

**MINUTES  
ENVIRONMENTAL QUALITY BOARD  
February 28, 2003  
Department of Environmental Quality  
Oklahoma City, Oklahoma**

Approved  
September 9, 2003

**Notice of Public Meeting** The Environmental Quality Board convened for a regular meeting at 9:30 a.m., February 28, 2003 at the Department of Environmental Quality Multipurpose Room at 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, 2002. The agenda was mailed to interested parties on February 19, 2003 and was posted at the Department of Environmental Quality and at the entrance of the meeting facility on February 26, 2003.

Chairman Jerry Johnston called the meeting to order. Roll call was taken and a quorum was confirmed. Mr. Johnston introduced Ms. Brita Haugland Cantrell who will be a Board member following Senate confirmation.

**MEMBERS PRESENT**

Jerry Johnston  
Mike Cassidy  
Jack Coffman  
Bob Drake  
Steve Mason  
Lee Paden  
Herschel Roberts  
Terri Savage  
Don Ukens  
Richard Wuerflein

**DEQ STAFF PRESENT**

Steve Thompson, Executive Director  
Larry Gales, Primary Division Director  
Jimmy Givens, General Counsel  
Scott Thompson, Land Protection Division  
Jon Craig, Water Quality Division  
Eddie Terrill, Air Quality Division  
Judy Duncan, Customer Service Division  
Gary Collins, ECLS Division  
Myrna Bruce, Secretary, EQ Board and Councils

**DEQ STAFF PRESENT**

Catherine Sharp, Land Protection Division  
Wendy Caperton, Administrative Services  
Pam Dizikes, Air Quality Division Legal  
Kendal Cody Air Quality Division Legal  
Dawson Lasseter, Air Quality Division  
Toni Payne, Air Quality Division  
Ellen Bussert, Administrative Services Division  
Monty Elder, Public Information Officer

**MEMBERS ABSENT**

Jennifer Galvin  
Lew Meibergen  
Roger Miner

**OTHERS PRESENT**

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

**Approval of Minutes** Chairman Johnston called agenda item 3, Approval of Minutes of the September 10, 2002 Regular Meeting. Mr. Coffman made motion to approve the Minutes as presented. The second was from Mr. Ukens.

**Roll call.**

Mike Cassidy	Yes	Herschel Roberts	Yes
Jack Coffman	Yes	Terri Savage	Yes
Bob Drake	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes
Lee Paden	Yes	Jerry Johnston	Yes

**Motion carried.**

**Election of Officers – Chair** -- Mr. Johnston expressed his pleasure serving as chairman then called for nominations for the next chairperson. Mr. Drake nominated Mr. Richard Wuerflein and Mr. Coffman made the second. Mr. Ukens moved that the nominations cease and elect Mr. Wuerflein by acclamation with Mr. Coffman making the second. Roll call was taken.

**Roll call.**

Mike Cassidy	Yes	Herschel Roberts	Yes
Jack Coffman	Yes	Terri Savage	Yes

Bob Drake	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes
Lee Paden	Yes	Jerry Johnston	Yes

**Motion carried.**

**Election of Officers – Vice Chair** Mr. Wuerflein presented Mr. Johnston with a plaque honoring his time served as the Chairman of the Environmental Quality Board. Mr. Thompson congratulated Mr. Johnston for his induction into the Oklahoma Hall of Fame for Town and Municipal Officials. Mr. Wuerflein then opened the floor for nominations for upcoming Vice-Chair. Mr. Drake nominated Mr. Steve Mason and Mr. Coffman made the second. Mr. Wuerflein entertained motion to accept this nomination by acclamation. Mr. Coffman made the motion and Mr. Paden made that second.

**Roll call.**

Mike Cassidy	Yes	Herschel Roberts	Yes
Jack Coffman	Yes	Terri Savage	Yes
Bob Drake	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes
Lee Paden	Yes	Jerry Johnston	Yes

**Motion carried.**

**Rulemaking – Air Pollution Control Subchapters 1, 7, 17, 31, 35, 37, and 39**

Mr. Wuerflein called upon Mr. David Branecky, Air Quality Council, to introduce the first rulemaking actions in agenda item 5. Mr. Branecky expressed that the proposal addresses re-right/de-wrong of the definitions section of Chapter 100 and that changes proposed would simplify and clarify defined terms and remove redundant definitions. Mr. Branecky requested that this proposal be approved for permanent adoption.

Mr. Lee Paden congratulated the Air Quality Council and the staff for the excellent job done in preparation of these changes. Mr. Ukens expressed his concern regarding the regulatory framework of air quality around hog farms. Mr. Ukens also wanted assurance that jurisdiction would remain with the DEQ. Mr. Thompson and Mr. Terrill explained that, per statutes, DEQ has authority for the air quality program but that the EPA is working towards further addressing this issue.

Mr. Wuerflein entertained motion for permanent adoption of these rules. Mr. Mason moved for adoption and Mr. Coffman made the second.

**Roll call.**

Mike Cassidy	Yes	Lee Paden	Yes
Jack Coffman	Yes	Herschel Roberts	Yes
Bob Drake	Yes	Terri Savage	Yes
Jerry Johnston	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes

**Motion carried.**

**Rulemaking – OAC 252:100-17 Part 9** Mr. Branecky advised that the proposal would update the rule to meet EPA requirements for incorporation by reference and would add a new Part 9. He pointed out that this proposal had been before the Air Quality Council three times and that Council recommended permanent adoption.

Mr. Wuerflein entertained motion for adoption. Mr. Johnston made the motion and Mr. Coffman made the second.

**Roll call.**

Mike Cassidy	Yes	Lee Paden	Yes
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Jack Coffman	Yes	Herschel Roberts	Yes
Bob Drake	Yes	Terri Savage	Yes
Jerry Johnston	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes

**Motion carried.**

**Rulemaking – OAC 252:100-31** Mr. Branecky pointed out that the proposal included three things: to clarify that the ambient air concentration limits for sulfur dioxides are measured in terms of facility-wide impact; reinstatement of the annual ambient air concentration limit for sulfur dioxides; and to correct a scrivener’s error in 31-26. Mr. Paden confirmed that the correction in 31-26 would not be a substantive change, then moved for adoption as a permanent rule. Mr. Ukens made the second.

**Roll call.**

Mike Cassidy	Yes	Lee Paden	Yes
Jack Coffman	Yes	Herschel Roberts	Yes
Bob Drake	Yes	Terri Savage	Yes
Jerry Johnston	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes

**Motion carried.**

**Rulemaking – OAC 252:100-33** Mr. Branecky requested passage of the rule for emergency adoption as the proposal would exempt glass-melting furnaces from the nitrogen oxides emission limits for fuel-burning equipment. He added that even with Best Available Control Technology (BACT), glass-melting furnaces couldn’t meet the limits as the current rule is written. Mr. Branecky stated that comments received would be considered when the rule was presented for permanent adoption. Board members asked questions about the facility requirements using BACT, RACT, or LAER. They also raised health concerns and discussed the timeframe for the permanent rule.

Mr. Wuerflein opened the floor to public comment. Speaking in support of the emergency rulemaking were: Mr. Tommy Kramer, Durant’s Economic Development Director; Mr. Richard Valtirra, Cardinal FG; Mr. Charles Kimbrough, Oklahoma Department of Commerce Site Location Manager; and Ms. Valerie Krulic of Saint-Gobain Containers. Following additional comments from Board members, Mr. Wuerflein called for motion for finding of emergency to adopt the rule. Mr. Roberts made the motion with Mr. Drake making the second.

**Roll call.**

Mike Cassidy	Yes	Lee Paden	No
Jack Coffman	Yes	Herschel Roberts	Yes
Bob Drake	Yes	Terri Savage	Yes
Jerry Johnston	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes

**Motion carried.**

Mr. Roberts made motion to adopt the rule as an emergency with instructions to the Air Quality Council to review all comments received when considering the proposal for permanent adoption. Mr. Drake made the second. Mr. Eddie Terrill suggested that at the Board’s next meeting, the Air Quality Division would provide an update and discussion on the permanent proposal and how the issues will be addressed.

**Roll call.**

Mike Cassidy	Yes	Lee Paden	No
Jack Coffman	Yes	Herschel Roberts	Yes
Bob Drake	Yes	Terri Savage	Yes
Jerry Johnston	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes

**Motion carried.**

**Rulemaking – OAC 252:205 Hazardous Waste Management** Mr. David Bradshaw, Hazardous Waste Management Advisory Council Chair, advised that the proposal would maintain the hazardous waste program in the state of Oklahoma by updating the incorporation by reference of the federal regulations to July 1, 2002. Mr. Bradshaw pointed out specific changes included in the proposal. Questions and comments were taken from the Board members. Ms. Catherine Sharp provided a summary of the changes to the Corrective Action Management Unit (CAMU) rule. Mr. Paden suggested that, for clarification, Section 3-3 should be stricken instead of being revoked. Mr. Mason moved for approval of the rule with Mr. Paden’s corrections. Mr. Roberts made the second.

<b>Roll call.</b>			
Mike Cassidy	Yes	Lee Paden	Absent for roll call
Jack Coffman	Absent for roll call	Herschel Roberts	Yes
Bob Drake	Yes	Terri Savage	Absent for roll call
Jerry Johnston	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes
<b>Motion carried.</b>			

**Rulemaking – OAC 252:410 Radiation Management** Mr. Steve Woods, Radiation Management Advisory Council Vice-Chair, advised that proposed revisions would establish a fee for categories of generally licensed radioactive gauges and that adoption is required to maintain compatibility with the Federal rules of the Nuclear Regulatory Commission. Mr. Woods further explained the requirements of the proposal and fielded questions from the Board. Mr. Johnston moved for permanent adoption of the rule and Mr. Ukens made the second.

<b>Roll call.</b>			
Mike Cassidy	Yes	Lee Paden	Absent for roll call
Jack Coffman	Absent for roll call	Herschel Roberts	Yes
Bob Drake	Yes	Terri Savage	Absent for roll call
Jerry Johnston	Yes	Don Ukens	Yes
Steve Mason	Yes	Richard Wuerflein	Yes
<b>Motion carried.</b>			

**New Business** None

**Executive Director’s Report** – Mr. Steve Thompson announced that the Water Quality Division had received an award from the EPA Region 6 for the reduction of the NPDS backlog to the acceptable level of ten percent. Because of reaching that goal, the EPA has initiated a program with DEQ to do differential oversight for water quality activities. He added that this speaks very well for the Water Quality Division, Mr. Jon Craig, and his staff.

Mr. Thompson provided the Board with an update on legislation. He advised that the general trend is to consolidate responsibilities across all state government. The bills introduced to date provide that responsibilities come to the DEQ, not be taken away. Mr. Thompson pointed out that this update does not mention the request from the Air Quality Council and Environmental Quality Board to address a license tag fee for the Air Quality program. He felt that legislators were working through bills at this time and would be taking up revenue issues in the future. He pointed out that support has been enlisted from cities and a great number of people to help us work toward a fee on mobile sources.

Mr. Thompson advised of budget recommendations from the Governor’s office and raised concerns that the cuts recommended would affect the areas that benefit from

general revenue monies: subsidies to small community programs such as public water supplies, wastewater treatment, and the complaints program. He was concerned that these small cities couldn't take up the slack in their budgets.

Mr. Thompson reported that due to the hard work of staff, the State of Pennsylvania is copying our complaints system.

The meeting adjourned at 12:45 p.m. with public forum following.

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

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DEPARTMENT OF ENVIRONMENTAL QUALITY BOARD

STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS

OF REGULAR MEETING - ITEM NUMBERS 1-8

HELD ON FEBRUARY 28, 2003, AT 9:30 A.M.

AT 707 NORTH ROBINSON

IN OKLAHOMA CITY, OKLAHOMA

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REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE  
(405) 721-2882

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MEMBERS OF THE BOARD

1. MR. CASSIDY - MEMBER
2. MR. COFFMAN - MEMBER
3. MR. DRAKE - MEMBER
4. MR. MEIBERGEN - ABSENT MEMBER
5. MR. MASON - VICE-CHAIRMAN
6. MR. MINER - ABSENT MEMBER
7. MR. UKENS - MEMBER
8. MR. WUERFLEIN - CHAIRMAN
9. MR. JOHNSTON - MEMBER
10. MS. SAVAGE - MEMBER
11. MR. ROBERTS - MEMBER

STAFF MEMBERS

- MS. MYRNA BRUCE - SECRETARY
- MR. JIMMY GIVENS - STAFF ATTORNEY

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## PROCEEDINGS

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MR. JOHNSTON: Looks pretty exciting here. We have a new Board member. Her name is Brita Haugland Cantrell, and I want to tell you some of the -- one of the pages of all the good pages that she's done, and we'll do this, but first of all, welcome aboard. I think that's at the bottom line here. But welcome aboard.

MS. CANTRELL: Thank you.

MR. JOHNSTON: Ms. Cantrell was appointed by Governor Brad Henry to fill the statewide non-profit environmental organization position on the Environmental Quality Board. She represents the Oklahoma Chapter of the Nature Conservatory.

Ms. Cantrell attended Muskogee High School in Muskogee, Oklahoma. She graduated from Wellsey College in Wellsey, Massachusetts, with a Bachelor of Arts Degree in Political Science. While there she served as president of the student body. Ms. Cantrell received her Juris Doctorate from the University of Oklahoma,

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1 College of Law, in Norman, and also served  
2 as Note Editor for the Oklahoma Law Review.  
3 Ms. Cantrell started her career with a law  
4 firm and specialized in environmental,  
5 labor and banking law.

6 From 1984 to 1989 she was an  
7 Assistant Attorney General in the  
8 environmental division of the Attorney  
9 General's office. Following her service in  
10 the state government, she served as  
11 Executive Director of the Oklahoma Chapter  
12 of the Nature Conservatory in Tulsa,  
13 Oklahoma. Ms. Cantrell is now self-  
14 employed working as a part-time attorney.  
15 Ms. Cantrell lives in Tulsa with her  
16 husband and two daughters.

17 Welcome to the Environmental Quality  
18 Board. We look forward to your serving as  
19 a member after your senate confirmation.  
20 Welcome aboard.

21 MS. CANTRELL: Thank you very  
22 much.

23 (Applause)

24 MR. JOHNSTON: So, we'll have the  
25 call to order. The regular meeting of the

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1 Environmental Quality Board has been called  
2 according to the Oklahoma Open Meeting Act,  
3 Section 311 of Title 25, of the Oklahoma  
4 Statutes. Notice was filed with the  
5 Secretary of State on December 5, 2002.  
6 Agendas were mailed to interested parties  
7 on February 19, 2003. The agenda for this  
8 meeting was posted at the Department of  
9 Environmental Quality, 707 North Robinson  
10 in Oklahoma City, Wednesday, February 26,  
11 2003. Only the matters appearing on the  
12 posted agenda may be considered.

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

18           Myrna, would you do the roll call,  
19 please?

20                   MS. BRUCE: Mr. Cassidy.

21                   MR. CASSIDY: Here.

22                   MS. BRUCE: Mr. Coffman.

23                   MR. COFFMAN: Here.

24                   MS. BRUCE: Mr. Drake.

25                   MR. DRAKE: Here.

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1 MS. BRUCE: Ms. Galvin is absent.

2 Mr. Mason.

3 MR. MASON: Yes.

4 MS. BRUCE: Mr. Meibergen is  
5 absent. Mr. Miner is absent. Mr. Paden.

6 MR. PADEN: Here.

7 MS. BRUCE: Mr. Roberts.

8 MR. ROBERTS: Here.

9 MS. BRUCE: Ms. Savage.

10 MS. SAVAGE: Here.

11 MS. BRUCE: Mr. Ukens.

12 MR. UKENS: Here.

13 MS. BRUCE: Mr. Wuerflein.

14 MR. WUERFLEIN: Here.

15 MS. BRUCE: Mr. Johnston.

16 MR. JOHNSTON: Here.

17 Number 3 on the agenda is the  
18 approval of Minutes of the November 14,  
19 2002 Regular Meeting. Are there any  
20 questions about the Minutes?

21 MR. COFFMAN: Mr. Chairman, I  
22 move for approval.

23 MR. UKENS: Second.

24 MR. JOHNSTON: Motion has been  
25 made and seconded. I guess that would be a

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1 roll call. Do the roll call. Mr. Ukens  
2 seconded.

