September 2007. Stationary sources that were not in operation prior to August 7, 1962 and were in existence on August 7, 1977 that have potential to emit 250 tons per year or more of any visibility impairing air pollutant or BART eligible sources that they belong to one of the 26 categories listed in the definition of existing stationary facility contained in the proposed in OAC 252:100-8-71. BART eligible sources that cause visibility impairment in any Class I area subject to BART and must establish emissions limitations by the application of BART.

Under the proposed rules, owners or operators of sources subject to BART must submit the proposed BART or proposed

exemptions from BART requirements for these sources to the Department no later than December 1, 2006.

In the weeks following the January Council Meeting, it was discovered that some of the language in the rule was unintentionally limiting. Under the proposed 8-73(c)(3), a source is allowed to obtain a waiver by demonstrating through modeling that it does not emit any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment. However, this waiver is limited by the last sentence to plant-wide emissions less than 250 tons per year. Limiting this waiver to 250 tons per year would not allow any facility to obtain a waiver through modeling.

The DEQ Air Quality staff feels the rule should be sent back to Council so the limiting language can be revised. The limiting language originated from a comment DEQ received from EPA Region 6. EPA has since told DEQ that the language is

incorrect.

So at this time, I would ask that the Board remand this rule back to the Air Quality Council so we can revise it and fix it in April.

MR. DARK: I make a Motion we remand this rule and send it back.

MR. COFFMAN: Second.

MR. MASON: Questions from the Board? Comments from the public? May we vote, please? And I guess a yes-vote sends it back to the Council. Okay.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: Thanks, Sharon.

MS. MYERS: Thank you, very much.

MR. MASON: All right. I think
we're at Laboratory Accreditation, with
Brian Duzan, now.

MR. DUZAN: Thank you. My name
is Brian Duzan, I'm the Chairman of the
Laboratory Services Advisory Council.

Amendments are proposed to OAC
252:300, the Laboratory Accreditation
Rules. The purpose of these rules is to
implement the DEQ's program for
accreditation of environmental

laboratories. Laboratory accreditation is a means to ensure that environmental data is of known and documented quality and, thus, is suitable for use in environmental decision making. The proposed changes relate to the following areas:

Changes to Subchapter 5-1, the Section on Accreditation Exception and references to other DEQ rules concerning when the use of accredited laboratories is required and when only an individual certified as a laboratory operator may be appropriate. This change is proposed to clarify the meaning of this Section.

Changes to Subchapter 7-3 update the methods reference for standard methods to the most recent version.

Changes to Subchapter 17 add new detailed requirements for Standard Operating Procedures and Method Manuals. These requirements move the Oklahoma accreditation standard into closer compliance with the National Voluntary Consensus Standards developed by the

National Laboratory Accreditation
Conference or NELAC.

Changes to Subchapter 19 and
Appendix D add methods to the Petroleum
Hydrocarbon Laboratory category. These
methods were added at the request of the
Oklahoma Corporation Commission, which
requires the use of our Laboratory
Accreditation Program in many instances.

Judy Duncan is here with me today
and we will try to answer any questions
that you may have regarding these proposed
changes.

MR. MASON: Questions from the
Board?

MR. WUERFLEIN: Mr. Chairman.

MR. MASON: Yes.

MR. WUERFLEIN: I have a question
on why, under Subchapter 17, you have a
Part 1 and nothing under it. Are we just
changing the title and not the text or did
something get left out of my packet -- I'll
put it that way.

MS. DUNCAN: Nothing is changed

in Part 1. I see exactly what he means.

We have the heading for Part 1, but we don't have the language --

MR. WUERFLEIN: Are just changing the heading, and nothing in the language or --

MS. DUNCAN: You know, I don't even know why that's in there, just Part 2 is the only thing we're changing. No, I know that. Let me -- it just had language about quality assurance, quality control before, so since we're adding a Part 2, we needed to add a heading for Part 1, I believe is the answer to that.

MR. MASON: Other Board questions? Public questions or comments? Is there a Motion?

MR. GRIESEL: So moved.

MR. DARK: Second.

MR. MASON: Motion from David and a second from Tony. Any discussion from the Board? Can we have a vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: And Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: Thank you. Brian, if

you would like to continue.

MR. DUZAN: Okay. The second

part is the amendments are proposed to OAC 252:305, the Laboratory Services Rule. The proposal of these rules is to establish fees for the Department of Environmental Quality State Environmental Laboratory. The SEL provides laboratory services to public water supplies in the State and to other State Agencies, to private citizens wishing to have their drinking water tested and to the Divisions of DEQ. These fees were last updated in 2001. Since that time, costs of laboratory supplies, equipment, maintenance and personnel have all risen.

In Fiscal Year 2006 Budget, personnel costs are underfunded by \$240,000 and supplies are underfunded by \$115,000. In addition, there's insufficient funding for equipment replacement and no funding for development of new technologies that are needed to support the public water supply and other programs.

Laboratory costs are funded by a combination of federal grants, general

revenue from the State, and fees. In the absence of funding increases from the first two sources, the DEQ must look to increase fees to make up the current needs of approximately \$850,000 annually.

