

**DRAFT MINUTES**  
**HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL**  
**April 8, 2004**  
**Fairview, Oklahoma**

For HWMAC approval  
~~July 8, 2004~~ October 7-January 11, 2005

**Notice of Public Meeting** The Hazardous Waste Advisory Council convened for a continued meeting at 10:00 a.m. April 8, 2004 in the Seminary Room of Northwest Tech Center, 801 Vo-Tech Drive, Fairview, Oklahoma. The meeting was held in accordance with the requirements for regularly scheduled meetings of the Open Meetings Act, Section 303 of Title 25 of the Oklahoma Statutes and notice of the meeting was given to the Secretary of State. The agenda was posted the meeting facility and the Department of Environmental Quality a minimum of 24 hours prior to the meeting. Ms. Jody Reinhart called the meeting to order and roll call was taken. Mr. Steve Kliewer, Business and Industry Service Coordinator of the Northwest Technology Center. Mr. Kliewer and Mr. Bruce Elwell welcomed Council to Fairview.

**MEMBERS PRESENT**

Jody Reinhart  
David Bradshaw  
Bruce Elwell  
Michael Graves  
Gerald Ihler  
Bob Kennedy  
Kathy Martin  
Steve Tomberlin

**MEMBERS ABSENT**

Wesley Anderson

**DEQ STAFF PRESENT**

Catherine Sharp  
Sonny Johnson  
Jerry Sanger  
Tammi Johnson  
Gail Hamill  
Mary Johnson  
Myrna Bruce

**OTHERS PRESENT**

The sign-in sheet is attached as an official part of these Minutes.

Ms. Reinhart called for a motion to approved the January 8, 2004 Minutes. Mr. Elwell made the motion and Mr. Graves made the second.

**Roll call.**

Bruce Elwell	Yes	Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

**Chair Person's Report** – Ms. Reinhart provided information about the rules that had been presented before the Environmental Quality Board.

**Division Director's Report** – Ms. Catherine Sharp introduced the staff and audience members and thanked the Council for their participation in the rulemaking.

**Formal Rulemaking** Ms. Tammy Johnson provided background information on the rulemaking as discussed at Council’s January 8, 2004, meeting and provided three options for processing delisting petitions for Council’s consideration. Ms. Johnson fielded questions and comments along with Mr. Jerry Sanger, DEQ Legal and other staff. Following much discussion, Ms. Reinhart polled Council for opinions as to whether each preferred rulemaking or permit action. The consensus was a tie and further explanations and comments followed. With another poll, Ms. Reinhart offered up three options for Council consideration. Council agreed that the program should be developed in Oklahoma. Mr. Elwell moved to go with rulemaking taking staff recommendations. Mr. Tomberlin seconded that motion. Following discussion, Mr. Elwell withdrew his motion and Mr. Tomberlin withdrew the second so that the other agenda items could be discussed before a roll call vote.

**Rulemaking – OAC 252:205-21-5 Fees for Waste Exclusion** Ms. Reinhart called for discussion and Ms. Tammy Johnson provided recommended language. (See pages 95-98 of the official transcript.) Ms. Martin moved to accept the rulemaking as discussed. Mr. Graves made the second.

**Roll call.**

Bruce Elwell	Yes	Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

*Following the completion of all the agenda items, Ms. Reinhart re-addressed some issues to clean up previously discussed language. (See pages 196-205) Mr. Graves made motion to amend OAC 252-205-21-5(c)(1) and provided that language. Mr. Kennedy made the second. Further discussion ensued then roll call was taken.*

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

**Rulemaking – OAC 252:205-25 Additional Requirements for Excluding a Waste from a Particular Facility.** There was discussion on the floor to approve each paragraph in a separate motion. (See pages 98-112 of the official transcript.) Ms. Martin made motion to approve discussed amendments to Paragraph (a) and the second was by Mr. Graves.

**Roll call.**

Bruce Elwell	Left the meeting	Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

*Following completion of all Agenda items, Ms. Reinhart called for motions to clean up of language in several areas. Ms. Martin moved to amend 252:205-25-1(a) to replace ‘DEQ’ with ‘Environmental Quality Board’. Mr. Graves made the second. (See pages 205-207.*

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
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<i>Michael Graves</i>	<i>Yes</i>	<i>Kathy Martin</i>	<i>Yes</i>
<i>Gerald Ihler</i>	<i>Yes</i>	<i>Steve Tomberlin</i>	<i>Yes</i>
<i>David Bradshaw</i>	<i>Yes</i>	<i>Jody Reinhart</i>	<i>Yes</i>

**Motion carried.**

Ms. Reinhart opened 252:205-25-1(b) for discussion and comment. (See pages 112-118 of the official transcript.) Mr. Graves made motion to approve proposed language and Mr. Kennedy made the second.

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

Ms. Reinhart continued the discussion for 252:205-25-2 and asked Ms. Johnson to advise Council of the recommended changes. See pages 119-149 of official transcript for discussion and comments regarding the suggested language. Mr. Bradshaw made motion to adopt 252:205-25-2 and recited recommended language. Mr. Graves seconded his motion. Following further discussion, Ms. Reinhart asked for roll call.

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

Ms. Reinhart called for discussion on 252-205-25-3. Conditions of Exclusion. (See pages 149-152 of the official transcript.) Mr. Bradshaw moved to accept the language proposed with one suggested change. Ms. Martin made the second.

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

*On 252:205-25-3-2 Ms. Reinhart confirmed with Mr. Sanger that a new vote was not necessary for the Environmental Quality Board.*

Ms. Reinhart called for discussion on 252:205-25-4. Reconsideration of an Approved Petition. (See pages 152-157 of the official transcript.) Mr. Graves made motion to approve with one amendment to the first line. Ms. Martin made the second.

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

Ms. Reinhart called for discussion on 252:205-25-5 Monitoring and Waste Approved for Exclusion. (See pages 158-159 of the official transcript). Ms. Johnson advised that there were no recommended

changes. Ms. Martin made motion to approve as written with Mr. Graves making the second.

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

Ms. Reinhart called for discussion on 252-2-5-25-6, Failure to Follow Approval Conditions. (See pages 159-164 of the official transcript.) Mr. Bradshaw made motion to approve as written with one additional change. Mr. Graves made the second. Following discussion roll call was taken.

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

Ms. Reinhart called 252:205-25-7 Effective Date, for discussion. (See pages 164-165 of the official transcript.) Ms. Martin made motion to accept as written. Mr. Graves made the second.

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

Ms. Reinhart called Agenda item 7, Formal Rulemaking Hearing and Vote on Proposed Permanent Changes to OAC 252:205-21 and Adoption of a New Appendix D. Waste Exclusion Fees. Ms. Johnson advised of the comments that had been received. (See pages 165-193 of the official transcript.) Following much discussion regarding the where the fee should be set, Mr. Bradshaw made motion to accept proposed Appendix D as written and changing one typographical error. Mr. Graves made the second. Discussion continued with public comments. Ms. Martin moved the question to vote on Mr. Bradshaw's motion and Ms. Reinhart asked for roll call.

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	No	Steve Tomberlin	No
David Bradshaw	Yes	Jody Reinhart	No

**Motion carried.**

Ms. Reinhart called Agenda item 8, Formal Rulemaking Hearing and Vote on Proposed Permanent Changes to OAC 252:205 Appendix E, Wastes Excluded from the List in Subpart D of 40 CFR 261 as Applicable in Oklahoma. (See pages 194-196) of the official transcript.) Mr. Jerry Sanger advised of staff's recommendations. Ms. Martin made motion to approve as written and Mr. Graves made the second. With no additional concerns, roll call was taken.

**Roll call.**

<del>Bruce Elwell</del>		Bob Kennedy	Yes
Michael Graves	Yes	Kathy Martin	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
David Bradshaw	Yes	Jody Reinhart	Yes

**Motion carried.**

**New Business** – None

**Adjournment** - At 1:30 p.m., the meeting was adjourned by acclamation.

**A copy of the hearing transcripts are attached and made an official part of these minutes.**

*An example of how to use the Index:*

*The word 'ability' is used [4] times on page 102 line 11; 117 line 21; and on page 122 lines 2 and 8.*

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DEPARTMENT OF ENVIRONMENTAL QUALITY  
HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL  
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS  
HELD ON APRIL 8, 2004, AT 9:00 A.M.  
IN FAIRVIEW, OKLAHOMA

\* \* \* \* \*

REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE  
(405) 721-2882

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MEMBERS OF THE COUNCIL

- JODY REINHART, CHAIR
- DAVID BRADSHAW, VICE-CHAIR
- BRUCE ELWELL, MEMBER
- MICHAEL GRAVES, MEMBER
- JERRY IHLER, MEMBER
- BOB KENNEDY, MEMBER
- KATHY MARTIN, MEMBER
- STEVE TOMBERLIN, MEMBER

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY
- TAMMI JOHNSON - ATTORNEY
- CATHERINE SHARP, STAFF
- JERRY SANGER, ATTORNEY

Christy A. Myers

Certified Shorthand Reporter

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PROCEEDINGS

MS. REINHART: This is the regularly scheduled meeting of the Hazardous Waste Management Advisory Council, which was called in accordance with the Open Meetings Act.

Notice was filed with the Secretary of State on October 29th, 2003 and amended on February 11th, 2004. The Agenda was duly posted at the Northwest Tech Center in Fairview and at the DEQ, 707 North Robinson, Oklahoma City, Oklahoma, 24 hours prior to the meeting.

Only matters appearing on the posted agenda may be considered at this regular meeting. In the event that this meeting is continued or reconvened, public notice of the date, time and place of the continued meeting will be given by announcement at this meeting.

Only matters appearing on the agenda of a meeting which is continued may be discussed at the continued or reconvened

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1 meeting.

2 Myrna, would you do a roll call,  
3 please.

4 MS. BRUCE: Wesley Anderson,  
5 absent. Bruce Elwell.

6 MR. ELWELL: Present.

7 MS. BRUCE: Michael Graves.

8 MR. GRAVES: Here.

9 MS. BRUCE: Jerry Ihler.

10 MR. IHLER: Here.

11 MS. BRUCE: Bob Kennedy.

12 MR. KENNEDY: Here.

13 MS. BRUCE: Kathy Martin.

14 MS. MARTIN: Here.

15 MS. BRUCE: Jody Reinhart.

16 MS. REINHART: Here.

17 MS. BRUCE: Steve Tomberlin.

18 MR. TOMBERLIN: Here.

19 MS. BRUCE: David Bradshaw.

20 MR. BRADSHAW: Here.

21 MS. REINHART: Okay. Before we

22 get started, Steve Kliewer of the Northwest

23 Tech Center --

24 MR. KLIEWER: Kliewer.

25 MS. REINHART: -- Kliewer, excuse

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1 me, would like to give us a welcome.

2 MR. KLIEWER: I just want to, on  
3 behalf of our Assistant Superintendent,  
4 Jane Bowen, and myself, Steve Cleaver, I'm  
5 the Business and Industry Service  
6 Coordinator here, I just want to welcome  
7 you here to our campus at the Northwest  
8 Technology Center in Fairview.

9 We are pleased that you are here and  
10 want to thank Bruce for inviting everybody  
11 here, as well, to this campus and just feel  
12 welcome. Take use of our facilities here  
13 anytime that you would like and use our  
14 local restaurants, place of eating  
15 establishments, if you so choose, buy gas  
16 here.

17 MS. REINHART: Buy a home.

18 MR. KLIEWER: Spend money here.

19 MS. REINHART: Just move here.

20 MR. KLIEWER: Move here, if you  
21 choose. Obviously, we are northwest rural  
22 Oklahoma with a declining population and we  
23 value your presence here, so I just want to  
24 welcome you here. And please take the  
25 opportunity to sign in with our sheet here

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1 and, again, just feel welcome. Thank you,  
2 so much.

3 MS. REINHART: Thank you, Steve,  
4 appreciate it. Bruce, we're here because  
5 you're hosting us. Would you like to say  
6 something?

7 MR. ELWELL: Welcome to Major  
8 County.

9 MS. REINHART: What more can we  
10 ask? Okay.

11 MS. MARTIN: Do you have Krispy  
12 Kremes here? No krispy kremes here!

13 MS. REINHART: No.

14 MR. ELWELL: No, no, you might --  
15 we do have a daylight donut shop.

16 MS. REINHART: And it's good. It  
17 is good.

18 (Off-the-Record Comments)

19 MS. REINHART: One of our staff  
20 brings donuts out every Wednesday and we  
21 greatly appreciate that.

22 Item No. 3 is Discussion, Amendment  
23 and Roll Call Vote to Approve the Official  
24 Minutes of the January 8, 2004, Hazardous  
25 Waste Management Advisory Council Meeting.

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1 MR. ELWELL: I'll move to  
2 approve.  
3 MS. REINHART: Okay. I have a  
4 motion.  
5 MR. GRAVES: Second.  
6 MS. REINHART: Okay. I've got a  
7 second. Mr. Elwell made the motion, Mr.  
8 Graves made the second. Do I hear a --  
9 what do I do at this point? Have a roll  
10 call, right?  
11 MS. BRUCE: Bruce Elwell.  
12 MR. ELWELL: Yes.  
13 MS. BRUCE: Michael Graves.  
14 MR. GRAVES: Yes.  
15 MS. BRUCE: Jerry Ihler.  
16 MR. IHLER: Yes.  
17 MS. BRUCE: Bob Kennedy.  
18 MR. KENNEDY: Yes.  
19 MS. BRUCE: Kathy Martin.  
20 MS. MARTIN: Yes.  
21 MS. BRUCE: Jody Reinhart.  
22 MS. REINHART: Yes.  
23 MS. BRUCE: Steve Tomberlin.  
24 MR. TOMBERLIN: Yes.  
25 MS. BRUCE: David Bradshaw.

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1 MR. BRADSHAW: Yes.

2 MS. REINHART: Okay. Item No. 4  
3 is the Chairperson's Report and we -- I  
4 went to the Council meeting in late  
5 February or the Environmental Quality Board  
6 meeting and presented what we had done at  
7 the last Council meeting. And as you can  
8 see by the marked text that Tammi provided  
9 us, what they -- we approved and what we  
10 did not -- if you look at page 1, Part 260,  
11 we did not ask the Board to pass that and  
12 that's because that is something that we  
13 are still considering as of today.

14 And I also got censored by the  
15 Board, we almost lost funding for the  
16 entire Land Protection Division; is that  
17 right? It was -- I think there was a whole  
18 bunch of us sweating bullets at that point.  
19 But the caution, I guess, is that when we  
20 take an action in the future is that we  
21 need to really highly consider what we're  
22 doing and if we need to go back over some  
23 actions that we've already taken during a  
24 Council meeting, we need to go back and  
25 look at that.

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1           Because we decided that, you know,  
2 that probably wasn't appropriate for us to  
3 pass or ask the Board to pass at that time,  
4 and so as a Council we just need to be more  
5 diligent about what we're passing on to the  
6 Board at that point.

7           So the only other thing, I really  
8 appreciate, you know, Bruce hosting this  
9 meeting here. I think it's a good thing  
10 that we do, that we take this meeting  
11 elsewhere in the state. There is  
12 opportunities for us to visit the  
13 industries that we're regulating in various  
14 parts of the state and if the -- if we  
15 could probably arrange something like that,  
16 where we might visit like Boeing when we go  
17 to Tulsa sometime.

18                   MR. BRADSHAW: Sure.

19                   MS. REINHART: I think that --  
20 those opportunities are there because  
21 that's who we are regulating, is industry,  
22 so I think that's something we ought to  
23 look at. Before we go on to Item No. 5,  
24 Catherine, do you have a report from the  
25 Land Protection Division?

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1                   MS. SHARP: I don't have a formal  
2 report, but I wanted to follow up and say a  
3 couple of things. I was just going through  
4 to see if there was anything newsworthy at  
5 the DEQ that you might not be aware of, and  
6 nothing big is coming to mind. We're  
7 partly through the Legislative Session,  
8 obviously the Executive Director's Office  
9 is still sending updates to the Council  
10 Members and I hope you all are receiving  
11 those.

12                   I have a bit of what I would  
13 consider sad news about Tammi Johnson. She  
14 has elected to make a career change. Tammi  
15 has been with us for a long time and is --  
16 and this is no overstatement, she is an  
17 imminent authority in Hazardous Waste, she  
18 really is. She's done so much for our  
19 programs there and she has decided to  
20 accept a position with another division in  
21 the agency which, you know, there is no  
22 division as good as Land Protection, we  
23 tried to tell her that. So she's going to  
24 be working a little closer to home with  
25 ECLS, some of you may deal with ECLS,

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1 that's the Environmental Complaints and  
2 Local Services. So we are sad to see her  
3 go. She will no longer be working on the  
4 Hazardous Waste rules. And I just wanted  
5 to say on the record that she will be  
6 greatly missed in our Division, she has  
7 just done more work than I could ever begin  
8 to go into and has been a good leader, as  
9 well.

10 So we will miss her and we will get  
11 with you all about, you know, how we are  
12 going to deal with rulemaking and so forth  
13 in the future. So that's one item.

14 With respect to what Jody said at  
15 the Board meeting -- and I just want to  
16 mention, the Board meeting was very  
17 interesting. And what happened, for those  
18 of you who may or may not know, the rule  
19 package that was advanced that you all --  
20 and I might mention also that at that last  
21 Council meeting -- I hope it wasn't too  
22 painstaking for you all. I thought you all  
23 did an excellent job of dealing with what  
24 was really a kind of a tangled RCRA issue,  
25 it's just not an easy issue. And I thought

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1 that dialogue, to the extent everybody  
2 could endure it, it was a long meeting. I  
3 mean, I think sometimes you have to go  
4 through that and I thought you all did an  
5 excellent job of kind of examining all  
6 those issues.

7           With that said, if you remember what  
8 happened, there were a set of, what's  
9 essentially what you all do as adoption by  
10 reference, normally it's somewhat routine  
11 for you all, with one small reference to  
12 the delisting matter that had been tabled  
13 later in the meeting.

14           We didn't, during your Council  
15 meeting, go back and excise that reference  
16 out. And Jody tried to explain that to the  
17 Board and a couple of Board Members,  
18 whether you want to think they were  
19 thinking maybe too black and white or  
20 clinically or whatever, they said, well,  
21 wouldn't this be changing what your Council  
22 advanced? And Jody tried to explain, well,  
23 no, this -- I don't really use the word  
24 oversight, but she was trying to say, this  
25 is really what they would have intended.

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1    Anyway -- and they kind of got hung up on  
2    it.    A couple of Members got a little bit  
3    hung up on that.

4                It's a technicality, it was just a  
5    hard thing to explain.    And so that caught  
6    -- you know, when there's other people in  
7    the Board meeting who don't understand all  
8    that, then that raised a question mark in  
9    their mind.    And so they were watching this  
10   dialogue go on.

11               I think you all understand exactly  
12   what you passed and how small an issue that  
13   was, but the Board, you know, they don't --  
14   they hadn't heard your whole dialogue, so  
15   they didn't know.    So that's what happened.  
16   It's not a big deal.    We'll try to be more  
17   careful in the future so that exactly what  
18   advances is what's advanced.    It was really  
19   just an effort to clean up one small thing  
20   before it got to the Board.

21               So anyway, that's what happened  
22   there and I just wanted you all to  
23   understand that.    I think, again, their  
24   dialogue is good, too.    I like to see the  
25   Board Members engaged on exactly what

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1 they're voting on. So even though Jody was  
2 kind of sweating, I think they were trying  
3 to get an understanding.

4 MS. REINHART: It wasn't just me.

5 MS. SHARP: Right. (Inaudible).

6 MS. REINHART: Exactly.

7 MS. SHARP: But I think that's  
8 all -- I just see that as all a kind of a  
9 part of the process we have to work  
10 through. And we haven't introduced all the  
11 DEQ people, forgive me if I'm remiss. Do  
12 you all know everybody who's here from the  
13 DEQ?

14 MS. REINHART: Why don't you go  
15 ahead and introduce them.

16 MS. SHARP: Pam, have you been to  
17 a Council meeting yet?

18 MS. DIZIKES: This is the first  
19 Hazardous Waste Council meeting attended.

20 MS. SHARP: We can go around and  
21 introduce ourselves. But I wanted to  
22 mention Pam Dizikes, because she is on our  
23 legal staff and she has an abundance of  
24 experience in environmental law and has  
25 done a lot of work, for example, in Air

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1 Quality rules for the DEQ. She's been in  
2 RCRA and radiation a while for us now, so  
3 she is a great resource, as well. I just  
4 want people to know who she was. And then,  
5 however you want to introduce everybody  
6 else, go ahead, but I just wanted to make  
7 sure people knew Pam.

8 MS. REINHART: Okay. Is there  
9 anybody else that would like to be  
10 introduced at this point?

11 MS. MARTIN: If you don't mind, I  
12 -- just to be familiar with them, please.

13 MS. REINHART: Okay. Why don't  
14 we just start at the back and we'll work  
15 our way around the room and introduce  
16 ourselves.

17 MS. TERNES: I'm Mary Ellen  
18 Ternes, I'm a lawyer, an environmental  
19 lawyer at McAfee and Taft, and I'm here  
20 representing EFO, Environmental Federation  
21 of Oklahoma.

22 MS. REINHART: Okay.

23 MR. SANGER: I'm Jerry Sanger,  
24 attorney with the DEQ and the Land  
25 Protection Division.

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1 MS. HAMMILL: I'm Gail Hammill,  
2 I'm with the Hazardous Waste Division.

3 MS. REINHART: Okay.

4 MR. ROBERTS: I'm Jon Roberts,  
5 I'm in Solid Waste.

6 MS. REINHART: Okay.

7 MS. JOHNSON: Mary Johnson, DEQ,  
8 secretary.

9 MS. REINHART: Okay.

10 MR. HENSCH: Don Hensch, with the  
11 Hazardous Waste group, permitting.

12 MS. REINHART: Okay.

13 MR. RABATINE: I'm Bob Rabatine  
14 with Environmental Management out of  
15 Guthrie.

16 MS. REINHART: Okay.

17 MS. DAVIS: Janet Davis with  
18 Stantech Environmental of Oklahoma City.

19 THE REPORTER: I'm sorry, with  
20 who?

21 MS. DAVIS: Stantech  
22 Environmental.

23 MS. REINHART: Okay.

24 MS. COOK: Susan Cook with  
25 Stantech Environmental out of Oklahoma

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1 City.

2 MS. REINHART: Welcome. Okay.

3 Of course --

4 MS. SHARP: Catherine and Tammi.

5 MS. REINHART: Catherine and  
6 Tammi.

7 MS. SHARP: I think you know us.

8 MS. REINHART: Yes, we do. I  
9 just want to make certain everybody  
10 understands who is at the meeting and so  
11 forth. Okay.

12 Item 5. Before we go on, on our  
13 agenda, many -- Item 5 on through, you can  
14 see that there is, down at the bottom, it  
15 will say item continued from January 21st,  
16 2004, Haz Waste Council meeting. The  
17 original meeting was on January 8th. At  
18 that meeting, we decided we were going to  
19 continue the meeting to January 21st. Just  
20 twenty-four hours before that meeting, we  
21 discovered that there was probably some  
22 additional information and things like  
23 that, so we decided to just wait until this  
24 meeting, until all the questions could be  
25 answered. So this is really a continuation

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1 more so of the January 8th meeting and so  
2 forth.

3           So those agenda items right there,  
4 we're just going to revisit them, as well,  
5 during this meeting.

6           So we begin with Agenda Item No. 5,  
7 which is Formal Rulemaking Hearing and Vote  
8 on the Proposed Permanent Changes in OAC  
9 252:205-21-5. And actually, all of these  
10 items are going to be all together, right,  
11 Tammi?

12           MS. JOHNSON: Yes. I kind of  
13 have a presentation to maybe kind of get  
14 things -- to bring the January Council  
15 meeting up to where we are and further  
16 address some of the issues that the Council  
17 and the public asked us to relook at for  
18 this meeting.

19           MS. REINHART: Okay. So we're  
20 actually going to be considering Items 5,  
21 6, 7 and 8, probably all at the same time  
22 in a general way in a discussion. Do you  
23 mind if you come down here, because I think  
24 that your voice is so soft like mine that  
25 it may be a little bit difficult for

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1 Christy to pick up and hear. And there are  
2 chairs up here, so you guys are welcome to  
3 come sit up here. Are these microphones  
4 close enough for them? Okay.

5 MS. JOHNSON: Well, first off,  
6 good morning.

7 MS. REINHART: Good morning.

8 MS. JOHNSON: I would like to  
9 say, since Catherine announced my leaving,  
10 I have worked in Land Protection for almost  
11 fourteen years, so it's -- I don't  
12 necessarily disagree, it's probably the  
13 best division.

14 But for personal reasons, it gives  
15 me an opportunity, I think, maybe to spend  
16 more time with my daughter and that was  
17 very important to me. So -- and I'll be,  
18 for the first time in about eighteen years,  
19 be able to live and work in the same town.

20 MS. REINHART: That's very  
21 positive.

22 MS. JOHNSON: I kind of wanted to  
23 take a moment and kind of regress or  
24 refresh our memories and maybe kind of fill  
25 some gaps from our Council meeting, the

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1 January 8th Council meeting, to kind of  
2 where we are today.

3           And we closed the January 8th  
4 Council meeting with the Council continuing  
5 the meeting and, specifically, the  
6 delisting rules. The Council asked that  
7 the DEQ further assess those identified  
8 issues of concern and, specifically, a  
9 concern was the delisting -- if a waste  
10 were delisted in Oklahoma, would such  
11 delisting apply only in Oklahoma versus if  
12 it was a waste delisted by EPA, and  
13 applying it nationwide.

14           Another concern was the proposed  
15 fees that were associated with the  
16 delisting. The DEQ re-reviewed the  
17 delisting issues, assessed the areas of  
18 concern expressed by the Council and those  
19 expressed by the general public that were  
20 in attendance at the January 8th Council  
21 meeting.