3 MS. BRUCE: Mr. Cassidy.

4 MR. CASSIDY: Yes.

5 MS. BRUCE: Mr. Coffman.

6 MR. COFFMAN: Yes.

7 MS. BRUCE: Mr. Drake.

8 MR. DRAKE: Yes.

9 MS. BRUCE: Mr. Mason

10 MR. MASON: Yes.

11 MS. BRUCE: Mr. Paden.

12 MR. PADEN: Aye.

13 MS. BRUCE: Mr. Roberts.

14 MR. ROBERTS: Aye.

15 MS. BRUCE: Ms. Savage.

16 MS. SAVAGE: Yes.

17 MS. BRUCE: Mr. Ukens.

18 MR. UKENS: Yes.

19 MS. BRUCE: Mr. Wuerflein.

20 MR. WUERFLEIN: Yes.

21 MS. BRUCE: Mr. Johnston.

22 MR. JOHNSTON: Yes.

23 Before we go to Item Number 4, I  
24 would like to say that it has been an  
25 extreme pleasure to chair this Board of

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1 great guys and gals. And it's really been  
2 fun for a country boy to do some of these  
3 things, and especially to be able to serve  
4 with Steve, and Mark before him, and all  
5 the excellent staff and everybody that made  
6 me look good, because you guys do a  
7 wonderful job of that, and that's pretty  
8 hard work, in my case. But it's really  
9 been a pleasure and I've really enjoyed it,  
10 and I want to thank you all for the honor  
11 of being able to do it.

12 At this time we'll go into election  
13 of officers. We'll first elect a Chair,  
14 and then I get to watch what's going on the  
15 rest of the meeting. So at this time, the  
16 nomination is open for Chair of the Board.

17 MR. DRAKE: I move Richard  
18 Wuerflein.

19 MR. JOHNSTON: Motion has been  
20 made for Richard. Do I hear a second?

21 MR. COFFMAN: Second.

22 MR. JOHNSTON: Are there any  
23 other nominations?

24 MR. UKENS: Move nomination  
25 cease, elect by acclamation.

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1                   MR. COFFMAN:    Second.

2                   MR. JOHNSTON:    The move has been

3 seconded to vote by acclamation.    I guess

4 we're there.    Do we need the roll call on

5 that, or I think it's -- is it proper for a

6 roll call?    Okay.    Do a roll call on it.

7                   MS. BRUCE:    Mr. Cassidy.

8                   MR. CASSIDY:    Yes.

9                   MS. BRUCE:    Mr. Coffman.

10                  MR. COFFMAN:    Yes.

11                  MS. BRUCE:    Mr. Drake.

12                  MR. DRAKE:    Yes.

13                  MS. BRUCE:    Mr. Mason

14                  MR. MASON:    Yes.

15                  MS. BRUCE:    Mr. Paden.

16                  MR. PADEN:    Aye.

17                  MS. BRUCE:    Mr. Roberts.

18                  MR. ROBERTS:   Aye.

19                  MS. BRUCE:    Ms. Savage.

20                  MS. SAVAGE:    Yes.

21                  MS. BRUCE:    Mr. Ukens.

22                  MR. UKENS:    Yes.

23                  MS. BRUCE:    Mr. Wuerflein.

24                  MR. WUERFLEIN:   Yes.

25                  MR. JOHNSTON:    I worked with Richard.

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1 He'll make you an excellent Chair.

2 (Applause upon his election and  
3 takes the Chair position)

4 MR. WUERFLEIN: The Board and the  
5 staff has prepared a little plaque just so  
6 you can remember you survived your two  
7 years at DEQ. For an old country boy you  
8 know your way around a lot of places --

9 MR. JOHNSTON: Thank you, thank  
10 you.

11 MR. WUERFLEIN: -- EPA and  
12 Washington. We were lucky to have had you  
13 on board.

14 MR. JOHNSTON: Thank you, sir.

15 (Applause)

16 MR. THOMPSON: Mr. Chairman, if I  
17 could, for those of you who are not aware  
18 of this, Mr. Johnston, will be inducted  
19 into the Oklahoma Hall of Fame for Town and  
20 Municipal Officials in the coming weeks,  
21 because of his extraordinary work across  
22 the state and the nation for towns and  
23 cities. So it's an honor that I believe is  
24 well deserved, and we congratulate him on  
25 that.

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1 MR. JOHNSTON: Thank you.

2 (Applause)

3 MR. WUERFLEIN: The next item of  
4 business is to select a Vice-Chairman. So  
5 I'll open the floor for nominations for  
6 Vice-Chairman, for the coming year.

7 MR. DRAKE: Mr. Chairman -- I'd  
8 move, I'd like to nominate Steve Mason for  
9 Vice-Chairman.

10 MR. COFFMAN: Second it.

11 MR. WUERFLEIN: Steve Mason --  
12 and seconded.

13 MR. JOHNSTON: I'll second that.  
14 You got a second?

15 MR. WUERFLEIN: We've got a  
16 second. Any other nominations? Are there  
17 any other nominations for Vice-Chairman?  
18 Any other nominations? I'll entertain a  
19 motion for accepting by acclamation, then.

20 MR. COFFMAN: So moved.

21 MR. WUERFLEIN: Mr. Coffman.

22 MR. PADEN: Second.

23 MR. WUERFLEIN: Seconded by Mr.  
24 Paden. Roll call, please.

25 MS. BRUCE: Mr. Cassidy.

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1 MR. CASSIDY: Yes.  
2 MS. BRUCE: Mr. Coffman.  
3 MR. COFFMAN: Yes.  
4 MS. BRUCE: Mr. Drake.  
5 MR. DRAKE: Yes.  
6 MS. BRUCE: Mr. Johnston.  
7 MR. JOHNSTON: Yes.  
8 MS. BRUCE: Mr. Mason.  
9 MR. MASON: Yes.  
10 MS. BRUCE: Mr. Paden.  
11 MR. PADEN: Aye.  
12 MS. BRUCE: Mr. Roberts.  
13 MR. ROBERTS: Aye.  
14 MS. BRUCE: Ms. Savage.  
15 MS. SAVAGE: Yes.  
16 MS. BRUCE: Mr. Ukens.  
17 MR. UKENS: Yes.  
18 MS. BRUCE: Mr. Wuerflein.  
19 MR. WUERFLEIN: Yes.

20 The next item of business is Item  
21 Number 5, Rulemaking on Chapter 100, Air  
22 Pollution Control. There will be three  
23 sets of amendments proposed for permanent  
24 rulemaking, and I should ask, are we going  
25 to do each of these bullet items

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1 separately, or the whole thing together?

2 Who --

3 MR. THOMPSON: Let David do it.

4 MR. BRANECKY: I can handle it.

5 MR. WUERFLEIN: We'll be  
6 discussing changes to Subchapters 1, 7, 17,  
7 31, 35, 37, and 39. These are proposed as  
8 a single action. These changes are  
9 intended to simplify and clarify defined  
10 terms and remove redundant definitions. So  
11 I'll turn it over to you.

12 MR. BRANECKY: All right. Thank  
13 you, Mr. Chairman. We are asking that all  
14 these rules that Mr. Chairman mentioned be  
15 passed as a permanent rule, and passed  
16 together. What this is, I guess we could  
17 kind of call it finishing touches on our  
18 re-right/de-wrong process. When we went  
19 through the re-right/de-wrong process  
20 through all the rules in air quality, we  
21 made several changes.

22 Subchapter 1 deals with general  
23 provisions, a lot of definitions. And so  
24 things changed. And rather than addressing  
25 the Subchapter 1 every time we made a

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1 change in the other chapters, we waited  
2 until the end to clean it all up at one  
3 time. So we've made several changes.  
4 We've added some definitions, deleted some  
5 definitions, we've revised some  
6 definitions. And that's what we're asking,  
7 for your approval today.

8 This came before the Air Quality  
9 Council in October, and then again in  
10 January. And again we're asking for your  
11 approval for a permanent adoption.

12 I'd be happy to answer any of your  
13 questions.

14 MR. WUERFLEIN: Are there any --  
15 any other questions from the Board?

16 MR. PADEN: Mr. Chairman, I'd  
17 like to make a comment. I congratulate Mr.  
18 Branecky for -- and the Council, and  
19 especially the staff for the excellent job  
20 they've done --

21 MR. BRANECKY: The Staff did all  
22 the work.

23 MR. PADEN: -- in this rule. And  
24 I would encourage Mr. Thompson to encourage  
25 the other directors in the other divisions

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1 to do the same thing. When we adopted the  
2 original rules back in 1993, we combined  
3 the rules of five agencies and the  
4 definitions of five agencies, and it was a  
5 very cumbersome process that had to be done  
6 in a very -- in a fairly rapid manner. As  
7 a result of that, we adopted definitions --  
8 in some cases were things that aren't even  
9 in rules. And what the staff has done in  
10 the air rules, is they've gone back  
11 through, done a thorough analysis of the  
12 things that were defined and the things  
13 that need to be defined, eliminated things  
14 that were no longer even contained in the  
15 rule, and have come forward with  
16 definitions that are in the right place, so  
17 that people have a better way to understand  
18 what the rules mean and what the particular  
19 definitions mean.

20           So I just want to take this  
21 opportunity to say thank you to the staff  
22 for doing this. I hope other division  
23 directors who are around, will take heed  
24 and do the same thing. Because part of our  
25 job has to be to provide rules that an

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1 Oklahoman who picks these rules up, can  
2 understand. And if we have definitions  
3 that don't even apply to the rules that are  
4 in place, those things need to be reviewed  
5 and updated.

6 And so I appreciate the work the  
7 staff has done on this. I appreciate the  
8 work that the Council has done. They've  
9 had that before them a couple of different  
10 times. And I hope that we'll adopt this  
11 rule when we vote on it today.

12 MR. WUERFLEIN: Mr. Ukens?

13 MR. UKENS: I was interested in  
14 some of the words here in Subchapter 1, the  
15 air contaminant source, the definitions. I  
16 noticed the words "any" and "all", and  
17 "all" is mentioned there again.

18 And I have a friend that lives  
19 southwest of Hooker and he works for a gas  
20 processing company, and because of the job  
21 he does he has an H2S monitor that he has  
22 to wear. He also -- across the road from  
23 his house is a factory hog farm, with  
24 several thousand hogs. So the H2S detector  
25 that he wears to protect himself at work

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1 will go off, the alarm, as he goes by that  
2 hog farm on the way home. That detector is  
3 calibrated to go off at ten parts per  
4 million. So as Lee said, an Oklahoman who  
5 picked up these rules, how do I explain to  
6 him that this doesn't apply to him?

7 MR. BRANECKY: Well, I think the  
8 jurisdiction for hog farms, am I correct --  
9 help me out here -- falls within the Ag  
10 Department.

11 MR. TERRILL: No, well.

12 MR. THOMPSON: Let me take a run  
13 at that, and then I'll ask Eddie to tell  
14 you what I meant. We believe that the  
15 Department of Environmental Quality has  
16 jurisdiction for the air program,  
17 regardless of the source in the State of  
18 Oklahoma.

19 The issue of hog farms of confined  
20 animal feeding operations is an issue that  
21 the Environmental Protection Agency is just  
22 taking up. I think what they are trying to  
23 do is to determine the appropriate approach  
24 to those with facilities, and as that  
25 becomes evident, we will move forward in

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1 that area. But I don't think that the  
2 Federal government has quite gotten to  
3 where they need to be. And so we will  
4 follow their lead.

5 MR. UKENS: Well, as you know,  
6 the EPA -- a gentleman from the EPA was out  
7 in our area last summer, and I spent some  
8 time with him and kind of said the same  
9 thing. But his question to me was, who was  
10 going to handle this for Oklahoma? And I  
11 hope that doesn't get petitioned out. His  
12 purpose in being out there was to work on  
13 some baseline, I anticipate that he'll be  
14 back out.

15 But I hope this air thing isn't  
16 something we have to share with somebody,  
17 once we figure out what the baseline is  
18 going to be.

19 MR. THOMPSON: That's an issue  
20 that will be addressed. Currently we  
21 believe that the statutes give us the  
22 authority for the air quality program in  
23 the state. That can change with statute.  
24 But currently, we're operating under the  
25 assumption that the DEQ will be the air

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1 quality agency for the state.

2 MR. UKENS: So, when can my  
3 friend, Dale, come and complain? And who  
4 would he complain to?

5 MR. THOMPSON: He would complain  
6 to Mr. Terrill. And Mr. Terrill will let  
7 you know when he can complain.

8 MR. UKENS: Mr. Terrill is going  
9 to be out our way. Maybe I could --

10 MR. THOMPSON: Absolutely.

11 MR. BRANECKY: All right. I  
12 stand corrected.

13 MR. WUERFLEIN: Do you have  
14 anything to add to that, Mr. Terrill?

15 MR. TERRILL: No. I think Steve  
16 hit it pretty well on the head. There's a  
17 lot of work being done nationally, and  
18 we're working with our national  
19 organization, as well as EPA, to try to  
20 understand what they're doing and push them  
21 along to address this issue, because we're  
22 way behind in the program. They should  
23 have looked at this five, ten years ago,  
24 and they haven't, and so they're trying to  
25 play catch-up. But I think we're going to

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1 see quite a bit of movement in the next  
2 three months, because they're under a court  
3 deadline to get something done in  
4 California, and that trickles down. So as  
5 quickly as we have a way to understand  
6 what's going on so that we have -- legally  
7 can analyze what's happening and don't get  
8 ourselves tangled up in something that we  
9 can't get out of, we're ready to move  
10 forward. I just need a tool that we can  
11 use to understand exactly what's happening  
12 and what the regulatory framework needs to  
13 be. That's all we're waiting on.

14 MR. WUERFLEIN: Thank you. Any  
15 other questions from the Board? I'll open  
16 up discussion to the public. Are there any  
17 other questions or comments from the  
18 public? I don't see any. Any other final  
19 questions from the Board? If not, I'll  
20 entertain a motion to adopt these  
21 proposals.

22 MR. MASON: So moved.

23 MR. WUERFLEIN: Steve Mason  
24 moves.

25 MR. COFFMAN: Second.

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1                   MR. WUERFLEIN:    Seconded by Jack  
2 Coffman.    Roll call.  
3                   MS. BRUCE:    Mr. Cassidy.  
4                   MR. CASSIDY:    Yes.  
5                   MS. BRUCE:    Mr. Coffman.  
6                   MR. COFFMAN:    Yes.  
7                   MS. BRUCE:    Mr. Drake.  
8                   MR. DRAKE:    Yes.  
9                   MS. BRUCE:    Mr. Johnston.  
10                  MR. JOHNSTON:   Yes.  
11                  MS. BRUCE:    Mr. Mason  
12                  MR. MASON:    Yes.  
13                  MS. BRUCE:    Mr. Paden.  
14                  MR. PADEN:    Aye.  
15                  MS. BRUCE:    Mr. Roberts.  
16                  MR. ROBERTS:   Aye.  
17                  MS. BRUCE:    Ms. Savage.  
18                  MS. SAVAGE:    Yes.  
19                  MS. BRUCE:    Mr. Ukens.  
20                  MR. UKENS:    Yes.  
21                  MS. BRUCE:    Mr. Wuerflein.  
22                  MR. WUERFLEIN:  Yes.

23                        We'll move on to Part 9 of  
24 Subchapter 17, which establishes state  
25 emissions standards for existing Commercial

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1 and Industrial Solid Waste Incineration  
2 Units. It establishes requirements for  
3 permitting, operator qualifications and  
4 training, waste management plans, testing  
5 and monitoring of pollutants, and operating  
6 parameters. Corresponding changes and  
7 updates of incorporation by reference occur  
8 in Parts 1, 5 and 7. Mr. Branecky, would  
9 you continue?

10 MR. BRANECKY: Yes, thank you,  
11 Mr. Chairman. Basically what we're doing  
12 here is updating this rule to meet some EPA  
13 requirements. If we don't adopt the EPA  
14 changes, then EPA will assume jurisdiction.  
15 So we've added Part 9, and we've  
16 incorporated some new dates to --  
17 incorporation by references. Basically,  
18 that's it. The Council heard this in July,  
19 and October and in January. So it's been  
20 three times before the Council. And we're  
21 asking for you today to adopt it as a  
22 permanent rule. I'd be happy to answer any  
23 questions from the Board.