The proposed fee increases were based upon review of actual costs in comparison to similar fees charged for the same tests in the private sector laboratories and in State environmental laboratories in surrounding states. Fees are based upon test method, analyzed and matrix. A few fees in the proposed fee schedule were increased because market comparisons showed them to be high. Some fees stayed the same, but most increased.

There are three groups of users of the SEL laboratory services. These include public water systems, those who contract for laboratory services, and the divisions of DEQ. Contractors for services include other State Agencies: the Oklahoma Water Resources Board; the Corporation Commission; the Department of Wildlife

onservation; and Tribes and private citizens. In order to determine the impact of the proposed new fees upon these groups, a comparison was made using data for actual services provided in Fiscal Year 2005. An increase in the fees to generate \$850,000 would be an overall increase in fees of 33 percent. The impact upon public water supplies would be the greatest of the three classes, since these fees have been the most ones that were the most under market comparison.

Public water supplies would pay 45 percent more than they have in the past. Contractors and the DEQ divisions use more of the services that were overpriced by market comparison and the impact on these groups would be 40 percent and 20 percent, respectively.

Rationales for specific fee changes are available and Judy will answer any questions you may have as to these details.

You should be aware that DEQ has requested funding from the Legislature to support drinking water laboratory analysi

for small communities. If that funding is made available, fees to these laboratory service users will be reduced to the extent that the State money is made available. The process for doing this will be to, first, establish a historical baseline for the laboratory analysis provided to each small system. Likely those systems serving 3,000 people and less.

The baseline year will be 2002, since that was when many of the new requirements for drinking water monitoring became effective. An invoice will be prepared for analysis performed and the small system will be expected to pay for their service up to that baseline amount. After that, the invoice will reflect the increased fees that have been paid by the State money set aside for small community assistance. Judy and I will be happy to answer any questions you may have.

MR. MASON: Questions from the Board? Questions from --

MR. CASSIDY: Yes, Steve.

MR. MASON: Yes.

MR. CASSIDY: Just out of curiosity, can you give us some idea of how often the small public water systems have to have their water tested? I'm just curious. Once a month?

MS. DUNCAN: Small public water systems test once a month for bacteria quality. Many of them test quarterly for nitrates. They test -- some test -- some just test annually for nitrates. And then they test on either a one, three, six or nine year cycle for metals for the inorganic constituents, such as chloride and for volatile organic chemicals. And then they test at least once a year for disinfection byproducts. The (inaudible) acids.

MR. CASSIDY: So they are required once a month. Do you have any idea what that costs -- or average cost (inaudible)?

MS. DUNCAN: Well, the tests for bacteria is about \$15 a sample. That's the

once a month thing. Everything else is more than that. And it's really kind of deceptive to say they test once a month. They all have a minimum of two samples that they collect once a month. And the number of samples goes up from there, depending on the number of people they serve.

MR. THOMPSON: I think it's important to give you a little bit of an update on our budget request and to more, maybe, explain it in a little more detail.

We've asked for 1.8 Million Dollars. We've asked for \$400,000 for TMDL work and about \$400,000 for technical assistance to small communities. The remaining, about, One Million Dollars is for laboratory equipment costs and a direct offset to small public water supply fee increases. And so it is that One Million Dollars that would be the offset to the cost of small public water supplies, should it pass.

I would also suggest to you that anything can happen, obviously, in the Legislative Session. We've had pretty good

indications from one House in the Legislature that we will be funded. We've had less than good indications -- we haven't heard any comment from the other house. But it seems to be an issue that, at least, in one House has been teed up as something they want to talk about. What will happen in the appropriation process is later in the Session, both Houses will get -- the Appropriation Chairman in both Houses will get together and hammer out who gets what money. But right now, it's moving forward.

MR. COFFMAN: I gather the need for this is driven just by your volume of samples going up and that's driving the increase in cost by 33 percent?

MS. DUNCAN: There's a couple of things that are driving the increase in cost. One, we have not had a fee increase since 2001. Our cost of personnel has gone up. Our cost of supplies and equipment have gone up. And also, because we have over that time period really improved the

quality -- improved our quality assurance procedures and what have you, the cost of doing the analysis has gone up, because of more accurate documentation of what we're doing.

MR. THOMPSON: I think it's also fair to say that we've kind of struggled along with some equipment for a long, long time using band-aids and that equipment is pretty well shot. And the amount of equipment that we need in the laboratory, because of the increases in the analysis, keeps going up, too.

MR. WUERFLEIN: I seem to recall from 2001 that the public water supplies got a larger increase than average then, because they were considered undersupporting their share of the deal and now they're saying the same thing again. Are we adding in the cost of equipment this time or replacing equipment that we didn't do five years ago?

MR. THOMPSON: I think the --
Judy, correct me if I'm wrong, but one of

the reasons that the increase is as high as it is, is we wanted to establish the opportunity to routinely replace equipment. I think this sort of acknowledges that need; is that fair to say?

MS. DUNCAN: Yes. What we have done for equipment replacement is we've looked for found money wherever we could from year-to-year, and what we have not included is sufficient funding in our recurring budget to do that. So we have lean years like -- we have good years and we have lean years. We got some REAP money from the Legislature a couple of years ago and that met our most pressing needs right then. But we still don't have sufficient money in our recurring budget to routinely replace equipment. I think I figured it one time that the value of equipment in the laboratory is between 20 and 25 Million Dollars and yet we -- and so what we need to do, is we need to be replacing, we need to have some money budgeted -- somewhere in the order of 300 to \$500,000 a year

budgeted just for routine replacement as that equipment wears out. And the expected lifespan of an analytical instrument is between five and ten years.