22           Subsequently, this led to kind of  
23 the development of the discussion paper  
24 that was provided to the Council Members  
25 and there is a handout available for those

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1 in attendance today. I hope all of you  
2 have had an opportunity to maybe look at  
3 that discussion paper, to read it, digest  
4 it, so forth. Since it really identifies  
5 the process of how and when the DEQ  
6 obtained delisting authorization and what  
7 further steps we need to take to either  
8 develop some delisting rules or  
9 consideration of returning delisting back  
10 to the EPA.

11 Presently, the DEQ sees three  
12 options for processing delisting petitions.  
13 Delisting by rulemaking action, which is  
14 developing specific implementing rules that  
15 must be recommended for adoption to the EQ  
16 Board by the Council.

17 The second one being delisting by a  
18 permitting-type process, such that the DEQ  
19 would review delisting petitions, approve  
20 or disapprove those petitions, and provide  
21 an approval or disapproval letter or permit  
22 to the entities.

23 A third option is we return the  
24 delisting process to the EPA.

25 I think each of these options has

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1 some positives and some -- some pluses and  
2 some minuses and I'll kind of just give one  
3 or so of each of those. They are not in  
4 any specific -- that that I give is not the  
5 one, or anything like that, the most  
6 positive one or the least negative -- or  
7 most negative one.

8           Relative to the rulemaking actions,  
9 a plus would be that the proposed delisting  
10 rules would be public noticed, public  
11 reviewed and an opportunity for public  
12 comment. A minus could be the likelihood  
13 that a longer timeline to get a facility a  
14 final delisting approval. By the time a  
15 facility actually submits a petition and  
16 the petition obtains final approval, that  
17 could be as long as eighteen months.

18           The permitting-type process, a plus  
19 would be a shorter timeline to obtain final  
20 delisting, because we don't have to go  
21 through the Council, the Board, the  
22 Legislature. Once the review is done, the  
23 Agency makes a determination whether to  
24 approve or disapprove. A minus would be  
25 that -- we believe that there is a greater

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1 legal liability here. The likeliness of  
2 lawsuits. because the issuance of an  
3 approval letter -- an approval letter or a  
4 permit may, in fact, conflict with the  
5 rules that are in place. We don't have an  
6 actual change to the Hazardous Waste Rules  
7 identifying that a waste is delisted.

8           The third item would be to return  
9 the delisting to the EPA. A plus being  
10 that federal delisting approval --  
11 facilities would obtain federal delisting  
12 approval. Region 6 staff is very well  
13 versed in the delisting process and they  
14 may be able to do those fairly quickly. A  
15 minus would be that we would have to give  
16 the program back to the EPA and an  
17 estimated timeline to do this would be two  
18 years. And, therefore, in the interim  
19 period, neither the DEQ or the EPA could  
20 process or consider processing any  
21 petitions.

22           With each of the options for the  
23 delisting identified, it kind of brings us  
24 back to where we ended the January 8th  
25 Council meeting, the continued issues of

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1 the proposed delisting rules, which are  
2 before the Council today.

3           Presently, the options that we  
4 believe maybe are available to the Council  
5 for these continued rules are to approve  
6 the proposed rules as is or with some  
7 revisions; do not approve the proposed  
8 rules; or don't approve the proposed rules  
9 and ask that new proposed rules be drafted  
10 for the Council's consideration at a later  
11 time. And that's kind of the quick  
12 overview I wanted to provide to the Council  
13 and to the audience today.

14           MS. REINHART: Okay.

15           MR. GRAVES: Could you explain to  
16 me the legal concern you raised with doing  
17 it by a permitting process? I don't  
18 understand what you meant.

19           MS. JOHNSON: Could I ask Jerry  
20 to specifically address that?

21           MR. GRAVES: Sure.

22           MR. SANGER: Well, I can speak  
23 for, I think, a concern that was perceived  
24 at the DEQ and I think there were  
25 additional concerns that the EFO

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1 representative probably can express better  
2 than I can.

3           My concern early on is that the  
4 language in the CFR as it currently exists  
5 for the federal program and probably for  
6 most states that do the delisting process  
7 in lieu of the federal program, it's a  
8 rulemaking procedure. EPA actually  
9 publishes notice twice in the Federal  
10 Register, which gives two different  
11 national notices of what's going on.

12           The first one, of course, is the  
13 only one that really allows an opportunity  
14 for public comment and the CFR specifically  
15 provides for written public comment and the  
16 public can request a public hearing.

17           Under the federal rules, EPA doesn't  
18 have to hold a hearing if it's requested on  
19 that issue, but they can. So once EPA  
20 publishes the first time in the Federal  
21 Register, it's open for public comment,  
22 they accept written comments, they consider  
23 those, they can hold a public meeting and  
24 then they again publish notice either,  
25 number one, that they are going to grant

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1 the delisting, in which case they actually  
2 publish the rulemaking change. Or, number  
3 two, they publish notice of denial of the  
4 petition.

5 Now, the only process that I'm aware  
6 of at the state level that would parallel  
7 that would be a state rulemaking. As far  
8 as I know, you can't publish something in  
9 the Oklahoma Register, which is the  
10 equivalent to the Federal Register, unless  
11 it's a rulemaking.

12 Now, I haven't really researched  
13 that. That was just based on what our  
14 rulemaking liaison in the Department told  
15 me, that she had discussed the issue with  
16 the Office of Administrative Rules and she  
17 was told that there was not a mechanism to  
18 publish something like this delisting  
19 process unless it was an actual rule  
20 change.

21 So that's the first issue is getting  
22 it published, public notice equivalent to  
23 that at the federal level, which would be  
24 in the Federal Register. And the second  
25 issue is in the federal level and we don't

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1 do an actual rule change so that anybody  
2 who picks up the CFR has access to Federal  
3 Registers has notice that that particular  
4 waste stream is no longer regulated, as a  
5 list of Hazardous Waste. So we go through  
6 a permit-type procedure, unless we can come  
7 up with something that's creative and new  
8 and hasn't been done yet, we're not going  
9 to get the same type of public notice that  
10 EPA gets from (inaudible) Federal Register  
11 in the CFR.

12 MR. GRAVES: Well, the discussion  
13 paper there raised that issue that states  
14 that the EPA RCRA program managers don't  
15 foresee any programmatic problems with the  
16 permit. So what is their take on that?  
17 Obviously, you've got delegation of the  
18 program.

19 MR. SANGER: Correct.

20 MR. GRAVES: Whatever that means.

21 MR. SANGER: Correct. Their take  
22 on that is that EPA can be flexible on this  
23 issue. In the past, delisting originally  
24 was done at the headquarters level. EPA  
25 Headquarters, did not allow anybody else in

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1 the country to do delistings except  
2 headquarters. Eventually, they trickled  
3 that out to all of the regions and the  
4 regions started doing them. But when the  
5 Headquarters was doing it, they set some  
6 policies and actually put it in memos and  
7 guidance documents that -- certain things  
8 on how the delistings had to be done. And  
9 they said if and when we turn it over to  
10 states, states have to do it as a  
11 rulemaking.

12           And, so, Region 6 has revisited that  
13 and said, well, we've run it by our Council  
14 and headquarters says it's fine. If  
15 Oklahoma wants to do it in this, quote,  
16 rulemaking -- I mean permit-type process,  
17 that as far as authorization purposes go,  
18 we can soften headquarter's old position  
19 and allow the state to do that.

20           They still want to have public  
21 notice that's going to be equivalent to  
22 their public notice, but they didn't really  
23 look at the details on how they were going  
24 to do that if we go through the permit  
25 process. So as far as our authorized

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1 program goes, they're willing to discuss it  
2 and look at the options and if we can come  
3 up with a reasonable public notice  
4 procedure, then they are not going to say  
5 our program is not as stringent as theirs,  
6 if we do it that way.

7 MR. GRAVES: Well, there is a  
8 public notice provision for some types of  
9 permits, but I guess obviously they don't  
10 go into the federal -- in the Oklahoma  
11 Register. Is that really the issue, is  
12 whether it has to be in the Oklahoma  
13 Register or not?

14 MR. SANGER: That's not an issue  
15 with EPA.

16 MR. GRAVES: Okay. But it sounds  
17 like it's an issue with you all --

18 MR. SANGER: Well, it's not --

19 MR. GRAVES: -- and I'm trying to  
20 figure out why.

21 MR. SANGER: When you say you  
22 all, there are people at the DEQ that feel  
23 comfortable with publishing in major  
24 newspapers and papers in different areas of  
25 the state that are in general circulation

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1 and going through the same type of notice  
2 procedure that we do with a permit.

3 Now, it still has yet to be  
4 determined how we -- but when you do a  
5 permit, permit notices are typically done,  
6 you know, on the radio and in the papers  
7 where the facility is located. But for  
8 delisting, really, the delisting is going  
9 to be a statewide delisting. So how we do  
10 that statewide notice equivalent to the  
11 permitting procedure, in my mind just  
12 hasn't been worked out yet.

13 MR. GRAVES: Okay. Mary Ellen,  
14 what's EFO's problem?

15 MS. TERNES: EFO's concern --  
16 originally, EFO had two primary concerns.  
17 One is if it's only a state delisting,  
18 obviously you would have some issues with  
19 transportation out of state. I think that  
20 our discussions with DEQ have been able to  
21 resolve that, not with this language, but  
22 if we can revise the language, I think  
23 we'll resolve our first issue. The second  
24 issue is --

25 MS. MARTIN: I'm sorry, when you

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1 -- you didn't finish that sentence. I  
2 didn't hear the last three or four words of  
3 your sentence.

4 MS. TERNES: Okay.

5 MS. MARTIN: About the  
6 transportation.

7 MS. TERNES: Out of state.

8 MS. MARTIN: Okay.

9 MS. TERNES: And maybe  
10 transportation in state. The issue of  
11 state only delisting, if there is a chance  
12 that the state (inaudible) waste delisted  
13 in Oklahoma can be transported out of state  
14 or -- and depending upon the ultimate fate  
15 of the material that's been delisted in  
16 Oklahoma, can raise a lot of issues. It's  
17 -- you know, if the entity has the  
18 opportunity to request a parallel delisting  
19 from EPA, which EPA previously said was not  
20 -- that wasn't a possibility, we have a  
21 problem with it. EFO has a problem with it  
22 because it's just going to create  
23 complications and difficulties and they  
24 don't want to pay me all the time to, you  
25 know, to resolve those issues.

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1           So with the discussions we've had,  
2 Jerry and I and Steve Gillerand at EPA  
3 Region 6, EPA has decided that, yes, we can  
4 request a parallel delisting of the  
5 entities that believe that this material  
6 that is delisted may reach some area  
7 outside Oklahoma, they think that  
8 eventually they may have an issue where it  
9 would be important to them that the  
10 material be delisted nationally, they can  
11 request a parallel delisting and EPA Region  
12 6 will accommodate that request, which is  
13 wonderful. I mean, we're having our cake  
14 and eating it, too. So that's great.

15           The second issue, though, is what  
16 will we get from Oklahoma in the state  
17 delisting program? The federal delisting  
18 is a rule change, because the waste was  
19 originally listed through a rulemaking. So  
20 in order to delist it, you've got to do  
21 another rulemaking. Otherwise, you know,  
22 we could be subject to challenge. We have  
23 that problem in Oklahoma. If it's not a  
24 rulemaking, we're not comfortable that a  
25 citizen -- that it would survive a citizen

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1 suit.

2           Let's just pretend somebody -- a  
3 facility has a process that had generated  
4 some material, and the material they think  
5 is benign, they submit it with a petition  
6 in Oklahoma. Oklahoma says, you're right,  
7 it's benign, it's not a problem, we'll go  
8 ahead and, you know, bury it in the back  
9 forty, it's just fine. The neighbors don't  
10 hear about it. The neighbors don't know  
11 about it. They sue in federal court to  
12 enforce the terms of the RCRA program in a  
13 citizen suit. And I think we would have  
14 problems if what we get in Oklahoma will  
15 not survive (inaudible).

16           I've been meaning to look at the  
17 rulemaking procedure again. Eighteen  
18 months is really long. I'm just wondering  
19 if EPA (inaudible, due to noises) -- six  
20 weeks or something?

21           MS. REINHART: No.

22           MS. TERNES: Steve Gillerand has  
23 talked about delisting procedures maybe  
24 (inaudible, due to multiple conversations).

25           MS. REINHART: I was going to say

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1 --

2 MS. MARTIN: Can't do anything in  
3 six weeks.

4 MS. TERNES: (Inaudible) a very  
5 short delisting time whereas before  
6 delisting has almost been two years. It  
7 hardly happens but, anyway, I think we can  
8 look at the eighteen months. I think it's  
9 a long time, but I'm still worried that if  
10 we do less than a rulemaking rule, we may  
11 not end up with the delisting that will  
12 survive a citizens petition.

13 MR. BRADSHAW: So, what if we are  
14 running a parallel process and the EPA for  
15 unimaginable reason was to beat Oklahoma  
16 through the process, then what would be the  
17 point of the Oklahoma process or would it  
18 in any way interfere with the federal  
19 process?

20 MS. TERNES: That's a good point.  
21 In discussing this with Don Davis, Steve  
22 Gillerand and Jerry, I think we were  
23 comfortable with the idea of drafting a  
24 Memorandum of Agreement with EPA such that  
25 with an entity in Oklahoma wanted a state

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1 delisting and thought that, well, the  
2 federal delisting would still be helpful,  
3 requested the parallel delisting, but under  
4 the Memorandum of Agreement, the two  
5 processes would be coordinated so that we  
6 wouldn't have -- our biggest fear, one,  
7 disparate results, right. The biggest fear  
8 would be Oklahoma says it's delisted and  
9 EPA says it's not. That can't happen.  
10 We've got to figure out a way so that won't  
11 happen. If EPA determines that a waste  
12 can't be delisted, then the EPA would be  
13 the determining factor (inaudible, due to  
14 noise) in both cases. But the point is  
15 that -- and I, you know -- the point is,  
16 what we want or what industry would  
17 appreciate is the flexibility to be able to  
18 ask for an Oklahoma delisting and also a  
19 federal delisting, and this way we can do  
20 both.

21           We can have some entities that  
22 realize the materials they're delisting  
23 will always be in Oklahoma, an Oklahoma  
24 delisting would be completely sufficient,  
25 they don't have any reason to think they

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1 need a federal delisting and other folks  
2 who don't really know, who maybe they  
3 really do need a federal delisting. And in  
4 that case, they can do both at the same  
5 time or end up (inaudible).

6 MR. GRAVES: I don't share -- I  
7 understand the desire to be super-safe. I  
8 don't frankly see anybody winning a citizen  
9 suit if EPA authorizes us to do it by  
10 permit. I think there is a much cleaner,  
11 neater, faster way to do it. So I would be  
12 in favor of that.

13 I frankly would not be in favor of  
14 going through rulemaking if EPA is going to  
15 do it, to me that's redundancy. And I  
16 don't want to spend this Council's two  
17 years of time to do something if EPA is  
18 going to do it as well. I would rather EPA  
19 do it.

20 MS. TERNES: What you're thinking  
21 about is Oklahoma delisting process, if  
22 it's Oklahoma only, you've got two  
23 entities.

24 MR. GRAVES: I know what you're  
25 saying. But if EPA -- if we have the

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1 authority -- what they said before was they  
2 wouldn't do it. It seems to me, I just as  
3 soon EPA did it.

4 MS. MARTIN: What I'm saying, Mr.  
5 Graves, what I understood is, once we had a  
6 delegation of a delisting program here in  
7 Oklahoma, EPA could not delist a waste for  
8 Oklahoma. We would have to do that and  
9 then EPA could delist for the rest of the  
10 United States and that would be the  
11 parallel delisting.

12 MR. GRAVES: But they are still  
13 going to go through the same analysis.

14 MS. MARTIN: Right.

15 MR. GRAVES: You're -- it's a  
16 duplicating effort.

17 MS. MARTIN: You've got to put  
18 your hat on crooked because it's a crooked  
19 idea. They can delist everything except  
20 Oklahoma or every other state that also  
21 does not have delisting authority, right?  
22 So it would be like if twelve states have  
23 delisting authority, EPA could do it for  
24 the remainder --

25 MR. GRAVES: It just seems to me

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1 it's redundancy.

2 MS. REINHART: Well, we  
3 understand that but there's, you know,  
4 we'll just have to pursue the process by  
5 whichever way the Council -- now, does the  
6 DEQ have a recommendation? Do you want to  
7 pursue rulemaking or permit action? You  
8 know, we need to get a feel from the DEQ  
9 what their -- what you guys want, because  
10 you guys are going to have to do --

11 UNIDENTIFIED PERSON: Do the  
12 work.

13 MS. REINHART: -- yeah, you guys  
14 are going to have to do the work. We're  
15 just going to be here, you know --

16 MS. JOHNSON: I guess we were  
17 kind of neutral on this situation. There  
18 is -- if we go proceed with the rulemaking  
19 process, we're a ways away from getting to  
20 that point. You know, we're looking at  
21 2005 at the earliest before we can get the  
22 delisting rules to the Council and so  
23 forth.

24 With the petition -- I mean, the  
25 permit process-type, again, we're still

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1 looking at doing those rules. The positive  
2 thing there is, I guess from an industry  
3 standpoint the -- eventually those will be  
4 processed, you know, once the agency has  
5 the opportunity to review and approve or  
6 disapprove, then we don't have to take that  
7 next step or that next step doesn't have to  
8 occur, which is to go to the Council, to  
9 the Board and to the Legislature.

10           So it's a -- you know, I guess we're  
11 just seeing positives and minuses in both  
12 and we're kind of -- regardless, there is  
13 going to be a load of work to do, whether  
14 it's the permitting-type process or the  
15 rulemaking.

16           Clearly, the rulemaking -- you  
17 travel down that road every time an entity  
18 comes before -- makes a petition, then  
19 that's going to have to come before the  
20 Council every time. So that will be  
21 additional work for the Council, as well.

22           MS. REINHART: But I understood  
23 there is maybe only three parties that have  
24 approached the DEQ at this point; is that  
25 correct?

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1 MS. JOHNSON: We're aware that  
2 there is three parties.

3 MS. REINHART: Right.

4 MS. JOHNSON: Or we've had three  
5 inquiries --

6 MS. REINHART: Okay.

7 MS. JOHNSON: -- on the  
8 delisting.

9 MR. BRADSHAW: Does anybody  
10 represent those parties here today? I  
11 guess not.

12 MS. REINHART: Okay. All right.

13 MS. MARTIN: Madam Chairwoman,  
14 can I ask Tammi a question?

15 MS. REINHART: Yes.

16 MS. MARTIN: Tammi, in light of  
17 what Jerry was talking about comparable  
18 public notice in a permitting process,  
19 would it be like a -- I don't remember my  
20 tiers, but would it be like a Tier II or a  
21 Tier III permit that would be issued to  
22 delist a waste so that it would be public  
23 noticed?

24 MS. JOHNSON: I think it would  
25 have to be a II or III. It couldn't be a

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1 I.

2 MS. MARTIN: Right. So it would  
3 go through the Executive Director's  
4 signature and then approved by the DEQ  
5 Council or would it go through, as to the  
6 Council?

7 MS. JOHNSON: No. It wouldn't go  
8 through -- and we're talking about a  
9 process that's similar -- I mean, in the --  
10 it wouldn't necessarily be exactly like the  
11 permitting that we have written now.

12 I mean, it could be developed  
13 differently such that the Chief Engineer or  
14 whatever of the Land Protection Division  
15 could be the signing entity, the approving  
16 entity, not necessarily the Executive  
17 Director or it could be the Executive  
18 Director.

19 MS. MARTIN: That entire  
20 rulemaking would have to occur, so at some  
21 point this Council would be making  
22 rulemaking whether it's delisting by rule  
23 or delisting by permit, right? So we will  
24 never have the solution until next year's  
25 legislative session.

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1           But if we go delisting by permit,  
2 then from then on this Council would not be  
3 receiving any information about that,  
4 because we wouldn't be voting on any of  
5 that?

6           MS. JOHNSON: Right. Unless you  
7 took what we have today, the proposed rules  
8 that are -- would be the rulemaking  
9 process. But, yes, those could still not  
10 come before the Council again for approval  
11 until January of 2005.

12           MS. MARTIN: I think the point I  
13 was trying to make is that if we do the  
14 delisting by permit, that this Council will  
15 no longer need to be aware of what is being  
16 delisted, because we will not be voting on  
17 it. But if we --

18           MS. JOHNSON: Correct.

19           MS. MARTIN: -- do delisting by  
20 rulemaking, we will always know what those  
21 issues are?

22           MS. JOHNSON: Right, yes.

23           MS. MARTIN: And so, as a  
24 Council, we would have to decide if it's  
25 appropriate to just remove ourselves from

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1 that knowledge.

2 MS. JOHNSON: That's right.

3 MR. GRAVES: Well, you wouldn't  
4 be -- that's not necessarily true. You  
5 wouldn't be asked to take action items. I  
6 suspect that the way this Council works, we  
7 would have information about that, because  
8 those are the kinds of things that would be  
9 big enough ticket items that the Department  
10 would share them with us, but we wouldn't  
11 be involved in the decision making.

12 MS. MARTIN: Right, and we could  
13 not affect its outcome.

14 MR. GRAVES: Right.

15 MS. MARTIN: So we would be  
16 reducing our effort.

17 MS. REINHART: Okay. Does  
18 Council have any further questions?

19 MR. IHLER: If we're delisting by  
20 permit, are we saying that we still want to  
21 go parallel action with EPA because of that  
22 potential legal liability? And if so, what  
23 is the estimated average time frame if  
24 we're going to have to do that anyway? Or  
25 in addition?

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1                   MS. JOHNSON: I believe we're  
2 still looking at probably eighteen months  
3 on the permit-type. Would that be --

4                   MS. TERNES: So there's no  
5 (inaudible) advantage in going to the  
6 permit action.

7                   MS. JOHNSON: Well, it would be  
8 after you submit the petition. I mean,  
9 we've still got to develop the rules on how  
10 we would do a delisting via the permit-type  
11 process.

12                   MS. TERNES: Well, I'm glad you  
13 asked that, because what EFO had asked me  
14 to discuss was the idea of the permit of  
15 the rulemaking here with the parallel EPA  
16 rulemaking option.

17                   In other words, do the rulemaking  
18 or/and/or, you know, you want to parallel  
19 delisting, you can do that. But, you know,  
20 if the Council is considering the permit  
21 option and the federal parallel delisting  
22 option, you can do it, you don't have to do  
23 it, then we are just looking at -- you are  
24 looking at a situation where if they are  
25 asking for the parallel, we will have that

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1 -- the national rulemaking completed, so  
2 that is an option to consider.

3 I know that EFO is not convinced at  
4 this point, anyway, that anything less than  
5 rulemaking would be completely invulnerable  
6 to risk with the citizen suit, you know,  
7 take a look at that and see --

8 MR. BRADSHAW: I would like to  
9 take a shot at your thing there, too. Once  
10 we get the rules in place whether it's  
11 rulemaking or the permit process, I would  
12 say the rulemaking process would take six  
13 to eight months longer than the permit  
14 process. Because, essentially, the permit  
15 process has got to go forward and this is  
16 something that goes on top of it. It  
17 depends on what time of the year it is, you  
18 know, whether legislation is -- or the  
19 Legislature is in session, when this  
20 Council meets and when the Board meets.  
21 And I would estimate on average it would be  
22 six to eight months. How do you respond to  
23 that, Catherine, is that --

24 MS. SHARP: That's what I was  
25 picturing is that once the initial

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1 rulemaking enables it to proceed as a  
2 permit process gets done -- let's say we  
3 can fast forward our lives to that point,  
4 then it becomes -- I don't want to say --  
5 Don Hensch managers our permit writers, for  
6 the RCRA Group, plus the toxicologists who  
7 would have to be involved, it would be  
8 analogous to class two or three  
9 (inaudible). Perhaps a more involved one  
10 than most, but you're talking months  
11 instead of years. Don might have a feel  
12 for that, I don't know, but I agree with  
13 how you characterize it. Whereas, anytime  
14 you do rulemaking, there are certain  
15 caveats, you've got to synchronize it when  
16 the Legislature is in session and that sets  
17 you back a little bit. There is nothing we  
18 can do to change that.

19 MS. MARTIN: Madam Chairman, I  
20 have a question. I think the delisting  
21 process seems to me it included things like  
22 sampling and analysis plans and things like  
23 that. It's not going to be just I'll write  
24 a letter, please take me off your list  
25 because I'm who I am. I think it's going

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1 to be a long involved process of evaluating  
2 the facility, visiting the facility, taking  
3 samples, looking at TCLP's, looking at land  
4 disposal options. It's not going to be a  
5 quicky-quick deal with the Agency as a  
6 permit, either.

7 MS. TERNES: And it's facility  
8 process specific --

9 MS. MARTIN: So the only thing --  
10 the only thing that would be different  
11 between the two processes, because I would  
12 assume it would be done in the same exact  
13 way if it was rulemaking, right? You would  
14 bring a recommendation to us after all this  
15 analyses, et cetera.

16 MS. REINHART: Yeah.

17 MS. MARTIN: The only addition is  
18 the time it would take to coordinate it, to  
19 get to the right meeting here, get to the  
20 right DEQ meeting to get to the  
21 Legislature. And that's, like you said,  
22 maximum six months. And then that ensures  
23 that it is similar to EPA, and I think  
24 that's the way we should go. Why not?

25 If you've already gone through years

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1 of data sampling analysis, you're going to  
2 save your firm thousands of dollars in  
3 hours in hazardous waste training and costs  
4 and whatever, what is six months really?  
5 It's nothing. And so I think we would be  
6 best to just continue to do it as a  
7 rulemaking procedure.