24 MR. WUERFLEIN: Any questions  
25 from the Board? Open this up for

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1 discussion from the public. Any questions  
2 or discussion from the public? Seeing  
3 none, I'll go back to the Board. Any other  
4 comments from the Board?

5 I'll entertain a motion to approve  
6 adoption of this Section.

7 MR. JOHNSTON: Move for permanent  
8 adoption.

9 MR. WUERFLEIN: Jerry Johnston  
10 moves.

11 MR. COFFMAN: Second.

12 COURT REPORTER: Was that Mr.  
13 Coffman?

14 MR. WUERFLEIN: Yes. Roll call,  
15 please.

16 MS. BRUCE: Mr. Cassidy.

17 MR. CASSIDY: Yes.

18 MS. BRUCE: Mr. Coffman.

19 MR. COFFMAN: Yes.

20 MS. BRUCE: Mr. Drake.

21 MR. DRAKE: Yes.

22 MS. BRUCE: Mr. Mason.

23 MR. MASON: Yes.

24 MS. BRUCE: Mr. Johnston.

25 MR. JOHNSTON: Yes.

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1 MS. BRUCE: Mr. Paden.

2 MR. PADEN: Aye.

3 MS. BRUCE: Mr. Roberts:

4 MR. ROBERTS: Aye.

5 MS. BRUCE: Ms. Savage.

6 MS. SAVAGE: Yes.

7 MS. BRUCE: Mr. Ukens.

8 MR. UKENS: Yes.

9 MS. BRUCE: Mr. Wuerflein.

10 MR. WUERFLEIN: Yes.

11 We'll move on to the next bullet  
12 there, proposed amendment to Section 31,  
13 Subchapter 7, clarifies that the ambient  
14 air concentration limits for sulfur  
15 dioxides are measured in terms of facility-  
16 wide impact. Also proposed is  
17 reinstatement of the annual ambient air  
18 concentration limit for sulfur dioxides.  
19 The amendment to Section 31-26 corrects a  
20 scrivener's error. Mr. Branecky?

21 MR. BRANECKY: Thank you, Mr.  
22 Chairman. What we did here, there were  
23 three things. One was to clarify that this  
24 rule applied to facility-wide rather than  
25 to a specific source at a facility, so it's

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1 a facility-wide rule.

2           The second thing we did was to  
3 reinstate the annual ambient concentration,  
4 or annual ambient air of eighty micrograms  
5 per cubic meter. The reason that was  
6 removed -- it was removed inadvertently in  
7 the first place. We assumed that the  
8 ambient air quality standard in Subchapter  
9 4 was equivalent, and therefore we felt  
10 that it was a redundancy to have it here  
11 and in the Ambient Air Quality Standards.  
12 While the Ambient Air Quality Standards is  
13 a general standard that applies to the  
14 whole state, this is a rule that is  
15 specific to a source or facility. And so,  
16 if we took it out of Subchapter 31, it  
17 could be construed by EPA as a relaxation  
18 of the SIP. So that's why we had to bring  
19 the 80 micrograms back into Subchapter 31.

20           And the final thing that we did to  
21 Subchapter 31, on page two, the formula --  
22 there was a scrivener's error, where an  
23 additional zero was added into the exponent  
24 of that formula. And that's why we had to  
25 correct that one.

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1                   So those are the three things that  
2 we did to Subchapter 31. The Council heard  
3 this in October and in January. And we're  
4 asking for a permanent adoption by the  
5 Board.

6                   MR. WUERFLEIN: Thank you. Mr.  
7 Paden?

8                   MR. PADEN: On the scrivener's  
9 error, we're not changing anything?

10                  MR. BRANECKY: Well, the exponent  
11 is changed.

12                  MR. PADEN: No. You don't  
13 understand. We're not substantively  
14 changing anything. All we're doing is  
15 correcting an error.

16                  MR. BRANECKY: Right, right.

17                  MR. PADEN: So we're not --

18                  MR. BRANECKY: Right. No it was  
19 intended --

20                  MR. PADEN: So we're not  
21 increasing --

22                  MR. BRANECKY: No.

23                  MR. PADEN: -- by one hundred --

24                  MR. BRANECKY: No, it was not  
25 intended to be the other way.

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1 MR. PADEN: Okay.

2 MR. WUERFLEIN: Any other  
3 questions or comments to the Board? I'll  
4 open this up to the public discussion. Are  
5 there any comments or questions from the  
6 public? Seeing none, are there any other  
7 comments from the Board?

8 MR. PADEN: Move the adoption.

9 MR. WUERFLEIN: Mr. Paden moved  
10 the adoption. Is there a second?

11 MR. UKENS: Second.

12 MR. WUERFLEIN: Seconded by Mr.  
13 Ukens. Roll call.

14 MS. BRUCE: Mr. Cassidy.

15 MR. CASSIDY: Yes.

16 MS. BRUCE: Mr. Coffman.

17 MR. COFFMAN: Yes.

18 MS. BRUCE: Mr. Drake.

19 MR. DRAKE: Yes.

20 MS. BRUCE: Mr. Johnston.

21 MR. JOHNSTON: Yes.

22 MS. BRUCE: Mr. Mason.

23 MR. MASON: Yes.

24 MS. BRUCE: Mr. Paden.

25 MR. PADEN: Aye.

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1 MS. BRUCE: Mr. Roberts.

2 MR. ROBERTS: Aye.

3 MS. BRUCE: Ms. Savage.

4 MS. SAVAGE: Yes.

5 MS. BRUCE: Mr. Ukens.

6 MR. UKENS: Yes.

7 MS. BRUCE: Mr. Wuerflein.

8 MR. WUERFLEIN: Yes.

9 We will continue with Item Number 6  
10 on the agenda, Chapter 33 of Air Pollution  
11 Control - Control of Emissions of Nitrogen  
12 Oxides. The proposed emergency revision  
13 exempts glass-melting furnaces from the  
14 nitrogen oxides emission limits for fuel-  
15 burning equipment. This eliminates an  
16 unintended barrier to construction of new  
17 glass plants in the state because glass-  
18 melting furnaces cannot meet these limits.  
19 Best Available Control Technology  
20 requirements will apply. Mr. Branecky.

21 MR. BRANECKY: Thank you, Mr.  
22 Chairman. Again, what we've done here, and  
23 we're asking today is that you pass this as  
24 an emergency rule. We have a facility, or  
25 a company down in southeastern Oklahoma

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1 who's wanting to install a glass plant in  
2 Oklahoma. And glass plants cannot meet the  
3 rule the way it's written, the existing  
4 rule, the NOx limit. Just physically  
5 cannot meet it. The glass plant that's  
6 being proposed has installed or has  
7 proposed to install, Best Available Control  
8 Technology, even doing the best they can,  
9 they still cannot meet Subchapter 33. And  
10 therefore that's why we included the  
11 exemption for glass-melting furnaces in  
12 Subchapter 33.

13           The company has agreed, and has  
14 agreed with installing BACT. Again, we're  
15 asking this for an emergency. We'll have  
16 to bring it back to you again as a  
17 permanent rule, and we realize that a  
18 comment has been submitted to the Board by  
19 Saint-Gobain Company. The Council was  
20 unaware of that comment at the time of the  
21 Council Meeting. That comment was  
22 submitted after the Council Meeting. And  
23 so we propose to review that comment and  
24 take that comment under consideration when  
25 we bring this rule back for permanent

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1 adoption.

2 MR. COFFMAN: Based on that  
3 comment, do you think you're going to write  
4 your new regulations around glass plants to  
5 incorporate language somewhat like was  
6 submitted?

7 MR. BRANECKY: In the comment?

8 MR. COFFMAN: Yes.

9 MR. BRANECKY: We'll have to go  
10 back and review that. What the comment is  
11 asking is that instead of requiring Best  
12 Available Control Technology for new  
13 facilities, that Reasonable Available  
14 Control Technology be established. And  
15 basically -- and staff can correct me if  
16 I'm wrong. Reasonable Available Control  
17 Technology sets a -- it's not a case-by-  
18 case basis, it sets a standard for the  
19 industry. BACT is a case-by-case, they  
20 look at each individual case and determine  
21 what the BACT is.

22 So, we'll just have to look and see  
23 what that does to the air quality, and see  
24 if it's feasible. But we will take that  
25 under consideration when we bring the rule

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1 back for permanent adoption.

2           The reason -- let me make one more  
3 statement. This probably would have been  
4 corrected a long time ago, but this is the  
5 first glass plant that has come in to --  
6 new glass plant that has come in to  
7 Oklahoma.

8           At the time it was passed in '72,  
9 and then we revised it I think in '77, we  
10 didn't realize that glass plants could not  
11 meet the standard. So if a glass plant  
12 would have come in twenty years ago --  
13 yeah, '83 -- we probably would have made  
14 that correction then. It's just that this  
15 is the first glass plant that's tried to  
16 locate in Oklahoma, and so we realized that  
17 there needs to be some changes made.

18           MR. WUERFLEIN: Recognize Mr.  
19 Paden.

20           MR. PADEN: I want to preference  
21 my remarks by saying that David and I have  
22 had a very brief conversation about this  
23 rule, and I'm very concerned about what  
24 we're about to do here. So I want to ask a  
25 couple of questions to maybe ally some of

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1 my fears, but I'm afraid they won't. So I  
2 may be prejudging.

3 Can you tell me what the -- on the  
4 proposed plan that we're talking about,  
5 what the annual NOx emissions -- tons?

6 MR. BRANECKY: Fourteen hundred  
7 and three tons.

8 MR. PADEN: Okay. Can you tell  
9 me on a recently approved PSD application -  
10 - for example, the latest power plant that  
11 we've cited, what the annual NOx emissions  
12 -- What the comparison would be?

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1                   MR. BRANECKY:   Twelve hundred  
2 tons.

3                   MR. PADEN:    So we're talking  
4 about adding an amount of NOx that is equal  
5 to or in excess of the latest power plant  
6 that we've licensed in Oklahoma?   And we're  
7 essentially talking about -- let me ask you  
8 this.   Do you know whether that plant  
9 required SCR or not?

10                  MR. BRANECKY:   Which plant?

11                  MR. PADEN:    The latest power  
12 plant.

13                  MR. BRANECKY:   No.   It's a  
14 different technology.

15                  MR. PADEN:    But is it --

16                  MR. BRANECKY:   What BACT for a  
17 glass plant, I think they inject natural  
18 gas into the exhaust and reburn that to  
19 reduce the NOx.

20                  MR. PADEN:    Okay.   I guess my  
21 problem with this, David, is that -- Lord  
22 knows we need economic development in  
23 Oklahoma, and we need things that provide  
24 us with jobs and investment, and tax  
25 revenue, et cetera, et cetera.   But I'm

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1 concerned that we are establishing here, a  
2 double standard, in requiring applicants  
3 who come to us for PSD permits, under  
4 Chapter 33, and other chapters of the  
5 rules, to install, not just BACT or RACT,  
6 but in some cases, control technologies  
7 that are even beyond that.

8           And then in this case -- and until  
9 you said just a minute ago, I didn't have  
10 any idea where this was located, but if  
11 it's located in southeastern Oklahoma,  
12 there is a potential impact that that plant  
13 could have on the Tulsa airshed because of  
14 the way the wind's blown. And Tulsa is  
15 fighting on a daily basis, during the ozone  
16 season, to stay within the attainment  
17 limits, probably is beyond the attainment  
18 limits if we go to the eight hour standard.  
19 But you're asking us to adopt a rule here  
20 that in effect says that we're not going to  
21 ask them to do anything in addition to what  
22 is BACT. And I just have a major problem  
23 with that.

24                           MR. BRANECKY: I think BACT is  
25 Best Available Control Technology, and

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1 that's what they're installing. I don't  
2 know if there's anything beyond that. The  
3 next step is LAER, which is Lowest  
4 Achievable Emission Rate, but I'm not sure  
5 if we have the authority to do that,  
6 because that's normally set for non-  
7 attainment areas, if you're located in a  
8 non-attainment area.

9 MR. TERRILL: I think this may be  
10 LAER. We looked at this -- this thing  
11 caught us very much by surprise, because  
12 when we were talking to this facility  
13 months ago --

14 MR. WUERFLEIN: Come up to the  
15 mic.

16 MR. TERRILL: I'm trying to stay  
17 out of the line of fire.

18 When we talked to the facility  
19 months ago, we were not aware even that  
20 this rule existed like it did and they  
21 couldn't meet it. And it came to our  
22 attention very much after the fact,  
23 because, you know, just the inadvertent  
24 change to the rule that was made years ago  
25 that we never did fix. But the only

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1 alternative here is not to build the  
2 facility. Now there's nothing that we're  
3 aware of being done nationwide that this  
4 facility could do beyond what they're going  
5 to do. And so that's the reason that we  
6 felt like -- and we're concerned about the  
7 impact on, not only Tulsa, but Lawton and  
8 Oklahoma City as well.

9           However, to tell a facility that  
10 they can't build, when they're doing what  
11 any other facility in the country would do,  
12 to us is a policy decision that really we -  
13 - that's not our job to make. So we did  
14 what we thought we would have done had we  
15 caught this five years ago, ten years ago.  
16 And we very well could change this rule  
17 such that other facilities that were  
18 unintentionally caught in this change years  
19 ago could locate in Oklahoma if they chose  
20 to. That's one of the reasons we didn't  
21 try to make this a permanent rule now, is  
22 that we need to go back and make sure what  
23 other unintended consequences were done  
24 thirty years ago that we need to correct  
25 and level the economic playing field.

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1                   So there's really -- we're not aware  
2 of anything this facility could do beyond  
3 what they're going to do, relative to  
4 control technology, that's being done  
5 anywhere else in the country. So it's  
6 BACT, LAER, whatever you want to call it,  
7 we believe that's what they're doing.

8                   MS. SAVAGE: David. We have a  
9 situation here where, if we pass the  
10 emergency rule, the plant will start;  
11 correct?

12                   MR. BRANECKY: Soon as the  
13 governor signs it.

14                   MS. SAVAGE: Okay. And this is  
15 southeastern Oklahoma?

16                   MR. BRANECKY: It's in Durant.

17                   MS. SAVAGE: In Durant. I share  
18 all of Lee's concerns, and I have a few  
19 more. I don't think that the argument that  
20 if we had caught it earlier is good. It  
21 sounds to me like if we had caught the rule  
22 earlier, then all we'd be doing is -- the  
23 plant would have gone in and then we'd have  
24 had a problem. So the fact that we didn't  
25 catch the rule means that we might be able

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1 to not add to our problem.

2 I know that we have a problem with  
3 economic development. And I know what  
4 happened in Henryetta when the glass  
5 factory closed. But what concerns me is,  
6 if you bring a plant in, are you asking  
7 people to trade their health for a job?  
8 And it's a terrible dilemma. And I don't  
9 know how you look at it. I don't know, how  
10 depressed is this area? These are just  
11 questions I have. I'm not saying this is  
12 something I want -- I'm trying to -- these  
13 are just questions I have.

14 One. Are you asking these people to  
15 trade money for health? Is this factory  
16 going in because the area is depressed and  
17 they're getting the land cheap, and are  
18 they taking advantage of this? We pass the  
19 emergency rule, the plant gets up and  
20 running, okay, then we have to go to a  
21 permanent rule, but so we chew on it.  
22 Well, we're not going to change it. Once  
23 they get going, no one's going to go in and  
24 tell a business to shut down, especially  
25 after they've hired people. I mean that

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1 just pretty much makes it permanent.

2           When you pass the emergency, you're  
3 passing the permanent, just by default.

4 And getting this dumped on us is a little  
5 off putting. And I don't like it.

6           MR. BRANECKY: Well --

7           MS. SAVAGE: I have to be  
8 convinced. I don't know.

9           MR. PADEN: Terri, I don't think  
10 that really this is a question of whether  
11 the plant ought to be built or shouldn't be  
12 built -- should be built or shouldn't be  
13 built. I don't think that's what this  
14 Board's responsibility is. I think this  
15 Board's responsibility is to adopt the  
16 rules that apply on a statewide basis, and  
17 not on a business enterprise located at X  
18 or Y, basis. I just have a major concern  
19 that the next time we have an economic  
20 development opportunity, and it's a widget  
21 company that's going to emit at some level,  
22 that they come to us and ask us to adopt a  
23 rule to allow that to be built. And I  
24 don't think that's the purpose that this  
25 Board ought to -- I don't think that's

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1 what the statute requires us to do in  
2 rulemaking.