MR. DARK: I'm assuming by those comments that you will now have a line item budget in your budget for that capital cost that will have to be spent at some point in the future. It will be a separate item and you will keep that money --

MS. DUNCAN: Right.

MR. DARK: -- and spend it as it comes.

MS. DUNCAN: Yes. If we get the money either through a fee increase or through a general revenue increase, then it will go into our budget and be there and available for that -- for recurring expenses of that sort.

MR. DARK: So if this fee increase doesn't happen at the Legislature, then you'll be coming back through the appropriation process again asking for it?

MR. THOMPSON: That's right.

MR. JOHNSTON: Also, there's been extremely a lot of great improvement in equipment, and the new equipment will be easier to work with and faster.

MR. WUERFLEIN: I didn't follow along all the way. If the Legislature does approve our request for equipment needs, how does this get -- do we have to come back and reapprove our fee schedule then or will there be a rebate for certain classes, or how does that work?

MR. THOMPSON: What will happen -
- and Judy, correct me if I'm wrong, but I think I know. You will charge the fee, as if -- whatever the fee is to that user and then you will rebate the money that we get from the Legislature from the invoice to bring it down. So we would charge the fee on the invoice, but then whatever it calculates out, that the money that we got from the Legislature, that would be taken as a cost reduction or rebate and then the net would be much lower; is that right?

MS. DUNCAN: Yes, that's correct.

MR. MASON: Any other Board
comments? Comments, discussion from the
public? Do we have a Motion?

MR. JOHNSTON: Move approval.

MR. GRIESEL: I'll second.

MR. MASON: A Motion from Jerry
and a second from David. Any discussion
from the Board? May we have a roll call
vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: Thank you. Brian,

thanks for the good work at your Council.

We appreciate it.

The next Agenda item involves
Radiation and a presentation by David
Gooden.

MR. WOODS: Good morning, Mr.
Chairman, Members of the Board, members of
the public. Dr. Gooden couldn't be with us
today, but I'm Steve Woods, Vice-Chairman
of the Radiation Management Advisory
Council.

Today, I'm presenting revisions to
Appendix A of Chapter 410 of the DEQ Rules.
If you approve it, this revision will make
changes to the fee structure for radiation

machines. Radiation machines consists of both x-ray machines and accelerators that generate radiation electronically, rather than from radioactive materials. Examples of these machines include x-ray machines at airports and buildings, x-ray refraction machines used in chemical laboratories, x-ray industrial radiography equipment used for quality control of wells and castings in industry, and therapeutic accelerators used to treat cancer patients.

The rulemaking does not effect diagnostic x-ray machines used in many medical and dental clinics, as those machines are under the jurisdiction of the State Health Department. The machines covered by this rule pose a wide variety of risks, ranging from essentially no risk for some of the low energy machines, to great risk from the industrial radiography x-ray machines and therapeutic accelerators.

DEQ currently charges a flat fee for the registering and inspection of these machines, but the current fee levels do not

cover the actual cost of the program.

Also, the current fee is not tied to the level of risk or regulatory effort involved.

A couple of years ago, the DEQ staff and the RMAC recommended that the existing one-size-fits-all safety rules governing these machines be changed. A new set of rules setting higher requirements for machines posing greater risks and lower requirements for machines with lower risks was established. You approved these changes and they are being implemented by the Radiation Management staff.

This rulemaking continues the progress -- or the process of trying to level -- trying the level of regulation and the burden of regulatory costs more directly to the level of risk. Overall, it raises fees, so that the fees will actually cover DEQ's costs.

A base fee is charged for the first machine at the facility and an additional smaller incremental fee is added for

additional machines. For a handful of machines posing very low risks, the fees are eliminated. But for most radiation machine users, we'll see their fees increase under this proposal.

The only comments received on this rule were from dermatologists who use a lower energy and, therefore, lower risk therapeutic machine to treat skin conditions. They objected to being included in the same high fee category as higher risk cancer therapy machines. DEQ staff agreed and revised its proposal to include a lower fee category for these machines.

The proposed fee schedule was passed unanimously by the Radiation Management Advisory Council. On behalf of the Radiation Management Advisory Council, I recommend that the Board approve the proposed rule change.

I'll be happy to answer any questions you have about the fee increase.

MR. MASON: Questions from the

Board?

I have a question. You can probably explain this. Can you explain to me, I guess, this section of the Department is operating at a deficit now? And how does that solve that deficit?

MR. WOODS: The current fee structure basically generates around \$20,000 per year for the operation of this particular area of the program. The increase would increase that to approximately a \$60,000 increase on that.

MR. MASON: And we need this much of an increase because the Department -- or the section is operating at a deficit?

MR. WOODS: That's correct.

MR. MASON: Other discussion from the Board?

MR. DARK: I'm just curious, do nuclear density machines fall under this category -- nuclear density testing equipment?

MR. WOODS: I'm not exactly familiar with what exactly you're talking

about.