8 MR. GRAVES: I think you're being  
9 optimistic because it depends on the time  
10 of year. If you don't get the analysis  
11 done until June 1st, you've got to wait  
12 until the Legislature is back in session  
13 sometime the next year and --

14 MR. MARTIN: (Inaudible).

15 MR. GRAVES: No, not the way this  
16 group operates.

17 MS. REINHART: It will take us  
18 about a year to process it. Don, you had  
19 something you wanted to say?

20 MR. HENSCH: I wanted to say, we  
21 haven't processed any of these applications  
22 yet, so we really can't say. If we got a  
23 very complete, very thorough petition in, I  
24 can see it would be on the order of three  
25 to four months to review and process it.

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1 MS. REINHART: Right.

2 MR. HENSCH: Now if they're  
3 incomplete, not enough data, questions,  
4 whatever, it would take more time.

5 MS. REINHART: Right.

6 MR. HENSCH: Whatever it took. I  
7 think Mr. Graves is right on the -- unless  
8 we hit the Legislative Session just right,  
9 which we'd have to back up this Council  
10 meeting --

11 MS. REINHART: Right.

12 MR. HENSCH: -- the January  
13 meeting, so it can go to the February Board  
14 meeting so it can go -- if we miss that  
15 date, then we're put off, effectively for a  
16 year. So I would say six months is  
17 probably a minimum.

18 MS. REINHART: Yes, ma'am.

19 MS. TERNES: Could we bridge the  
20 gap between when the DEQ approves the  
21 delisting petition and the Legislature  
22 approves the delisting petition, rulemaking  
23 (inaudible) basically it says, until it's  
24 actually a rulemaking you need to manage it  
25 this way and control the process.

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1 MS. REINHART: We would still be  
2 managing it as hazardous waste until that  
3 whole process would be --

4 MS. TERNES: It's still -- yeah.

5 MS. REINHART: Yes, it's still  
6 hazardous waste, so you're not really  
7 changing it.

8 MS. TERNES: You're not  
9 delisting.

10 MS. REINHART: Right. Now, I've  
11 got a question. Would it be -- I know that  
12 we're talking about parallel process  
13 between the feds and the state at this  
14 point, but would the feds begin looking at  
15 a petition at the same time as the DEQ or  
16 would they have to wait until the state had  
17 gone through their process before they  
18 could begin processing a parallel request?  
19 Do you see what I'm saying? Jerry.

20 MR. SANGER: The way they  
21 proposed it is to start processing it  
22 whenever they receive it.

23 MS. REINHART: Okay. So it's not  
24 -- it would be --

25 MR. SANGER: It's not dependent

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1 on Oklahoma's processing. Now, when they  
2 process it and they grant a delisting,  
3 their delisting really applies in states  
4 that are not authorized to implement the  
5 delisting program through the EPA.

6 MS. REINHART: Okay.

7 MR. SANGER: So if we retain part  
8 of the program, then the state -- to be  
9 delisted in Oklahoma, if we're lagging  
10 behind or ahead, it doesn't matter, but the  
11 delisting in Oklahoma will come out when it  
12 comes out.

13 MS. REINHART: Right.

14 MR. SANGER: But at the federal  
15 level, then theirs -- they can finish and  
16 hold it until ours is done or whatever.

17 MS. REINHART: Right.

18 MR. SANGER: But they don't have  
19 to -- the timing doesn't have to be the  
20 same time.

21 MS. REINHART: But they probably  
22 would coordinate with the state, in and of  
23 itself. How many states have authority for  
24 delisting right now? Does anybody have any  
25 idea?

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1                   MR. SANGER:   Gail says about  
2 eight.

3                   MS. REINHART:   There is only  
4 eight that have -- okay.   Do we have any  
5 idea what those states might be?

6                   MS. HAMMILL:   Within the Region  
7 6, Louisiana.

8                   MS. REINHART:   Louisiana, okay.

9                   MS. HAMMILL:   They are not an  
10 incorporation by reference state.

11                   MS. REINHART:   They're not?  
12 That's an interesting concept.

13                   MR. BRADSHAW:   Jody, I spoke with  
14 Tammi earlier about the people in Oklahoma  
15 who might want to do a delisting now and I  
16 think you indicated they were more  
17 interested in dealing with Oklahoma and  
18 getting the process -- you know, that they  
19 were only interested in Oklahoma, per se,  
20 for the whole process as far as you knew at  
21 this time it seemed like that was where  
22 their emphasis was.

23                   So I think we have to keep in mind  
24 that this parallel process would not -- I  
25 would imagine it wouldn't typically be

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1 requested. It might be important to some  
2 people but I suspect in most cases that,  
3 you know, Oklahoma delisting only would be  
4 what the main issue for the state -- for  
5 people in the state, although I understand  
6 the importance of the parallel process.

7 MS. TERNES: I wonder how many of  
8 the entities that we're talking about are  
9 aware (inaudible) really educated on this  
10 whole thing. But I'm wondering how many of  
11 those folks are aware if it's delisted in  
12 Oklahoma, it's not delisted elsewhere. And  
13 rather, they're just -- you know, they have  
14 a preference for working with the state  
15 agency that they are familiar with, which I  
16 understand. That's what folks want to do.

17 MS. REINHART: I don't know that  
18 they will know and understand that, but  
19 that would be through the rules that they  
20 propose, you know, the proposed party has  
21 to come in and discuss it with the Agency  
22 before they begin that process. And I'm  
23 sure that that would be, you know, written  
24 to them, it would be clearly stated in the  
25 meeting before you leave, do you understand

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1 this is only in Oklahoma, you know.

2 MS. TERNES: (Inaudible). And you  
3 have an option

4 MS. JOHNSON: And I think, too,  
5 that the parallel would only be necessary  
6 if a facility really wants to take their  
7 waste out of state.

8 MS. TERNES: Yeah, they might.

9 MS. JOHNSON: And, you know, we -  
10 - I think we have some -- have a -- we  
11 don't really anticipate that there is going  
12 to be a whole lot of interest in somebody  
13 who generates hazardous waste and gets it  
14 delisted and then transports it three  
15 states away, when we've got adequate number  
16 in capacity for disposal of nonhazardous  
17 waste in our landfills here in Oklahoma.  
18 So I guess the transportation issue isn't a  
19 significant heartburn to the DEQ.

20 MS. REINHART: Right. Solid  
21 Waste Division, Jon, would you like to  
22 speak for the Solid Waste Division about  
23 this? Because this material, once it  
24 becomes delisted in the State of Oklahoma,  
25 it's going to be going to your solid waste

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1 landfills, right?

2 MR. ROBERTS: Yes, it would.

3 MS. REINHART: Yeah.

4 MR. ROBERTS: And we have an  
5 approval -- not really an approval process  
6 anymore because of the notification process  
7 that enables the nonhaz industrial waste  
8 would have to go through to send it to one  
9 of the landfills, but once it's been  
10 officially delisted, then we wouldn't have  
11 any objection to it going to one of our  
12 landfills.

13 MS. REINHART: Do we know of any  
14 wastes right now that's been delisted at  
15 the federal level that comes into our solid  
16 waste landfills? Do we have any idea?

17 MR. ROBERTS: I'm not aware.

18 MS. REINHART: I was just  
19 curious.

20 MS. JOHNSON: I accidentally came  
21 across one.

22 MS. REINHART: Okay.

23 MS. JOHNSON: As I was talking to  
24 another state up in the northeast and  
25 actually the -- I believe kind of the

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1 conditions with their delisting was, as  
2 long as it stayed in their state and went  
3 to a specific landfill, it was delisted.  
4 But if it left, it was hazardous waste.

5 MS. REINHART: So that's when  
6 they wrote the delisting --

7 MS. JOHNSON: And that's kind of  
8 part of the conditions that you can -- that  
9 they adhere to.

10 MS. REINHART: Right. That way  
11 they would minimize the liability of it.

12 MS. JOHNSON: Right.

13 MS. REINHART: Well, I think  
14 we've kicked this around enough at this  
15 point that we have a -- all Council Members  
16 have a strong feeling whether they prefer a  
17 parallel or a rulemaking or a permit  
18 action. So --

19 (COURT REPORTER CHANGES TAPE)

20 MS. REINHART: Okay. But we have  
21 -- I'm pretty certain that everybody has an  
22 opinion which way they prefer to go at this  
23 point. So I'm going to go ahead and poll  
24 the Council Members present as to which  
25 they prefer. It will be rulemaking or

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1 permit action, okay? So, Mr. Tomberlin,  
2 you're first up.

3 MR. TOMBERLIN: I believe I favor  
4 the permit.

5 MS. REINHART: Okay. Ms. Martin.

6 MS. MARTIN: Rulemaking.

7 MS. REINHART: Okay. Mr. Graves.

8 MR. GRAVES: Permit.

9 MR. BRADSHAW: This is a tough  
10 one but --

11 MS. REINHART: Mr. Bradshaw.

12 MR. BRADSHAW: -- I'm going to  
13 say rulemaking, at this point.

14 MS. REINHART: Okay. Let's start  
15 back over here. Mr. Ihler.

16 MR. IHLER: Permitting.

17 MR. ELWELL: Permitting.

18 MS. REINHART: Permitting, okay.  
19 Mr. Kennedy.

20 MR. KENNEDY: I'm going to say  
21 rulemaking, also.

22 MS. REINHART: This is bad,  
23 because I'm favorable to rulemaking. We've  
24 got a dead heat on this.

25 MR. BRADSHAW: Well, let's have

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1 some discussion on it, maybe. I mean, my  
2 thought about the rulemaking is simply  
3 this. I want a process something I'm  
4 confident of, you know, and I feel like  
5 there would be a lot of confidence around  
6 that and that may be true of the permit if  
7 we look at it more closely. But right now,  
8 I feel comfortable with that.

9           And people who are delisting waste  
10 have this opinion that they are producing  
11 an awful lot of this waste, they are  
12 spending an awful lot of money and they are  
13 willing to spend that extra six or eight  
14 months that we would on average -- that  
15 rulemaking would add versus the permit  
16 process.

17           I think that it's only a few  
18 players, it's very important economically,  
19 they want a sure process, they want to go  
20 ahead and get it in place. That's my take  
21 on it.

22           It's a tough decision because I  
23 don't like the process of going through all  
24 of us every time, but the good part about  
25 it is there is not going to be that much of

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1 it in my opinion, because it's only going  
2 to happen in very -- in cases where there  
3 is a great deal of waste. That's my case  
4 for the rulemaking.

5 MS. REINHART: I'll just speak to  
6 why I feel like the rulemaking is probably  
7 more critical. We, as Council Members,  
8 have been appointed by various entities  
9 within government, whatever. And we've  
10 been -- there has been some trust placed in  
11 us, as well. And I think there is a  
12 process at the federal level that allows  
13 the community, the public, to have input.  
14 And that's exactly what our Council does,  
15 as well.

16 We have some people here from the  
17 public, you know, today and I think it's --  
18 you know, there is not that much. There is  
19 only going to be -- we only know of like  
20 three entities so far, but we're -- I think  
21 we're also accountable, as well as the DEQ,  
22 about knowing who is going to go through  
23 this process, to go through the delisting  
24 process, so we know what they're doing.

25 You know, it's up to us, to just as

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1 a Board and the Governor, to make certain  
2 things are done equitably, fairly, but we  
3 also protect the environment and stuff.

4 I don't like the time frame it takes  
5 to do rulemaking anymore than anybody else.  
6 That's the tough part because I know I've  
7 done permit actions and permit actions can  
8 take a long time, right, Don? They can.  
9 So whether you go permit action or  
10 rulemaking, there is a lot of time  
11 involved.

12 And just like Dave said, people are  
13 only going to be interested in this if they  
14 feel like they're going to save money, they  
15 can see down the road as a five year, ten  
16 year plan and know that they're going to do  
17 that. So they are willing to put that  
18 commitment down, you know, to make that  
19 investment to do things like that.

20 So that's my case for doing  
21 rulemaking. I don't know if that changed  
22 anybody's minds, but I don't know how to  
23 move forward at this point. Does anybody  
24 have any recommendations?

25 MR. GRAVES: Let me speak to the

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1 other side. In addition to the time  
2 situation, I look at the only -- where  
3 you're stuck is when you are dealing --  
4 you're caught in a trap because you're in a  
5 category that some bureaucrat originally  
6 thought may be hazardous waste. But, in  
7 fact, as a technical matter, you don't have  
8 the hazardous constituency present in the  
9 levels that makes it a natural hazardous  
10 waste.

11           So in that situation, I look at that  
12 as really being a technical decision. And  
13 I think a permit not only is quicker but,  
14 frankly, I can see the -- if it comes into  
15 our process, which is in essence a  
16 political process, I can see the  
17 possibility of playing -- playing political  
18 football with something that I really think  
19 is a technical issue. And frankly I don't  
20 really want to be involved with those. I  
21 don't think that really is what our  
22 business is.

23           So that's the reason I think  
24 permitting is better, because I think it  
25 allows the technical decisions to be made

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1 at a technical level.

2 MS. REINHART: Well, let me just  
3 speak to the hazardous constituents, first.  
4 I mean, I work at the hazardous waste  
5 landfill for the State of Oklahoma, you  
6 know, the Lone Mountain facility here.

7 And we see hundreds, thousands of  
8 waste streams coming into our facility.  
9 And rare -- and most of them you cannot put  
10 them straight into a landfill because they  
11 don't meet EPA standards for land disposal  
12 restrictions. They have hazardous  
13 constituents. EPA broadened that ruling a  
14 few years ago to underline hazardous  
15 constituents and many waste streams, they  
16 are not listed, they don't have  
17 characteristics, but they are still above  
18 the LDR standard. So, therefore, they  
19 still are hazardous according to EPA  
20 standards. So there is not many waste  
21 streams really out there by that listing,  
22 that have the problem that they're really  
23 not non-hazardous.

24 I don't think that our process is as  
25 politicized as what some people feel it may

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1 be. I know that I've lived through many  
2 permit modifications for Lone Mountain and  
3 that can be pretty political, as well. I  
4 mean, Catherine remembers when we rented  
5 the -- and Bruce here, when we rented the  
6 Fairview High School gymnasium for a public  
7 meeting and we had buses of people being  
8 transported in, you know, that was quite a  
9 meeting there.

10 But the DEQ tries to keep it from  
11 becoming politicized. I think everybody  
12 here on the Council recognizes the  
13 political aspects of some people that have  
14 come to our meetings and I don't think that  
15 -- we try to make certain that our  
16 decisions are also based upon sound logic  
17 and so forth. So -- yes, ma'am.

18 MS. TERNES: I would like to say  
19 a word for rulemaking on behalf of the EFO.  
20 And I think I agree with everything that  
21 everybody said. I think, you know, EFO  
22 just falls on the side of rulemaking for  
23 these reasons. Unfortunately, it is a  
24 technical issue, but EPA chose to handle it  
25 through a rulemaking process. And if we

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1 don't have a parallel process, we are  
2 subject to the risk that someone will  
3 challenge it after we put it back in the  
4 ground, you know, after all the money was  
5 wasted on the delisting effort through a  
6 permit process and after, you know, we have  
7 already begun the process in the ground and  
8 these constituents, if there are any left,  
9 starting to migrate.

10           And we don't want to create a  
11 situation where we are going to have to go  
12 remediate the result of, you know, a  
13 vulnerable bureaucratic decision.

14           And so with the rulemaking, I just  
15 think we would have less risk. I think  
16 people will feel more confident in their  
17 investment of time and effort in attempting  
18 to get the delisting completed because  
19 there's less risk, I think, just for  
20 industry in general and I think it's a  
21 preferable option. And I do think that on  
22 a, you know, just from a policy standpoint,  
23 you know, there is an element of trust. I  
24 think that the public will want to know  
25 about this delisting.

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1 MS. REINHART: Okay. Yes, go  
2 ahead.

3 MR. TOMBERLIN: How long does it  
4 take to do -- I guess I'm getting confused  
5 with all the months. How long does it take  
6 to do a rulemaking process, total, from  
7 beginning to end?

8 MS. REINHART: I'll let Catherine  
9 and Tammi and them speak to that because --  
10 when do we have to do a public notice for  
11 the January meeting? We have to do that in  
12 November, right?

13 MS. JOHNSON: Yes.

14 MS. REINHART: Okay. So that  
15 begins your time frame. You have to have  
16 public notice in --

17 MR. TOMBERLIN: Right. But I'm  
18 talking about from the time frame that a  
19 company comes in and asks for a delisting.

20 MS. REINHART: Okay.

21 MS. JOHNSON: It's going to --  
22 I'm sorry.

23 MS. MARTIN: I think you're  
24 better off asking the question of how do we  
25 organize it so that the person who wants to

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1 be delisted understands the drop dead date  
2 to get it started in order for it to be  
3 processed as quickly as possible?

4 MR. TOMBERLIN: What I'm really  
5 after is I'd like to know the time frame  
6 compared to going to EPA totally -- what is  
7 it, twenty-four months, compared to coming  
8 into just this state and asking? By the  
9 time we go through the rulemaking and  
10 everything procedure, what does the company  
11 look at? Is there a time -- a twenty-four  
12 month turnaround or --

13 MS. REINHART: I would say you  
14 could actually anticipate doing it in  
15 twelve months, because if a company  
16 submitted in June, they had a thorough  
17 complete application, the DEQ made their  
18 decision so that it could be public noticed  
19 in November, we act on it in January, the  
20 Board acts on it at the February meeting,  
21 the Governor signs off on it, then it  
22 becomes final in June.

23 MR. TOMBERLIN: So there is a  
24 significant time saving?

25 MS. REINHART: If you do it by

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1 rulemaking, if you had all your ducks in a  
2 row, you could accomplish it within a year.  
3 Now, that doesn't mean that -- the company  
4 is going to have to invest the time frame  
5 up front so that -- to get everything --

6 MR. TOMBERLIN: Right. I get  
7 that. (Inaudible, people talking over each  
8 other).

9 MS. REINHART: Right. That could  
10 take -- yeah. You can't count the  
11 company's time right there. But from the  
12 time they submit it, they had everything  
13 that they were supposed to have.

14 MR. GRAVES: That's assuming  
15 we're going to rubber stamp it, too.

16 MS. REINHART: No, we may not  
17 rubber stamp it and then I can tell you now  
18 the Board may not rubber stamp it, either.  
19 I think all Council Members need to go to a  
20 Board meeting one time, by the way.

21 MR. TOMBERLIN: One of the things  
22 that I -- you know, I said permitting. But  
23 one of the things I have kind of noted down  
24 here on the permitting is I would like to  
25 see some statewide notice. I believe that

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1 was brought up.

2 MS. REINHART: Well, that  
3 statewide notice is also done through the  
4 Oklahoma Register, though, you know. So we  
5 could add on to the program where public  
6 notice, you know, major newspapers were  
7 also required as well as the Oklahoma  
8 Register.

9 Because I don't know how widespread  
10 the Oklahoma Register is acquired and stuff  
11 like that, but that's the legal mechanism  
12 for doing that. But public notice could  
13 also be required through our rulemaking  
14 process to say, in addition to this, you  
15 must do similar public notice like the  
16 permitting process.

17 MR. BRADSHAW: I would think if  
18 everything went well under the permit  
19 process, you could expect eight months, you  
20 know, after submittal if you -- if  
21 everything went well under the rulemaking  
22 process, I would think it would be ninety-  
23 five percent of those would be between  
24 twelve and twenty months.

25 MR. TOMBERLIN: Well, that's kind

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1 of the way -- I was getting to the --  
2 almost twenty months and if EPA can handle  
3 it in about twenty-four --

4 (Inaudible, people talking over each other)

5 MR. IHLER: We've given them  
6 justification to think about turning it  
7 back to EPA because we talked about the  
8 legal liability issue that we're concerned  
9 and we want somebody that handles it from a  
10 technical standpoint. And we've also  
11 indicated that because of the importance of  
12 it, the industry has -- is willing to wait  
13 a greater period of time, maybe we need to  
14 think about it. We haven't given that  
15 concern, to go back to the EPA.

16 MS. REINHART: To go back to the  
17 EPA.

18 MR. BRADSHAW: Can I respond to  
19 that? I don't want to go that road, first  
20 of all, so you know where I stand. But I  
21 think that there are problems at EPA.

22 One is, they are very slow and I  
23 don't know that you could even count on  
24 twenty-four months. And also in EPA, it is  
25 a politicized process, as well, with public

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1 hearings, et cetera, so you are not getting  
2 back to the technical approach to this  
3 thing at all, in my opinion.

4           I think the people in Oklahoma who  
5 want to delist are very nervous about  
6 having the EPA do it because they don't  
7 believe it will ever really happen. From  
8 what I hear is they really want Oklahoma to  
9 get this program and go forward with it, is  
10 what I thought.

11           MS. JOHNSON: That's the  
12 information we've gotten, they want the DEQ  
13 to --

14           MS. REINHART: And I would agree.  
15 I would rather have the DEQ -- I mean, I  
16 think we have the technical knowledge and  
17 expertise the same as the EPA does. If we  
18 don't, we'll have it in place, right, to be  
19 able to process the application. So I'm  
20 not afraid of the technical review and so  
21 forth.

22           I've been -- my facility has been  
23 subject to Region 6 review of permits when  
24 the DEQ didn't have their program in place  
25 yet. It's not fun. It is -- it's

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1 horrible. You can send it in and ask for  
2 that, you know, and unlike our tier program  
3 which requires a timely return of permit  
4 requests and so forth and -- they don't  
5 have that. It can -- twenty-four months  
6 probably could be hopeful, but it could not  
7 be expected.

8           We went six years trying just to get  
9 a deviation from something, not a delisting  
10 one time, it was a deviation. It took six  
11 years to get that. So we're not talking --  
12 you're not -- returning it to federal EPA  
13 is not a time advantage at all.

14           MR. BRADSHAW: And the only  
15 liability thing that you brought up would  
16 be, you know, there is some questions about  
17 the liability associated with the  
18 permitting process in Oklahoma. There is  
19 no question about the rulemaking process in  
20 Oklahoma and the liability, is what I  
21 heard.

22           So that's -- the liability only  
23 falls into one of the options. But I think  
24 you were thinking what I'm thinking, you  
25 know, maybe we should poll ourselves on

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1 whether we want to go back to the EPA or  
2 not, because we polled ourselves on the  
3 other two.

4 MS. REINHART: Let's do that real  
5 quick. We'll do a poll to find out who  
6 wants to return it to EPA. So Jerry, I'll  
7 let you start that off since -- do you want  
8 to go back to EPA or not?

9 MR. GRAVES: I can't answer that  
10 question until we resolve the other one.  
11 Because if they're going to do it by  
12 permit, I think we ought to keep it. If  
13 we're going to do it by rulemaking, I would  
14 send it back.

15 MS. REINHART: Okay.

16 UNIDENTIFIED PERSON: That's kind  
17 of what I'm thinking, too.

18 MS. MARTIN: I don't see that at  
19 all, you guys, you have such faith in EPA  
20 that if we can't do a quicky-quick by  
21 permit then why don't we just let the EPA  
22 do it. To me, that is not even a good  
23 argument.

24 We can do rulemaking, we are not  
25 slow rulemakers. The only reason why we've

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1 come to this third meeting is because we  
2 didn't come to the second meeting. But  
3 we're right on target and I don't think we  
4 have any control over Dallas, at all,  
5 period, end of conversation, you just let  
6 all the companies have fun. Take the  
7 morning flight over, see ya.

8           Whereas if we do rulemaking here,  
9 they -- you can get, from any point in  
10 Oklahoma to Oklahoma City in four hours and  
11 they can be banging on your door making you  
12 hurry, all right. So I think it's better  
13 to have the power here.

14           Now, if you're going to have it  
15 here, you might as well imitate EPA and do  
16 it as rulemaking rather than as permitting,  
17 so that it is recognizable to other areas,  
18 other companies, other people, other  
19 lawyers, other citizens, who have seen it  
20 anywhere else as rulemaking, that if they  
21 come across an Oklahoma company that is  
22 also as rulemaking and seen as the same  
23 cookie cutter approach rather than it's a  
24 permit, it must be wrong, you know, it's  
25 not the same. I think that consistency is

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1 important, as well.

2 MS. REINHART: And I would like  
3 to bring it -- Tammi and the DEQ brought it  
4 out in the discussion paper, we as a  
5 Council agreed that we wanted Oklahoma to  
6 have this program to begin with. We took  
7 that action. We did it in January 2001.

8 We approved the rules for DEQ to be  
9 -- to take this authority of delisting.  
10 And I think if we had questions or issues -  
11 - and by and large, the Council still  
12 remains the same entity as it was in  
13 January 2001. So I think we've already  
14 agreed that we wanted Oklahoma to have the  
15 delisting authority program here in the  
16 State of Oklahoma. So --

17 MR. GRAVES: What they've done is  
18 they've changed their interpretation of  
19 their rules. That was when -- what they  
20 were really saying was, it's one or the  
21 other. And they've now changed their  
22 position in saying they can do both,  
23 meaning EPA. When we said they were going  
24 to take it -- it was if Oklahoma takes it,  
25 EPA is completely out of the loop and can't

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1 be back in the loop.

2 MS. REINHART: That was the  
3 original -- right.

4 MR. GRAVES: Now they're saying  
5 they are still -- they can still be in the  
6 loop and to me that is a substantial  
7 difference.

8 MS. MARTIN: In loop with the  
9 rest of the country, but not for Oklahoma.

10 MR. GRAVES: But they could do  
11 Oklahoma, too.

12 MS. REINHART: Yes, they can do a  
13 federal process for Oklahoma.

14 MS. MARTIN: If we give it back,  
15 but not if we keep it.

16 MS. REINHART: No, no, no. They  
17 can do a parallel, even if we -- no?

18 MR. SANGER: No.

19

20 MS. REINHART: No. If we keep  
21 the program --

22 UNIDENTIFIED PERSON: Parallel is  
23 for other states that don't have --

24 MS. MARTIN: It is not within  
25 Oklahoma, that's the way I understand. We

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1 are responsible or we give it back, period.

2 MS. REINHART: No, no, no.

3 MR. SANGER: Let me clarify it.

4 If you're running parallel procedures, EPA  
5 will process petitions for companies that  
6 want their waste delisted in other states.