3           Very honestly, I don't know how to  
4 deal with this. I don't know if the best  
5 thing to do is to send this back to the  
6 Council and say to the Council that we want  
7 you to look at BACT, RACT and LAER, and  
8 impose the most difficult standard for  
9 these people to meet as a class. I don't  
10 know what we ought to do. But what I am  
11 concerned about is, I'm concerned that what  
12 you have said is absolutely true. The  
13 minute that this rule is approved as an  
14 emergency, then this company or any other  
15 company that's a glass company can come in  
16 and build, and build under the standard  
17 that is set out here, I don't think that's  
18 in the best interest of the air quality in  
19 the state --

20           MR. BRANECKY: Well --

21           MR. PADEN: -- at this time.

22           MR. BRANECKY: I just wanted to  
23 assure the Board that, as part of the  
24 permanent application, extensive ambient  
25 air quality modeling was required to show

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1 compliance with the ambient air quality  
2 standards, to make sure there's no  
3 violation caused by this company of the  
4 ambient air quality standards. And there  
5 were none. So I just wanted you to know  
6 that the air quality was looked at as part  
7 of the permanent application.

8 MR. WUERFLEIN: Recognized Don,  
9 and then I think Steve has a comment.  
10 Well, I saw Don first, so I'll give it to  
11 Don first then Herschel.

12 MR. UKENS: Well, in the grand  
13 scheme of economic development, what Lee  
14 was talking about, I can give you a living  
15 example of economic development that came  
16 to the Oklahoma panhandle, and an industry  
17 uses this term, reasonable, which is code  
18 word for we really don't want to do  
19 anything, to pretty well wipe out the  
20 environment, property values and all that.  
21 It came bringing, quote, unquote, economic  
22 development, and it's left with an  
23 environmental nightmare, and it's going to  
24 be a disaster somewhere down the road. So  
25 this term, reasonable, is so relative I'm

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1 not sure what that really means --

2 MR. BRANECKY: Reasonable  
3 Available Control Technology?

4 MR. UKENS: Well, but reasonable  
5 to what -- and we're back to the factory  
6 hog industry they use reasonable to mean  
7 what they can afford and what they can't.  
8 So I'm pretty well against something like  
9 this.

10 MR. BRANECKY: Well, staff and  
11 Council were just going to entertain the  
12 comment letter that was received from  
13 Saint-Gobain. It doesn't say we're going  
14 to agree with it, but we were going to  
15 consider it. This company at this point in  
16 time has agreed to install BACT, and  
17 according to the staff it's the same as  
18 LAER which is the best they can do.

19 MR. WUERFLEIN: Herschel.

20 MR. ROBERTS: My basic  
21 understanding of how we operate as a Board,  
22 is to rely on the Councils and the staff to  
23 know what they're doing. And we trust that  
24 you don't bring us a rule that you don't  
25 feel is protective of human health and the

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1 environment. Now if I'm wrong about that,  
2 someone should explain it, if you don't  
3 feel it's protective of human health and  
4 environment. If you do, then I don't think  
5 that part really is for us to debate. I  
6 don't think ten million hogs and one glass  
7 plant is a good comparison. I couldn't see  
8 a proliferation of glass plants all over  
9 the state just because we require them to  
10 install the very best technology that is  
11 even available nationwide.

12 I don't think it's fair to expect  
13 any industry to shut down because they just  
14 -- they can't do better than is humanly  
15 possible to do. That's a pretty big  
16 decision, I think. And that's what you're  
17 telling us --

18 MR. BRANECKY: I understand.

19 MR. ROBERTS: -- that the  
20 technology they use is the very best that  
21 is humanly possible to do. So I'd like to  
22 know if the Council and the staff feels  
23 that this rule is protective of human  
24 health and the environment. If it is, then  
25 I'm for it. If it's not, then I want you

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1 to restudy it.

2 MR. BRANECKY: I will reiterate,  
3 in the permit process, the construction  
4 permit requires that the company and staff  
5 do ambient air quality modeling of what the  
6 impact will be from the emissions from any  
7 facility, and to see if there is any  
8 violation of the ambient air quality  
9 standards, and the ambient air quality  
10 standards are set to protect human health.  
11 And based on that modeling, there was no  
12 violation of the standard.

13 MR. ROBERTS: And so you feel  
14 that it's protective of human health?

15 MR. BRANECKY: Yes.

16 MR. TERRILL: It's as protective  
17 of human health as you're going to get.  
18 But you're going to add a burden to the  
19 airshed. I mean, you can't add a new  
20 facility and not add a burden to the  
21 airshed. But based on the existing methods  
22 of evaluating that, it doesn't appear to  
23 present a problem. And if we were to take  
24 this back, what we would bring back is  
25 exactly the same thing that we brought

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1 today. Because there's nothing that can be  
2 done in the analysis to add control  
3 equipment. They can't do anything else. I  
4 mean this is it. So it's just a question  
5 of, do they build it or they don't. I mean  
6 that's -- because there's nothing they can  
7 do to it, and there's nothing to say they  
8 wouldn't build it in Texas. And then we'd  
9 lose the economic development as well as  
10 we'd get the pollution that drifts across.  
11 It is a tough decision, I'll agree. And  
12 we're (inaudible) that it came to this, but  
13 this is part of the --

14 MR. WUERFLEIN: Let's have one  
15 more question. Let Steve. He's going to  
16 add or address something that Eddie just  
17 did.

18 MR. THOMPSON: When this issue  
19 came up -- I just want to visit a minute  
20 with the Board about this. When this issue  
21 came up, I was concerned that the  
22 discussion would be that we were changing  
23 the rule to accommodate economic  
24 development. And I don't believe that's at  
25 the core of what the Council and our staff

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1 have done. As a result of an economic  
2 development initiative, we recognized that  
3 we had a rule that a plant could not meet.  
4 And I think what the staff and the Council  
5 decided was, what's the best thing you can  
6 do. There will be other issues that will  
7 come to this Board in the future just like  
8 this, relative to economic development.  
9 And I think the decision that is made sort  
10 of affects not only this issue, but what  
11 happens in the future. But I want, most  
12 importantly, while the agency is sensitive  
13 to economic development, and will always  
14 be, the decision wasn't simply to allow the  
15 plant to build, it was to go back and  
16 correct an error in the rules, and I think  
17 that's what they did in the Council.

18 MR. WUERFLEIN: Herschel, do you  
19 have a follow up?

20 MR. ROBERTS: Just one more  
21 question. On timing, suppose the rule was  
22 passed as an emergency. What would be the  
23 Council's intent to take these comments  
24 that we have and any others and evaluate  
25 that under -- over what period of time

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1 before coming back to the Board?

2 MR. TERRILL: We have to bring it  
3 back in front of you all before, I guess, a  
4 year from this July. So we'd probably take  
5 it to the Council, our Council, in either  
6 July or October, with the idea that we'd  
7 probably this time next year bring back a  
8 permanent rule. And based on your  
9 sentiment, it sounds like we'll be looking  
10 real strongly at the BACT angle of it as  
11 opposed to the RACT.

12 MR. PADEN: Well now, don't judge  
13 the whole Board just based on a few RACT --

14 MR. TERRILL: No, I don't. But  
15 what I'm saying is, that gives us kind of a  
16 flavor of -- it's part of the comment  
17 process that we'll evaluate along with  
18 everybody else --

19 MR. PADEN: Well, I want you to  
20 consider LAER as well.

21 MR. BRANECKY: It is my  
22 understanding from staff that what they  
23 have is LAER.

24 MR. PADEN: Well, that -- but I  
25 would submit to you, David, that the

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1 company's own desire is to RACT, which is  
2 the very least.

3 MR. BRANECKY: No, that was a  
4 comment not by the company that's building  
5 the facility, it's by a different company  
6 in the state.

7 MR. ROBERTS: That was my  
8 question, too. RACT is not as severe as  
9 BACT, and BACT is not as severe as LAER.

10 MR. BRANECKY: LAER.

11 MR. ROBERTS: LAER. And what we  
12 currently have is unachievable by anybody.

13 The current rule --

14 MR. BRANECKY: The current rule,  
15 right.

16 MR. THOMPSON: There are  
17 situations, I believe, where LAER and BACT  
18 are the same thing.

19 MR. BRANECKY: Yes.

20 MR. WUERFLEIN: Mr. Coffman's  
21 been waiting, I'm going to let his ask one.

22 MR. COFFMAN: Just one comment,  
23 Lee, to you and Terri. My sense is, based  
24 on your comments, the issue of ozone non-  
25 attainment is high on everybody's list.

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1 One of the things I suggest we need to be  
2 concerned about, and I would direct that  
3 back to the Council, is in attempting to  
4 achieve ozone compliance, have we put in  
5 place the modeling and the effects of  
6 mobile sources that we all get concerned  
7 about? I see this no differently than  
8 saying, well one more car in Tulsa is going  
9 to put us over the limit. So I don't  
10 think, it's as simple as looking at, is it  
11 one plant? I think it's more, back to,  
12 Herschel, your comment that, will the rules  
13 and regulations we've got in place protect  
14 human health? Have they been designed to  
15 do that? And are we following them? And  
16 if that takes lowest achievable, that's  
17 fine. But we look to EPA and we look to  
18 some of the other rulemaking authorities to  
19 say, based on the knowledge we have at the  
20 present time, what is going to be the  
21 overall effect?

22           But my sense is, it's more than just  
23 a glass plant, it is the ozone airshed  
24 issue that's got us all concerned. And I  
25 want to be sure that we've got, not just

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1 this thing that we're looking at, but all  
2 of the contributors in the proper  
3 proportion.

4 MR. WUERFLEIN: Mr. Paden?

5 MR. PADEN: Jack, I absolutely  
6 agree with you. And I guess my problem is  
7 not that it's one plant. My problem is  
8 that the -- and I don't want to imply that  
9 the Council and the staff in any way are  
10 doing anything that I would consider to be  
11 outside the purview of sound environmental  
12 analysis of this. But my problem is that -  
13 - well I have two problems. First of all,  
14 in other PSD applications, whether it's a  
15 power plant or a large industrial facility,  
16 et cetera, there are strict limitations on  
17 emissions, NOx, VOCs, et cetera, et cetera,  
18 that you have to meet. And you have to  
19 meet it by doing whatever the permit writer  
20 finally winds up and tells you that you  
21 have to do. And that is putting additional  
22 control devices on whatever the emission  
23 source is.

24 I think the problem I have with this  
25 rule is the potential precedent that it

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1 sets, that down the road, a widget company  
2 can come to the state and, because it can't  
3 meet the standard that's in the existing  
4 rule, that someone comes to the department  
5 and to the Council and to the Board and  
6 asks for a waiver. And this Board is not a  
7 permitting Board. And that's what we're  
8 doing by passing this rule. We do not  
9 issue permits. The department issues  
10 permits. But if we adopt this rule, we in  
11 fact have issued a permit for the facility  
12 that we're talking about here, as well as  
13 any other facility that meets that  
14 requirement, any other glass plant that  
15 meets that requirement. So I have a  
16 problem in making the exception to the rule  
17 rather than in trying to fashion a rule  
18 that is -- will from this point forward be  
19 applicable to everyone else.

20 MR. BRANECKY: Let me clarify.  
21 This company will have a permit, and in  
22 that permit there will be emissions  
23 standards. The difference between their  
24 standards will be set on what they can do  
25 with BACT. It won't be set on a standard

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1 in a rule. They will have emission  
2 limitations on NOx, VOCs, whatever they  
3 emit. They will have emission standards.  
4 It's just based on what they can do with  
5 their control technology.

6 Now I want to go back to Mr.  
7 Thompson's point. In 1977 this rule was  
8 changed to include direct-fired boilers,  
9 which this system is. And at the time, I  
10 think if the Council realized, and they  
11 just assumed direct-fired and indirect-  
12 fired, everybody could meet point two, and  
13 we didn't realize that until a new facility  
14 came in that was direct-fired and said,  
15 hey, we can't meet this. If we were to  
16 have realized it at the time, I don't think  
17 we would be here today. We would have  
18 never made that change.

19 So we're not asking for an exemption  
20 from a rule, we're asking to correct an  
21 error that was made back twenty, thirty  
22 years ago.

23 MR. WUERFLEIN: Go ahead, Jack.

24 MR. COFFMAN: Given the fact that  
25 we've discovered a rule that needs to be

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1 rewritten, would it be -- or should it be  
2 this Board's recommendation to accept it  
3 based on lowest achievable, for an  
4 emergency, until the Council has --

5 MR. PADEN: We cannot do that,  
6 Jack, because we can't change a rule  
7 submission from air quality, we've got to  
8 send it back to them.

9 MR. COFFMAN: Okay. Accept it as  
10 is, or we either accept it as is --

11 MR. PADEN: We either accept it  
12 as is or we send it back to them, and we  
13 can make a recommendation and then they can  
14 bring it back to us. But --

15 MR. ROBERTS: Wasn't the comment  
16 made earlier that the lowest achievable and  
17 BACT are about the same thing --

18 MR. PADEN: But they're not.

19 MR. ROBERTS: They're not.

20 MR. PADEN: In this case, they  
21 probably are.

22 MR. COFFMAN: But they're not  
23 always.

24 MR. ROBERTS: They're not always,  
25 but they could be.

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1                   MR. COFFMAN:    They could be but  
2 we don't know that.

3                   MR. MASON:    We've said the plant  
4 will emit fourteen hundred and three tons a  
5 year.

6                   MR. BRANECKY:    Yes.

7                   MR. MASON:    How much would it  
8 emit with LAER, BACT and RACT if we applied  
9 those analysis?

10                  MR. BRANECKY:    What I understand  
11 from staff, what they have proposed is  
12 BACT, is also LAER.    That's the best they  
13 can do.    There's no LAER.    There's nothing  
14 better they can do, so those are the same.

15                  MR. MASON:    And how about if we  
16 applied the RACT that's contained in this  
17 letter?

18                                   (Inaudible answer)

19                  MR. MASON:    Jack, I'm just  
20 following up on your questions of what do  
21 we get to if we say LAER or RACT.    You know  
22 RACT -- that's a good thought to go back  
23 to.

24                  MR. LASSETER:    I'm Dawson  
25 Lasseter.    The letter addresses containers,

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1 furnaces, container glass furnaces, which  
2 have a different standard than flat glass.  
3 This is flat glass. The flat glass has to  
4 be much more pure than the container glass.  
5 So you're going to have an ability to  
6 achieve less emissions with a container  
7 glass-type furnace than you are with flat  
8 glass. You've got to be able to see  
9 through your windows on your car. So that  
10 flat glass has to be really pure. So we  
11 couldn't use that letter for what you're  
12 saying.

13 MR. PADEN: Could I ask a  
14 question though?

15 MR. WUERFLEIN: Yes.

16 MR. PADEN: Dawson, if the glass  
17 plant in Tulsa, that manufactures  
18 windshields, (inaudible) or the old Ford  
19 company, if they installed a new line with  
20 a new furnace, et cetera, et cetera, would  
21 this rule apply, that we're talking about  
22 now?

23 MR. LASSETER: Yes, sir. They're  
24 emitting -- they're an existing facility,  
25 they're emitting quite a bit more now than

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1 this rule will allow. But they're  
2 entitled, they are existing.

3 MR. PADEN: That isn't what I  
4 asked you.

5 MR. LASSETER: Yeah.

6 MR. PADEN: I asked you if they  
7 put a new facility --

8 MR. LASSETER: A new furnace -- a  
9 new furnace would have to fall under the  
10 rule.

11 MR. CASSIDY: How many existing  
12 facilities are there in the state?

13 MR. LASSETER: Five or six.

14 MR. CASSIDY: And they're all  
15 emitting more than this one will, under  
16 these new guidelines?

17 MR. LASSETER: On a pounds per  
18 MMBTU basis, yes. They may not be as -- I  
19 don't know what size all the plants are.  
20 But emissions-wise, yes, sir.