Most of the density testing equipment is a source-type material which would not be under this category.

MR. DARK: Okay. So it's just anything but source-type material would not apply here?

MR. WOODS: Yes, source byproduct material is covered under a different fee schedule, completely.

MR. DARK: Thank you.

MR. WUERFLEIN: I don't know enough about fees, but are we going from a minimum of \$100 per machine to, in some cases, one or two thousand dollars per machine?

MR. WOODS: That is correct. The current fee schedule is \$100 per machine and then additional fees for machines up to a \$500 maximum. The fee schedule was broken down. Like you said, the cyclotrons, used for the production of radionuclides, those have a higher fee schedule of \$2,000. And there is

approximately two of those in the State. So the larger group of things that we have, such as a cabinet x-ray machine, things like that, that has the larger number of licensees, that would be \$200 for the first machine and \$50 per additional machine.

MR. CASSIDY: Would this increase -- get your deficit up to snuff, I mean, to cover all the costs with this increase for your Department?

MR. WOODS: The staff has indicated that it would, yes.

MR. MASON: Just talking about the overall budget of the Department, Steve, I presume right now you're covering the \$60,000 shortfall. If you're covering the shortfall, is there any reason to raise the fee that much?

MR. THOMPSON: Probably out of solid waste fees. So the question is -- the Agency has always taken the position that fee funds should cover the cost of the operation of that particular program. There are other funds available, clearly in

solid waste fees. Right now, we are asking for the Legislature, for a hazardous waste fee increase because of the reductions in that program. So I would -- without knowing, particularly, I would suspect that whenever we have shortfalls in other waste programs, we just go to the hazardous waste fees to try to solve those problems until we can come back and address those specific needs of the program -- of the activity.

MR. MASON: In the public comment period, did the affected entities comment on this?

MR. WOODS: Yes, they did.

MR. MASON: All right. Questions from the Board, Council or the public? Is there a Motion?

MR. COFFMAN: So moved.

MS. CANTRELL: Second.

MR. MASON: We have a Motion from Jack and a second from Brita. Any discussion from the Board?

MR. CASSIDY: I would just like to say, I have trouble voting for an

increase like this, but seeing there is no opposition to it and there's no public opposition here, so --

MR. MASON: And I might second what you're saying. I'm probably going to vote no, even though it's going to pass. It just seems out of control, almost. I can't tell you why, but it just does. All right. Any other Board discussion? All right. May we have a vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: No.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: No.
MS. BRUCE: Motion approved.
MR. WOODS: Thank you, Mason.

Thank you, Steve.

I think we're to Bill Torneten next,
on Solid Waste.

MR. TORNETEN: Good morning. My
name is Bill Torneten, I'm the Chairman of
the Solid Waste Advisory Council.

The Council voted to recommend
approval of proposed rule changes in the
Solid Waste Rules at the November 17
Meeting, in three separate rulemaking
actions.

The first set of rule revisions
consists of various language tweaks to the
515 rules, including language

clarifications, corrections of legal cites, and corrections of typographical errors. Also, the MCL for arsenic in Appendix B was changed from .05 to .01 milligrams per liter to comply with the new Clean Water Act Standard.

In total, there were 13 rule changes, all of which are minor. Five are for clarifications, six are to comport with other laws or rules, and two are typographical corrections. There were no comments from the public in either of the two Council Meetings when the proposed rule changes were presented.

The second group of rulemaking modifications relates to a revised waste tire statute. These rules are to incorporate changes mandated by the 2005 Legislative revision of the Waste Tire Recycling Act and streamlining existing rules. The changes include additions for new statutory requirements, provisions for a tire storage permit, added -- erosion control installer was added to the

definitions, and there were minor changes to facility operational requirements.

Again, there were no comments from the public on these proposed rules.

The last rule change relates to a requirement for a five year review of the unit costs for closure and post-closure care in Appendix H and I of Chapter 515.

In reviewing these unit costs, the Department calculated a percent unit increase from -- RS means heavy construction cost data over the period from 2000 to 2005. These unit costs in Appendix H and I were then adjusted by the percentage increases from the means data. In addition, the groundwater monitoring well costs were adjusted by actual unit cost data from State contracts for drilling and plugging wells.

The Council voted to recommend approval of these cost adjustments. Again, there were no comments from the public. There was some debate on the Council regarding these adjustments, but in the

final analysis, the Council did recommend approval. Questions?

MR. MASON: Any questions from the Board? Comments from the public?

MR. GRIESEL: I'll make a Motion for approval.

MS. ROSE: Second.

MR. MASON: We have a Motion from David and a second from Sandra. Any discussion from the Board? May we have a vote, please, Myrna?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: Thank you.

MR. MASON: Thanks, Bill. I

believe we're now to some water issues and we have a presentation by Jeffrey -- is it Jeffrey Short?

MR. SHORT: Yes.

MR. MASON: And I understand you wanted to pack the house, so you brought some supporters?

MR. SHORT: Yes. And they're just really hoping that I get some question of an embarrassing or harassing nature so they can cheer. I would like to recognize my class. I have my environmental

regulations class from Southwestern Oklahoma State University, a fine group of kids over here and they thoroughly have enjoyed the free food this morning.