7 MS. REINHART: Right.

8 MR. SANGER: They still will not  
9 process the petitions for Oklahoma.

10 MS. REINHART: Right.

11 MR. SANGER: That is left up  
12 exclusively to Oklahoma.

13 MS. REINHART: Right.

14 MR. SANGER: So the company will  
15 have to get the delisting granted through  
16 Oklahoma, whatever procedure they go  
17 through, if we run the parallel procedure.

18 MS. REINHART: Right.

19 MR. GRAVES: If we keep it, not  
20 if we turn it back.

21 MR. SANGER: EPA will not come in  
22 and say we're going to grant -- we're going  
23 to process and grant the delisting in  
24 Oklahoma if Oklahoma retains part of the  
25 program.

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1                   MS. MARTIN:   Okay.    So -- okay.  
2    You have the history of this committee.  
3    You are saying that back when you guys  
4    voted to have delisting in Oklahoma, you  
5    were under the impression that it was an  
6    either/or situation and he's just saying  
7    it's still an either/or situation.    Giving  
8    it back to EPA seems backwards.

9                   MR. SANGER:   Right.    Only for in  
10   state only.    In other words, if we want --  
11   before EPA was saying if we authorize you  
12   for the delisting program, we're not going  
13   to come into your state at all.    In other  
14   words, if an industry in Oklahoma wants to  
15   come to EPA and say we want a national  
16   delisting now, we're not going to do that.

17                  MS. REINHART:   Right.

18                  MR. SANGER:   But now what they're  
19   saying is they've softened their position  
20   and saying if a company wants -- in  
21   Oklahoma, wants to come to EPA, even if  
22   Oklahoma still is authorized and is still  
23   doing instate petitions, if they want to  
24   come to EPA and say we want this national  
25   delisting, then we'll do it for the

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1 national level, but we're not going to do  
2 it in Oklahoma.

3 MS. MARTIN: Okay. That makes  
4 sense. EPA's original position seemed a  
5 little obtuse.

6 MS. TERNES: It was strange. You  
7 can have a national delisting with us or  
8 you can have only in Oklahoma with  
9 (inaudible, due to multiple conversations).

10

11 MS. MARTIN: That seems obtuse.

12 The way it's working now makes a lot more  
13 sense. They are responsible for delisting  
14 for all other states that have not accepted  
15 authority and that they have to do that.  
16 Because you have to not only delist in the  
17 state of origin but in the state of waste  
18 disposal, because we could delist a company  
19 to dispose of it here but they would have  
20 to get delisted from where they generated  
21 if it was outside the State of Oklahoma.  
22 So the EPA would have to do that one or  
23 that other state would have to do that.

24 MS. TERNES: So we almost  
25 couldn't accept the program before.

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1 MS. MARTIN: Sure.

2 MS. TERNES: But now we can.

3 MS. MARTIN: Right.

4 MS. REINHART: Now, the problem  
5 about turning it back to EPA is it will  
6 take us two years and you will have  
7 generators in limbo, not able to do  
8 anything. So we have program -- we don't  
9 have the rules. It will take two years,  
10 right, is that correct, for it to be given  
11 back?

12 MS. JOHNSON: Yes, we would  
13 anticipate twenty-four months.

14 MS. REINHART: Twenty-four months  
15 to give it back to the federal EPA.

16 MR. GRAVES: It will take  
17 eighteen months before you're going to get  
18 this in effect.

19 MS. MARTIN: Yes. Can we have a  
20 break?

21 MS. REINHART: Yes. Point of  
22 order. Let's take a quick break.

23 (Off-the-record for a break)

24 (Back on record)

25 MR. GRAVES: Madam Chair, I have

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1 a couple of questions. Jerry? Jerry? I  
2 have two questions. If we do a rulemaking,  
3 I know that when we do certain kinds of  
4 permits, EPA Region 6 reviews them. If we  
5 do this kind of a rulemaking, will the  
6 region automatically review it or will it  
7 be strictly stand-alone Oklahoma.

8 MR. SANGER: No, if we go through  
9 the rulemaking, they, of course, just like  
10 any other entity, will have an opportunity  
11 to comment during the public comment  
12 period. But I -- they're not going to have  
13 any specific, we're going to send it down  
14 to you and you've got to review it before  
15 we can do anything.

16 And as a matter of fact, in this  
17 letter from EPA, I think that they made it  
18 pretty clear that EPA will not have  
19 authority to deny state only delisting  
20 petitions. In the event that they  
21 determine that by granting a delisting  
22 petition that we are -- that our program  
23 becomes less stringent, then they are going  
24 to have to handle it just like any other  
25 part of the program that may be less

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1 stringent.

2           So, no, we wouldn't have to wait for  
3 them to say, yes or no, or given any kind  
4 of a comment specific (inaudible) to the  
5 rulemaking.

6           MR. GRAVES: Okay. I would  
7 assume if we do the rulemaking, we do a  
8 parallel, we keep it in the rulemaking. My  
9 guess would be that those companies who  
10 would be interested in -- well, let's say  
11 maybe not. Let's say they go ahead and get  
12 ours, we got our rule and then somewhere  
13 down the road they decide they actually  
14 want to ship this stuff to Arkansas, then  
15 they've got to go to EPA. Does not the  
16 possibility exist that we'll get an  
17 inconsistent ruling?

18           MR. SANGER: Well --

19           MR. GRAVES: And then what  
20 happens?

21           MR. SANGER: -- well, EPA, of  
22 course, has the authority to say we're not  
23 going to deny it or we're not going to  
24 grant your petition to go into Arkansas.  
25 But they can't come back and say we're

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1 going to retroactively deny the petition  
2 that Oklahoma granted and they're not going  
3 to have the authority to specifically --  
4 that's why I wanted us to keep the language  
5 in here to make sure that was clear that  
6 EPA understood that, that by initiating  
7 this parallel proceeding, that they give  
8 them some additional oversight authority  
9 over our state delistings, any more  
10 authority then they have over any of the  
11 rest of the program that we're running.  
12 Once we're authorized for it, if they  
13 really don't like what we're doing,  
14 including granting a particular delisting,  
15 then they have to look at either  
16 withholding or withdrawing authorization  
17 for the entire program, which is highly  
18 unlikely and I don't know that it's ever  
19 been done, that they've actually  
20 (inaudible) withdrawn an authorization.

21           So in the event that they say, no,  
22 we're not going to grant it, but Oklahoma  
23 has, that's the last word for Oklahoma  
24 unless they come in and de-authorize us.  
25 That's what they put in this letter.

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1 MS. REINHART: Okay. Any further  
2 questions?

3 MR. TOMBERLIN: Madam Chairman,  
4 earlier I had asked about the twenty-four  
5 months and I had some confusion on that.  
6 That's twenty-four months going back --  
7 that would be EPA taking back --

8 MS. REINHART: Well, it probably  
9 would be more than twenty-four months  
10 because there would be discussions and  
11 things like that that have to happen. You  
12 have to hit time frames, just like for us  
13 to do --

14 MR. SANGER: Right.

15 MS. REINHART: -- rulemaking.  
16 They would have to submit applications and  
17 finalize them, so then it takes a time  
18 frame for them to act. So that time frame  
19 for EPA to act is actually the twenty-four  
20 months. It is not the time that's up  
21 front. So it could be more like thirty-six  
22 months, right, Jerry?

23 MR. SANGER: I think so. You  
24 would have to go through a whole rulemaking  
25 procedure in Oklahoma first.

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1 MS. REINHART: Right.

2 MR. SANGER: Which could take  
3 seven months to a year or longer, depending  
4 how long it's debated. And then once it's  
5 all finalized here, which we discussed  
6 those timelines earlier, that probably two  
7 years would be a very conservative, very  
8 fast processing of that.

9 MR. TOMBERLIN: One of the things  
10 I was trying to get at is, if once it does  
11 go back to the EPA, what would a company's  
12 turnaround time be to go through EPA?

13 MR. SANGER: Well, as we  
14 discussed, we know what they say but we  
15 don't know what they do. They, being  
16 Region 6, are suppose to be able to process  
17 these rather quickly, and I've heard as  
18 quick as six months, but we don't know of a  
19 particular company, that it's actually gone  
20 through the process and gotten it done that  
21 quickly. On paper they say they can do it  
22 pretty quickly, but we don't know, speaking  
23 from experience, how quickly they can do  
24 it.

25 MS. REINHART: Yes.

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1                   MR. TOMBERLIN: I guess my  
2 question is then, if it's six months going  
3 through the EPA and we're looking at the  
4 deal of where it's going to take a year,  
5 what's the advantage of the company going  
6 through the state compared to going through  
7 EPA and what's the difference in safeguard  
8 from us and the EPA deregulating? Because  
9 it's a faster time frame with EPA than it  
10 would be with us.

11                   MS. REINHART: No, not  
12 necessarily. Possibly, not necessarily.  
13 You're still -- you know, you have time  
14 frames that they have to do publications  
15 and things like that, as well. The six  
16 months probably may just be the review  
17 time. Yes, ma'am.

18                   MS. COOK: I haven't personally  
19 done --

20                   THE REPORTER: What is your name?  
21 I'm sorry.

22                   MS. COOK: Susan Cook with  
23 Stantech Environmental. I haven't  
24 personally done delisting, however, I am  
25 working with a consultant who does

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1 delisting and she had indicated to me that  
2 originally it was about a year to try to  
3 get a delisting petition through the EPA  
4 and now it was looking more like two years.  
5 So there is probably a year to two years to  
6 get it through the EPA.

7 MS. REINHART: Okay. Yes, ma'am.

8 MS. MARTIN: I have one question.  
9 I think another advantage to keeping it in  
10 Oklahoma versus EPA, if you were a company  
11 -- if you do it through the EPA, they do it  
12 in the Federal Register, which means it's  
13 known nationally what you're doing. If you  
14 do it here in Oklahoma, it's only known  
15 here in Oklahoma what you're doing and it's  
16 more private.

17 And representing different nonprofit  
18 organizations, I promise you there are  
19 watchdogs all over the country looking in  
20 the register every day. So it would be  
21 advantageous to restrict the number of  
22 interested parties that come rallying  
23 against your cause.

24 MR. TOMBERLIN: I'm for trying to  
25 get it out where everybody knows.

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1                   MS. REINHART: One final comment  
2 and then I'm going to -- yes. I'm going to  
3 do one final comment and then we're going  
4 to poll the Council. Okay? Go ahead.

5                   MS. MARTIN: I'm glad that --  
6 I've got three little things, but I'm glad  
7 you mentioned that first thing and in  
8 response to that, yeah, a lot of companies  
9 would much rather have the opportunity in  
10 the given situations to simply delist  
11 within a state and not have the entire  
12 country know what you're doing, right? So  
13 that's one thing.

14                   But you've got to remember with  
15 regards to the concern you were mentioning,  
16 every time -- if you look at -- in a  
17 parallel delisting request, what are we  
18 gaining? What we're gaining is the  
19 advantage of other folks to not make that  
20 request, and only work with Oklahoma. If  
21 you give it back to EPA, we're never going  
22 to have that opportunity. So the parallel  
23 is to accommodate the folks who do want a  
24 national delisting or may find there is a  
25 potential for that later and they don't

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1 want to screw up their chances by not  
2 requesting the Oklahoma (inaudible) and the  
3 combination that we're the only one in  
4 Oklahoma (inaudible). If we give it back to  
5 them, we're never going to get it back.

6 MS. REINHART: We're going to  
7 poll the Council Members right now and  
8 we're going to give you three options. So  
9 make certain you understand what option it  
10 is you're going to vote for.

11 The option one would be to pass it  
12 back to EPA, the entire program. Option  
13 two would be to take it back to EPA if it  
14 was rulemaking. If we decided to do  
15 rulemaking, you know, do process here. Or  
16 third option, don't give it back to EPA at  
17 all. Okay?

18 So, options: give it back to EPA;  
19 give it back to EPA only if we're going to  
20 do rulemaking; and third, do not give it  
21 back at all to EPA.

22 MS. MARTIN: Regardless of  
23 whether we do rulemaking or permitting?

24 MS. REINHART: Right.

25 MR. ELWELL: Yes, and this is not

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1 a vote, it's a poll.

2 MS. REINHART: It's just a poll,  
3 because we need to get -- this is high  
4 centered and we've got to know which  
5 direction the Council wants to go. Okay?

6 MR. ELWELL: And neither one of  
7 those options are the recommendation that  
8 she's making, as far as parallelling?

9 MS. REINHART: No.

10 UNIDENTIFIED PERSON: No?

11 MS. REINHART: We'll come back to  
12 that in just a moment. We need to find out  
13 if the Council wants to give it back to EPA  
14 --

15 UNIDENTIFIED PERSON: To proceed  
16 with the program.

17 MS. REINHART: -- right, or give  
18 it back to EPA. Okay? Mr. Ihler.

19 UNIDENTIFIED PERSON: Thank you.

20 MS. REINHART: Okay. Back to  
21 EPA, not back, keep.

22 UNIDENTIFIED PERSON: Or only if  
23 it's rulemaking, which means if it's  
24 permitting --

25 UNIDENTIFIED PERSON: Back to EPA

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1 is either way, whether we permit or just  
2 the whole program.

3 MR. IHLER: I understand. I just  
4 didn't want to be first. I'm going to say  
5 not back to EPA.

6 MS. REINHART: Not back to EPA.  
7 Mr. Elwell.

8 MR. ELWELL: I think we should  
9 keep the program, we should develop the  
10 program in Oklahoma.

11 MS. REINHART: So it's not back  
12 to EPA. Mr. Kennedy.

13 MR. KENNEDY: Same, not back.

14 MS. REINHART: Okay. Mr.  
15 Bradshaw.

16 MR. BRADSHAW: Not back.

17 MS. REINHART: Okay. Mr. Graves.

18 MR. GRAVES: I concur. Keep it.

19 MS. REINHART: Keep it. Ms.  
20 Martin.

21 MS. MARTIN: Keep it.

22 MS. REINHART: Okay.

23 MR. TOMBERLIN: Keep it.

24 MS. REINHART: Keep it. It's  
25 unanimous. We're going to keep it. Okay.

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MR. BRADSHAW: So, I mean, what

that tells us is now we're down to

hammering among ourselves to come up with

going down the permit rule or the

rulemaking road.

MS. REINHART: Right.

MR. BRADSHAW: The "R's" in here

are getting thick. We really need to come

to grips with this and find a way to do it.

I don't know if we're going to do it today

or not. If we go the rulemaking way today,

we can do it today.

But if those of you who really want

to go the permit way are sticking with your

guns, then we need to find a way to come

back at the next meeting and arrive at a

decision. Maybe we'll have a odd number of

Council Members.

MS. REINHART: So we can make a

decision. Well, let's go forward with the

polling to find out if anybody has changed

their options. On --

MR. ELWELL: I'm ready to make a

motion.

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1 MS. REINHART: Okay. Make a  
2 motion.

3 MR. ELWELL: I move that we go to  
4 rulemaking and take her recommendation, so  
5 we don't have the legal liability that  
6 she's --

7 MS. REINHART: Okay.

8 MR. ELWELL: -- brought up to us.

9 MS. REINHART: Okay.

10 MR. TOMBERLIN: I'll second that.

11 MS. REINHART: Okay. Motion by  
12 Mr. Elwell, second by Mr. Tomberlin.

13 MR. ELWELL: Is that a good  
14 enough motion, Dave?

15 MR. BRADSHAW: Yes, that's a  
16 great motion, but I just wanted to before  
17 we vote on it --

18 MR. ELWELL: Discussion.

19 MS. REINHART: Right.

20 MR. ELWELL: Can we really make  
21 that motion, I mean, that's not exactly  
22 what's on the agenda. But I mean, if that  
23 were voted for, then we would have to go  
24 through each of the agenda items, wouldn't  
25 we, and vote for those individually? So

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1 really the motion could have been, you  
2 know, to accept -- could we do it all at  
3 the same time?

4 (Inaudible, due to people talking over each  
5 other)

6 UNIDENTIFIED PERSON: I'm good  
7 for that. I'm good for that.

8 MR. GRAVES: Let me just say that  
9 I don't believe that, frankly, is a real  
10 concern. But if people have it, then I'm  
11 willing to withdraw my opposition. I think  
12 doing a permit is a cleaner, neater, better  
13 way, but if people want to do it by  
14 rulemaking, I won't oppose that. But if  
15 we're going to talk about these rules,  
16 there is one rule I think has to be amended  
17 and I don't know how you want to take that  
18 up.

19 MR. IHLER: Why don't we discuss  
20 that rule that you want to amend first?

21 MS. MARTIN: Can somebody retract  
22 the motion and bring it back up again?

23 MR. GRAVES: I don't think we  
24 need a new motion.

25 MS. REINHART: I don't think we

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1 need a new motion, either. I think we're  
2 just going to proceed on with item --

3 MR. GRAVES: Did you withdraw  
4 yours?

5 MR. BRADSHAW: There is a motion  
6 on the floor.

7 MR. ELWELL: Do I need to  
8 withdraw my motion?

9 MS. REINHART: I think you need  
10 to withdraw the motion so that we can --

11 MR. ELWELL: So we can discuss  
12 the other items on the agenda? Is that  
13 what you want to do?

14 MS. REINHART: Right.

15 MR. TOMBERLIN: Second is  
16 withdrawn.

17 MS. REINHART: Okay.

18 MR. ELWELL: And then we'll have  
19 a new motion once we get these other items  
20 done, right?

21 MS. REINHART: We're going to  
22 proceed through. Now, it is twenty until  
23 12:00 right now.

24 MR. ELWELL: I'm all right.

25 MS. REINHART: So -- okay.

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1 Number 5, we're going to do a Rulemaking  
2 Hearing and Vote on the Proposed Permanent  
3 changes to OAC 252:205-21-5, if everybody  
4 will take a look at those. I think we have  
5 -- does Council -- what does Council want  
6 to do about the language there?

7 MS. JOHNSON: Jody.

8 MS. REINHART: Yes, ma'am.

9 MS. JOHNSON: I have my notes  
10 from our January 8th Council Meeting.

11 MS. REINHART: Right.

12 MS. JOHNSON: With some of the  
13 recommended changes. Would you like me to  
14 read those?

15 MS. REINHART: Would you please  
16 go through those? Yes.

17 MS. JOHNSON: On 21-5(a)(1), it  
18 was recommended that the proposed rule  
19 language be shortened to read as follows,  
20 "Application fee for waste exclusions are  
21 listed in Appendix D of this chapter."

22 MS. REINHART: Okay.

23 MS. JOHNSON: 21-5(a)(2) was  
24 recommended the deletion of the proposed  
25 language of (a)(2).

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1 MS. MARTIN: Of (a) (2)?

2 MS. JOHNSON: Yes. 21-5(a) (3),  
3 it was recommended it be renumbered  
4 252:205-21-5(a) (2) and it was modified to  
5 read as follows, "Payment of the  
6 appropriate fee must be made at the time of  
7 the submission of the petition to exclude  
8 the waste stream(s). The DEQ will not  
9 consider said petition(s) until the  
10 appropriate fees are paid in full."

11 MS. REINHART: Okay. Were there  
12 any other modifications to that citation  
13 at all?

14 MS. JOHNSON: No, there were not.

15 MS. REINHART: Okay. That was  
16 what we had agreed to at the last Council  
17 meeting. Is there any other comments or  
18 concerns? Turn to page 2.

19 MR. GRAVES: Okay.

20 MS. REINHART: I'm sorry.

21 MR. GRAVES: I have a question --

22 MS. REINHART: Yes.

23 MR. GRAVES: -- because I wasn't  
24 here at the last meeting. How does  
25 Appendix D get set? Is that also by rule?

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1 MS. REINHART: Yes, we will get  
2 to that here in a moment.

3 MR. GRAVES: Okay.

4 MS. REINHART: Yes, other rules  
5 within the DEQ do not actually put the  
6 dollar numbers in when they refer to it,  
7 that's why we wanted it all back there.

8 MR. GRAVES: I disagreed.

9 MS. REINHART: Okay.

10 MR. GRAVES: Okay.

11 MS. MARTIN: I make a motion that  
12 we accept the rulemaking for fees for waste  
13 exclusion with the amendment of removing  
14 the first sentence of Item 1, the existing  
15 sentence of Item 2, which will be replaced  
16 with what is now shown as Item 3,  
17 renumbered as Item (a) (2) with the word  
18 "be" with a (s) and then the verb "is"  
19 changed to "are".

20 MS. REINHART: Okay.

21 MR. GRAVES: Second.

22 MS. REINHART: I have a motion  
23 and a second. Is there any discussion --  
24 further discussion by Council? Seeing  
25 none, is there any discussion by the

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1 public? Okay. Seeing none, we need to do  
2 a roll call vote, Myrna.

3 MS. BRUCE: Mr. Elwell.

4 MR. ELWELL: Yes.

5 MS. BRUCE: Mr. Graves.

6 MR. GRAVES: Yes.

7 MS. BRUCE: Mr. Ihler.

8 MR. IHLER: Yes.

9 MS. BRUCE: Mr. Kennedy.

10 MR. KENNEDY: Yes.

11 MS. BRUCE: Ms. Martin.

12 MS. MARTIN: Yes.

13 MS. BRUCE: Ms. Reinhart.

14 MS. REINHART: Yes.

15 MS. BRUCE: Mr. Tomberlin.

16 MR. TOMBERLIN: Yes.

17 MS. BRUCE: Mr. Bradshaw.

18 MR. BRADSHAW: Yes.

19 MS. REINHART: Okay. Item No. 6,  
20 Formal Rulemaking Hearing and Vote on  
21 Proposed Permanent Changes OAC 252:205  
22 Subchapter 25. Additional Requirements for  
23 Excluding a Waste from a Particular  
24 Facility. Tammi, can you read us what we  
25 discussed at the last meeting?

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1                   MS. JOHNSON:   Okay.   On 25-1(a),  
2   there were no changes recommended although  
3   the Council wanted the DEQ to further  
4   assess the statement of the fourth sentence  
5   of the proposed rule that identifies wastes  
6   excluded in Oklahoma are not considered  
7   excluded in other states.

8                   Council expressed concern that if  
9   the proposed rules regarding delisting were  
10  passed, then the delisting would only apply  
11  in Oklahoma whereas if the delisting rules  
12  were not passed, such petitions would be  
13  handled by the EPA and upon approval the  
14  delisting would apply nationwide.

15                  MS. REINHART:   Okay.

16                  MS. JOHNSON:   I think we already  
17  discussed that.

18                  MS. REINHART:   Okay.   I think we  
19  really killed that one real well.   Does  
20  anybody think that we need to amend any  
21  language within there regarding that at  
22  this time?

23                  MS. TERNES:    I think we need to  
24  take a step back and pull this section and  
25  work on revising it and perhaps put in a

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1 sentence about or a paragraph about the  
2 opportunity to request a parallel delisting  
3 with EPA and mention -- perhaps talk about  
4 an MOA or something. I think we need to  
5 think about that. If we insert that, then  
6 the rule largely looks okay. I think it --  
7 we need to take a look at it. But I don't  
8 know how to go forward considering this  
9 language given what we've already discussed  
10 with the parallel delisting.

11 MS. REINHART: Okay.

12 MS. TERNES: I wasn't drafted  
13 (inaudible).

14 MS. REINHART: Okay. I  
15 understand. Council, does anybody want to  
16 make some proposed language regarding, you  
17 know, parallel listing?

18 MR. GRAVES: Well, we don't  
19 really have any -- that's a federal -- if  
20 they're going to do that, that's not -- I  
21 don't see how that falls in our rule. It  
22 seems the EPA needs to amend their rule.

23 MS. REINHART: It's for  
24 informational purposes only, basically, so  
25 that should somebody be interested in that

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1 they would -- that would be within their --

2 MR. GRAVES: Don't you usually do  
3 that -- I mean, I would rather not put it  
4 in the rule. Really, I mean, I've seen you  
5 drop footnotes for the explanation but I  
6 don't think that belongs in the body of the  
7 rule.

8 MS. REINHART: Tammi.

9 MS. JOHNSON: That was kind of my  
10 comment. I thought, you know, that the MOU  
11 would be a separate document, I don't  
12 necessarily see it in the rules, either.  
13 (Inaudible, due to people talking over each  
14 other)

15 MS. MARTIN: Madam Chairman.

16 MS. REINHART: Yes.

17 MS. MARTIN: I have another  
18 comment along those same lines. I  
19 understand wanting to communicate to the  
20 public versus having it in the rule and  
21 those items, like the option to go parallel  
22 and all that, should be in an information  
23 document that is handed to the industry in  
24 the precursory meeting or whatever.

25 But in that same vein, the sentence

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1 that says "when excluded by EPA, the  
2 exclusion is applicable in all states",  
3 which is actually not true. It's excluded  
4 in all states that do not have delegation.

5           So -- and it's also just  
6 information, it doesn't need to be in our  
7 rule. And the next sentence says "waste  
8 excluded by Oklahoma are not considered  
9 excluded in other states". And again,  
10 that's an information sharing, not our  
11 ability to empower ourselves anyway, and I  
12 think that should be removed and better  
13 described in a fact sheet.

14           MS. REINHART: Okay. So you  
15 would recommend removing the second, third  
16 and fourth sentences?

17           MS. MARTIN: Just two sentences,  
18 actually. The ones that says, "when  
19 excluded by EPA" and the "wastes excluded  
20 by Oklahoma".

21           And I wanted to -- the thing that  
22 caught my eye about wastes excluded by  
23 Oklahoma in that sentence, are not  
24 considered excluded in other states, may or  
25 may not be necessarily true because EPA

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1 could exclude them in other states, as  
2 well, and then we have some kind of  
3 silliness in our law that says we don't  
4 recognize it as being excluded in other  
5 states no matter who excludes. You know,  
6 it just could be interpreted loosely, so it  
7 just needs to be removed.