21 MR. WUERFLEIN: I guess my  
22 question is, if we do nothing, if the  
23 existing plant in Tulsa tried to switch  
24 processes, would they be able to?

25 MR. LASSETER: Couldn't do it.

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1                   MR. WUERFLEIN:    Couldn't do it  
2 because our rule is unachievable?

3                   MR. LASSETER:    Yes, sir.

4                   MR. WUERFLEIN:    Mr. Drake.

5                   MR. DRAKE:    Let me review, since  
6 I'm not as up on this as many around the  
7 table, obviously.    We do have an area  
8 that's depressed, we know that.    We  
9 couldn't build it -- we could build it  
10 across the way, about fifteen miles away;  
11 we know that.    We also know that if we do  
12 this today we are in fact permitting, which  
13 we really can't do.    But they couldn't do  
14 it without this Board's action, and I  
15 understand that.    We also know that the  
16 best available, anything that -- you've  
17 already asked them to do everything that  
18 they can possibly do; correct?

19                   MR. BRANECKY:    Yes.

20                   MR. DRAKE:    We have to rely on  
21 our staff because some of us aren't experts  
22 in these fields, and I'm certainly not.    So  
23 I have to rely on you all.    And if you ever  
24 found out you've deceived me, well it won't  
25 be pleasant.    So I'm going to assume that.

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1 The plant that we were just talking about  
2 in Tulsa that Lee was talking about, if  
3 they were to come forward, then they would  
4 have to meet these new rules that we're  
5 passing, which is much stronger than  
6 they've already got. So I would think that  
7 we'd be better off if they came forward and  
8 asked to build something like this that we  
9 could go back and take them out of the  
10 grandfather possibility --

11 MR. BRANECKY: And without this  
12 rule they couldn't --

13 MR. DRAKE: A possibility,  
14 though, that they could do. And in  
15 understanding everyone's concerns, I don't  
16 know how we can just turn down a company  
17 that's doing everything possible, you would  
18 have changed it if you'd seen it before.  
19 You've already admitted that. This was put  
20 in in '72, revised in '77. You've talked  
21 about that. Well, here it is 2003, and  
22 obviously we haven't had a plant that  
23 wanted to come in in those years; is that  
24 correct?

25 MR. BRANECKY: That's correct.

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1                   MR. DRAKE:    So we now have one,  
2   and is agreeing to put up everything that  
3   possibly can be done to satisfy the rule as  
4   you're about to state; correct?

5                   MR. BRANECKY:   Yes, sir.

6                   MR. DRAKE:    Well, I just wanted  
7   to kind of bring out what I'm thinking.

8                   MS. SAVAGE:   Well, okay.   We have  
9   two things here.   We have the micro and the  
10  macro look.   And in the micro look, Bob and  
11  I are looking at the micro, but technically  
12  we're not supposed to look at the micro.  
13  We're not supposed to consider economic  
14  develop, people or health.   Or maybe health  
15  is okay, but anyway.

16                   But separate from that, you still  
17  have the macro which is, if we set a  
18  precedent here, by passing this, we become  
19  a permitting agency.   By passing this we  
20  open the door for other allowances in the  
21  future, and maybe this Board won't, but in  
22  ten years when we're -- maybe none of us or  
23  half of us are not here, an institutional  
24  memory being what it is, it could happen  
25  again.

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1                   So even if you take all of my  
2                   considerations and Bob's considerations off  
3                   the table, we still get down to, we will be  
4                   permitting, which is what we don't do, and  
5                   we may be setting a very dangerous  
6                   precedent. Which it seems pretty clear,  
7                   and I agree with what Lee is saying, I  
8                   don't know how you get around it. So, I  
9                   don't know.

10                   MR. THOMPSON: Well, I think that  
11                   -- we will issue -- the department will  
12                   issue a permit, an individual permit to  
13                   this facility. It will be based on the  
14                   revision to the rule if that is done today.  
15                   Now, because of the circumstance that  
16                   occurred, because we had a rule that the  
17                   Council and the staff believes should have  
18                   been changed, could have been changed a  
19                   long time ago. Had that change been made  
20                   at that time, then the department would  
21                   simply be issuing a permit based upon that  
22                   rule. So in this specific instance, the  
23                   case could be made that you are in the  
24                   permitting process, but the actual  
25                   individual document that permits a

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1 facility, will be issued by the department,  
2 not by the Board.

3 MR. WUERFLEIN: We're being asked  
4 to find this as an emergency. Would you  
5 address the emergency versus permanent  
6 part, since we're two votes, if we get that  
7 far?

8 MR. THOMPSON: Okay.

9 MR. WUERFLEIN: Address that --  
10 why it needs to be an emergency.

11 MR. THOMPSON: I think that I'll  
12 let -- I think that maybe David might be  
13 able to address that. I think that when  
14 you find that you have a rule that is at  
15 least in the Council's view improper, and  
16 when you have a situation that currently  
17 exists where we have a company that does  
18 want to come in under Best Available  
19 Control Technology, I think that's the  
20 reason for the emergency. If that is --

21 MR. WUERFLEIN: The permanent  
22 process would take how long?

23 MR. THOMPSON: It could take, I  
24 guess, up to a year.

25 MR. BRANECKY: What's that, for a

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1 permanent rule? My understanding was if it  
2 was a permanent it would not become  
3 effective until June of next year. And the  
4 permit is currently under EPA review. So,  
5 we're almost ready to roll, and this  
6 company is ready to start construction.  
7 And so, if we have to wait another year, I  
8 don't know what will happen.

9 MS. SAVAGE: If they go -- if we  
10 don't do something, and then they go into  
11 Texas, and then they build in the airshed,  
12 then we have the same problem that we have  
13 with the chickens up in Arkansas. We can't  
14 do anything about what the people in  
15 Arkansas and Missouri do to our water. And  
16 that's not a good thing.

17 If we have them -- if we allow them  
18 to come in, do we have the potential of  
19 making -- we would at least -- I don't like  
20 -- what Lee said is valid, and I don't like  
21 the idea that we could do something that  
22 would open up a hole that you can drive a  
23 truck through to hurt air quality later on.  
24 I think what he's saying is valid and I  
25 don't see how anyone can argue that. But,

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1 we get down to the micro of whether we  
2 should do this or not. So if these people,  
3 they're going to come to Oklahoma into  
4 Durant and they're going to build, and if  
5 we don't do it they go into Texas, then we  
6 have no control, and we still might be  
7 polluting Tulsa's airshed. So do we have a  
8 potential to control them if they get in?

9 MR. PADEN: Let me propose this  
10 as a compromise. It's a delay, but it's a  
11 compromise. If BACT is LAER, then let's  
12 change this rule to LAER, which is the very  
13 -- the most stringent requirement that you  
14 possibly can meet. And if BACT is LAER in  
15 this case, then they're going to have to do  
16 whatever they have to do. I don't want to  
17 be in a position where we send a signal  
18 that says to anyone who wants to come in  
19 here -- I'm sitting here thinking, about  
20 two, three years ago we permitted a foundry  
21 in the Tulsa airshed. And we required some  
22 additional control technologies on that  
23 foundry. I don't want to be in a position  
24 two years from now where a foundry decides  
25 to open up in Henryetta, and we come in and

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1 change the rule. That's what I'm concerned  
2 about. And so, if we change the rule, what  
3 I want the rule to be is, I want the rule  
4 to be the most stringent technology  
5 possible if we're going to make a change.  
6 And we're going to make an exception for a  
7 particular group of individuals.

8 MS. SAVAGE: That's a good idea.

9 MR. PADEN: And so what I would  
10 propose is, I would propose that we -- and  
11 I can make this in the form of a motion.  
12 I'm not going to make it in the form a  
13 motion right now, but I would propose that  
14 we return this to the Air Quality Council,  
15 with the Board's recommendation that they  
16 look at a LAER requirement rather than a  
17 BACT requirement.

18 MR. BRANECKY: And so you're  
19 asking that only glass plants be subject to  
20 LAER?

21 MR. PADEN: Right. That's what  
22 this says. It says glass melting furnaces  
23 that are subject to -- right now it says  
24 BACT. What I'm proposing is that the  
25 Council consider changing that to LAER, and

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1 that requirements are exempt from the  
2 requirements of the Subchapter. So it  
3 would only apply to glass plants, and it  
4 would require any glass plant to meet LAER,  
5 whatever LAER might be at the time the  
6 application is processed by the department.

7 MR. BRANECKY: Could that be  
8 construed as unfair to glass plants?  
9 You're picking on glass plants?

10 MR. PADEN: I would say --

11 MR. BRANECKY: I'm just asking.

12 MR. PADEN: I would say that  
13 right now, David, this rule, as it's  
14 proposed, is unfair to every other class  
15 that is subject to Subchapter -- or to  
16 Chapter 33. Because it imposes an  
17 exemption that none of the others have to  
18 meet.

19 MR. COFFMAN: Lee, that's a  
20 little bit what I was fishing around for.  
21 If this Board can only remand back to the  
22 Council for further study rather than a  
23 word change, which it sounds like we can't  
24 do, then I would be in favor of remanding  
25 that back, but not with the -- we're not

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1 rule making. So I don't think we can say  
2 it's got to be lowest achievable. But what  
3 we can say is, it needs to be lowest  
4 achievable in terms of emergency form  
5 unless the Council brings us something that  
6 says we've done the studies, this is the  
7 right level and here's the basis to go  
8 forward.

9 MR. PADEN: That's fine with me,  
10 Jack. I think that the Board has the right  
11 to make a recommendation to them that they  
12 consider something. Whether they do that  
13 or not and send it back to us that way, is  
14 strictly up to them. And they may come  
15 back with a permanent rule that says BACT  
16 is the only way to do it. And if that's  
17 the case, that's the case. But given the  
18 circumstance --

19 MR. COFFMAN: Well, but this is  
20 unique and that's the --

21 MR. PADEN: If a week from today  
22 the Governor signed this rule, and a  
23 technology became available that was better  
24 than BACT, the company would not have to do  
25 anything except do what BACT is.

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1                   MR. ROBERTS: I think it would  
2 become BACT.

3                   MR. WUERFLEIN: It would. And  
4 that --

5                   MR. PADEN: I think you can argue  
6 that until hell freezes over.

7                   MR. WUERFLEIN: Jimmy Givens  
8 wanted to say something, and then we still  
9 need to get to the public comments, so  
10 Jimmy, would you address this.

11                   MR. GIVENS: Yes, I just wanted  
12 to point out that, while it's a bit gray,  
13 this is an emergency rule, and therefore  
14 the requirement you alluded to earlier,  
15 arguably would not apply in that the Board  
16 could not change the proposal and could  
17 only remand it to the Air Quality Council.  
18 You may desire to do that anyway, but since  
19 this is an emergency rule, it does not have  
20 to go through the normal Council process.  
21 In this case it did, and they've come  
22 forward with a recommendation. But all I'm  
23 saying is, at least arguably, this Board  
24 could decide if it wanted to do something  
25 different, since this is an emergency rule

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1 and not a permanent.

2 MR. WUERFLEIN: We can amend an  
3 emergency rule, then? We can amend a  
4 permanent rule proposal?

5 MR. GIVENS: Yes. It is not  
6 entirely clear, but, yes, I believe that to  
7 be the case.

8 MR. WUERFLEIN: I want to address  
9 the public.

10 MR. PADEN: Well, if there's  
11 anyone in the audience, I'll take you to  
12 court on that one.

13 MR. BRANECKY: I would suggest  
14 you ask the company if they could live --  
15 what would they do if they had to delay a  
16 year, and just --

17 MR. ROBERTS: Go to Texas.

18 MR. PADEN: And if they go to  
19 Texas, they go to Texas. You know?

20 MS SAVAGE.: I'm saying --

21 MR. ROBERTS: We have no control  
22 over them --

23 MS. SAVAGE: -- if they go to  
24 Texas, then we -- Dumas, Texas has put out  
25 -- I kid you not, they have sent out a

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1 notice that says, come here, we're not  
2 going to regulate you. And they've said  
3 that to the hog industry, and they might as  
4 well say it to the glass industry as well  
5 or whomever. If, you know, if they say  
6 other places, if you don't want to be other  
7 places, come here, we'll be very friendly  
8 to you. So if they leave Oklahoma and they  
9 go to Texas, then we have no control and  
10 they still might be in our airshed. Is  
11 that correct?

12 MR. ROBERTS: I think Terri's  
13 analysis is absolutely right. If we push  
14 them that way and they move right across  
15 the line, you've got a problem.

16 I have another problem with this.  
17 If our macro concern is Tulsa's attainment  
18 -- if I'm from the southeast corner of  
19 Oklahoma, I'm a little ticked that we're  
20 making judgments about their economic  
21 development indifference to Tulsa. Maybe  
22 that's because I come from southeast  
23 Oklahoma. That's how I would feel. I  
24 believe if we ask -- if the company's  
25 already volunteering to do everything that

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1 they possibly can do, even though we're not  
2 in the permitting business, we're  
3 essentially allowing them to exist but  
4 under the most stringent standards. I  
5 would rather adopt this thing as an  
6 emergency and then let the Council do its  
7 job after that. We're not going to  
8 have a flood of glass plant applications  
9 within a year. We haven't had new  
10 industries in this state in twenty years.

11 MR. PADEN: Let me just say this  
12 about the Tulsa issue. This is not a Tulsa  
13 issue, this is an Oklahoma issue. If Tulsa  
14 goes into non-attainment, it's going to  
15 affect the entire state. The State  
16 Implementation Plan is going to have to be  
17 changed, we are opening the door for EPA to  
18 do a bunch of additional oversight that  
19 they would not normally do. And so I  
20 certainly don't want this to be labeled as  
21 a Tulsa issue, this is a state issue. And  
22 if a glass plant goes in in southeastern  
23 Oklahoma, it's going to affect the air  
24 quality of the state of Oklahoma. As well,  
25 if it goes into Texas, it's going to affect

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1 the air quality of the state of Oklahoma.  
2 The difference is, that Texas and several  
3 areas in Texas are already in non-  
4 attainment, and their requirements are  
5 vastly different than ours are. If you go  
6 to Texas and you try to cite this, they're  
7 going to have to meet LAER; aren't they,  
8 Eddie?

9 MR. TERRILL: It depends on where  
10 they locate, but they could, yeah. But  
11 again if they locate there, they'll have  
12 the exact same facility that --

13 MR. BRANECKY: Same control  
14 equipment.

15 MR. TERRILL: It should be  
16 configured just like it is now in Texas or  
17 Oklahoma, or Ohio or New York, or --

18 MS. SAVAGE: Jimmy, did you say  
19 that because it's an emergency rule, we  
20 can't amend it here today and not have to  
21 pass it as written? Did I hear you  
22 correctly?

23 MR. GIVENS: That's my opinion,  
24 but obviously Lee disagrees with me.

25 MS. SAVAGE: You disagree? Okay.

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1                   MR. PADEN: I don't disagree, I'm  
2 just saying I can tie that up in a court --

3                   MS. SAVAGE: Well, no. I'm just  
4 wondering if there's some way that we can -  
5 -

6                   MR. PADEN: -- longer than --

7                   MS. SAVAGE: No, no. I'm just  
8 trying to get back to your compromise. Is  
9 there some way we can fix it? Because  
10 we're damned if we do, damned if we don't.

11                   MR. PADEN: I would suggest that  
12 we vote on it and vote --

13                   MR. WUERFLEIN: I'm going to open  
14 this up to public comment, so we can let  
15 you, the Board, think or discuss or come up  
16 with a proposal. I'll open this up to  
17 public comments, and then we'll come back  
18 to the Board.

19   (Break)

20                   MR. WUERFLEIN: I am going to  
21 turn this over to David, then we'll open it  
22 up to other public comment.

23                   MR. BRANECKY: I just had one  
24 other comment. I'd like to caution the  
25 Board, if you set LAER for this facility,

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1 it's located in an attainment area. LAER  
2 is normally reserved for non-attainment  
3 areas, those that exceed the ambient  
4 standard. To me, if you set LAER for a  
5 company that's existing in an attainment  
6 area, you're being more restrictive. And  
7 if you do that, maybe you just need to make  
8 the whole state LAER. If you did that,  
9 then I don't know if you'd have much  
10 economy development in the state, because  
11 it's pretty restrictive. You just need to  
12 be careful in setting LAER in an attainment  
13 area. That just makes things difficult.