The first action we bring before you this morning is concerning the Oklahoma Pollutant Discharge Elimination System Standards, 606. The Council and Department proposes to update the rules concerning the date of Incorporation by Reference of the pertinent Code of Federal Regulations. The change would update the Incorporation by Reference from July 1, 2004 to July 1, 2005.

During the open comment period, there were no comments received from the public and also, there were no comments received from the public at the Council Meeting, and the Council voted unanimously to approve these changes.

MR. MASON: Questions?

MR. DARK: Move approval.

MR. MASON: We have a Motion from Tony. Second?

MR. WUERFLEIN: Second.

MR. MASON: Second from Richard.

Is there any discussion from the public?

Any discussion from the Board? May we have
a vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: Thank you. Please
continue with Item 12 now.

MR. SHORT: The second action we
bring before you today is concerning the
General Water Quality. And again, it is
changing the date of Incorporation by
Reference from July 1, 2004 to July 1,
2005. Again, no comments were received
during the open comment period. No
comments were received during the Council
Meeting from the public, and we did vote
unanimously to send these forward.

MR. MASON: Questions from the
Board? Questions from the public?

MR. DRAKE: Move for approval.

MR. DARK: Second.

MR. MASON: We have a Motion from
Bob and a second from Tony.

Any Board discussion? May we have a
vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: All right. Item 13

in regard to Industrial Wastewater.

MR. SHORT: The Industrial Wastewater System is being brought before you this morning concerning our proposal to amend the rules concerning the conditions under which the sand and gravel mining operations need to obtain a permit. Sand and gravel, under most circumstances, would be required to obtain only a general industrial multi-sector general stormwater permit.

We did receive one comment during the meeting and that was from Jim Rodriguez of the Aggregates Association, and it was in support of the change that we were making, and we did vote unanimously to send this one to the Board for approval.

MR. MASON: Questions from the Board? This is the last chance of the day, I think, for your students to ask you questions on the record. If they have any questions you'll have to answer, and they'll be in writing.

MR. WUERFLEIN: Mr. Chairman, I

noticed in the transcript of the meeting that some of the staff went out and actually looked at a sand and gravel operation to make these rules. I wondered, is that a standard procedure of the Department to make rules without any firsthand knowledge of the industry? I'm asking a tough question to the wrong person here but --

MR. THOMPSON: No. Well, the answer to your question is, there are occasions where we may not have visited a particular kind of facility because issues may not have arisen to do so. But I would suggest in the vast majority of the cases, staff has familiarity with the facilities.

MR. SHORT: I might add that this rule change arose out of many, many meetings of the 616 workgroup that was formed with Council Members, Board Members, regulated community, staff members and other concerned folks. And the 616 rules deal mostly with the industrial impoundments. And as such, we were

defining the sand and gravel operations as an industrial impoundment but, yet, didn't find the conditions that existed for an impoundment. Therefore, it became very difficult to actually know how to regulate them under the 616 rules. After further review, the staff recommended that they don't really constitute the surface impoundment that we consider in the 616 rules, and exempted those portions of their operations that fell outside the scope of the rule.

MR. MASON: Tony, as you remember about a year or so ago, we had a discussion and we were regulating that an impoundment dike had to be certified by a PE, and that was part of this. And we passed the rule and then the Department realized afterwards we kind of overregulated. And this is getting those sandpits out of that rule.

MR. DARK: That's great.

MR. MASON: Fixing a problem we passed. Okay. Any other comments? Last chance for your class.

MR RODRIGUEZ: If I might make a comment?

MR. MASON: Please. If you would introduce yourself, also.

MR. RODRIGUEZ: Good morning. I'm Jim Rodriguez with the Oklahoma Aggregates Association. I thank you for this opportunity to speak. I would like to express our gratitude to the DEQ staff for working with us, for accompanying us on a tour of several facilities. This is good news and good news. The good news is that the staff is very aggressive in protecting the environment. And the good news is that the staff listens, and they listen actively. By that, I mean, they wanted to make sure that they understood what our issues were so that we could deal with them and we're very pleased that they were dealt with, they were heard. We look forward to a continuing relationship in the future and encourage you to vote in support of this. Thank you.

MR. MASON: Absent any other

discussion, is there a Motion?

MR. COFFMAN: So moved.

MR. JOHNSTON: Second.

MR. MASON: We have a Motion from Jack and a second by Jerry. Any discussion from the Board? May we have a vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes. And it's good

to hear positive comments.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes. I

appreciate you clarifying that we're
cleaning up something we did.

MS. BRUCE: And Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: Thank you. All
right. Item 14.

MR. SHORT: Item 14 concerns
Chapter 631. Again, it is a rule
concerning the date of Incorporation by
Reference of certain CFRs. We're changing
the date from July 1, 2004 to July 1, 2005.
Again, there were no comments received from
the public, either during the open comment
period or the meeting. And we did move to
-- we did vote unanimously to send this one
forward.

MR. MASON: Discussion from the
Board? Discussion from the public? Is
there a Motion?

MR. GRIESEL: So moved.

MS. ROSE: Second.

MR. MASON: We have a Motion from David and was that -- and Sandra seconded. Any discussion? Can we have a vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: One more.