8 MS. REINHART: Okay. So that's a  
9 recommendation on the table.

10 MS. STANTECH: Can you clarify  
11 that sentence to say "wastes excluded by  
12 Oklahoma are only excluded in Oklahoma"?

13 MS. MARTIN: I still think it's  
14 just information sharing and not an  
15 empowerment statement.

16 MS. REINHART: Yeah.

17 MS. MARTIN: It's not really a  
18 rule, it's a non -- you know, I don't think  
19 it's appropriate to even be in there.

20 MS. REINHART: Well, and we went  
21 through this process of rewrite/dewronging  
22 a few years ago and so information like  
23 that is not considered to be appropriate  
24 for rules and stuff, so.

25 MR. GRAVES: Are you making that

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1 as a motion?

2 MS. MARTIN: In our discussion  
3 that's what I would like to see in the  
4 motion.

5 MR. GRAVES: Well, I agree with  
6 you, that's why I asked.

7 MS. MARTIN: I don't know if  
8 we're ready for a motion yet. We have to  
9 talk about the next paragraph.

10 MR. BRADSHAW: Well, what purpose  
11 does that whole paragraph have then?

12 MS. MARTIN: Well --  
13 (Inaudible, due to multiple conversations)

14 MS. MARTIN: It does state the  
15 purpose and scope of applicability.

16 MR. KENNEDY: I know it's  
17 information but, I mean, that's kind of  
18 what you see in scope and applicability  
19 sections.

20 MS. MARTIN: Okay. Okay, then  
21 you're right. But as scope then it needs  
22 to be reworded. Okay.

23 MS. REINHART: Okay. So do you -  
24 - are you going to make a motion to remove  
25 those two sentences then?

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1 MS. MARTIN: Well --

2 MS. REINHART: I mean, recommend  
3 adoption of this with --

4 MS. MARTIN: -- I'll talk about  
5 some suggested language and then when we do  
6 make a motion to accept this, then people  
7 can either reiterate that idea. It says  
8 the federal rule is intended to allow  
9 persons to exclude a waste in a particular  
10 generating facility from the list. When  
11 excluded by the EPA, the exclusion is  
12 applicable in all states that do not have  
13 delisting delegation. Wastes excluded by  
14 Oklahoma are only considered excluded in  
15 Oklahoma, would be my suggested wording, if  
16 you're wanting to give information in that.

17 MS. REINHART: Well, I think we  
18 don't want to give information, though.

19 MS. MARTIN: But I mean -- but  
20 actually the paragraph title is, purpose,  
21 scope and applicability. So I totally like  
22 turned 180 on you there.

23 MS. REINHART: Okay.

24 MS. MARTIN: And to me some  
25 information is appropriate in that type of

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1 paragraph. Sorry.

2 MS. REINHART: Could you -- could  
3 that be re-read?

4 (Off-the-record)

5 MS. REINHART: Okay. That's  
6 fine.

7 MS. MARTIN: Madam Chairman, do  
8 you want me to do that?

9 MS. REINHART: Yes, would you  
10 please restate that.

11 THE REPORTER: Could you tell me  
12 where you're reading from?

13 MS. MARTIN: Right. I was going  
14 to do that. 205-25-1(a), purpose, scope  
15 and applicability. Okay, it should read in  
16 toto: "The DEQ has adopted 40 CFR 260.22 by  
17 reference. The federal rule is intended to  
18 allow persons to exclude a waste at a  
19 particular generating facility from the  
20 lists in Subpart (D) of 40 CFR 261. When  
21 excluded by the EPA, the exclusion is  
22 applicable in all states that do not have  
23 delisting delegation. Wastes excluded by  
24 Oklahoma are only considered excluded in  
25 Oklahoma. Excluded wastes may still be

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1 hazardous wastes under Subpart (C) of 40  
2 CFR 261."

3 MS. TERNES: And at the end of  
4 that, can we add "by characteristic"?

5 MS. MARTIN: Yes, I understand  
6 what you're saying that a lot of people  
7 don't understand.

8 MS. TERNES: It's ambiguous  
9 otherwise.

10 MS. MARTIN: Okay. Let's  
11 backtrack to the last sentence.

12 MS. TERNES: Okay.

13 MS. MARTIN: "Excluded waste may  
14 still be hazardous waste by characteristic  
15 under Subpart C of 40 CFR 261". And then  
16 we're giving accurate information.

17 MS. REINHART: Okay. So is that  
18 made in a motion -- form of a motion?

19 MR. GRAVES: Could you read it  
20 back, I want to make sure I got it.

21 MS. MARTIN: Okay.

22 THE REPORTER: Just the last part  
23 of the exclusion, that part? Will still be  
24 hazardous waste by characteristic -- is  
25 that what you're wanting?

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1                   MR. GRAVES: No, I'm sorry, go  
2 back up. I want the whole last three  
3 sentences. Right after the title.

4                   MS. REINHART: When excluded.

5                   MR. GRAVES: When excluded.

6                                 (Off-the-record)

7                   MR. GRAVES: Let me read it and  
8 see if I got it right. "When excluded by  
9 EPA, the exclusion is applicable to all  
10 states that do not have delisting  
11 delegation. Wastes excluded by Oklahoma  
12 are considered excluded in Oklahoma only".  
13 Is that right?

14                   THE REPORTER: Yes.

15                   MS. MARTIN: Yes.

16                   MR. GRAVES: Okay. That's where  
17 I want to go. I don't think you need the  
18 word "considered". They are excluded in  
19 Oklahoma only.

20                   MS. MARTIN: Okay.

21                   MR. GRAVES: So I just want to  
22 take out the word "excluded" or the word  
23 "considered". And then the last one was  
24 "excluded wastes may still be considered --  
25 may still be hazardous waste by

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1 characteristic under Subpart C 40 CFR 261".

2 Right? Is that right?

3 MS. MARTIN: Yes.

4 MS. REINHART: All right.

5 MS. MARTIN: All right. I would  
6 propose a motion to amend only Part A prior  
7 to our vote on the entire section, if  
8 that's okay, using the language that we  
9 have just discussed.

10 MS. REINHART: Okay. So your  
11 motion is to take 205-25-1 with the  
12 recommended language that you and Michael  
13 just discussed, right? And you're  
14 proposing to -- I mean, you're --

15 MR. GRAVES: Proposing to  
16 substitute that language that we read in  
17 for those three sentences.

18 MS. REINHART: Right. Okay.

19 MS. MARTIN: That motion is to  
20 vote on 1(a) right now with these changes,  
21 get it done, and then we can go on to the  
22 next thing before we lose track.

23 MS. REINHART: How about look at  
24 (b), as well. Is there any consideration  
25 of changes for Paragraph (b), because I

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1 would just rather do it all at one time.

2 MS. JOHNSON: From the --

3 MS. REINHART: Meeting.

4 MS. JOHNSON: -- notes, it was  
5 identified there were no changes to the  
6 proposed rule. The Council asked that in  
7 these procedures, that a portion of the  
8 proposed rule that the DEQ consider  
9 establishing a minimal time frame for  
10 petition reviews.

11 MS. REINHART: Okay.

12 MS. MARTIN: Madam Chairwoman.

13 MS. REINHART: Yes.

14 MS. MARTIN: The reason why I  
15 just wanted to separate it out to (a) and  
16 (b) is I think --

17 MS. REINHART: Okay. That's --

18 MS. MARTIN: -- (a) we're all  
19 very clear what it means and (b) may have  
20 other issues.

21 MS. REINHART: Okay. That's  
22 fine. Do I hear a second?

23 MS. MARTIN: And then I was  
24 thinking we would vote it all together as  
25 amended?

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1 MS. REINHART: No, you would do  
2 them separately. I mean, once you have it  
3 on the floor, you would --

4 MS. MARTIN: Okay.

5 MS. REINHART: Okay.

6 MS. MARTIN: Whichever way is  
7 procedurally correct.

8 MS. REINHART: Yes. So I have a  
9 motion on the floor to do Paragraph (a)  
10 right now. Do I hear a second?

11 MR. GRAVES: Second.

12 MS. REINHART: Okay. Roll call  
13 vote, please, Myrna.

14 MS. BRUCE: Mr. Elwell.

15 MS. REINHART: He left.

16 MS. BRUCE: I didn't look up, I'm  
17 sorry.

18 MS. REINHART: That's all right.

19 MS. BRUCE: Mr. Graves.

20 MR. GRAVES: Yes.

21 MS. BRUCE: Mr. Ihler.

22 MR. IHLER: Yes.

23 MS. BRUCE: Mr. Kennedy.

24 MR. KENNEDY: Yes.

25 MS. BRUCE: Ms. Martin.

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1 MS. MARTIN: Yes.

2 MS. BRUCE: Ms. Reinhart.

3 MS. REINHART: Yes.

4 MS. BRUCE: Mr. Tomberlin.

5 MR. TOMBERLIN: Yes.

6 MS. BRUCE: Mr. Bradshaw.

7 MR. BRADSHAW: Yes.

8 MS. REINHART: Okay. So  
9 Paragraph (b) now is open for comment and  
10 motion. The concern expressed at the last  
11 Council meeting was that time frames were  
12 not indicated within this paragraph. Does  
13 anybody -- and that was a concern  
14 communicated at our last Council meeting.  
15 Does anybody have a concern about that now  
16 or do you wish to amend this paragraph at  
17 this point?

18 MS. MARTIN: Did we express the  
19 concerns or did the public, for time frame?

20 MS. REINHART: I probably  
21 expressed them because of my experience  
22 with permit rulemaking and so forth,  
23 because -- and I think the DEQ has  
24 expressed that it would fit into a Tier II  
25 or III, you know, time frame.

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1           So if somebody would like to make  
2 some language expressing that within this -  
3 - I think that's probably the most  
4 appropriate place to put that type  
5 language. Does the DEQ have any sentiments  
6 regarding that, putting that tier --  
7 referring to the tier process?

8           MS. MARTIN: Are you talking  
9 about like a clock on, clock off?

10           MS. REINHART: That's what the  
11 tier process does for you.

12           MS. MARTIN: Right.

13           MR. HENSCH: Does anyone have a  
14 copy of Subchapter 4 of the DEQ rules that  
15 has the tiers laid out in it?

16           MS. REINHART: I don't remember  
17 the time frames and I don't have the  
18 language with me.

19           MS. MARTIN: Is it like a total  
20 of six months?

21           MR. HENSCH: Well, it varies. It  
22 depends on the type of permit because it  
23 does -- there are two pieces. One is an  
24 administrative review to see if it's  
25 complete and then a technical review.

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1 Okay. There is different time frames on  
2 those.

3 MR. GRAVES: I am going to -- I  
4 am going to submit that since we decided we  
5 didn't want a permit, it's not appropriate  
6 to use permit timelines. Rulemaking is a  
7 different kettle of fish.

8 MS. REINHART: Okay.

9 MR. GRAVES: And I think it would  
10 be very -- unless the Agency is willing to  
11 live with something that says an absolute  
12 180 days or something like that, I think  
13 you just leave it alone. Because I think  
14 otherwise, all that will happen is -- I  
15 mean, what happens if we -- I guess the  
16 other place I could think of you could put  
17 time deadlines is for the Agency's  
18 technical review. Because once it comes  
19 back out of there, you're really into our  
20 process and I don't think we can bind  
21 ourselves.

22 I would prefer just to leave it  
23 alone, frankly, because I think it might  
24 cause more harm than good.

25 MS. REINHART: Okay.

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1                   MS. MARTIN: I have an additional  
2 comment. I agree with a lot of what he  
3 said, but there may be -- there's timelines  
4 that are put on the petitioner, as well,  
5 because the Agency just sits around and  
6 cools its heels waiting for responses. And  
7 there is that question, did they go away or  
8 are they coming back.

9                   And if they did have a time frame to  
10 respond -- but that could all be worked out  
11 in the pre-petition scoping meeting where  
12 they set up their schedule and say if we  
13 don't hear responses back from you by x --  
14 depending on the severity of the issue.  
15 And I think that would leave it open for  
16 the Department to say --

17                   MS. REINHART: Well --

18                   MS. MARTIN: -- you know, if you  
19 don't get back to us in thirty days on  
20 this, we're going to consider you walked  
21 away.

22                   MR. HENSCH: Right now there is a  
23 six month time frame, if they don't respond  
24 within six months, it's considered  
25 withdrawn.

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1 MS. MARTIN: In the permitting  
2 program?

3 MR. HENSCH: Yes, that exists  
4 today.

5 MS. MARTIN: Yes.

6 MR. HENSCH: Just for your  
7 information, that deadline for permits does  
8 exist.

9 MS. REINHART: We're talking  
10 about rulemaking versus permitting.

11 MR. GRAVES: I'm not recommending  
12 that, I just wanted you to know what exists  
13 in the permitting process.

14 MS. REINHART: That's fine.

15 MS. MARTIN: It's like a courtesy  
16 thing.

17 MS. REINHART: Yes.

18 MR. KENNEDY: In a sense, a  
19 petition is kind of a name for -- at least  
20 on the technical side of this, it's kind of  
21 like a permit application but it's called a  
22 petition. So I didn't know whether we  
23 wanted to have any time frame just --

24 MS. REINHART: I think I agree.

25 MR. KENNEDY: -- regarding the

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1 technical portion of this petition.

2 MS. REINHART: I agree with  
3 Michael, this is rulemaking and, you know,  
4 it's not really appropriate to put time  
5 frames within the language here.

6 MR. GRAVES: I'm positive that  
7 anybody who is industrious enough to file  
8 one of these is going to file it.

9 MS. MARTIN: That's what I was  
10 going to say, yes.

11 MR. GRAVES: They're not going to  
12 go away.

13 MS. REINHART: Right. So --

14 MR. GRAVES: They're going to  
15 want to do this as fast as possible,  
16 because it's a big money issue to them.

17 MS. REINHART: Right.

18 MS. MARTIN: And it's not like a  
19 permit where you have to have a permit to  
20 operate or to construct and we are  
21 interfering with their ability to get on  
22 with things. This is just something to  
23 make their life easier so they -- put the  
24 burden on them.

25 MS. REINHART: So do I hear a

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1 motion to accept the language as proposed  
2 at this point?

3 MR. GRAVES: I so move.

4 MS. REINHART: Okay. I have a  
5 motion. Do I have a second?

6 MR. KENNEDY: I'll second.

7 MS. REINHART: Okay. Mr. Graves  
8 made the motion, Mr. Kennedy made the  
9 second. Any further discussion by the  
10 public, Council? Seeing none, Myrna, would  
11 you please do a roll call?

12 MS. BRUCE: Mr. Graves.

13 MR. GRAVES: Yes.

14 MS. BRUCE: Mr. Ihler.

15 MR. IHLER: Yes.

16 MS. BRUCE: Mr. Kennedy.

17 MR. KENNEDY: Yes.

18 MS. BRUCE: Ms. Martin.

19 MS. MARTIN: Yes.

20 MS. BRUCE: Ms. Reinhart.

21 MS. REINHART: Yes.

22 MS. BRUCE: Mr. Tomberlin.

23 MR. TOMBERLIN: Yes.

24 MS. BRUCE: Mr. Bradshaw.

25 MR. BRADSHAW: Yes.

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1 MS. REINHART: Okay. Item No. 7  
2 is Formal Rulemaking Hearing and Vote on  
3 Proposed Permanent Changes of OAC 252:205  
4 Subchapter 21 and Adoption -- no, we're  
5 still going on --  
6 (Inaudible, due to talking over each other)

7 MS. REINHART: Number 2. I'm  
8 sorry, I just thought we had it all in one  
9 thing. Sorry.

10 MR. BRADSHAW: No, we only did  
11 Section 1.

12 MS. REINHART: Sorry. Okay.  
13 252:205-25-2. Tammi, could you read us  
14 what we discussed last time, please?

15 MS. JOHNSON: The Council  
16 recommended that the words "approved by the  
17 DEQ" in the first sentence of the proposed  
18 rule be moved to after the first two words  
19 in the proposed rule, such that the first  
20 sentence of the proposed rule would read as  
21 follows: "Any petition approved by the DEQ  
22 to exclude a waste shall apply only to the  
23 particular waste described in the petition,  
24 which must be managed as described in the  
25 approved petition". Would you like to see

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1 that?

2 MS. REINHART: No, I think it's  
3 very clear the way you read it. Sure, yes.  
4 We were just moving a phrase more forward  
5 in the sentence, yes. Okay. Having read  
6 what we discussed last time, is there any  
7 further comment by Council?

8 MR. GRAVES: I have a couple of  
9 questions.

10 MS. REINHART: Sure.

11 MR. GRAVES: When you say that --  
12 actually I guess I get confused when we're  
13 talking about a rulemaking because the  
14 petition, at least technically, will be  
15 approved by the DEQ but it will be  
16 implemented by the Environmental Quality  
17 Board. So I'm not sure what this means.

18 MS. REINHART: Now, run that by  
19 me again.

20 MS. MARTIN: I'm following you.

21 MR. GRAVES: Well --

22 MR. KENNEDY: There's multi-parts  
23 involved in the final approval for someone  
24 that gets to do what they want to do.

25 MR. GRAVES: Yeah.

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1                   MR. KENNEDY:    Is what you're  
2   saying here.

3                   MR. GRAVES:    Yeah.    Because it's  
4   really -- it's really implied in the rule.  
5   What we're really saying is the rule will  
6   have -- will apply only to a particular  
7   waste and it will be managed as described  
8   in the approved petition.    The ultimate  
9   approval is not by the DEQ, it's by the  
10  Environmental Quality Board.    So I --

11                  MS. MARTIN:    Oh, I see, by the  
12  DEQ.    And it's even worse than that,  
13  because it's also by the Legislature.

14                  MS. REINHART:   So you're saying  
15  instead of approved by the DEQ, it should  
16  be approved by --

17                  MR. GRAVES:    The Environmental  
18  Quality Board or --

19                  MS. REINHART:   Is that correct or  
20  is it the State of Oklahoma?

21                  MR. GRAVES:    It's actually in the  
22  rule.

23                  MS. REINHART:   It's the State of  
24  Oklahoma that approves it; is that right,  
25  Jerry?

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1                   MR. GRAVES:    No, they have the  
2    ability to deny.

3                   MR. SANGER:    I'm sorry, the  
4    question was whether the Board actually  
5    approves it or the DEQ approves it?

6                   MR. GRAVES:    Well, the Board  
7    passes it and then the Legislature has the  
8    ability to veto it.

9                   MR. SANGER:    Correct.

10                  MR. GRAVES:    But they don't pass  
11   it, they have -- isn't that right, Jerry?

12                  MR. SANGER:    Right.    That's  
13   correct.

14                  MS. REINHART:   Well, I'm saying  
15   it's --

16                  MR. SANGER:    Actually, I think  
17   Mr. Graves is correct that appropriate  
18   language would be "any petition approved by  
19   the Environmental Quality Board" rather  
20   than the Department.

21                  MS. REINHART:   Is it the  
22   Environmental Quality Board or is it the  
23   State of Oklahoma, though?

24                  MS. MARTIN:    I think you can just  
25   say the Board.

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1                   MR. SANGER:    The Board actually  
2 passes the rules, and as Mr. Graves has  
3 pointed out, the Legislature and/or the  
4 Governor can shoot them down at some point.

5                   MS. REINHART:    Okay.

6                   MR. SANGER:    And the effective  
7 date is -- I mean, the Governor has to sign  
8 it and so on and so forth.

9                   MS. REINHART:    Right.

10                  MR. SANGER:    But I think the way  
11 that the law is written, the DEQ -- the  
12 Environmental Quality Board is the one that  
13 actually passes the rule.

14                  MS. REINHART:    Okay.    That's  
15 fine.    So the -- we should strike DEQ and  
16 put Environmental Quality Board.

17                  MS. MARTIN:    Yes, you might be  
18 able to just put Board, depending on which  
19 definitions say what Board means.

20                  MS. REINHART:    Well, I would  
21 prefer to just spell it out, that would --  
22 where there is no way --

23                  MR. GRAVES:    You do that the  
24 first line to the end of -- the fourth line  
25 down.

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1 MS. REINHART: Right. Okay.

2 MR. SANGER: And if you wanted to  
3 throw in when the rule becomes effective or  
4 something along those lines, then that  
5 would indicate that it has to go through  
6 the full procedure of the Legislative  
7 review and govenetorial signature.

8 MS. MARTIN: I have some  
9 recommended language.

10 MS. REINHART: Well, just a  
11 second. I think what you're saying, Jerry,  
12 may be addressed in 25-7.

13 MR. SANGER: Effective date.

14 MS. REINHART: Yes. Do you see  
15 what I'm saying?

16 MR. SANGER: Right. Okay.

17 MS. REINHART: Yes, I think it's  
18 already been addressed back there, so.

19 MS. MARTIN: But are you saying  
20 strike DEQ and put Environmental Quality  
21 Board?

22 MS. REINHART: Right.

23 MS. MARTIN: In the two places?

24 MS. REINHART: In the two places.

25 MS. MARTIN: Okay.

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1 MS. REINHART: Okay.

2 MS. MARTIN: Madam Chairman.

3 MS. REINHART: Yes.

4 MS. MARTIN: I have two other  
5 ideas. In the first sentence, it's now  
6 going to read "any petition to exclude a  
7 waste approved by the Environmental Quality  
8 Board shall apply only to the particular  
9 waste described in the petition which must  
10 be managed as described in the approved  
11 petition". And then I propose to add the  
12 words "and corresponding rulemaking".

13 And then "if the generator manages a  
14 waste in a manner other than that approved  
15 by the Board, the exclusion is lost and the  
16 waste reverts back to the listed status"  
17 instead of the words "becomes a hazardous  
18 waste as defined in applicable State and  
19 Federal Regulations."

20 The reason being that the -- it  
21 introduces the concept of rulemaking right  
22 away but in the end, in the last sentence  
23 where it said "and the waste becomes a  
24 hazardous waste", I think it's better to  
25 say "it reverts back to its listed status",

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1 that it was always a hazardous waste  
2 before. Just a little -- reverts back to  
3 listed status.

4 THE REPORTER: Delisted or listed  
5 status?

6 MS. MARTIN: Reverts back to  
7 listed status.

8 THE REPORTER: Listed, okay. I  
9 wanted to make sure I heard you right.

10 MS. REINHART: Okay.

11 MR. GRAVES: The problem with  
12 reverts back is that would imply, which may  
13 not be the case, that the generator had  
14 always mismanaged it. And I'm not sure  
15 that's really the case.

16 What you're saying here is if the  
17 waste becomes, then you know it's a  
18 perspective matter but it doesn't  
19 necessarily mean that they've been -- that  
20 they were -- that everything else they did  
21 back before that was illegal, because I'm  
22 not sure if that's the case.

23 MS. MARTIN: I don't think it --  
24 no, it doesn't say that at all.

25 MR. GRAVES: Yes, it does.

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1 MS. REINHART: Yes.

2 MS. MARTIN: No.

3 MS. REINHART: Yes, it would --

4 MS. MARTIN: It reverts back to  
5 listed status, it was listed status, they  
6 just got an exclusion for it. You didn't  
7 do what you were supposed to do in the  
8 petition, you would revert back to listed  
9 status. You can start all over again.

10 MS. REINHART: But the waste in  
11 the intervening period of time is a --  
12 you're saying it now becomes listed, so  
13 that means we've got a problem in our solid  
14 waste landfills. So I agree with Michael  
15 on that.

16 MS. MARTIN: Well, if it's no  
17 different, then it becomes a hazardous  
18 waste again.

19 MS. REINHART: Yes. We have  
20 comments from the public.

21 MS. MARTIN: I think -- I think  
22 the word -- I have a problem with the use  
23 of the word "manage" because in EPA  
24 delisting, what EPA is more concerned with  
25 is not the fate of the delisting material

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1 but that the delisting material is always  
2 exactly the same as what was delisted. And  
3 so that's why EPA says you've got to  
4 monitor the waste and make sure it's never  
5 changing, you've got to make sure the  
6 process from which the waste is generated  
7 doesn't change such that it can change the  
8 constituents and as long as you make sure  
9 that's the same, then you know that every  
10 batch of waste you generate is going to be  
11 okay. So you're not monitoring where the  
12 ultimately delisted waste goes. In other  
13 words, you're (inaudible).

14 MS. REINHART: Managing the  
15 process.

16 MS. MARTIN: -- you're monitoring  
17 the waste. You're making sure that the  
18 waste itself, you generated, is always the  
19 same. So I have a problem with the word  
20 "manage" because that almost says that,  
21 well, it's delisted only if you put it  
22 here, which is not delisting, that's not  
23 the point.

24 MS. REINHART: So it's really --  
25 if the generator generates the waste in a

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1 manner other than approved.

2 MS. MARTIN: Right or -- right.

3 And EPA goes on to say, you know, if you  
4 have any data, it's really more like this  
5 last paragraph 5, you're monitoring the  
6 waste approved. If you know of anything,  
7 you've got to do the monitoring and you've  
8 got to do the process analysis and make  
9 sure that nothing has changed. And as long  
10 as you do that, then you know that the  
11 waste is properly delisted.

12 But if you have any -- if you make  
13 any changes to the process or find out  
14 sometime after a process changed, that the  
15 process actually did change substantially  
16 because of an addition or subtraction of a  
17 waste stream you weren't aware of at the  
18 time, then you do have to go back and check  
19 and make sure that the waste didn't change.

20 MS. REINHART: Okay.

21 UNIDENTIFIED PERSON: Even if you  
22 did put it in the ground, you've got to  
23 make sure it didn't change.

24 MS. MARTIN: Yes, I understand  
25 what you mean by "reverts back to".

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1 UNIDENTIFIED PERSON: Yes.

2 MS. MARTIN: But --

3 MS. REINHART: Yes, Don.

4 MR. HENSCH: I believe there are  
5 some delistings that are specific to a  
6 specific disposal site.

7 MS. REINHART: Yes, it is.  
8 Right.

9 MR. HENSCH: In which case the  
10 waste is only delisted if it goes back  
11 through the process and goes to the  
12 specific site.