14 MR. KRAMER: Board, I'm Tommy  
15 Kramer. I'm a native Oklahoman. I was  
16 born and raised in Tulsa, educated in  
17 Oklahoma, and retired forty years out of  
18 the meat industry. I know more about pork  
19 processing, pork slaughtered, than probably  
20 anybody in the state of Oklahoma. I have  
21 three college degrees. I'm a muscle  
22 biologist and meat chemist. Retired as the  
23 Vice President of J.C. Potter Sausage  
24 Company, in Durant, Oklahoma. Prior to  
25 that I run Owens Country Sausage in

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1 Richardson, Texas for ten years, and  
2 probably I've slaughtered more pigs, more  
3 swine than anybody in this area. So I know  
4 a lot about the pork industry. I made the  
5 Seaboard Farms private label pork sausage  
6 in Durant, Oklahoma. Our pork processing  
7 company, that the Potter family owned for  
8 over fifty years, was our leading economic  
9 development manufacturing plant in our  
10 community for fifty-plus years. We sold  
11 the company, and I retired.

12           Four and a half years ago the  
13 community, the city, the bankers of our  
14 three banking institutions asked me to stay  
15 in Durant and be the first full-time  
16 economic development director. Durant was,  
17 and still today is, extremely depressed.  
18 We need manufacturing jobs in the worst  
19 way. You cannot believe the difference in  
20 southeast Oklahoma and living in Durant,  
21 the struggles that our people have. We've  
22 got nineteen thousand people in Bryan  
23 County and the four surrounding counties,  
24 that are educated. Twenty-six point four  
25 percent of them hold a B.S. Degree, and

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1 they do not have a job today where they're  
2 able to use their skill level or their  
3 education. That was one of the factors in  
4 our community to create this position four  
5 and a half years ago.

6 We've worked extremely hard to  
7 develop a local incentive program to work  
8 with our State Department of Commerce and  
9 the quality jobs program to compete against  
10 the state of Texas and other surrounding  
11 states. We're about twenty-two miles from  
12 Dennison, Texas. We're about twenty-five,  
13 twenty-six miles from Sherman. They've  
14 experienced tremendous success. Every  
15 morning, three thousand people get up in  
16 Bryan County and drive to Texas for a  
17 better paying job. They spend their money  
18 in Texas when they're over there. They buy  
19 gas, they buy clothes, they shop, and then  
20 they come back to Bryan County and live.

21 Our area -- I can't tell you, I  
22 can't explain to you in words the  
23 difference between Durant and Oklahoma City  
24 and Tulsa, being raised and educated in  
25 Tulsa. And my mother was the first manager

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1 of the Ford glass plant. And my twin  
2 brothers and sister worked there, the best  
3 jobs that our family ever had. My mother  
4 and brother retired from there.

5 My uncle was the manager of the PPG  
6 glass plant in Henryetta, retired and  
7 enjoys a very nice retirement. We want  
8 that same opportunity for our citizens in  
9 Durant. I can't tell you how depressed it  
10 is. I mean, it's bad in rural Oklahoma.

11 We're trying our very best to create  
12 jobs, and when we were selected from eleven  
13 cities, seven in Texas and four in  
14 Oklahoma, it was boiled down basically to  
15 Durant and Sherman, Texas. Sherman, the  
16 economic development authority there, and  
17 their director, Mr. Davis, offered land  
18 with utilities and a check for five million  
19 dollars to buy these jobs. The city of  
20 Durant didn't have five hundred thousand  
21 dollars, but our community rallied due to  
22 the importance of these jobs, our future,  
23 the future of our kids, our grandkids.  
24 It's just so important. We've not had one  
25 negative comment in Bryan County, at the

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1 public hearings, at the meetings. This  
2 hundred million dollar investment will  
3 create in excess of one and a half million  
4 dollars in ad valorem and sales tax,  
5 annually, for our school district, for our  
6 Bryan County health and our emergency  
7 management ambulance system and our county  
8 commissioners. It's the largest investment  
9 in Bryan County history. It will be paying  
10 on a personal per capita income over thirty  
11 thousand dollars a year average, which will  
12 be, barring the universities' salaries, the  
13 highest paying industrial manufacturing  
14 facility in our area. I don't know what  
15 else to tell you, the impact that this is  
16 going to have on Durant, Bryan County,  
17 southeast Oklahoma, the state of Oklahoma.

18

19 I can tell you that Sherman, Texas  
20 offer still stands today, twenty-five miles  
21 away. They would welcome Cardinal Glass  
22 with open arms. And I'm very sensitive,  
23 being a muscle biologist and a meat  
24 chemist, on public health, air quality,  
25 water quality. Serving on the Oklahoma

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1 Pork Council, I can tell you that I'm  
2 highly concerned about corporate hog  
3 farming in Oklahoma and ground water, air  
4 quality.

5 Living and going to school out at  
6 Guymon, out at Good Will, and getting my  
7 B.S. Degree, and working in the feed lots,  
8 I understand that industry. I was raised  
9 on a farm in east Tulsa County. I have  
10 cattle today in Bryan County. I understand  
11 it. I appreciate, Don, your comments and  
12 concerns about corporate farming and air  
13 quality out in the panhandle. The Cardinal  
14 Glass people, I can tell you, I've toured  
15 their plant in North Carolina, they are  
16 great corporate citizens, it's not a hog  
17 plant. The inside of that plant is as  
18 clean as this room. It's an air-  
19 conditioned warehouse environment. It's  
20 computerized. They have a quality control  
21 department and an air quality engineer on  
22 staff, and they will be the greatest  
23 corporate citizens that we could ever  
24 imagine, in the state of Oklahoma.

25 MR. WUERFLEIN: Mr. Kramer, we

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1 need to move this along. We limit our  
2 comments to five minutes.

3 MR. KRAMER: Okay. I hope that  
4 you understand with them trying to beat or  
5 meet the best possible standards, that our  
6 rules in Oklahoma, thirty year old rules,  
7 are out of step, and I would appreciate you  
8 considering this. Not only is the plant  
9 vital, but there's going to be twenty to  
10 twenty-five families moving in to manage  
11 this, and build homes and bring in families  
12 and kids. So it's a great economic impact.

13 I thank you.

14 MR. WUERFLEIN: Thank you, Mr.  
15 Kramer. Any other comments from the  
16 public?

17 MR. VALTIRRA: Good morning. My  
18 name is Richard Valtirra, and I'm with  
19 Cardinal FG, the plant that wants to build  
20 in Durant. I was selected as a plant  
21 manager for this facility. In fact, at the  
22 time I did not know where it was going to  
23 be built, that was -- I was asked by our  
24 president to manage this new plant, which  
25 may be in Texas or Oklahoma, and I wasn't

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1 involved with the site selections.

2 I have to say that I've been happy  
3 and delighted to meet people of Oklahoma.  
4 I'll be honest, my first choice was  
5 Sherman, Texas, personally. But after  
6 meeting Tommy and the rest of the people  
7 from Durant, we quickly understood what  
8 Oklahoma had to offer. And I just want to  
9 make a clarification on one thing. We are  
10 requesting BACT, which is the best  
11 available technology. This is going to be  
12 my home as well. I'm going to be living  
13 there. I'm concerned about water quality,  
14 air quality. And of course it's important  
15 to me to wake up every morning and say,  
16 we're doing everything we can to support  
17 this community and make sure that the air  
18 is clean and the water is clean. And we  
19 take it very seriously.

20 We are good corporate citizens,  
21 we're not trying to get around anything.  
22 Of the last five glass plants that were  
23 built in the U.S., Cardinal built two.  
24 Each one of those communities, those  
25 states, required obviously air quality

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1 rules, and we met them with the standard,  
2 and we've always proposed more than what  
3 was required in some cases. Actually the  
4 last three that we built we actually  
5 imposed more than what was requested,  
6 because we understood what was involved in  
7 the community. And I'm proud of our  
8 history, and proud of our environmental  
9 statement overall.

10           And I think one thing to point out  
11 is, when this issue came up we realized  
12 that it was unintended. I think the rule  
13 was not meant to exclude glass plants from  
14 being built in Oklahoma. Obviously there  
15 are glass plants existing.

16           And I think your point made today  
17 earlier that if Tulsa wanted to build a new  
18 plant and increase their size, they  
19 couldn't. And I really do feel that it was  
20 unintended. And then that's important to  
21 know. Because without this we cannot build  
22 in the state of Oklahoma. And that's just  
23 the fact. And, you know, our company has  
24 been growing, our big push, the reason why  
25 we wanted to build is we actually as a

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1 company produce coated glass, which is  
2 high-efficiency glass, which overall if --  
3 as a rule if changed in Texas and in the  
4 southeast, southwest, as they're changing,  
5 requiring new energy codes for windows that  
6 are more energy-efficient to reduce the  
7 number of power plants needed for air  
8 conditioning. As that continues to grow we  
9 need to build plants that can make those  
10 windows that can meet those energy codes.  
11 That's what we do. And our whole story is  
12 about low -- low-e square glass, high-  
13 efficiency glass for windows to reduce the  
14 amount of energy needed for heating and air  
15 conditioning. And that's why this plant is  
16 going to be located in Durant, Oklahoma.  
17 We're here to support the area, the  
18 community, and it's important for us to be  
19 here.

20           Also I just wanted to point out as  
21 far as it being an oversight -- and we feel  
22 it is, because if you look at any state in  
23 the union, there is no state that precludes  
24 glass plants from being built, except for  
25 right now, in Oklahoma. And again, I don't

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1 think the well-intentioned people that  
2 wrote those rules meant for that to be, and  
3 it truly was an oversight.

4           And again, we're not trying to get  
5 around anything. We'll do what we have to  
6 do to meet the technology, or use the  
7 technology available to meet those air  
8 standards, and we feel we have in the past  
9 and we will continue to do that in the  
10 future. Thank you.

11                   MR. WUERFLEIN: Thank you, Mr.  
12 Valtirra. Any other comments from the  
13 public?

14                   MR. KIMBROUGH: Ladies and  
15 gentlemen, my name is Charles Kimbrough,  
16 and I'm a site location manager for the  
17 Oklahoma Department of Commerce. My name  
18 is Charles Kimbrough once again. I was  
19 instrumental in assisting Cardinal Glass  
20 from the very beginning when they were  
21 still looking at several states. It's our  
22 job at the Commerce Department to work with  
23 companies that are considering locating in  
24 Oklahoma, and we do a very thorough job of  
25 disseminating which companies are a good

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1 corporate citizen, and which companies  
2 perhaps might not be. And I can assure  
3 you, from my vantage point, Cardinal Glass  
4 is one of the most exceptional companies  
5 we've tried to recruit in several years.

6 I just want to make a very good  
7 clarification here that glass plants, other  
8 plants like this, are not lined up at the  
9 border waiting to come in to Oklahoma.  
10 There are many, many factors that attract  
11 these companies in there. And once this  
12 plant locates in Oklahoma, there's not  
13 going to be a swamp of more glass plants  
14 coming in, that's not going to happen.  
15 It's been my experience that this kind of  
16 industry follows those patterns like that.

17

18 Cardinal Glass -- I have also  
19 attended the -- experienced their plant in  
20 the Carolinas, and it is a beautiful,  
21 exceptional plant. But what concerns me  
22 more that I've heard here at this meeting,  
23 really more than the Cardinal issue is, I  
24 work on an economic development basis with  
25 a lot of companies in our state. And here

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1 in the last two or three years we've been  
2 hit, the Commerce Department, with  
3 companies who have been doing business  
4 twenty, twenty-five years, and are  
5 experiencing the equipment is run out. The  
6 technology, they're having to upgrade.  
7           General Motors, the tire plant down  
8 in Lawton, they've come to us and said, hey  
9 look guys, we have to invest seven hundred  
10 million dollars, or five hundred million  
11 dollars to upgrade our equipment, or we've  
12 got to make a decision whether we do  
13 business in Oklahoma any more. And what  
14 really is concerning me about what I've  
15 heard today is that I'm going to get a call  
16 one to two years down the road from some  
17 glass plants in northeast Oklahoma that are  
18 going to say, what can the state do  
19 economic development-wise that's going to  
20 help us stay in this state and do business?  
21 And what I'm hearing is that it's now out  
22 of economic development right now, it's out  
23 of Commerce Department's hands. Because  
24 I've got to look at them and say, you know  
25 what, if you put a hundred million dollars

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1 or five hundred million dollars into  
2 upgrading your glass plant, you can't get  
3 there, because it's an environmental issue  
4 now. And so our answer would have to be,  
5 perhaps, you might as well look at another  
6 state. And that concerns me from the  
7 economic development standpoint, but that  
8 remaining in Commerce hands can perhaps not  
9 be shared with -- or not rest upon your  
10 shoulders to have to take the brunt of that  
11 answer. And that bothers me and I think it  
12 might be of concern to this Board as well.

13 MR. WUERFLEIN: Thank you.

14 MS. KRULIC: Hi, I'm Valerie  
15 Krulic. I work with Saint-Gobain  
16 Containers.

17 We first became aware of this NOx  
18 rule last fall when we were going through a  
19 minor modification at an existing glass  
20 melting facility. In states in which  
21 Saint-Gobain Containers has other, does  
22 business with and has other glass melting  
23 furnaces, the NOx rules of those respective  
24 states take into account the inherent  
25 differences in industries and processes

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1 when establishing appropriate NOx emission  
2 limits. The current NOx rule in Oklahoma,  
3 we believe, is not appropriate because it's  
4 technically impossible for a glass melting  
5 furnace to meet. We recommend that the  
6 rule be re-examined to establish  
7 appropriate emission limits that are  
8 equitably applied to all industries in the  
9 state.

10 MR. WUERFLEIN: Thank you. Are  
11 there any other comments? Do you have  
12 anything further, David -- Mr. Branecky?

13 MR. BRANECKY: No.

14 MR. WUERFLEIN: We'll return to  
15 the Board. We're asking for two votes.  
16 The first one is a finding of emergency,  
17 and if we find an emergency then we can  
18 discuss what we're going to do about it.

19 MR. UKENS: Can I make a comment  
20 first?

21 MR. WUERFLEIN: Yeah.

22 MR. UKENS: I just wanted to kind  
23 of speak -- I come from an area that is  
24 really a victim of economic development,  
25 and I'm a businessman, so I understand the

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1 need to have development and I also  
2 understand the need to take care of the  
3 environment. And so, as we were talking in  
4 the break, I'd like to recommend, if  
5 possible, a compromise here. We could  
6 trade ten hog farms --

7 (Laughter from the crowd)  
8 -- for this glass plant. And I don't  
9 happen to know a lawyer, I have a good  
10 legal-ese.

11 MR. COFFMAN: You have natural  
12 gas and sand so --

13 MR. UKENS: That's right, that's  
14 right. Just a thought.

15 MS. SAVAGE: Well you know, in  
16 the earlier discussion, my first thought  
17 was this was dumped on us, and why aren't  
18 there representatives, people representing  
19 the interests of Durant and this company?  
20 And I appreciate that they came forward  
21 because that has helped expand the face to  
22 this issue.

23 In the last six years that I've been  
24 involved with the corporate hog farm issue,  
25 one of the things that has just bugged me

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1 is that, isn't it sad that Oklahoma can't  
2 seem to bring anything more to Oklahoma  
3 than hog farms and private prisons? And  
4 you know, obviously, this is something  
5 that's -- this is an opportunity to bring  
6 manufacturing back to Oklahoma. We've had  
7 representatives speak.