MR. SHORT: The last item I bring

before you is, once again, changing the date of certain CFRs Incorporated by Reference from July 1, 2004 to July 1, 2005. Again, no comments and we did vote unanimously to send this one forward, also.

MR. MASON: Any discussion from the Board? Any comments from the public? Is there a Motion?

MR. JOHNSTON: So moved.

MR. CASSIDY: Second.

MR. MASON: Motion from Jerry, second from Mike. Discussion from the Board? May we have a vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: Thank you.

MR. SHORT: I want to say last,

thank you for allowing me to save face in
front of my class.

MR. MASON: Thank you, sir.

Thanks for bringing your students. I think we're at Item 16, it looks like some waterworks issues with Allen McDonald.

MR. MCDONALD: Hello. My name is Allen McDonald and I am the Chairman of the Water and Wastewater Works Operator Certification Advisory Council.

The Department proposes this rulemaking to clarify the current operator certification rule concerning the exemption to the certification requirement for licensed plumbers and contractors, as well as to correct several typographical errors contained within the rules. The revised provisions include language intended to clarify the title "contractor" covered by the exemption. There were no comments received during the comment period or at the Council Meeting. The Council voted unanimously to recommend that the Board approve the changes to Chapter 710.

MR. MASON: Is there any discussion from the Board? Discussion from the public? Is there a Motion?

MR. COFFMAN: Move to adopt.

MR. JOHNSTON: Second.

MR. MASON: Motion from Jack,
second from Jerry, I think. Any discussion
from the Board? May we vote, please?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MCDONALD: Thank you, Mason.

I think we're back to our first rule, which was the Emergency Planning. We either can tackle that or grab our sandwiches. What do you all want to do?

MR. THOMPSON: Judy, do we have a revised version?

MS. DUNCAN: Yes, we do.

MR. THOMPSON: This issue falls somewhat under the notion of you just can't make some people happy. So let me review for you.

If you will remember, Judy asked that on 252 -- on Page 1, 252:21-4, that the word "using" in about the third line, what it says is, "internet website using utilizing", so we want to strike that, the word "using".

If you will go to Page 2, what we have done in 252:20-1-7 is -- 2(a), is to

change the word -- or what we would like to do, I don't think it's indicated in your -- in the information that you have, change that from \$12 per reported facility simply for consistency sake.

And then during the break, I had discussions both with Mr. Cassidy and with the -- with Angie, and I think there was a desire by the Ag dealers to -- understanding that there was going to be some raise to everybody, some raise in the fees to everybody, to share equitably in that raise. And so instead of returning the fee per facility to \$10, they, I think, asked or agreed that that should be raised to \$12 to be similar to what the oil industry is paying, to build equity into that issue. So we are suggesting -- or the amendment would then be, for Agricultural Chemical dealers, \$12 per facility.

I believe that builds in -- it addresses Mr. Cassidy's and the Ag dealer's concerns and, at the same time, builds some equity into the fee structure for

everybody.

MR. CASSIDY: I think it addresses part of my concern, you're correct.

MR. THOMPSON: Okay.

MR. CASSIDY: This will work.

MR. THOMPSON: At least relative to the fee structure?

MR. CASSIDY: Yes. And I want to add, that we're still subject to the extremely hazardous chemical of \$30 per (inaudible).

MR. MASON: Let's clarify his question. I mean, does the \$12 apply to the \$30 (inaudible) or not?

MS. DUNCAN: No, it would not.

MR. CASSIDY: So we're exempt from that, also?

MS. DUNCAN: You would be exempt from that. It says for -- I guess you would need to add a phrase to number one. It says, "for owners/operators of non-oil and gas production facilities and Agricultural dealers". No. No. It would

be subject.

MR. MASON: No, it's okay like it is?

MS. DUNCAN: It's okay like it is. I'm sorry. You wouldn't be subject to it. It just has a separate category for Agricultural Chemical dealers and the only thing you would be subject to would be the \$12 per facility.

MR. CASSIDY: And this only reduces your estimate (inaudible) by \$8,000?

MS. DUNCAN: That's correct.

MR. THOMPSON: Less now, because we raised it from \$10 to \$12, somewhat less.

MS. DUNCAN: Yes, it will be less than that now.

MR. WUERFLEIN: Steve, I hated to see this turn into an Ag versus oil issue. The thing that caught my eye right off the bat was how it affected manufacturing sites. They've got a bigger hit than even the Ag farm supply industry. And I guess

my ignorance, I'm not sure where a Tier 2 facility starts, and how many manufacturing sites does that -- because I think a lot of welding shops or body shops that have just -- handle just as many flammable materials and oils and cutting gases and things that --

UNIDENTIFIED PERSON: Are they going to be hit by this, too, or are they under the Tier 2?

MR. THOMPSON: Well, I would defer to the experts in this area, but I -- I recall that this is based on a reportable quantity. And so, I can't say all, but I would suspect most of the kinds of facilities that you're talking about would fall beneath the reportable quantity issue and, therefore, wouldn't pay a fee at all. Is that fair to say, Monty?

MS. ELDER: Yes. The basis for Tier 2 filing is based on chemicals present in storage at the facility and threshold planning quantities. For the types of substances generally used in welding

facilities, the threshold planning quantity is 10,000 pounds at one time. So most of those entities do not qualify for Tier 2 reporting.