13 MR. GRAVES: That raises a  
14 question I was going to ask anyway. Why  
15 wouldn't that be what was covered in the  
16 next one with an additional condition? I  
17 mean it's -- isn't that -- I thought that's  
18 why you made conditions, which was you can  
19 only send it here.

20 UNIDENTIFIED PERSON: Right.

21 UNIDENTIFIED PERSON: But I --  
22 Mary Ellen, do you have a proposed  
23 language?

24 MS. TERNES: I don't. Perhaps --

25 MR. GRAVES: Because I see what

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1 you're saying.

2 MS. TERNES: -- generated instead  
3 of managed.

4 MS. REINHART: I think -- yes.  
5 That more accurately describes why the  
6 waste is listed in the first place. Yes.  
7 It's not how you manage it. You manage it  
8 because of what it has within it and you  
9 manage that by how you generate it.

10 MS. TERNES: Right. I mean,  
11 let's think about it, generate might work.

12 MS. REINHART: Yes, Jerry.

13 MR. SANGER: EPA, in their Table  
14 2, waste excluded from specific sources,  
15 they have three columns. One is the  
16 facility name, the second is the address,  
17 and the third that they titled "waste  
18 description", actually contains specific  
19 conditions for the exclusion, which go far  
20 beyond just the condition of the  
21 generation.

22 It goes into things such as waste  
23 holding and handling, delisting levels,  
24 changes in operating conditions, which is  
25 what we're discussing, data submittals.

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1 There is a whole list of things that  
2 changes from facility-to-facility that if  
3 those conditions aren't met, then it's my  
4 understanding that they say that you  
5 haven't met the -- you have to meet those  
6 conditions for your waste to continue to be  
7 excluded. In other words, it's excluded if  
8 these specific conditions that are listed  
9 are met.

10 MS. REINHART: Right.

11 MS. TERNES: That's right. There  
12 are holding times in periods that you got  
13 to hold it, but that sort of -- do you  
14 think that if we said generation and  
15 management? Again, I just sort of want to  
16 get away from -- we need to put in the  
17 generation concept.

18 MS. REINHART: Right. Was  
19 generated and managed in accordance with  
20 the described -- the approved petition and  
21 --

22 MS. MARTIN: And corresponding  
23 rulemaking. Because I would think the  
24 rulemaking would not have to include all of  
25 the conditions, would it?

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1 MS. REINHART: Yes, it does.  
2 Yes. Yes, rulemaking -- the rulemaking in  
3 essence is like a permit.

4 (Inaudible, due to multiple conversations)

5 MR. HENSCH: Looking at  
6 (inaudible) some of those delistings are  
7 pages long.

8 MS. MARTIN: So you can't refer  
9 to petition 10-35 located in the files, you  
10 have to include all of your petition  
11 language, signatures and everything, as  
12 part of the rulemaking?

13 MR. HENSCH: Not the signatures,  
14 but there is very extensive conditions  
15 listed.

16 MS. REINHART: Right.

17 MS. TERNES: (Inaudible).

18 MS. REINHART: Right. The  
19 rulemaking will have all the conditions of  
20 which the materials -- it has to be  
21 generated, managed, et cetera, if it's a  
22 disposal facility, whatever you want to  
23 say, that rulemaking will have all that  
24 criteria within it. Jerry.

25 MR. SANGER: May I make a

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1 suggestion?

2 MS. REINHART: Yes.

3 MR. SANGER: This is coming from  
4 being an enforcement attorney for a while.  
5 If we take this entire paragraph out and as  
6 part of the rule we list these conditions  
7 and they don't meet those conditions, then  
8 basically they have violated the rule, you  
9 can still take an enforcement action and  
10 they don't have to lose their exclusion for  
11 us to go to court and get an injunction  
12 that will require them to comply with the  
13 rule.

14 So, to me, if I were an enforcement  
15 attorney in a case and I had to try it and  
16 make somebody comply with conditions, I  
17 wouldn't need this language. I could still  
18 fall back on the fact that they have  
19 violated the terms of the rule, with the  
20 conditions that are listed.

21 MS. REINHART: Right.

22 MS. TERNES: Right. And EPA says  
23 in those conditions, having been through  
24 this one for a huge national company will  
25 look at, not that the whole exclusion is

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1 lost, but they'll look at the waste that  
2 was generated when it wasn't consistent  
3 with --

4 MS. REINHART: Right.

5 MS. MARTIN: Right.

6 MS. TERNES: They won't go back  
7 and say, categorically.

8 MS. MARTIN: No, I understand  
9 that.

10 MS. REINHART: Okay. So --

11 MS. MARTIN: Now, the rule you're  
12 reading, Jerry, that's the federal CFR and  
13 we've incorporated that by reference?

14 MR. SANGER: Well, what we're  
15 going to do is, we're going to have our own  
16 table where we set out our -- we're going  
17 to list things just like this, basically,  
18 and that table is here and that table will  
19 be amended in the state rules.

20 MS. REINHART: We have an example  
21 in Appendix E of what our table will look  
22 like and it's identical to the federal  
23 process, right?

24 MR. SANGER: Right. So what I'm  
25 saying is it's not necessary to have this

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1 language that --

2 MS. REINHART: Just refer to  
3 Appendix E.

4 MR. SANGER: -- the exclusion is  
5 lost, to enable us to enforce the  
6 conditions under which it was excluded.

7 MR. GRAVES: I agree. I think  
8 you can take this provision -- I think the  
9 first real clause is good. But on the  
10 second line, I would end it after the word  
11 "petition". I think you want to say it  
12 only applies to a particular waste, but I  
13 don't think you need the rest of it because  
14 you're going to cover all that under these  
15 conditions in the next paragraph.

16 MS. REINHART: So after the  
17 comma, remove that and the whole second  
18 sentence, remove it?

19 MR. GRAVES: Yes.

20 MS. REINHART: Any petition  
21 approved by the Environmental Quality Board  
22 to exclude a waste shall apply --

23 MR. GRAVES: -- shall apply only  
24 to the particular waste described in the  
25 petition.

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1 MS. REINHART: And that's it?

2 MR. GRAVES: Yes.

3 MS. REINHART: Okay.

4 MS. TERNES: The petition will  
5 describe all those.

6 MS. MARTIN: I have a question.  
7 It's hard for me to form my question.  
8 Okay. This last sentence, if the generator  
9 manages a waste, blah, blah, blah, that's  
10 the only sentence that makes it clear up to  
11 this point that the facility will be  
12 punished if it doesn't do what it says it  
13 was going to do.

14 MS. REINHART: But that -- you  
15 would -- that would probably be spelled out  
16 in a rulemaking.

17 MS. MARTIN: What rulemaking?  
18 When you do the petition, each individual  
19 petition?

20 MS. SHARP: (Inaudible). 25-6  
21 states (inaudible).

22 MS. REINHART: Yes. Subject to  
23 prior approval conditions. Thank you,  
24 Catherine.

25 MS. MARTIN: Okay. I understand

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1 all that. But I like this thing where you  
2 said you were going to take the exclusion  
3 away. That's a pretty big hammer. And if  
4 you take this out that it would have  
5 enforcement action, you know, that means  
6 they still get to keep their exclusion but  
7 they'll be in a Consent Decree or, you  
8 know, they'll pay a fine or whatever, which  
9 is enforcement.

10 But this actually says, you don't do  
11 exactly what you said, you lose your  
12 exclusion, end of conversation. And I  
13 think that's a very powerful tool --

14 MS. REINHART: Yes, ma'am.

15 MS. MARTIN: -- if that's not  
16 reflective of the federal law, then is that  
17 only a state (inaudible).

18 MS. REINHART: Okay. Go ahead.

19 MS. TERNES: Perhaps what might  
20 fit the bill here would be waste generated  
21 and managed inconsistent with the petition  
22 would not be excluded. It's not so much  
23 the exclusion is lost but that waste would  
24 be.

25 MS. MARTIN: Madam Chairman, can

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1 the staff answer my question? If this  
2 language came from the federal law or was  
3 it a state (inaudible)?

4 MS. REINHART: This is -- the  
5 language you guys crafted for 25-2, is it -  
6 - did the DEQ craft that or was that  
7 recommended by --

8 MS. JOHNSON: Gail, do you know,  
9 was that language that came in the --

10 UNIDENTIFIED PERSON: I don't  
11 think it was federal.

12 MS. TERNES: In the federal  
13 system, you can lose your exclusion, you  
14 can, and EPA can withdraw it if you think  
15 they're just abusing it.

16 MS. REINHART: Right.

17 MS. TERNES: But -- and perhaps  
18 you could say DEQ could look at withdrawing  
19 the exclusion if it happens again. But  
20 certainly, waste that is not -- that is  
21 generated inconsistent with the petition  
22 wouldn't be excluded, because it wouldn't  
23 be the stuff in the petition. And then you  
24 could have -- if you wanted to be very  
25 tough, you could. Just simply say DEQ may

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1 consider withdrawing the exclusion if you  
2 wanted to, just to let people know that  
3 abuse won't be tolerated.

4 MS. REINHART: Would it be better  
5 to have that type language over in 25-6  
6 versus 25-2? What does the DEQ feel about  
7 that? That way it's consistent -- it's  
8 being consistently talked about in 25-6  
9 versus scattering it amongst the rules?

10 MS. MARTIN: Okay. I've got a  
11 question.

12 MS. REINHART: Yes, ma'am.

13 MS. MARTIN: Are we taking the  
14 position that there's -- in the list, there  
15 is lots of benign stuff that have been  
16 unfairly classified as hazardous waste and  
17 that we will rush to exclude them to show  
18 our fairness and it was always benign and  
19 that's why we're delisting it. So even if  
20 they didn't follow the petition, no harm,  
21 no foul. All right.

22 Or are we also accepting the fact  
23 that there may be listed wastes by a  
24 company process, okay, that you must make  
25 the company prove that they don't actually

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1 use that process, the process isn't the  
2 same anymore as it was twenty-five years  
3 ago when RCRA was written. The raw  
4 materials are all different, everything is  
5 different now. And so the end product of  
6 that process, as is identified in the list,  
7 is no longer hazardous. Okay.

8           But there could be guys out there in  
9 my same industry who use the old process  
10 and has the old raw materials that does  
11 generate hazardous waste. Okay. So it  
12 could be hazardous.

13           I mean I keep getting this feeling  
14 like we're delisting things that are like  
15 latex paint, when twenty-five years ago  
16 everybody said that this latex paint was  
17 hazardous, you know. And so it won't  
18 matter if they don't do the petition, we  
19 don't have to take back their exclusion.  
20 We can just enforce things. I don't know  
21 what the sentiment is, I'm not that  
22 familiar with delisting to know how -- if  
23 there is one out of forty that actually is  
24 a problem.

25           MS. REINHART: Yes, ma'am.

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1                   MS. TERNES: I think what we want  
2 to avoid or what I humbly suggest the  
3 Council might want to consider is that in a  
4 chemical process, they can get complicated  
5 after a while. Sometimes you can have a  
6 change in the process that you don't  
7 realize can affect the delisting and you  
8 don't want to automatically cause someone  
9 to lose their exclusion when it really  
10 wasn't an intentional act. I think the  
11 Department would have the discretion to  
12 withdraw the exclusion if they felt it was  
13 being abused, in addition taking, you know,  
14 punitive enforcement action and assess a  
15 penalty.

16                   MS. REINHART: Yes.

17                   MS. TERNES: But legally, again,  
18 it would help to provide us, I guess, just  
19 to state the obvious that if the material  
20 wasn't generated (inaudible) it simply --  
21 that particular waste material would not  
22 benefit from the exclusion.

23                   MS. REINHART: Okay. Catherine.

24                   MS. MARTIN: Can somebody answer  
25 my questions, please, Ms. Chairwoman, about

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1 delisting?

2 MS. REINHART: I don't know that  
3 I can answer it. That's why I --

4 MS. MARTIN: (Inaudible, due to  
5 talking over each other). Okay.

6 MS. SHARP: To capture both  
7 thoughts in 25-6, it contemplates  
8 enforcement action on it, if you could add  
9 -- if you wanted to beef that up, that the  
10 appropriate enforcement actions, including  
11 loss of exclusion status or loss of the  
12 exclusion may be taken, that way you can  
13 envision both and more appropriate to lose  
14 that status (inaudible) enforcement action.

15 MS. REINHART: So take the  
16 language that's in 25-2 and --

17 MS. SHARP: I wasn't going to  
18 take it all, there was a suggestion on the  
19 table to eliminate that paragraph, people  
20 were sensing it was redundant, so I'll let  
21 you all think about that.

22 MS. REINHART: Right.

23 MS. SHARP: But enforcement is  
24 contemplated in 25-6 and you could add to  
25 that, including loss of excluded status, or

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1     however you all want to say that.

2                     MS. REINHART:    Right.    And I  
3     think that that's appropriate but --

4                     MS. SHARP:     That's just an idea.

5                     MS. REINHART:   -- Ms. Martin, you  
6     had questions that --

7                     MS. MARTIN:    Is there a list of  
8     the list in this room?

9                     MS. REINHART:   Jerry's got it --

10                    MR. SANGER:    The federal -- the  
11    federal delisting wastes?

12                    MS. MARTIN:    Yes, the listed  
13    wastes, the ones we're talking about.

14                    MR. SANGER:    The listed wastes?

15                    MS. MARTIN:    Do you have the  
16    list?

17                    MR. SANGER:    Yes.

18                    MS. MARTIN:    How many is on it?

19                    MR. SANGER:    Quite a few.

20                    MS. MARTIN:    What is quite a few?  
21    A hundred, two hundred?

22                    MS. REINHART:   There are over  
23    five hundred hazardous waste codes.    And  
24    there are only forty-some characteristic  
25    codes, so there is only like approximately

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1 five hundred hazardous waste codes.

2 MS. MARTIN: Okay. Are they all  
3 benign, every last one of them?

4 MS. REINHART: No, no, no,  
5 absolutely not.

6 (Inaudible, due to multiple conversations)

7 MS. MARTIN: Right. Well, that's  
8 what I'm asking you. I mean, we're talking  
9 about you could take a fairly hazardous  
10 waste that's listed and try to get it  
11 delisted by changing something, right?

12 MR. GRAVES: Well, that's one of  
13 the ideas.

14 MS. MARTIN: We're saying -- yes.  
15 Let's say you could take the most  
16 horrendous thing on that list and I could  
17 petition the Agency to delist it because I  
18 promise to do these hundred and five  
19 things. All right. It still starts out as  
20 the most horrendous one on the list. But  
21 if I do those hundred and five things, it  
22 becomes a very benign thing. All right.  
23 So what we're talking about when they don't  
24 follow the hundred and five things on the  
25 petition, then if they lose their delisting

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1 status, it reverts back and they go back to  
2 square one. That's a heavy hammer. We're  
3 not talking about the most benign thing on  
4 the list, it's no big deal, we'll just  
5 enforce. I think they should lose their  
6 status immediately.

7 UNIDENTIFIED PERSON: But they  
8 (Inaudible).

9 (INAUDIBLE, DUE TO MULTIPLE CONVERSATIONS)

10 MS. MARTIN: (Inaudible) we know  
11 that. It's in our blood and in our heart  
12 and in our brains.

13 (Inaudible, due to multiple conversations)

14 MS. MARTIN: Okay. Now, I'm  
15 looking at it from the most horrendous  
16 thing on that list. I understand there's  
17 things on that list that were put on there  
18 that don't make any sense. I understand  
19 that and they ought to be delisted very  
20 easily and rapidly. But I don't think I  
21 want to take a cavalier approach for all  
22 the other things on the list just because  
23 there is some that are benign.

24 MS. TERNES: I think we're  
25 dealing, too, with a lot of wastes included

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1 due to -- due to the (inaudible) rule and  
2 it just carried waste codes. I mean, half  
3 the stuff we get is just --

4 MS. REINHART: Oh, yes.

5 MS. MARTIN: And I'm totally cool  
6 with reducing the drama. All right. But  
7 unless they are all drama-free, then I  
8 think we need to keep language in there  
9 that's a hammer for the most vile one on  
10 the list. Okay.

11 UNIDENTIFIED PERSON: Are you  
12 comfortable with that paragraph  
13 (inaudible).

14 MS. MARTIN: I like that as a  
15 solution better than just removing the  
16 paragraph 2 completely. I like Catherine's  
17 idea of putting all hammer-like topics in  
18 one paragraph. But --

19 MR. BRADSHAW: Okay. So I'll  
20 make a motion -- I make a motion that takes  
21 precedent, I believe, that we adopt 25-2  
22 with the first sentence "any petition to  
23 exclude a waste approved by the -- was that  
24 the Environmental Quality Board --

25 MR. GRAVES: Yes.

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1                   MR. BRADSHAW:  -- shall apply  
2 only to the particular waste described in  
3 the petition." That shall be the entire  
4 content of that section.

5                   MS. REINHART:  Okay.  Do I hear a  
6 second?  Is that -- were you finished?

7                   MR. BRADSHAW:  Yes.

8                   MS. REINHART:  Okay.  Do I hear a  
9 second?  Okay.  Mr. Graves seconded.

10                  MS. MARTIN:  Wait a minute.

11                  MS. REINHART:  There is a motion  
12 on the floor.

13                  MS. MARTIN:  I understand that.  
14 The question is to the author.

15                  MS. REINHART:  Now there is  
16 discussion.

17                  MS. MARTIN:  I have a question  
18 for the author.  Do you intend to move that  
19 language about losing the exclusion to  
20 Paragraph 6?

21                  MR. BRADSHAW:  My intention is  
22 that when we get there, that we will  
23 address that issue but not necessarily move  
24 that language.  We may not choose to use  
25 that specific language.

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1 MS. MARTIN: But the intent?

2 MR. BRADSHAW: That we will look  
3 at the intent of that and what should be  
4 said about it.

5 MS. MARTIN: Okay. On that good  
6 faith, I'm willing to vote.

7 MS. REINHART: Okay. Is there  
8 any further discussion? Okay. Myrna,  
9 would you please take a roll call?

10 MS. BRUCE: Mr. Graves.

11 MR. GRAVES: Yes.

12 MS. BRUCE: Mr. Ihler.

13 MR. IHLER: Yes.

14 MS. BRUCE: Mr. Kennedy.

15 MR. KENNEDY: Yes.

16 MS. BRUCE: Ms. Martin.

17 MS. MARTIN: Yes.

18 MS. BRUCE: Ms. Reinhart.

19 MS. REINHART: Yes.

20 MS. BRUCE: Mr. Tomberlin.

21 MR. TOMBERLIN: Yes.

22 MS. BRUCE: Mr. Bradshaw.

23 MR. BRADSHAW: Yes.

24 MS. REINHART: Okay. Next

25 paragraph is 205-25-3, Conditions of

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1 Exclusion. Tammi, is there anything from -

2 -

3 MS. JOHNSON: There was no change  
4 to the proposed rule.

5 MS. REINHART: Okay.

6 MR. GRAVES: I have one.

7 MS. REINHART: Okay.

8 MR. GRAVES: Since we're dealing  
9 with rulemaking, instead of the DEQ there,  
10 it needs to be the Environmental Quality  
11 Board.

12 And then my question to Jerry is,  
13 the Board can only act as a rulemaking  
14 body; is that not correct?

15 MR. SANGER: That's right.  
16 That's what they are supposed to do, is  
17 pass rules.

18 MR. GRAVES: Well, here's my  
19 question. Because it has the language in  
20 here where you can adopt a condition at the  
21 beginning because a rule is set in time  
22 once it's promulgated. But then you go on  
23 to say or anytime thereafter, which is  
24 inappropriate unless you're back in another  
25 rulemaking institution.

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1           So if the DEQ Board can only act by  
2 rulemaking, then I don't have any problem  
3 with that language because they can always  
4 bring up a new rule at any time.

5           MR. SANGER:    Correct.

6           MR. GRAVES:    Okay.

7           MR. SANGER:    And that's how they  
8 would do it.

9           MR. GRAVES:    All right.    Then I  
10 think the only change that needs to be made  
11 is to make that the Environmental Quality  
12 Board instead of the DEQ.

13           MS. REINHART:   Okay.    Any further  
14 comments?   Do we have any from the public?  
15 Okay.   Do I --

16           MR. BRADSHAW:   I'll move that the  
17 language be accepted with the change noted  
18 that the DEQ -- what is it, the  
19 Environmental Quality Board?

20           MR. GRAVES:    Environmental  
21 Quality Board.

22           MR. BRADSHAW:   Yes, with that  
23 change.

24           MS. MARTIN:    Second.

25           MS. REINHART:   Okay.    Mr.

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1 Bradshaw made the motion, Ms. Martin made  
2 the second. Any further comments,  
3 discussions? Seeing none, Myrna, would you  
4 please take a roll call, please?

5 MS. BRUCE: Mr. Graves.

6 MR. GRAVES: Yes.

7 MS. BRUCE: Mr. Ihler.

8 MR. IHLER: Yes.

9 MS. BRUCE: Mr. Kennedy.

10 MR. KENNEDY: Yes.

11 MS. BRUCE: Ms. Martin.

12 MS. MARTIN: Yes.

13 MS. BRUCE: Ms. Reinhart.

14 MS. REINHART: Yes.

15 MS. BRUCE: Mr. Tomberlin.

16 MR. TOMBERLIN: Yes.

17 MS. BRUCE: Mr. Bradshaw.

18 MR. BRADSHAW: Yes.

19 MS. REINHART: Okay. 205-25-4,

20 Reconsideration of an Approved Petition.

21 Tammi, could you read us anything that we  
22 discussed last time?

23 MS. JOHNSON: There were no  
24 changes to the proposed rule  
25 recommendation.

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1 MS. REINHART: Okay.

2 MR. GRAVES: I have a question.

3 MS. REINHART: The same one?

4 MR. GRAVES: Well, similar.

5 Similar.

6 MS. REINHART: Okay.

7 MR. GRAVES: Because here we're  
8 talking about reopening and what I -- and  
9 it puts the burden on the DEQ, which  
10 frankly makes sense because they're the  
11 ones who are going to have the information.

12

13 My only question is, as a matter of  
14 rulemaking how do you formally reopen a  
15 rulemaking? Does the DEQ have that  
16 authority or does only the Board have that  
17 authority?

18 MR. SANGER: No. The DEQ is  
19 procedurally supposed to make  
20 recommendations to you or whatever  
21 appropriate council that the rules go  
22 through. And then that council is supposed  
23 to advise the Board to amend the rules.  
24 But to me, I don't think the DEQ has  
25 authority to change rules directly, that's

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1 up to the Board.

2 MR. GRAVES: No, they don't, but  
3 that gets to the point as a procedural  
4 formal matter, what does reopening mean?

5 MR. SANGER: Well, I think you're  
6 correct. I think that's problematic.

7 MR. BRADSHAW: Well, could we say  
8 request reopening?

9 MR. SANGER: Yes. For  
10 consideration by the Council and Board, or  
11 something like that.

12 MR. BRADSHAW: Yes, because you  
13 can't reopen it but you can certainly  
14 request that it be reopened.

15 MR. SANGER: Correct. Correct.

16 MR. BRADSHAW: So if we put that  
17 word in. --

18 MS. REINHART: The DEQ may  
19 request for consideration --

20 MR. BRADSHAW: Reopening of a  
21 previously approved petition.

22 MS. REINHART: By the  
23 Environmental Quality Board.

24 MR. GRAVES: Here, let's do it,  
25 the DEQ may request the reopening of a

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1 previously-approved petition. That will  
2 work.

3 MS. REINHART: Okay. Could you  
4 re-read that, Michael, for the record?

5 MR. GRAVES: Okay. The first  
6 part of that would read "the DEQ may  
7 request a reopening of a previously  
8 approved petition".

9 MS. REINHART: Okay.

10 MS. MARTIN: I have a question.  
11 You know, we've been kind of just changing  
12 DEQ to Board. We don't always need to do  
13 that, because some of these sentences it's  
14 not really an action.

15 MS. REINHART: No. In the  
16 context of this paragraph, it is the DEQ  
17 that has to take the action first because  
18 they will bring it -- you know, they will  
19 reopen procedurally with us, then on to the  
20 Board for something to happen.

21 What this is doing is initiating,  
22 Kathy, the fact that the generator may  
23 become aware that part of this process --

24 MS. MARTIN: I'm agreeing with  
25 you, you don't have to continue to explain

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1 that.

2 MS. REINHART: Okay.

3 MS. MARTIN: But I would like to  
4 revisit some other DEQ words prior to when  
5 we started doing this to make sure we got  
6 all the DEQ's replaced correctly.

7 MS. REINHART: We'll have to do  
8 that.

9 MS. MARTIN: But this one has to  
10 remain DEQ.

11 MS. REINHART: Okay. Is there  
12 any other further comments, concerns from  
13 the Council about this? Seeing none, is  
14 there any from the public at this time?

15 MR. BRADSHAW: Did you get that  
16 as a motion? I mean, is this on --

17 MS. REINHART: It's not as a  
18 motion. I'm just trying to -- do we have a  
19 motion? You're right. You're right.

20 Thank you for reminding me.

21 MR. BRADSHAW: Sometimes you pull  
22 the trigger --

23 MS. REINHART: Well, it's easy to  
24 do that, so.

25 MR. GRAVES : I move that the

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1 first line of Subsection 4 be amended to  
2 read as follows, "the DEQ may request the  
3 reopening of a previously approved  
4 petition."

5 MS. REINHART: Okay. Do I have a  
6 second?

7 MS. MARTIN: I second.

8 MS. REINHART: Okay. Any further  
9 comment by anybody? Seeing none, Myrna,  
10 would you please take a roll call.

11 MS. BRUCE: Mr. Graves.

12 MR. GRAVES: Yes.

13 MS. BRUCE: Mr. Ihler.

14 MR. IHLER: Yes.

15 MS. BRUCE: Mr. Kennedy.

16 MR. KENNEDY: Yes.

17 MS. BRUCE: Ms. Martin.

18 MS. MARTIN: Yes.

19 MS. BRUCE: Ms. Reinhart.

20 MS. REINHART: Yes.

21 MS. BRUCE: Mr. Tomberlin.

22 MR. TOMBERLIN: Yes.

23 MS. BRUCE: Mr. Bradshaw.

24 MR. BRADSHAW: Yes.

25 MS. REINHART: Okay. 252:205-25-

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1 5 is the Monitoring of Waste Approved for  
2 Exclusion. And Tammi, I know that we had  
3 lots of comments about that.