8 My first concern was, is somebody  
9 coming in, are they sneaking in through a  
10 rule, and are they going to hurt the  
11 people? And even though I'm not supposed  
12 to care about that, I do. And it seems  
13 sort of obvious unless everyone is lying,  
14 that the area is going to be benefitted.  
15 You know, Susan was telling me that the  
16 definition of an emergency rule is, how  
17 does it benefit the public? Well, you know  
18 it will benefit the public in many ways if  
19 everyone has jobs and everyone's spending  
20 their money in Oklahoma. There's a -- we  
21 still have the concerns about the airshed,  
22 but it almost seems like the impact is  
23 going to be to the community, and it's  
24 going to be immediate. And we, as a  
25 result, we may go into its non-compliance,

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1 and we may have to do this and we may have  
2 to do that, but I mean, you've got to get  
3 back to people. And I don't think there's  
4 an easy answer here but, these are just my  
5 thoughts. So --

6 MR. WUERFLEIN: Herschel.

7 MR. ROBERTS: Are you ready for a  
8 motion?

9 MR. WUERFLEIN: Yes.

10 MR. ROBERTS: I'd like to move  
11 that we adopt the rule as emergency.

12 MR. WUERFLEIN: We need a finding  
13 of emergency first, and then --

14 MR. ROBERTS: I move we find an  
15 emergency.

16 MR. DRAKE: I'll second.

17 MR. WUERFLEIN: Second by Bob  
18 Drake. Roll call, please.

19 MS. BRUCE: Mr. Cassidy.

20 MR. CASSIDY: Yes.

21 MS. BRUCE: Mr. Coffman.

22 MR. COFFMAN: Yes.

23 MS. BRUCE: Mr. Drake.

24 MR. DRAKE: Yes.

25 MS. BRUCE: Mr. Mason

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1 MR. MASON: Yes.  
2 MS. BRUCE: Mr. Johnston.  
3 MR. JOHNSTON: Yes.  
4 MS. BRUCE: Mr. Paden.  
5 MR. PADEN: No.  
6 MS. BRUCE: Mr. Roberts.  
7 MR. ROBERTS: Aye.  
8 MS. BRUCE: Ms. Savage.  
9 MS. SAVAGE: Yes.  
10 MS. BRUCE: Mr. Ukens.  
11 MR. UKENS: Yes.  
12 MS. BRUCE: Mr. Wuerflein.  
13 MR. WUERFLEIN: Yes.

14 Now we can address the motion.

15 MR. PADEN: Before we go to the  
16 adoption of the rule, I just want to make  
17 one thing very clear here. I am not  
18 opposed to economic development. I'm not  
19 opposed to a glass plant being located in  
20 Oklahoma. What I am concerned about, what  
21 I think we're doing here, is we're  
22 establishing a precedent based solely on  
23 the issue of whether or not a plant ought  
24 to be built or not. And I don't think  
25 that's a proper function of this Board, and

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1 I certainly don't think it's a proper  
2 function of the department. I take great  
3 offense at the insinuation that we're going  
4 to have to compromise the environmental  
5 quality of the state for economic  
6 development. And I think Mr. Kimbrough and  
7 the Department of Commerce doesn't really  
8 mean that in the words that he said, but I  
9 think we need to be concerned about what  
10 this does, and what future changes might be  
11 brought to us because a rule happens to be  
12 ten years old or twenty years old or thirty  
13 years old. And so, having said that, I'm  
14 ready to vote.

15 MR. WUERFLEIN: Mr. Roberts.

16 MR. ROBERTS: I'd like to move we  
17 adopt the rule on an emergency basis, but  
18 I'd like to also give the Air Quality  
19 Council some specific instructions on how  
20 to review the specific comments given and  
21 other factors brought up today by Lee and  
22 others in their deliberation before they  
23 come back for permanent -- for a permanent  
24 rule. So however you want to do that for  
25 vote. Adopt the rule first?

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1                   MR. WUERFLEIN:    Adopt the rule  
2 first, and then figure it out --

3                   MR. ROBERTS:    Move to adopt the  
4 rule.

5                   MR. DRAKE:    I'll second that.

6                   MR. WUERFLEIN:    Second, Mr.  
7 Drake.    Is there discussion?    One more  
8 comment.

9                   MR. MASON:    I have a question.  
10 If we pass this as emergency, does the rule  
11 go away June 30th, so July 15th we're back  
12 in this same mess?

13                   MR. GIVENS:    If it's passed as an  
14 emergency during the legislative session,  
15 it continues as an emergency for,  
16 basically, a year and three months or so,  
17 until the following summer, summer of 2004.

18

19                   MR. MASON:    So we've got to get  
20 this fixed by summer of 2004 or we're back  
21 in the same mess?

22                   MR. GIVENS:    It will expire in  
23 July of 2004.

24                   MR. WUERFLEIN:    We have a motion  
25 on the table.    Any other discussion?    If

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1 not, we'll have roll call vote.

2 MS. BRUCE: Mr. Cassidy.

3 MR. CASSIDY: Without

4 reservation, yes.

5 MS. BRUCE: Mr. Coffman.

6 MR. COFFMAN: Yes.

7 MS. BRUCE: Mr. Drake.

8 MR. DRAKE: Yes.

9 MS. BRUCE: Mr. Johnston.

10 MR. JOHNSTON: Yes.

11 MS. BRUCE: Mr. Mason

12 MR. MASON: Yes.

13 MS. BRUCE: Mr. Paden.

14 MR. PADEN: No.

15 MS. BRUCE: Mr. Roberts.

16 MR. ROBERTS: Aye.

17 MS. BRUCE: Ms. Savage.

18 MS. SAVAGE: Yes.

19 MS. BRUCE: Mr. Ukens.

20 MR. UKENS: Yes.

21 MS. BRUCE: Mr. Wuerflein.

22 MR. WUERFLEIN: Yes.

23 Comments were noted to the Air

24 Quality Council on how to address the

25 permanent issue.

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1                   MR. ROBERTS:   Well, Mr. Chairman,  
2   I think we ought to give them some  
3   specifics.   It is important to look at the  
4   issue of LAER versus BACT versus RACT.   The  
5   specific comments point out rules from  
6   specific states.   Obviously those things  
7   should be reviewed and their validity  
8   checked by staff.   We should also look at  
9   the existing rule in Texas, to see how that  
10  compares in Oklahoma, to not just this  
11  industry but others.

12                   I think we ought to be concerned  
13  about singling out the glass business  
14  versus some other industry by having LAER  
15  there.   But that might be the answer, I'm  
16  not saying it's not.   But we should ask the  
17  Council to review the specific regs, regs  
18  of surrounding states, the issue of  
19  applying LAER to one industry and not  
20  others, in an attainment area.   I think  
21  that's a potential problem.

22                   Consider all those factors and come  
23  back to us at the earliest possible date.  
24  But I don't think we should be predisposed  
25  to have the rule more or less restricted

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1 than it will be as emergency. We should  
2 give them the authority to review and come  
3 back to us without predisposition.

4 MR. WUERFLEIN: Okay.

5 MR. PADEN: Well, the only  
6 comment I would make about that, Mr.  
7 Chairman, is that -- Herschel, I don't  
8 think that they ought to consider anything  
9 less than what the emergency rule proposes,  
10 so BACT or LAER.

11 MR. ROBERTS: Well my problem  
12 with that is, you have specific comments  
13 that you're basically saying ignore. I  
14 think they have to include them. They  
15 don't have to come back and recommend them.  
16 But I think they need to consider them --

17 MR. PADEN: Sure.

18 MR. ROBERTS: -- I think that  
19 would be bad for them if they dismissed  
20 them.

21 MR. PADEN: In doing this, are we  
22 talking about looking at all of Chapter 33,  
23 or are we talking about just looking at  
24 glass plants? Because that really broadens  
25 the spectrum here, if we're talking about

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1 looking at the entire issue of NOx levels,  
2 and NOx requirements. I think you've got  
3 to --

4 MR. BRANECKY: The intent of the  
5 Council is to look not only at this section  
6 but how it applies to all industry, not  
7 just glass. So we will cover all industry  
8 but we're not going to look at all of 33.

9 MR. WUERFLEIN: The comments were  
10 to keep industries on a level playing  
11 field, so you have to look at them on a  
12 broader basis.

13 MR. BRANECKY: But just that  
14 Section 33. We're not going to look at all  
15 of 33.

16 MR. MASON: The other request I  
17 might have is, so I don't think that the  
18 Board feels it necessary to pass this as  
19 permanent without time to have a dialogue  
20 in a year. But if at all possible -- we  
21 have a couple of Board meetings if  
22 necessary to deal with this, if there's a  
23 deadline to get a permanent rule in place.  
24 Because what troubles me is that we may be  
25 in this same pickle a year from now, and

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1 we've got to pass it as a permanent today.  
2 And if we don't, it ruins the world again,  
3 and we're against the wall and we have no  
4 choice.

5 MR. COFFMAN: Steve, are you  
6 recommending that the Council use due  
7 diligence to bring us back their  
8 investigation as quickly as possible?

9 MR. MASON: Yes. And I'm also  
10 saying that if a year from now that it  
11 hasn't happened, I have no qualms with  
12 saying, we missed the deadline guys, fine.

13 MR. COFFMAN: I would see nothing  
14 that would keep this Board from continuing  
15 an emergency should that happen. That  
16 certainly would not be my desire.

17 MR. WUERFLEIN: I see Mr. Terrill  
18 wanting to address that.

19 MR. TERRILL: Let me make a  
20 suggestion there. Probably going to wish I  
21 hadn't done this but I think it's the best  
22 thing. I think we've got a policy issue  
23 here that we need to have a discussion with  
24 the Board, relative to how we're going to  
25 address the overall air quality issue,

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1 relative to RACT, BACT, LAER, however you  
2 want to term it. Then we've got the other  
3 issue of the rule and what we need to do  
4 with that. I propose that we bring back  
5 some type of report at the next Board  
6 meeting to tee-up the policy issue.

7           Let's talk about the concept of what  
8 you all would like to see us look at and  
9 make sure we're all in agreement there  
10 before we start looking at this specific  
11 rule, because the policy is going to drive  
12 the rule. And if we bring the rule first  
13 without putting the policy -- without  
14 taking the policy out, we're going to be in  
15 a quandary.

16           So I propose, at the next Board  
17 meeting, that we have some kind of -- at  
18 least the discussion points on, here's what  
19 we're looking at, are we getting the idea  
20 that you all want, and then move that  
21 forward and then possibly come back later  
22 with the rule change itself. I really  
23 think there are two separate issues here.

24           MR. COFFMAN: Mr. Terrill, are  
25 you going to provide this Board with enough

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1 data that will help us reach that policy?

2 MR. TERRILL: Well, that will be  
3 our intent --

4 MR. COFFMAN: Okay.

5 MR. TERRILL: -- we'll do the  
6 best we can to do that, because otherwise  
7 it's kind of a futile exercise, if we  
8 can't.

9 MR. BRANECKY: Now let me  
10 understand. You're asking that a rule be  
11 brought to you -- not at the next -- not  
12 February 2004, but a meeting prior to that?

13 MR. MASON: What I'm saying is, I  
14 think Terri's expressed it maybe when this  
15 whole thing started is, from a Board  
16 perspective this happened very quickly.

17 MR. BRANECKY: Right, I  
18 understand.

19 MR. MASON: And we had variable -  
20 - if we sent it back to the Council then we  
21 might have killed this plant.

22 MR. BRANECKY: Sure, I  
23 understand.

24 MR. MASON: So we were somewhat  
25 up against the wall. I think what I'm

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1 saying is, let's try not to do that next  
2 year. And if next year we get to the same  
3 point, as a Board Member, I don't mind  
4 saying to you all, we're against the wall,  
5 sorry, we've missed a deadline, we've  
6 missed a deadline.

7 MR. BRANECKY: So you have a  
8 Board Meeting in November.

9 MR. THOMPSON: Just let me say  
10 that we will make this a priority to bring  
11 this back as quickly as we can and make  
12 logic of it. I do want to say that this  
13 issue came up in such a way that we did not  
14 intend to put your back against the wall on  
15 this issue, that was not our intention, and  
16 we won't do that in the future. We will  
17 have a policy discussion and we'll bring  
18 this issue to you in plenty of time so that  
19 you can consider the issues that we're  
20 dealing with here. I do think that Eddie  
21 is right, though. The issue of how  
22 stringent is Oklahoma going to be is sort  
23 of -- this particular issue tees-up but,  
24 and it's important to understand the  
25 Board's feeling about that as we go

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1 forward. I think that's what Eddie's  
2 saying and it's important to understand  
3 that if we're talking about an element, if  
4 we're talking about LAER, and that's what  
5 the guidance we need in our permitting  
6 process. We're talking about BACT, you  
7 know -- the department needs to have some  
8 discretion in all of those things, but as a  
9 general policy issue we need to kind of  
10 have some guidance.

11 MR. WUERFLEIN: Thank you, Mr.  
12 Branecky.

13 MR. BRANECKY: Thank you.

14 (Item 6 Concluded)

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(Item Number 7)

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MR. WUERFLEIN: We'll move on to

4

our agenda item number seven, Chapter 205,

5

Hazardous Waste Management. The proposed

6

amendment to Section 3-1 updates the

7

incorporation by reference of federal

8

hazardous waste regulations to July 1,

9

2002. Besides technical corrections,

10

incorporated regulations include the

11

listing of three wastes generated by

12

inorganic chemical manufacturing processes;

13

amendments to the Corrective Action

14

Management Unit Rule. Number three is the

15

declassification of mineral processing

16

characteristic sludges and by-products

17

being reclaimed as NCRA solid wastes; and a

18

provision that the Toxicity Characteristic

19

Leaching Procedure may not be used for

20

determining whether manufactured gas plant

21

waste is hazardous waste. The amendment to

22

Section 3-2 and the revocation of Section

23

3-3 correspond to the update of the

24

incorporation by reference.

25

I'll turn the floor over to David

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1 Bradshaw.

2 MR. BRADSHAW: Okay, let's move  
3 on to something really controversial.

4 (Laughter from the crowd)

5 MR. BRADSHAW: Mr. Chairman,  
6 members of the Board, thank you for the  
7 opportunity to present the rules that we  
8 recommend today. Basically, this is pretty  
9 simple. It's maintaining the hazardous  
10 waste program in the state of Oklahoma by  
11 updating the rules that we do on an average  
12 basis. That's the bottom line to it. None  
13 of this in any way will impact hog farming  
14 in the state of Oklahoma.

15 (Laughter from the crowd)

16 (Inaudible)

17 MR. BRADSHAW: Well, I don't know  
18 that it will impact last month's or not,  
19 but there are some mineral waste here, so I  
20 want to be careful. But I'm pretty sure of  
21 the hog farming. Having grown up on a  
22 farm, I have an appreciation of not wanting  
23 to impact that for the small farmer.

24 Anyway, what we are proposing in the  
25 update, what it would do to our rules, and

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1 the Chairman read those, and that is the  
2 listing of three wastes generated from  
3 inorganic chemical manufacturing process.  
4 As of now, we don't believe any of those  
5 are produced in Oklahoma, there certainly  
6 could be at some future date, but right now  
7 they aren't. Amendments to the Corrective  
8 Action Management Unit Rule, and CAMU Rule.  
9 That's how a rule states how sites should  
10 be cleaned up, and actually this amendment  
11 makes the clean-up procedure more  
12 stringent.

13           And the third one is the  
14 declassification of mineral processing  
15 characteristic sludges and by-products  
16 being reclaimed by RCRA. That was a suit  
17 brought against the EPA and the outcome was  
18 that they had to change the rules, because  
19 these wastes that could be reclaimed, felt,  
20 would now fall outside of the definition  
21 solid waste, so the EPA has amended to  
22 comply with the court order.

23           And number four, a provision of the  
24 TCLP may not be used for determining  
25 manufacturing gas waste, whether that waste

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1 is hazardous waste. And the EPA was  
2 petitioned and they agreed that that should  
3 be the case. Right now, also we don't  
4 believe that any of that is going forward  
5 in Oklahoma that would apply to us, but it  
6 could at a later date.

7 And other than that there are some  
8 rules that are -- some changes in here,  
9 some technical things where we marked out  
10 some things that we had previously adopted,  
11 you know, directly out of the Federal  
12 register. And this -- we're now proposing  
13 that this rule be on a permanent basis so  
14 we're striking out this previous  
15 indicators. Any questions?

16 MR. WUERFLEIN: Mr. Paden.

17 MR. PADEN: Are you ready?

18 (Laughter from the Board)

19 MR. PADEN: This is just one of  
20 my nit-picking questions. On page two we  
21 revoked 205-3-3, but in 3-1 we continued  
22 to, at the very end of that sentence, it  
23 says, as well as any new or superseding  
24 provisions listed in 205-3-3. Shouldn't we  
25 strike that as well?