And again, we did send letters to every person, to every owner/operator who had reported under Tier 2. So if those entities did report under Tier 2, they did receive information on this. But by and large, welders would not. There are some plating facilities that do, because they have some extremely hazardous substances that have lower thresholds. You know, some plating facilities have cyanide and other kinds of (inaudible).

MR. MASON: All right. Other Board comments? And our lawyers are comfortable. Jimmy is comfortable, maybe.

MR. DARK: I assume there will be absolutely just no comments and just fly through the Legislature from the oil industry and Agriculture industry (inaudible).

MR. THOMPSON: Mr. Dark, I

wouldn't predict anything would happen.

I'm sorry.

My impression is from the conversations that I've had, that everybody is, at least, comfortable with the fee issue.

MR. MASON: Angie, do you have any more comments from the oil industry? Okay.

Any comments from the public? Yes, ma'am.

MS. BEVERS: May I ask a question?

MR. MASON: Sure. If you would come to the podium and introduce yourself, we would love a question.

MS. BEVERS: I'm Julia Bevers with OGE Energy. I'm going back to a previous -- the document that we got before this last one. Both of them have, on Item 3 there is a strikeout for owners/operators with 25 or more facilities, \$500 per company. That was like a maximum fee. But now currently under 1 , it says there is

\$1,000 maximum fee for non-oil and gas production facilities. Is that per facility or per company?

MS. DUNCAN: (Inaudible).

MS. BEVERS: Total company?

MS. DUNCAN: Yes, owner/operators.

MS. ELDER: Basically, the cap is raised from \$500 to (inaudible) for a single company owner/operator.

MS. BEVERS: Well, it's a little unclear. It says for owner/operators of non-oil and gas production facilities, with the \$1,000 maximum fee.

MS. DUNCAN: We have always applied this with the term owner/operator meaning a company.

MS. BEVERS: A company. Okay.
Thank you.

MR. MASON: All right. I guess, let's ask Judy. Do we need to add per company under (c) or not?

MS. DUNCAN: Under what?

MR. THOMPSON: Under (c).

MS. DUNCAN: For the maximum fee

--

MR. MASON: Yes, ma'am.

MS. DUNCAN: -- per company?

Yes, that would be fine. We've always interpreted the -- under Number 1, the owners/operators, we've always interpreted that to mean one company.

MR. MASON: I think to be careful, as we kind of -- now we're acting like a Council. And we're putting all this together, we might just add per company on the end of that.

MS. DUNCAN: Okay.

MR. MASON: Jimmy, did you have some suggestions?

MR. GIVENS: Well, there's an issue that's come up that I think -- for more than one person that we need to clarify. And that is under Number 1, where it talks about non-oil and gas production facilities, and it goes on to add the parenthetical, SIC Codes other than 1311. What does that phrase mean? What are the

production facilities that are non-oil and gas production facilities?

MS. DUNCAN: We intended that to mean anything other than things which would fall under SIC Code 1311.

MR. GIVENS: Why, then, would that not capture the Ag Chemical dealers, just because they're not in production? Is that the issue?

MR. MASON: Jimmy, are you heading to you want to add thought to the end of that sequence? If so it's --

MS. DUNCAN: Let me make sure I understand your question, Jimmy. Your question is why, under Number 1, would the phrase non-oil and gas production facilities not capture --

MR. THOMPSON: No, the question -- I think the question --

MS. DUNCAN: Okay. I see what you're saying. So the issue is, it would capture -- would it capture Agricultural Chemical facilities. So it looks to me like there's two ways you handle that. You

can wordsmith on Number 1 to try and make it clear or you could adjust Number 3 to say, extremely hazardous chemical fees shall not apply.

MR. THOMPSON: Let me suggest this. Jimmy, let me suggest this, that we add the words after production facilities, the words "and Agricultural Chemical dealers", and then trust the staff to include whether the SIC code is for that entity. Does that address your issue? Apparently, it doesn't address Monty's issue.

MS. DUNCAN: Okay. So let me ask you -- you have me thoroughly confused. Are you trying to make the extremely hazardous chemical fee apply to Agricultural Chemical dealers or are you trying to not make it apply? Then you would not want to add it as you suggested, because that would say "for operators of non-oil and gas and for Agricultural Chemicals", and then extremely hazardous substances would apply --

MS. CANTRELL: I have a suggestion, if I may.

MR. MASON: Yes, ma'am.

MS. DUNCAN: -- because it's not written as an exemption.

MS. CANTRELL: I think -- what about this. What about under line one, following non-oil and gas production facilities and following SIC Codes other than 1311, and then put in parenthesis, other than or except Agricultural Chemical dealers. In other words, excepting out Agricultural Chemical dealers from Number 1, is what the thought is. Does that make sense?

MR. THOMPSON: Or maybe what we do is follow Judy's first suggestion and say that Agricultural Chemical dealers are not subject to the provisions of 252:20-1-7(1). Would that solve it, too? I don't know. Whatever the Board thinks.

MS. DUNCAN: I think you could change Number 3 to say, for Agricultural Chemical dealers, colon. Then put a

parenthesis (a), \$12 per facility and put a parenthesis (b) that says, the extremely hazardous substance fee does not apply. The thing that would leave you open for would be the \$1,000 cap. And you would need to probably add a (c) for \$1,000 cap per company. We currently don't have anybody who comes up against that cap.