4 MS. JOHNSON: No changes to the  
5 rule as recommended.

6 MS. REINHART: Really? I just  
7 knew that we got -- you have to go out  
8 there and do that monitoring. Okay.

9 MS. MARTIN: I'll make a motion  
10 to approve 205-25-5 as written.

11 MS. REINHART: Okay.

12 MR. GRAVES: I'll second.

13 MS. REINHART: Okay. Any  
14 comments, discussion by Council? Any by  
15 the public? Seeing none, let's do a roll  
16 call on this motion, please.

17 MS. BRUCE: Mr. Graves.

18 MR. GRAVES: Yes.

19 MS. BRUCE: Mr. Ihler.

20 MR. IHLER: Yes.

21 MS. BRUCE: Mr. Kennedy.

22 MR. KENNEDY: Yes.

23 MS. BRUCE: Ms. Martin.

24 MS. MARTIN: Yes.

25 MS. BRUCE: Ms. Reinhart.

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1 MS. REINHART: Yes.

2 MS. BRUCE: Mr. Tomberlin.

3 MR. TOMBERLIN: Yes.

4 MS. BRUCE: Mr. Bradshaw.

5 MR. BRADSHAW: Yes.

6 MS. REINHART: Okay. 252:205-25-

7 6, Failure to Follow Approval Conditions.

8 Did we have any comments last time

9 regarding this?

10 MS. JOHNSON: We had one. One

11 Council Member recommended changing the

12 word "may", the second to the last word of

13 the rule, to "shall".

14 MS. REINHART: Okay. Okay. Is

15 there any further consideration of language

16 at this time?

17 MS. MARTIN: I would propose that

18 after the word "taken, including but not

19 limited to loss of exclusion status".

20 MR. BRADSHAW: You know, I'm

21 having a little bit of a problem with the

22 shall and the may. You know, if at any

23 time the DEQ determines that the provisions

24 of the approved petition are not being

25 followed, sometimes those things can become

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1 irrelevant.

2 I mean, it might be that you're  
3 supposed to push button A and you improve  
4 it with a process and you think you're  
5 doing fine and you are doing fine. DEQ  
6 comes in and finds you're pushing a  
7 different colored button and they look at  
8 it and say, you know, that really improves  
9 the process. And here we've got language  
10 that says they shall take enforcement  
11 action.

12 MS. MARTIN: Yes, but it says it  
13 shall take appropriate enforcement action.  
14 And the reason why I liked shall in that is  
15 that they are going to do something and  
16 something may be writing a letter that says  
17 continue pressing the wrong button. Okay.

18 MR. BRADSHAW: So appropriate,  
19 you think, doesn't require -- I mean, the  
20 appropriate --

21 MS. MARTIN: It helps.

22 MR. BRADSHAW: -- may be that  
23 there is none; is that what you're saying?

24 MS. MARTIN: Correct. Correct.

25 MR. BRADSHAW: Mike, how do you

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1 feel about that? I mean, from your  
2 experience, does that fly?

3 MR. GRAVES: Well --

4 MS. MARTIN: If it's appropriate  
5 if no action is appropriate, it's  
6 appropriate. If it's not, it's not.

7 MR. GRAVES: No, if you put  
8 "shall" in there, they'll feel obligated to  
9 do something. I'm always in favor of the  
10 prosecutorial discretion. I would prefer  
11 to leave the word as "may".

12 MS. MARTIN: And I've been on the  
13 side of where the people want something  
14 done and the may is always used to get  
15 out of it.

16 MS. REINHART: Okay.

17 MR. BRADSHAW: Well, I mean, I  
18 like your second way, your line, which is  
19 what? Would you read that again?

20 MS. MARTIN: Comma, including but  
21 not limited to loss of exclusion status.

22 MR. BRADSHAW: Yes, I like that.

23 MS. MARTIN: And that's moving  
24 that idea over there.

25 MS. REINHART: Okay.

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1                   MR. BRADSHAW: I'm going to make  
2 a motion that we approve it as written  
3 here, leaving "may" in and adding the  
4 sentence that you --

5                   MS. REINHART: The phrase.

6                   MR. BRADSHAW: -- the phrase that  
7 you included, yes.

8                   MS. REINHART: Okay.

9                   MR. GRAVES: Second.

10                  MS. REINHART: Okay. Any further  
11 discussion by Council Members? Okay.  
12 Discussion by the public? Okay. Coming  
13 back to the Council, Is there any further  
14 discussion by the Council? Okay. Seeing  
15 none, Myrna, would you please take a roll  
16 call.

17                  Well, let's read it back before we  
18 take the vote.

19                  THE REPORTER: After the -- at  
20 the end of taken, you'll have a comma after  
21 taken, including but not limited to loss of  
22 excluded status.

23                  MS. REINHART: Okay.

24                  MS. MARTIN: Exclusion status.

25                  THE REPORTER: Okay. Exclusion

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1 status.

2 MS. REINHART: Okay. So as it  
3 reads right now, "if at any time the DEQ  
4 determines that the provisions of the  
5 approved petition are not being followed,  
6 appropriate enforcement action may be  
7 taken, including but not limited to the  
8 loss of exclusion status."

9 MS. MARTIN: Exclusion status.

10 MS. REINHART: Yes.

11 MR. GRAVES: Would you do me one  
12 favor? Would you put a comma after  
13 "limited to"?

14 THE REPORTER: Sure.

15 MR. BRADSHAW: I accept that.

16 MS. REINHART: Accept that  
17 modification to the motion. Okay. I think  
18 we can go forward now with the roll call  
19 vote.

20 MS. BRUCE: Mr. Graves.

21 MR. GRAVES: Yes.

22 MS. BRUCE: Mr. Ihler.

23 MR. IHLER: Yes.

24 MS. BRUCE: Mr. Kennedy.

25 MR. KENNEDY: Yes.

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1 MS. BRUCE: Ms. Martin.

2 MS. MARTIN: Yes.

3 MS. BRUCE: Ms. Reinhart.

4 MS. REINHART: Yes.

5 MS. BRUCE: Mr. Tomberlin.

6 MR. TOMBERLIN: Yes.

7 MS. BRUCE: Mr. Bradshaw.

8 MR. BRADSHAW: Yes.

9 MS. REINHART: Okay. The last  
10 paragraph for consideration is 252:205-25-  
11 7, Effective Date. And is there any  
12 modification to that language there at all?

13 MS. JOHNSON: One Council Member  
14 recommended changing the word "will" to  
15 "shall".

16 MS. REINHART: Okay. Is there  
17 any consideration -- I mean, how does  
18 Council feel? Do you want to keep the  
19 language as it is right now? Is there a  
20 recommendation to change the "will" to  
21 "shall"? Okay. Seeing none, does the  
22 public have any comments, concerns? Okay.  
23 Do I hear a motion?

24 MS. MARTIN: I move that  
25 Paragraph 205-25-7 be accepted as written.

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1 MR. GRAVES: Second.

2 MS. REINHART: Okay. I have a  
3 motion on the table. Is there any comments  
4 or concerns? Okay. From the public?  
5 Seeing none, Myrna, would you please take a  
6 roll call vote, please.

7 MS. BRUCE: Mr. Graves.

8 MR. GRAVES: Yes.

9 MS. BRUCE: Mr. Ihler.

10 MR. IHLER: Yes.

11 MS. BRUCE: Mr. Kennedy.

12 MR. KENNEDY: Yes.

13 MS. BRUCE: Ms. Martin.

14 MS. MARTIN: Yes.

15 MS. BRUCE: Ms. Reinhart.

16 MS. REINHART: Yes.

17 MS. BRUCE: Mr. Tomberlin.

18 MR. TOMBERLIN: Yes.

19 MS. BRUCE: Mr. Bradshaw.

20 MR. BRADSHAW: Yes.

21 MS. REINHART: Okay. I think I

22 can go on to the next one finally. Okay.

23 Now, this is Appendix D, so this is Agenda

24 Item No. 7, Formal Rulemaking Hearing and

25 Vote on Proposed Permanent Changes OAC

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1 252:205 Subchapter 21 and Adoption of a New  
2 Appendix D.

3 MS. MARTIN: I was just going to  
4 say that there was a couple of DEQ --

5 MS. REINHART: We'll come back to  
6 those later.

7 MS. MARTIN: Do you want to?

8 MS. REINHART: Yes. Yes, there  
9 is other things I need to -- we need to  
10 clean up, you know.

11 MS. MARTIN: Okay.

12 MS. REINHART: So, we'll come  
13 back to that. I want to go through the  
14 agenda items and finish this at this time.

15 So, we're moving on to Agenda Item  
16 No. 7. Okay. Waste Exclusion Fees. And I  
17 know we had some comments at this point.

18 MS. JOHNSON: Yes. The Council  
19 discussed -- discussions related to  
20 increasing the proposed basic application  
21 and subsequent fee of \$20,000.00 to  
22 \$15,000.00, respectively, and the annual  
23 monitoring fee \$1,200.00.

24 One Council Member expressed  
25 recommendations for fee increases,

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1 suggested the basic fee increase to  
2 \$30,000.00, the subsequent fee increase to  
3 \$20,000.00 and the annual fee to \$2,500.00.  
4

5 Another Council Member expressed  
6 increases to the basic fee to \$50,000.00,  
7 the subsequent fee increase to \$40,000.00  
8 and the annual fee increase to \$5,000.00.

9 The Council recommended the fees be  
10 fixed versus variable. Six of the seven  
11 Council Members present expressed  
12 preference for a fixed fee, with one of the  
13 seven expressing no preference for either  
14 fixed or variable.

15 One Council Member expressed desire  
16 for another fee -- expressed desire of  
17 another fee be assessed, unrelated to the  
18 annual fee, but as an annual renewal fee.  
19 It was suggested that this renewal fee  
20 cover the costs for DEQ sampling and  
21 analysis and included four (4) unannounced  
22 sampling events.

23 Another Council Member suggested  
24 reimbursement for out-of-state travels  
25 associated with out-of-state generator

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1 petitions and the need to visit  
2 petitioner's sites.

3 Those were the comments.

4 MS. REINHART: Yes. I knew we  
5 had a lot. Okay. Council Members, what is  
6 your thoughts about current proposed  
7 language?

8 MR. GRAVES: We've got a typo.

9 MS. REINHART: All right.

10 MR. GRAVES: We've got the basic  
11 application fee, second line from the end,  
12 the word "as" should be "at".

13 MS. MARTIN: At the same time.

14 MR. GRAVES: At the same time.

15 MS. REINHART: Okay. Any further  
16 comments about the numbers? Yes, ma'am.

17 MS. TERNES: It s just a  
18 question, really.

19 MS. REINHART: Okay.

20 MS. TERNES: The \$1,200.00 for  
21 annual monitoring fees, I understand that's  
22 for the DEQ to take samples? Is that  
23 right? Or is that --

24 MS. REINHART: I don't know that  
25 -- I don't know that it's been discussed as

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1 to what Monitoring Fee addresses, whether  
2 it's collecting samples or travel out there  
3 and back or -- I think it's at the Agency's  
4 discretion how that money is utilized and  
5 so forth.

6 MS. TERNES: I guess it would  
7 provide them budget to actually do that,  
8 then.

9 MS. REINHART: Yes. I think that  
10 was the concept. It gave them some money  
11 to do what they felt was necessary to  
12 ensure that the conditions of the exclusion  
13 were being maintained by the company.

14 MS. TERNES: Would there be any  
15 consideration of the graduated fees, such  
16 that if -- I think the DEQ may find in some  
17 situations that the facility really does  
18 have a process that through whatever  
19 reason, mixture derived from or just the  
20 process itself, generates wastes, it's not  
21 going to change, but it's in the company's  
22 best interest to never change the process,  
23 and that you might -- and \$1,200.00 a year  
24 in perpetuity fees (inaudible).

25 MS. REINHART: Okay.

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1 UNIDENTIFIED PERSON: (Inaudible)

2 consideration for graduated reduction or --

3 MS. REINHART: Okay. I  
4 understand what you're saying. Yes. Okay.

5 MS. MARTIN: Madam Chairman.

6 MS. REINHART: Yes.

7 MS. MARTIN: I was under the  
8 impression this program is supposed to  
9 completely pay for itself, that there were  
10 no additional state funds to pay for it.  
11 So the \$1,200.00 a month monitoring fee, I  
12 kind of thought of it more as an  
13 administrative fee and that additional fees  
14 could be assessed for extra costs  
15 associated with monitoring. And that might  
16 be an option rather than a requirement.

17 MS. REINHART: Well, from what I  
18 understand about how our process works is  
19 that they can only legally charge what's  
20 within the fee structure itself. Is that  
21 correct, Don? Catherine? I mean, if it's  
22 not -- if it's not within there, they can't  
23 come back and charge whoever.

24 MS. MARTIN: Right. Can't they  
25 put that optional fee for waste -- you

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1 know, I mean, it says right here, annual  
2 fees. Just annual fees, \$1,200.00  
3 administrative fee plus optional, \$1,500.00  
4 other fee, whatever we want to call it.  
5 And that handles whoever was thinking there  
6 needed to be other costs and it would be in  
7 the rule and it would be optional.

8 MS. REINHART: Yes, right. Once  
9 we approve it, the Board approves it, the  
10 Legislature, that whole process, then they  
11 can charge that fee, whatever has been set  
12 within the schedule.

13 MS. MARTIN: Okay.

14 MS. REINHART: Right. But we --  
15 but it's not at their discretion to say  
16 they can charge a fee that's not been  
17 talked about within the system at all. It  
18 has to be written up here before it can be  
19 done.

20 MS. TERNES: If that's -- if  
21 that's considered, then the \$1,200.00  
22 that's set here as a fixed rate would be an  
23 administrative fee, apparently would be, it  
24 sounds like that would turn into something  
25 which would be. And then I'm wondering,

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1 the companies are -- the companies will be  
2 spending their money, they're going to be  
3 doing all the monitoring and they're going  
4 to submit it into the DEQ for just a  
5 review. And I would think quarterly  
6 monitoring, all the staff would be doing  
7 would be looking at the report basically  
8 for ten minutes and saying, they're going  
9 to be getting the same report every  
10 quarter, pretty much. So, I mean, 1,200  
11 bucks just sounds --

12 MS. REINHART: Tammi -- I realize  
13 you're moving on. Would your office be  
14 overseeing -- I mean, I don't know how the  
15 division of labor is going to happen once  
16 we get a petition approved and so forth.  
17 Catherine, how would this be -- is it Don's  
18 division that gets to do this? Tammi's or  
19 who's?

20 MS. JOHNSON: It s joint. My  
21 section currently does the inspections --

22 MS. REINHART: Right.

23 MS. JOHNSON: - at the TSD  
24 facilities. Don's group deals with the  
25 TSD s relative to the permits, permit

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1 modifications and that sort of thing. And  
2 it's typically a joint maneuvering to do  
3 that. So I would expect kind of to  
4 continue with --

5 MS. REINHART: Right.

6 MS. JOHNSON: -- joint listing  
7 issues at a facility to be done jointly.

8 MR. HENSCH: I guess a kind of a  
9 correlating process is the groundwater  
10 monitoring we have at facilities, quarterly  
11 or semi-annually. Some of those are very  
12 simple.

13 MS. REINHART: Right.

14 MR. HENSCH: And quite literally,  
15 it s a ten minute thing to look at them.  
16 Our policy is to respond to those -  
17 there s a letter involved and some time  
18 there. Most of them involve some time to  
19 look at -- look at statistics, see --  
20 you've got to go back to the -- in this  
21 case, you have to go back to the original  
22 petition and see what the conditions were.  
23 So while there would be some that may be  
24 very minimal, I think there is more work  
25 involved. There would be a wide spectrum.

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1 MS. REINHART: Sure.

2 MR. HENSCH: You couldn't say all  
3 facilities were the same.

4 MR. BRADSHAW: Don, you know, you  
5 guys submitted these numbers here. I  
6 gather, though, you feel comfortable with  
7 them?

8 MR. HENSCH: We felt that that  
9 would make at least an attempt to reimburse  
10 us for what we thought our costs would be.

11 MR. BRADSHAW: And if you were to  
12 find at some subsequent date that that  
13 wasn't the case, we could certainly go back  
14 through this process and amend those  
15 figures, couldn't we? Therefore, I'm  
16 making the motion that we accept these  
17 figures as written.

18 MR. GRAVES: Second.

19 MS. REINHART: With changing "as"  
20 to "at"?

21 MR. GRAVES: With changing "as"  
22 to "at".

23 MS. REINHART: Okay. I have a  
24 motion on the table and a second.

25 MS. STANTECH: I have a public

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1 comment.

2 MS. REINHART: Yes, ma'am. We're  
3 getting to the comments.

4 MS. COOK: I'm sorry. Sometimes  
5 there is a one-time delisting and sometimes  
6 there is a ongoing waste delisting. This  
7 would be an annual fee, so if it was a one-  
8 time delisting, would that annual fee only  
9 apply to the year that you get it in or  
10 that you delisted it and that you hauled it  
11 off? Or, you know, you kind of mentioned  
12 monitoring. There wouldn't be anything  
13 associated with any annual fees with post-  
14 closure monitoring or anything?

15 MR. HENSCH: I would assume that  
16 we'll -- as long as the waste is generated,  
17 that would be subject to this exclusion,  
18 there will be some annual fee. If the  
19 generation stopped and there was no more  
20 waste generated, there would be no need for  
21 an annual fee.

22 MS. REINHART: It's kind of like  
23 the disposal plant fee. I mean, if you're  
24 not generating the waste stream anymore,  
25 you don't pay that \$50.00 per waste stream

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1 fee. Yes, ma'am.

2 MS. TERNES: Well, I was just  
3 going to point out just for consideration  
4 by the Council, that some of the  
5 delistings, they are quite interesting. If  
6 you read them, some of them do require  
7 post-disposal monitoring of the leachate  
8 even after they stop generating it.

9 MS. REINHART: Right.

10 MS. COOK: So, I mean, I'm just  
11 thinking of the one-time delisting that may  
12 actually involve some post-delisting  
13 monitoring.

14 MR. GRAVES: Wouldn't that be  
15 required under the regular program?

16 MR. HENSCH: One other thing. If  
17 there is a disposal site, they would have a  
18 separate permit.

19 MS. REINHART: Right.

20 UNIDENTIFIED PERSON: As a solid  
21 waste disposal site. There would be  
22 separate monitoring requirements under that  
23 permit.

24 MS. REINHART: Right.

25 UNIDENTIFIED PERSON: Regardless

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1 of the delisting waste.

2 MS. MARTIN: Well, not if it was  
3 just a solid waste and it was just going -  
4 going to solid waste they don't get a  
5 permit for that, because it is in the  
6 application process.

7 UNIDENTIFIED PERSON: Yes, but I  
8 mean the solid waste permit itself would  
9 have monitoring.

10 MS. MARTIN: For the landfill.

11 MS. REINHART: Yes.

12 MS. MARTIN: But that wouldn't be  
13 monitored by the petitioner?

14 MS. TERNES: No, these are  
15 delistings --

16 MS. MARTIN: And the landfill  
17 operator may not even know what it is --  
18 his permit may not even incorporate this  
19 new waste that's put into the landfill, may  
20 not even be a parameter that's monitored.

21 MS. REINHART: What's the  
22 groundwater monitoring requirements for a  
23 solid waste? Is it similar to Appendix --  
24 is it 8 or 9? I can't remember.

25 MR. HENSCH: Appendix 9. It's

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1 really not as extensive.

2 MS. REINHART: It's not as  
3 extensive but it catches the parameters of  
4 things that probably --

5 MR. HENSCH: I think it could be  
6 and I think we would rely on the DEQ to be  
7 smart enough to realize what was happening  
8 and make sure the requirements are being  
9 met.

10 MS. TERNES: It's to cover that  
11 Reynolds issue, you know, where the  
12 leachate --

13 MS. REINHART: Well, yes, but  
14 Reynolds -- yes, it's totally different,  
15 yes.

16 MS. TERNES: It does.

17 MS. REINHART: Yes.

18 MS. MARTIN: It would be like an  
19 on-site landfill.

20 MS. REINHART: Yes, Jerry. Yes,  
21 it's an on-site landfill over in Arkansas.

22 MS. MARTIN: Right.

23 MS. REINHART: Yes, Jerry.

24 MR. SANGER: I mentioned back in  
25 21-5 Subparagraph (c) --

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1 MS. REINHART: Yes, sir. Jerry.

2 MR. SANGER: -- where we talk  
3 about - the title is monitoring and  
4 discussion of fees, it says all facilities  
5 generating a waste that has been excluded  
6 and so on and so forth. So I think what  
7 we're reading about would be that the  
8 monitoring fees are charged to facilities  
9 that are actually generating the waste.

10 MS. REINHART: Right.

11 MR. SANGER: (Inaudible, due to a  
12 cough).

13 MS. REINHART: Right. Okay.

14 MR. SANGER: So that might  
15 resolve that issue (inaudible).

16 MS. MARTIN: I suggest if you  
17 don't have enough money, you come back with  
18 a quick rulemaking later.

19 MS. REINHART: Okay. A motion is  
20 on the table, I think there has been --  
21 yes, go ahead.

22 MR. TOMBERLIN: On this motion,  
23 is there a renewal fee in there or is there  
24 any monitoring fees?

25 MS. MARTIN: Not in this one.

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1 Just the monitoring.

2 MS. REINHART: What's before you  
3 is just that change with "as" to "at".  
4 You've got \$20,000.00 and \$15,000.00.

5 MR. TOMBERLIN: So we wouldn't  
6 have consideration -- the monitoring fees  
7 or the unannounced?

8 MS. REINHART: The \$1,200.00 is  
9 the annual monitoring fee right there.

10 MR. TOMBERLIN: Yes, but not the  
11 unannounced, that just covers everything.

12 MS. REINHART: Yes, that  
13 \$1,200.00 is going to have to cover  
14 everything for an annual -- right.

15 MR. IHLER: Don, do your people  
16 go out and inspect the sites?

17 MR. HENSCH: Typically, my group  
18 primarily does the permitting and in  
19 conjunction with that, occasionally we have  
20 to look at the sites. The formal  
21 compliance inspection is done by the  
22 compliance groups, such as Tammi -- well,  
23 up until next week (inaudible) and they do  
24 the actual checking of all the rules, all  
25 the paperwork, all that. Typically, you

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1 know, if one of my folks has an interest in  
2 the site that's being inspected, they will  
3 go when Tammi's inspecting, at the same  
4 time.

5 MR. BRADSHAW: Don, isn't it true  
6 that those inspections would be made  
7 regardless of whether the waste was listed  
8 or delisted, though?

9 MR. HENSCH: Yes. Now generators  
10 are not inspected as frequently as disposal  
11 sites, obviously.

12 MR. BRADSHAW: And we appreciate  
13 that.

14 MS. REINHART: I don't if that s  
15 -I think this needs to be an even playing  
16 field here.

17 MR. HENSCH: So if it were --  
18 again, we haven't done these. But my  
19 projection is that during -- once a waste  
20 is delisted, there will be a heightened  
21 interest in inspecting that for a year or  
22 two to make sure that was going along.  
23 (Inaudible) that interest might drop off.  
24 But again, we have the option to go out  
25 there anytime we wanted to.

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1                   MR. TOMBERLIN:   Are there any  
2 samples that are taken out like when  
3 they're dumping into your landfill, other  
4 than the water monitoring?

5                   MR. HENSCH:    There can be samples  
6 taken of the waste or groundwater or the  
7 leachate.

8                   MR. TOMBERLIN:   Okay.   And when  
9 you say can, is that -- what's your policy?

10                  MR. HENSCH:    We don't ordinarily  
11 sample the waste.   We frequently split  
12 samples of the groundwater.   In fact, at  
13 least every other year we take split  
14 samples.

15                  MS. REINHART:   But they're at  
16 liberty to take -- if DEQ comes in and they  
17 don't believe that we're -- a landfill is  
18 doing what they're supposed to, they have  
19 liberty to do whatever they want at that  
20 point in time.   They can take samples or  
21 not take samples.

22                  MR. TOMBERLIN:   Are there any  
23 samples taken from the generator when they  
24 bring this product into the landfill for  
25 monitoring?

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1                   MR. HENSCH:    There is no  
2   provision to take samples currently if you  
3   take something to a solid waste landfill.

4                   MS. REINHART:    Right.

5                   MR. RABATINE:    In the delisting  
6   process, if there were any conditions  
7   established, that would all be done at the  
8   generator site prior to moving the  
9   material.

10                  MR. HENSCH:    Okay.    Notice can be  
11   made at random.

12                  MR. RABATINE:    Notice can be made  
13   at random.    I guess it would depend on how  
14   the delisting decision was written.

15                  MS. REINHART:    I think what your  
16   concerns are addressed back in --

17                  UNIDENTIFIED PERSON:    That would  
18   be addressed back in the delisting.

19                  MS. REINHART:    Well, I think what  
20   your concerns are are addressed in 25-4,  
21   where they have to -- if they find out  
22   about information, it's incumbent upon them  
23   to make certain that their waste stream is  
24   still being generated the same way that it  
25   always has been, et cetera.    If they find

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1 out that no, it's not, then they have to  
2 report back in within thirty days to the  
3 DEQ saying, hey, we -- something's changed.  
4 Okay. And provide that information. So  
5 they're -- it's still -- we've got within  
6 the rules but --

7 MR. TOMBERLIN: To get back to  
8 this, the \$1,200.00 covers that action,  
9 also. That's all the money they have for  
10 all those operations.