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1                   MR. BRADSHAW:   Since there isn't  
2 anything remaining in 3-3; is that your  
3 point?

4                   MR. PADEN:    Yeah.    I mean you're  
5 making reference in one to 3-3, and you  
6 revoked 3-3.

7                   MR. BRADSHAW:   I don't know.  
8 That's kind of a technical question in a  
9 way, because if there's nothing there then  
10 obviously we wouldn't continue it.   I don't  
11 know, does the staff have any comment on  
12 that?

13                  MR. PADEN:    3-3 as I read it  
14 through the strike-through was a deal where  
15 we incorporated something that was in the  
16 Federal register out of sequence --

17                  MR. BRADSHAW:   Uh-huh.

18                  MR. PADEN:    -- than we would  
19 normally do.    So it just seems like to me  
20 that striking as well as any new or  
21 superseded provisions listed in 3-3 ought  
22 to come out of that first paragraph.

23                  MR. BRADSHAW:   Well I'll take an  
24 opinion on that.   I would like to leave it  
25 in because later -- you know right now

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1 there isn't anything left so it doesn't  
2 apply. Later in the year a Federal  
3 register may come out and we will put  
4 something back in 3-3, and then we would  
5 also have to go back and modify --

6 MR. PADEN: Okay, then could I  
7 suggest that rather than having the term  
8 revoked following the 3-3, that we just  
9 strike the language in 3-3 and leave the  
10 paragraph heading there?

11 MR. GIVENS: I think that is an  
12 office of administrative rule requirement  
13 that we put that parenthetical "revoked"  
14 out there, that's why it's there. What it  
15 boils down to, I believe, Lee, is we can  
16 either leave it here, and I agree with you  
17 it looks a little funny, but you'll end up  
18 putting it back in at some point. Or we  
19 can take it out and put it back in later.

20 MR. PADEN: When Aunt Minnie  
21 reads the rule and she can't understand  
22 what's in 3-3, Jimmy, I'm going to refer  
23 her to you.

24 MR. GIVENS: And I'll refer her  
25 to Catherine.

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1 (Laughter from the Board)

2 MR. MASON: I guess it would make  
3 sense to me if we're referencing 3-3 and  
4 there's no 3-3 paragraph, or a 3-3 that's  
5 blank, it is confusing.

6 MR. PADEN: I think it needs to  
7 come out, but that's --

8 MR. BRADSHAW: I have no opinion  
9 about that. I don't know whether we can do  
10 that today at this meeting or not, but  
11 certainly we can take that back and look at  
12 it.

13 MR. THOMPSON: I think we can  
14 strike it and then put it back if it  
15 becomes necessary.

16 MR. PADEN: I think that's what  
17 we ought to do --

18 MR. BRADSHAW: They can't put it  
19 back without Board action anyway.

20 (Laughter from Board)

21 (Inaudible by Board members)

22 MR. BRADSHAW: We can't take it  
23 out today, can we? I mean it would have to  
24 come through the Council again?

25 MR. GIVENS: No --

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1 MS. KRUG: No.

2 MR. GIVENS: -- I would say, for  
3 a change like this --

4 MR. BRADSHAW: Okay, it's up to  
5 you guys. I see it as kind of it's not one  
6 of those earth-shaking things.

7 MR. WUERFLEIN: Are there any  
8 other comments? I'll open this up to the  
9 public. Oh, there's a comment. Herschel.

10 MR. ROBERTS: On the more  
11 stringent rules for CAMU Rules. Just more  
12 detailed design information and requirement  
13 for public input to the application. I  
14 thought there was already a requirement for  
15 public input.

16 MR. BRADSHAW: I honestly don't  
17 know. Where's my back up? I've got help  
18 coming.

19 MR. PADEN: Catherine was hiding  
20 over there, she didn't want to get into  
21 this. Come on, Catherine. Don't be afraid  
22 of us.

23 MS. SHARP: I've got a little  
24 summary on the changes they did to the CAMU  
25 Rule. CAMU Rule's been around a little

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1 while and they were taking a lot of heat  
2 over it and they changed the definition of  
3 remediation waste in there, because it used  
4 to be wide open, you could call most  
5 anything, remediation waste. But here's a  
6 little list of what's in the summary. It  
7 does have more detail of minimum design and  
8 operating standards for CAMU's. Treatment  
9 requirements for waste placed in CAMU's  
10 including minimum treatment standards were  
11 established with opportunities for  
12 adjustment to that, because again that was  
13 thought to be too -- I won't say  
14 permissive, but too wide open to state  
15 agency disclosure, or state agency  
16 discretion. Public notice and opportunity  
17 for comment before the final CAMU  
18 determination was established. And our  
19 requirements for CAMU is used only for  
20 treatment of storage, if you're only going  
21 to do treatment in storage but not  
22 permanent placement, they changed those.  
23 So they were tightening up the rules on it,  
24 and it's a rule that we only use in certain  
25 limited situations where it really helps

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1 you to speed things up.

2 MR. PADEN: It addressed staging  
3 files and it allowed a really speeded up or  
4 streamlined authorization so states could  
5 implement this real quickly.

6 MR. ROBERTS: If we adopt this,  
7 does this come under the state's authority  
8 to manage or does EPA do that for some  
9 period of time?

10 MS. SHARP: No, we would take it  
11 immediately, and in fact we already are  
12 implementing this rule. We picked this up  
13 by emergency early on, and so this is just  
14 to make it permanent.

15 MR. ROBERTS: All right.

16 MS. SHARP: The EPA does almost  
17 no oversight over clean-up rules here. I  
18 hope that was helpful.

19 MR. WUERFLEIN: We'll open this  
20 up to the public. Are there any public  
21 comments or questions? If not, we'll go  
22 back to the Board. Are there any further  
23 questions from the Board?

24 MR. MASON: I would like to move  
25 approval with Lee's corrections.

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1 MR. ROBERTS: I'll second that.

2 MR. WUERFLEIN: Is the amendment  
3 clear to the staff? Motion has been made  
4 and seconded. Jerry, were you wanting to  
5 comment?

6 MR. JOHNSTON: No.

7 MR. WUERFLEIN: Roll call,  
8 please.

9 MS. BRUCE: Mr. Cassidy.

10 MR. CASSIDY: Yes.

11 MS. BRUCE: Mr. Coffman.

12 MR. COFFMAN: (No response.)

13 MS. BRUCE: Mr. Drake.

14 MR. DRAKE: Yes.

15 MS. BRUCE: Mr. Johnston.

16 MR. JOHNSTON: Yes.

17 MS. BRUCE: Mr. Mason

18 MR. MASON: Yes.

19 MS. BRUCE: Mr. Paden.

20 MR. PADEN: (No response.)

21 MS. BRUCE: Mr. Roberts.

22 MR. ROBERTS: Aye.

23 MS. BRUCE: Ms. Savage.

24 MS. SAVAGE: (No response.)

25 MS. BRUCE: Mr. Ukens.

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MR. UKENS: Yes.  
MS. BRUCE: Mr. Wuerflein.  
MR. WUERFLEIN: Yes.  
MS. BRUCE: Motion passed.  
(Item Number 7 Concluded)

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1 (Item Number 8)

2 MR. WUERFLEIN: Agenda Item 8 is  
3 Chapter 410, Radiation Management, and I'll  
4 turn this over to Steve Woods.

5 MR. WOODS: Thank you, Mr.  
6 Chairman. I'm presenting to you today the  
7 proposed revisions to Chapter 410 that will  
8 establish a fee for categories of generally  
9 licensed radioactive gauges. DEQ adoption  
10 of this rule is required to maintain  
11 compatibility with the Federal rules of the  
12 Nuclear Regulatory Commission. The rules  
13 requiring registration of these devices  
14 were adopted in 2001, but the program has  
15 not been implemented pending adoption of  
16 the fee recovery in the rule I'm presenting  
17 to you today.

18 The program of generally licensed  
19 devices was established by the Atomic  
20 Energy Commission to allow for the use of  
21 modest quantities of radioactive materials  
22 in equipment which was specifically  
23 designed to be tamper-resistant and to be  
24 safe when used by personnel with little or  
25 no training. Because of its inherent safe

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1 construction, no inspections or inventories  
2 of these devices were made. The Nuclear  
3 Regulatory Commission continued with that  
4 program. Unfortunately, some of the  
5 devices approved for this program,  
6 particularly in the earlier years, have had  
7 surprisingly large quantities of  
8 radioactive material incorporated into  
9 those devices.

10           These devices have posed problems in  
11 some cases. The most dramatic problems  
12 have been that these devices have wound up  
13 in scrap metal industry, in scrap metal  
14 stream, where they came in to scrap mills,  
15 which have incurred clean-up costs from  
16 anywhere to three to twenty million  
17 dollars, per incident. Basically it shuts  
18 down the mill for several weeks, and the  
19 people are not allowed to go to work.

20           Since these mills are major  
21 employers, they have the desire, dire  
22 economic consequences for the affected  
23 community, and clean-up costs are quite  
24 substantial for these. One of the problems  
25 that the steel mills have is when they melt

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1 or destroy these type of devices, they're  
2 destroyed. The owner, or the originator of  
3 that device can no longer be found because  
4 you do not know where the device came from,  
5 and the burden of that clean-up is left  
6 with the steel mill.

7 A steel mill in the U.S. melts down  
8 a source approximately every eighteen  
9 months. At least one of these devices has  
10 been received in an Oklahoma steel mill in  
11 recent years, but it was fortunately  
12 discovered before it was melted down. An  
13 additional problem has occurred because  
14 generally licensed devices have often been  
15 abandoned or left uncontrolled since there  
16 has been no enforcement requirement to  
17 maintain custody and control of them,  
18 particularly in process plants. These  
19 devices have turned up in vacant lots,  
20 scrap metal dealers and many other unlikely  
21 places. This has caused substantial  
22 problems for property owners who have found  
23 or located these devices.

24 The aftermath of the 9-11 incident  
25 has further reinforced the importance of

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1 controlling radioactive materials such as  
2 these. The program which this fee will  
3 support is intended to avoid these problems  
4 with the most important of these devices.  
5 A relatively small sub-set of these devices  
6 has been identified which posed the  
7 greatest risk. This program will require  
8 registration of these devices and payment  
9 of a fee based on each facility which  
10 maintains these devices, and an annual  
11 statement that the device owner has  
12 physical custody of these devices, that  
13 they went out and checked them.

14 The fee which we're asking you to  
15 approve today will be three hundred  
16 dollars, payable for each facility which  
17 has these devices. It is not a per device  
18 fee. The fee will support the cost for DEQ  
19 of implementing the program, as well as  
20 investigating incidents or abandoned  
21 sources of this type.

22 The NRC has had a similar program in  
23 effect nationally now for about two years.  
24 The NRC fee is four hundred and fifty  
25 dollars per location. The DEQ does not

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1 know of any problems or special issues  
2 which have been encountered with the  
3 national program. The DEQ is making  
4 preparations to notify facilities which may  
5 have these devices of the pending Rule so  
6 that they can be prepared when it goes into  
7 effect. The rule makes provisions for  
8 adequate time for the facilities to  
9 register their sources and get into  
10 compliance. There have been no negative  
11 comments on this rule, and an industry  
12 group wrote in support of the rule.

13 I appreciate your attention during  
14 this briefing. If you have any questions  
15 I'll do my best to answer them.

16 MR. WUERFLEIN: Thank you. Are  
17 there any questions? You have a question,  
18 Steve?

19 MR. MASON: In my business when  
20 you compact soil, you test it then with the  
21 nuclear density gauge.

22 MR. WOODS: Right.

23 MR. MASON: It's yellow. Is this  
24 going to affect -- will that have to have  
25 this license, that machine?

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1                   MR. WOODS:   Those are  
2 specifically licensed devices.

3                   MR. MASON:   Well that's my  
4 question.   They're already licensed so they  
5 have to go to another agency and get a  
6 second license, and what are we gaining?

7                   MR. WOODS:   On those particular  
8 devices, such as the soil moisture density  
9 gauge that you're talking about, those are  
10 a specifically licensed item.   The type of  
11 devices that we're talking about would be  
12 those devices such as a measuring or  
13 controlling gauge in a plant or facility.  
14 Haliburton has devices such as these that  
15 are mounted on cementing units, and so do  
16 other companies who are in the oilfield  
17 service industry.   So those are  
18 particularly the ones that they're looking  
19 at.

20                  MR. MASON:   So these oilfield  
21 service devices that would be covered here,  
22 are they already regulated and licensed by  
23 another agency?   Are we duplicating that  
24 licensing?

25                  MR. WOODS:   Not currently, no.

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1 Not in Oklahoma.

2 MR. MASON: But the density gauge  
3 Steve mentioned is not required to have a  
4 new license.

5 MR. WOODS: That already has a  
6 license. This is a different -- this is  
7 for -- a generally licensed device is --  
8 take a smoke detector. When you go down to  
9 Wal-Mart or another store like that and buy  
10 a smoke detector, that has a small quantity  
11 of radioactive material in it, haven't  
12 Americium 241. When you purchase that  
13 device, you become a general licensee,  
14 because you bought it, you're now a  
15 consumer. If you open the box up and read  
16 the little warning labels and the  
17 associated literature, that is basically  
18 considered this same type of device.  
19 You're not required to go to a training  
20 course to be able to use a smoke detector  
21 in your home. It's a minimal threat, a low  
22 threat-type device. The types of devices  
23 that we're looking at in this rule are  
24 larger than that, have more radioactive  
25 material contained within them, and are

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1 subsequently more concerned. And they are  
2 not currently licensed, the ones we're  
3 talking about.

4 MR. THOMPSON: Let me just see if  
5 I understand what's being said. If Steve  
6 has a specifically licensed instrument, he  
7 is not covered under this general  
8 provision. Once that's licensed he doesn't  
9 have to re-license that.

10 MR. WOODS: That's correct.

11 MR. MASON: Thank you.

12 MR. CASSIDY: I thought you said  
13 the Federal government has a four hundred  
14 fifty dollar.

15 MR. WOODS: It is.

16 MR. CASSIDY: So are these people  
17 going to have to pay four fifty plus our  
18 three hundred?

19 MR. WOODS: No. Since Oklahoma  
20 became an agreement state, the NRC no  
21 longer regulates those materials that are  
22 in Oklahoma.

23 MR. THOMPSON: Unless we choose  
24 not to do to so. So the decision you have  
25 if you have this machine, you're regulated

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1 under the Federal government, four fifty;

2 under Oklahoma it's three hundred.

3 MR. WOODS: No choice.

4 MR. CASSIDY: That answers my  
5 question.

6 MR. WUERFLEIN: Any other  
7 comments from the Board. If not, we'll  
8 open it to the public. Are there any  
9 questions or comments from the public?  
10 Seeing none, we're back to the Board. Any  
11 other comments from the Board?

12 MR. JOHNSTON: I move we vote on  
13 the permanent adoption of this.

14 MR. WUERFLEIN: It's been moved  
15 by Jerry Johnston. Do I hear a second?

16 MR. UKENS: Second.

17 MR. WUERFLEIN: Second by Don  
18 Ukens. Roll call, please.

19 MS. BRUCE: Mr. Cassidy.

20 MR. CASSIDY: Yes.

21 MS. BRUCE: Mr. Coffman.

22 MR. COFFMAN: (No response.)

23 MS. BRUCE: Mr. Drake.

24 MR. DRAKE: Yes.

25 MS. BRUCE: Mr. Johnston.

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1 MR. JOHNSTON: Yes.  
2 MS. BRUCE: Mr. Mason  
3 MR. MASON: Yes.  
4 MS. BRUCE: Mr. Paden.  
5 MR. PADEN: (No response.)  
6 MS. BRUCE: Mr. Roberts.  
7 MR. ROBERTS: Aye.  
8 MS. BRUCE: Ms. Savage.  
9 MS. SAVAGE: (No response.)  
10 MS. BRUCE: Mr. Ukens.  
11 MR. UKENS: Yes.  
12 MS. BRUCE: Mr. Wuerflein.  
13 MR. WUERFLEIN: Yes.  
14 MS. BRUCE: Motion passed.  
15 (Item Number 8 Concluded)  
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