MR. CASSIDY: Well, why can't you under Number 1, just at the end of gas production facilities, just put excluding Ag Chemical dealers, and be done with it?

MS. DUNCAN: Okay. Well, I think what we -- in order to make it make sense to me, you need to say, for owner/operators other than non-hazardous -- other than non-oil and gas -- let's take the non-oil out, okay? For owner/operators excepting oil and gas production facilities SIC Codes -- SIC Codes other than 1311 and Agricultural Chemical dealers.

MS. ELDER: You wouldn't put other than 1311, you would put 1311, because that's the oil and gas.

MS. DUNCAN: Okay.

MS. ELDER: And Ag dealers.

MS. DUNCAN: Okay. So the way that would look would be -- it would say, for owner/operators other than oil and gas production facilities (SIC Codes 1311) and other Agricultural Chemical dealers, colon. And then you would have dealt with owner/operators of SIC Code 1311 in Number 2 and deal with Agricultural Chemical dealers in Number 3. And you could leave Number 3 as it is written.

MR. THOMPSON: The general counsel is not there, yet.

MR. GIVENS: I'm sorry. I'm just not following you. I didn't follow all that. If everybody else did, that's fine. But I didn't follow it.

MS. DUNCAN: Okay. Well, let me tell you specifically what we would do.

MR. MASON: Judy, why don't you bring us back another sheet of paper in about half an hour, please.

MS. DUNCAN: I'll do it.

MR. MASON: And if you would visit with Jimmy and Ellen beforehand, and make sure everyone is comfortable?

MS. DUNCAN: Okay.

MR. MASON: And maybe show it to Brita, too.

MS. DUNCAN: Okay.

MR. MASON: That would be great.

MR. MASON: Has anyone seen Ellen Bussert with my lunch? Okay. Do we want to roll on or do we want to take a quick break, guys? We're going to roll on.

Item 17, I asked that we put on here. This is kind of informational. We've had four people that have tried to be on our Board that have had problems. I think the first was Hershel Roberts with the Benham Group, who couldn't be on our Board because they were trying to get Superfund contracts that the State pays a match on.

Then Jack Coffman was asked to leave for a little while because we bought electricity from OG&E.

And then Ken Purdy was asked to leave because the solid waste fee helped fund his research institute up in Tahlequah.

And then most recently, a guy named Jim Warram over at Zerox tried to join our Board, but he couldn't join because the Department buys toner from Zerox.

Now, since that time, I've been told that Jack's been cleared. I think he since retired from OG&E, but if he was still there, he could still be on our Board because someone sort of decided, since it's a monopoly, he could be on our Board, I think is what I've been told.

I just wanted to make sure that everybody was kind of up to speed and would understand the difficulty we're having in finding good Board Members.

MR. DARK: Or the difficulties we're having working with people that are making those judgment calls about who should be on the Board, I think that is, in fact, the problem.

MR. MASON: Right. So this is informational, just so everyone is up to speed.

All right. We'll just leave it at that, and we'll keep looking for Board Members.

The next item is Item 18. In the last Legislative Session, legislation was passed so we no longer have to have four forums a year. Previously, State Law required four forums. That went away. Currently, our rules require that we meet four times a year.

My suggestion is that we ask that the Department bring us a rule at the next Board Meeting that says we don't have to meet four times a year if we don't have business, because it's a lot of effort to get all these people together for two days in a row. So if everyone's fine with that, we're going to bring some rulemaking that says we can meet less than four times a year if we don't have any business.

So, next Agenda -- or next meeting,

Steve, if we could bring some rules.

MR. THOMPSON: We will.

MR. MASON: Okay. New Business.

Is there any New Business today? Have I forgotten anything today? We're going to get to you. I'm still missing lunch. So I guess we'll go to Steve.

(Whereupon, the Director s Report was given by Steve Thompson)

(Lunch Break)

Back on the Record)

MR. MASON: Now, we'll see if the third time's the charm. So we're going to return to whatever Agenda item dealt with Community Right to Know. Who wants to speak first?

MR. DARK: Mr. Chair, I did put a Motion on the floor. We need to approve that before we have discussion, correct?

MR. MASON: All right. I have a Motion.

MR. DARK: I'd like a Motion -- I'm making a Motion on the exception that staff is in agreement with the language.

THE REPORTER: I'm sorry, I
couldn't hear you.

MR. DARK: Motion for approval.
I'm assuming that staff is in agreement
with the language since it s been presented
to us three times.

MR. MASON: Is there a second?

MR. COFFMAN: Second.

MR. MASON: A second from Jack.

Okay. Does everybody have the new
recommendation? Does the public have a
copy? And I know I've got the right copy,
because I guess on the very last page, I've
got a bunch of A and B -- or I have 3A and
B at the bottom.

Is there any comments from the
Board? Any comments from the public?
Okay.

I have a Motion to approve this as
presented. May we have a vote?

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Dark.

MR. DARK: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Motion approved.

MR. MASON: And part of this was

a good exercise for us, because we figured
out how hard it is to work on a Council.

(Meeting Concluded)