11 MS. REINHART: Per waste stream,  
12 per year, right.

13 UNIDENTIFIED PERSON: Per year,  
14 just \$1,200.00.

15 MS. REINHART: Just \$1,200.00.  
16 My only concern is that when I think the  
17 DEQ was polling the federal agency about  
18 how much it cost for them to do the  
19 petitions, that's how we have come up with  
20 some of these numbers that we discussed  
21 last time. But I was concerned about it  
22 only -- only \$20,000.00 for the first waste  
23 streams and subsequent waste stream and  
24 stuff, so I don't know if anybody would  
25 like to comment on that.

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1                   MR. TOMBERLIN:    I feel like  
2 they're a little low.

3                   MS. REINHART:    Okay.

4                   MR. TOMBERLIN:    I think they need  
5 to be higher.

6                   MS. REINHART:    There was a couple  
7 of sets of numbers thrown out there.    I  
8 obviously had the higher one because I see  
9 business slipping away from my facility and  
10 it's already in a downward -- severe  
11 downward spiral, you know.    At the same  
12 time, the DEQ is going to be losing per  
13 tonnage fees, you know, \$9.00 a ton down  
14 to, what is it, for solid waste?

15                   SEVERAL COUNCIL MEMBERS:    \$1.25.

16                   MS. REINHART:    \$1.25.    So the DEQ  
17 is also going to be losing money out of  
18 this.    So I had outlandish numbers at  
19 \$50,000.00 and \$40,000.00; Dave's was more  
20 moderate, \$30,000.00 for the first  
21 petition, \$20,000.00 for the second  
22 subsequent petition, so.

23                   MR. TOMBERLIN:    I guess I feel  
24 like if they're saving quite a substantial  
25 amount of money, then the upper limits

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1 aren't that -- it shouldn't be that big of  
2 an item.

3 MR. GRAVES: If you look at it  
4 the other way, if the stuff is really  
5 eligible for delisting and isn't hazardous,  
6 they're way overpaying now.

7 MS. REINHART: That's true.

8 MS. MARTIN: Now, \$30,000.00 --  
9 \$15,000.00 isn't even -- not even a half a  
10 year of an engineer, that's just one  
11 person. You talk about staff time and  
12 supervisor time, et cetera, the \$30,000.00  
13 to \$50,000.00, sounds like you might have  
14 more than one person slightly paid for  
15 where they could dedicate so many hours of  
16 their work week for this project, you know,  
17 with their little billing code and it s  
18 taken care of. I would rather see, if not  
19 fifty-something, closer to that, maybe,  
20 \$45,000.00. It doesn't matter to me.

21 MS. REINHART: There is actually  
22 -- there is a motion on the table to accept  
23 that word change from "as" to "at". So if  
24 you want to make recommendations on the  
25 numbers, then that will have to be a motion

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1 -- modification to the motion that s  
2 accepted by Mr. Bradshaw.

3 MS. MARTIN: Does Mr. Bradshaw,  
4 do you want to make an amendment to your  
5 motion to change the fee?

6 MR. BRADSHAW: No, I'm going to  
7 stick with it. If it's defeated, then  
8 we'll come back.

9 MS. MARTIN: Okay.

10 MS. REINHART: Okay. Anything --  
11 any other comments? Yes.

12 MR. RABATINE: I would just like  
13 to add -- I'm Bob Rabatine. Based on the  
14 industry perspective, we don't object to  
15 paying a reasonable fee, for service  
16 rendered and there is the idea that there  
17 is going to be a value added by having this  
18 done in Oklahoma instead of through EPA.

19 But what I understand is there has  
20 been an admission that no one is quite sure  
21 how much effort this is going to take or  
22 how much fee might be needed. And the  
23 numbers that were thrown on the table by  
24 DEQ that are before you, I would just like  
25 to let the process move forward, move

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1 through a few of these there is  
2 apparently a few in the winds, rather than  
3 sit here and arbitrarily raise it some more  
4 to start out with when we don't know how  
5 much it's going to cost. And with due  
6 respect to your idea of pricing it so that  
7 no one can possibly afford to -

8 (Inaudible, due to several people talking  
9 at the same time)

10 MS. REINHART: It's not either.

11 MS. MARTIN: I have a response to

12 Mr. -- I have a response to that. Look, if  
13 EPA can do it in six months, that's a half  
14 a year's salary. Are they six months, ten  
15 minutes a day, you know, I don't know what  
16 they mean by six months. Let's say one guy  
17 looking at it is dedicating a third of his  
18 work week to that procedure. \$20,000.00  
19 isn't getting there, because you still have  
20 to have your supervisor, your department  
21 head, all of those costs are still billed,  
22 that's how they do it at DEQ. \$20,000.00  
23 isn't going to cut it for six months. So  
24 they're going to go in and start losing  
25 money but this program is supposed to pay

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1 for itself, that's why I think it should be  
2 upped a little bit.

3 MS. REINHART: Addressing that  
4 comment, is the program expected to pay for  
5 itself. I'm just asking.

6 MS. SHARP: It is now.

7 MS. MARTIN: The reason why --  
8 Jody, the reason why I said that that was  
9 in the little report you read (inaudible).

10 MS. REINHART: Okay. Yes, ma'am.

11 MS. MARTIN: I was just going to  
12 say, having worked at EPA Region 6, I know  
13 that in doing things like this, most of the  
14 engineers time is just spent waiting on  
15 people, so, you know, it's not a third of  
16 the work week. It's maybe a third of the  
17 work week for one week of the month, but  
18 actually getting something really done, I  
19 just -- I don't know that these are low,  
20 given the actual time spent on the actual  
21 work.

22 MS. REINHART: Okay.

23 MS. MARTIN: And I second what  
24 Mr. Rabatine was saying about we don't know  
25 how much this is really going to cost yet.

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1 Let's not penalize the first applicant.

2 MS. REINHART: Well, we just knew  
3 that that one state or region says we'll  
4 never ever do another one, because they  
5 spent like in excess of \$200,000.00. So we  
6 just -- you know, that was an extreme case  
7 but --

8 MS. MARTIN: Well, I don't think  
9 you can raise the permit fee and effect  
10 ongoing petitions. It would be for new  
11 petitions?

12 MS. REINHART: No. Absolutely,  
13 once it's agreed to, the ones that are in  
14 motion are -- that is locked in for them.  
15 And it would only become effective like,  
16 you know, once the new fees went into  
17 motion, if they would ever be approved,  
18 then our (inaudible) looking. So they  
19 can't go back and do it. Okay. I think  
20 we've had enough discussion on this.

21 Yes, Jerry.

22 MR. SANGER: I'm sorry.

23 MS. REINHART: That's fine.

24 MR. SANGER: I don't want to hold  
25 things up, because I'm hungry, too, but Pam

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1 did point out something in 21-5 that  
2 referenced monthly monitoring fees for  
3 first year application for the monitoring  
4 fees. In other words, if the facility  
5 comes in in July or December and they get  
6 their exclusion, are we going to charge  
7 them that \$1,200.00 annual monitoring fee  
8 when we only monitored them for a month?  
9 It references -- it references Appendix D  
10 but I am not sure if -- I don't see where  
11 in Appendix D we really have a monthly fee  
12 listed anywhere. So I think we either need  
13 to remove that monthly fee reference or  
14 include an Appendix.

15 MS. REINHART: I don't see  
16 monthly. I see periodic monitoring.

17 MR. KENNEDY: No. Monthly, under  
18 21-5(c)(1) in the middle of that sentence.

19 Facility must pay the monthly monitoring  
20 fees listed in Appendix D , on page 3.

21 MS. REINHART: Okay.

22 MR. BRADSHAW: We could go back  
23 and visit that.

24 MS. REINHART: Let's go back and  
25 look at that, okay, when we clean up and --

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1 because we've got a little bit of clean-up  
2 to do, okay? We'll come back and look at  
3 that one real quick. Because that's not  
4 monthly, that's an annual. So, yes, we  
5 need to clean that up. Okay. Any other  
6 comments? Yes, sir.

7 MR. ROBERTS: I have one real  
8 quick one.

9 MS. REINHART: Sure.

10 MR. ROBERTS: In (c)(1), it says  
11 after approval by DEQ (inaudible)  
12 Subchapter 25, would that be after approval  
13 by the Environmental Quality Board?  
14 (Inaudible, due to talking over each other)

15 MS. REINHART: Yes, it would have  
16 to be by the Environmental Quality Board,  
17 right.

18 MS. MARTIN: I move the question  
19 that we vote on Mr. Bradshaw's motion.

20 MS. REINHART: Excuse me?

21 MS. MARTIN: I move the question  
22 that we vote on Mr. Bradshaw's motion.

23 MS. REINHART: Yes, I was getting  
24 ready to do that. Okay. Myrna, could you  
25 take a roll call vote on Mr. Bradshaw's

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1 motion to adopt Appendix D as written,

2 except for that one word change?

3 MS. BRUCE: Mr. Graves.

4 MR. GRAVES: Yes.

5 MS. BRUCE: Mr. Ihler.

6 MR. IHLER: No.

7 MS. BRUCE: Mr. Kennedy.

8 MR. KENNEDY: Yes.

9 MS. BRUCE: Ms. Martin.

10 MS. MARTIN: Yes.

11 MS. BRUCE: Ms. Reinhart.

12 MS. REINHART: No.

13 MS. BRUCE: Mr. Tomberlin.

14 MR. TOMBERLIN: No.

15 MS. BRUCE: Mr. Bradshaw.

16 MR. BRADSHAW: Yes.

17 MS. REINHART: Okay. Aye's have

18 it.

19 MS. MARTIN: Four to three.

20 MS. REINHART: That's okay.

21 MR. BRADSHAW: You can go back

22 and tell the boss you tried.

23 MS. REINHART: That's right.

24 Okay. Appendix E is the next item on the

25 agenda, I believe, then we'll come back and

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1 do clean-up.

2           Item No. 8 is the Formal Rulemaking  
3 Hearing and Vote on Proposed Permanent  
4 Changes to OAC 252:205 Appendix E, Wastes  
5 Excluded from the List in Subpart D of 40  
6 CFR Part 261 as Applicable in Oklahoma.  
7 This is identical to the federal process  
8 and the CFR, correct?

9           MR. GRAVES: We're just voting on  
10 the form?

11           MS. REINHART: We're voting on  
12 the form, Appendix E, yes. This is  
13 identical to the CFR -- no, it's not.

14           MR. SANGER: The difference is at  
15 the state level -- I'll just read it to  
16 you. The federal level, you have facility,  
17 address, and then waste description.

18           MS. REINHART: Okay.

19           MR. SANGER: And under waste  
20 description, they include those conditions.

21           MS. REINHART: Okay.

22           MR. SANGER: So the only  
23 difference is, it is broken out and added -  
24 -

25           MR. SANGER: Conditions, that's a

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1 separate column?

2 MS. REINHART: Right. And I  
3 really like what we've done here, what the  
4 DEQ has proposed. It also -- they also  
5 list the EPA ID number, correct, in the  
6 fed? Does it or doesn't it?

7 MR. SANGER: No.

8 MS. REINHART: Just the address.  
9 I like seeing that ID number, because that  
10 really pinpoints it very specifically to  
11 that place, so. Any comments?

12 MS. MARTIN: I move we accept the  
13 Appendix E as written.

14 MS. REINHART: Okay.

15 MR. GRAVES: Second.

16 MS. REINHART: I have a motion  
17 and a second. Ms. Martin made the motion,  
18 Mr. Graves made the second. Any comments,  
19 concerns by Council Members? By the  
20 public? Seeing none, please take a roll  
21 call.

22 MS. BRUCE: Mr. Graves.

23 MR. GRAVES: Yes.

24 MS. BRUCE: Mr. Ihler.

25 MR. IHLER: Yes.

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1 MS. BRUCE: Mr. Kennedy.  
2 MR. KENNEDY: Yes.  
3 MS. BRUCE: MS. Martin.  
4 MS. MARTIN: Yes.  
5 MS. BRUCE: Ms. Reinhart.  
6 MS. REINHART: Yes.  
7 MS. BRUCE: Mr. Tomberlin.  
8 MR. TOMBERLIN: Yes.  
9 MS. BRUCE: Mr. Bradshaw.  
10 MR. BRADSHAW: Yes.  
11 MS. REINHART: Okay. We need to  
12 move back to 205-21-5 Paragraph (c) of  
13 that. We have monthly monitoring instead  
14 of annual monitoring fees noted within  
15 this. Does anybody else see further  
16 language that needs to be modified?  
17 There's two monthly s, at least. The  
18 Paragraph (2) does state annual and the  
19 time period is actually specified on or  
20 before January 1 of the year following the  
21 year that the petition was approved. So  
22 that gives a time frame as to when those  
23 fees would be paid. The reason monthly is  
24 in there is because in the first year, if  
25 you got approved in June, you've got to pay

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1 a prorated fee; is that correct? Okay.

2 MS. MARTIN: Then why don't we  
3 put prorated instead of monthly? Or pay  
4 the appropriate monitoring fees?

5 MS. REINHART: I prefer prorated.

6 MS. MARTIN: Okay.

7 MS. REINHART: Because that  
8 clearly states how that will be, and it's  
9 been approved as \$1,200.00 a year for the  
10 annual fee, so it's a \$100.00 a month.

11 MR. GRAVES: So you're proposing  
12 to change the word "monthly" to "prorated"?

13 MS. REINHART: Uh-huh.

14 MR. GRAVES: Okay.

15 MS. REINHART: I mean, that's  
16 what I understand Ms. Martin suggested.

17 MS. MARTIN: Correct.

18 MR. GRAVES: Also, in the same  
19 paragraph, two lines up where you've got  
20 the DEQ, it should be the Environmental  
21 Quality Board.

22 MS. MARTIN: Say that again.

23 MR. GRAVES: This one should be  
24 Environmental Quality Board.

25 MS. MARTIN: After approval by

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1 the DEQ of a petition to exclude waste?

2 MR. GRAVES: Yes.

3 MS. REINHART: Uh-huh, after  
4 approval by the Board.

5 MS. MARTIN: Okay. The process  
6 isn't really done though. Do they have to  
7 pay the fee then or do they wait until the  
8 Legislature approves it?

9 MR. GRAVES: If the Legislature  
10 doesn't approve it, they can only veto it.

11 MS. MARTIN: They can only veto  
12 it. So do you wait until after it's been  
13 not vetoed by the Legislature?

14 MS. REINHART: It's really not --

15 MS. MARTIN: Or do they still  
16 have to pay the fees whether or not -- I  
17 like they have to pay the fees regardless.

18 MR. GRAVES: They pay the fee  
19 when they file it.

20 MS. MARTIN: Okay.

21 MS. REINHART: The first fee.  
22 The annual fee isn't due until after it's  
23 actually been approved and after --

24 MR. GRAVES: Might I suggest  
25 (inaudible) after the effective date.

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1 MS. REINHART: It would be, after  
2 the effective date of the petition to  
3 exclude a waste.

4 MR. GRAVES: Yes. Well, the rule  
5 is effective.

6 MS. REINHART: After the  
7 effective date of the rule to exclude a  
8 waste?

9 MR. GRAVES: Actually, after the  
10 effective date of the rule to exclude --

11 MS. MARTIN: (Inaudible).

12 MR. GRAVES: -- exclude a waste.

13 MS. REINHART: Okay.

14 MR. GRAVES: After the effective  
15 date of the rule excluding a waste.

16 MS. REINHART: Okay.

17 MR. GRAVES: The generating  
18 facility must pay the prorated monitoring  
19 fees.

20 MS. MARTIN: (Inaudible).

21 MS. REINHART: Okay.

22 (Inaudible, due to multiple conversations)

23 MS. JOHNSON: (Inaudible). After  
24 the effective date of the rule?

25 MR. GRAVES: In 252:205-21-5(c)

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1 in the --

2 MS. REINHART: Paragraph (1).

3 MR. GRAVES: Paragraph (1).

4 MS. JOHNSON: Okay.

5 MR. GRAVES: Second sentence  
6 would read as follows, "after the effective  
7 date of the rule excluding a waste, the  
8 generating facility must pay the prorated  
9 monitoring fees listed in Appendix D for  
10 the remainder of the year in which the  
11 successful petition was approved."

12 MS. REINHART: Okay.

13 MR. GRAVES: Thank you.

14 MS. REINHART: And there is  
15 another monthly.

16 MS. MARTIN: And I was thinking  
17 maybe just put --

18 (Inaudible, due to talking over each other)

19 MS. REINHART: Or you could just  
20 say the . It would be easier.

21 MR. GRAVES: Do you want to put  
22 "the" instead of "monthly"?

23 MS. REINHART: Yes.

24 MR. GRAVES: Do you want to do  
25 that, put "the" instead of "monthly"?

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1 MS. MARTIN: Yes.

2 MR. GRAVES: Okay. Then in the  
3 next sentence replace the first word  
4 "monthly" with the word "the".

5 MS. MARTIN: How about subsequent  
6 monitoring fees are due in full. Because  
7 it's like you got two fees due.

8 MR. GRAVES: Yes.

9 MS. MARTIN: It doesn't make  
10 sense. The generating facility must pay  
11 the monthly monitoring fees --

12 MS. REINHART: Pay the annual  
13 monitoring fees.

14 MS. MARTIN: For the remainder of  
15 the year in which the petition was  
16 approved. Then you should say - either  
17 you don't need that sentence at all or talk  
18 about subsequent monitoring fees are due by  
19 June or something or whatever day you want  
20 to do.

21 MS. REINHART: I think we could  
22 probably just exclude the second sentence.

23 MS. MARTIN: On the anniversary  
24 of the rulemaking.

25 MR. GRAVES: We're still talking

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1 about the first year, so you don't even  
2 need it.

3 MS. MARTIN: You don't need, take  
4 it out.

5 MR. GRAVES: Yes, it's only the  
6 first year.

7 MS. REINHART: So the second  
8 paragraph takes care of that.

9 MR. GRAVES: Yes, the second  
10 paragraph.

11 MS. REINHART: Okay.

12 UNIDENTIFIED PERSON: It's  
13 getting cheaper the longer we go.

14 MR. GRAVES: If we go long  
15 enough, we could actually combine all these  
16 conditions into one paragraph. We've got  
17 four of them now and I want to go home.

18 MS. MARTIN: I think the next  
19 sentence is fine.

20 MR. GRAVES: Yes.

21 MS. REINHART: Okay. So do I  
22 have a motion on the table or does somebody  
23 want to make a motion to amend the language  
24 there?

25 MR. GRAVES: I'll do it. I move

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1 to amend 21-5(c)(1), second sentence to  
2 read, "after the effective date of the rule  
3 excluding the waste, the generating  
4 facility must pay the prorated monitoring  
5 fees listed in Appendix D for the remainder  
6 of the year in which the successful  
7 petition was approved." And strike the  
8 next sentence.

9 MS. REINHART: Okay. Do I have a  
10 second?

11 MR. KENNEDY: I'll second.

12 MS. REINHART: He did it. Mr.  
13 Graves made the motion, Mr. Kennedy made  
14 the second. Do I have any further  
15 discussion?

16 UNIDENTIFIED PERSON: What  
17 happens if they're not approved?

18 MS. REINHART: They don't have  
19 fees. There's no fees. Yes, ma'am.

20 MS. MARTIN: I'm wondering when  
21 the fee is actually due. Is -- I'm trying  
22 to understand, under Paragraph (2), does  
23 this mean that, let's say I get my wastes  
24 excluded in October of 2003, is my annual  
25 monitoring fee due up front, January 1,

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1 2004, for the next year or is it due --

2 that's the way that reads now, right?

3 MR. GRAVES: Uh-huh.

4 UNIDENTIFIED PERSON: Okay.

5 MS. REINHART: I understand you

6 pay a prorated fee for the rest of 2003 and

7 then January 1 for 2004 you pay a full

8 year.

9 MS. MARTIN: You pay it

10 prospectively.

11 MS. REINHART: Right,

12 prospectively, right.

13 MS. MARTIN: Then you pay

14 monthly. Okay.

15 MS. REINHART: Right.

16 MS. MARTIN: So you (inaudible).

17 MS. REINHART: Okay. Continuing

18 on through this.

19 MR. BRADSHAW: Don't we have to

20 do a roll call.

21 MS. REINHART: I'm sorry. Roll

22 call.

23 MS. BRUCE: Mr. Graves.

24 MR. GRAVES: Yes.

25 MS. BRUCE: Mr. Ihler.

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1 MR. IHLER: Yes.

2 MS. BRUCE: Mr. Kennedy.

3 MR. KENNEDY: Yes.

4 MS. BRUCE: Ms. Martin.

5 MS. MARTIN: Yes.

6 MS. BRUCE: MS. Reinhart.

7 MS. REINHART: Yes.

8 MS. BRUCE: Mr. Tomberlin.

9 MR. TOMBERLIN: Yes.

10 MS. BRUCE: Mr. Bradshaw.

11 MR. BRADSHAW: Yes.

12 MS. REINHART: There is a concern

13 that DEQ was -- we may need to change the

14 references within the subsequent language

15 from DEQ to Environmental Quality Board.

16 Okay. So if everybody would just take a

17 moment to look through the rest of the

18 rules that we've just gone through. I

19 think that we caught it in 252:205-25-2, so

20 the only thing that you would really need

21 to look at is 25-1.

22 MR. GRAVES: 1(a), on the top of

23 page 4, the first sentence, DEQ has

24 adopted.

25 MS. REINHART: So actually the

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1 Board has adopted, right? So keep it.

2 Okay. So otherwise, the remainder of that

3 whole paragraph is -- it's appropriate.

4 DEQ is the appropriate reference there.

5 MS. MARTIN: There is a bunch of  
6 DEQ's.

7 MS. REINHART: Yes, but they  
8 submit it to the DEQ.

9 MS. MARTIN: Yes, it seems okay.  
10 So we just make a motion to amend 205-25-  
11 1(a), the first sentence that says "the DEQ  
12 has adopted 40 CFR". Replace "DEQ" with  
13 the word "Board" -- "Environmental Quality  
14 Board". Sorry.

15 MS. REINHART: Okay. I have a  
16 motion on the floor. Do I hear a second?

17 MR. GRAVES: Second.

18 MS. REINHART: Okay. Ms. Martin  
19 made the motion, Mr. Graves made the  
20 second. Any further questions, comments,  
21 discussion? Seeing none, let's call the  
22 roll, please, for this.

23 MS. BRUCE: Mr. Graves.

24 MR. GRAVES: Yes.

25 MS. BRUCE: Mr. Ihler.

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1 MR. IHLER: Yes.

2 MS. BRUCE: Mr. Kennedy.

3 MR. KENNEDY: Yes.

4 MS. BRUCE: Ms. Martin.

5 MS. MARTIN: Yes.

6 MS. BRUCE: MS. Reinhart.

7 MS. REINHART: Yes.

8 MS. BRUCE: Mr. Tomberlin.

9 MR. TOMBERLIN: Yes.

10 MS. BRUCE: Mr. Bradshaw.

11 MR. BRADSHAW: Yes.

12 MS. REINHART: Okay. The only

13 other thing that I know that we need to

14 clean up, if you will go back to 252:205-3-

15 2. And I'm going to need Jerry and

16 Catherine's help on this one, because this

17 is procedural. They did not -- when we --

18 we did not recommend that they adopt the

19 language in Paragraph (d) of that where we

20 talk about the delisting program. It's --

21 we took it to them, we recommended that

22 they not adopt it since we were not doing -

23 - we did not have a full set of package

24 there.

25 So does this Council need to do

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1 anything to take that back to the Board at  
2 their meeting on June 22nd at that time?  
3 We have passed it, we didn't change our  
4 actions, we just asked that the Board not -  
5 - you know, make any recommendations or  
6 pass it on to the Governor at that point.  
7 I think it's fine as is. We can take it  
8 back to them now; is that your  
9 understanding?

10 MR. SANGER: Well, I think so. I  
11 think that really the recommendation to the  
12 Board, as poorly received as it was, was  
13 that they just didn't send it over at that  
14 time.

15 MS. REINHART: Right.

16 MR. SANGER: It was not that it  
17 just not ever be done.

18 MS. REINHART: Right.

19 MR. SANGER: It was just a bad  
20 time.

21 MS. REINHART: Right.

22 MR. SANGER: So since it was  
23 passed at your last meeting --

24 MS. REINHART: Right.

25 MR. SANGER: -- then I think

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1 we're on good procedural grounds to go  
2 ahead and send it over as part of this next  
3 package.

4 MS. REINHART: Okay.

5 MR. SANGER: And ask that they go  
6 ahead and do it at that time.

7 MS. REINHART: You're good with  
8 that, as well?

9 MS. SHARP: Yes, I m good with  
10 that.

11 MS. REINHART: So, okay. All  
12 right. Just so that it wouldn't be the  
13 same kind of thing happen, does the DEQ see  
14 anything that might cause the presenter  
15 grief?

16 UNIDENTIFIED PERSON: You could  
17 bear gifts.

18 MS. REINHART: I'll take whatever  
19 they want.

20 MR. SANGER: Jody, just make it  
21 clear that it's actually -- we voted and  
22 it's the intention of the Council that the  
23 Board -- to review a later meeting for the  
24 Board.

25 MS. REINHART: Right.

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1 MR. SANGER: To go to -- to vote.

2 MS. REINHART: Right.

3 MR. SANGER: You know, either go  
4 or not go with that particular Board  
5 meeting, and that's up to you.

6 MS. REINHART: Okay.

7 MS. MARTIN: Were they mad  
8 because we were piece mealing it.

9 MS. REINHART: No, no, no. They  
10 -- no. No, they were picking at something  
11 else, so. No. But it's exciting when  
12 you're -- I'm standing on the firing line.

13 MS. MARTIN: Sorry. Thank you  
14 for taking it.

15 MS. REINHART: I don't think  
16 that's ever -- I've never had that happen  
17 that way before.

18 MR. GRAVES: It happens to all  
19 Chairmen at least one.

20 MS. REINHART: I've been on the  
21 firing line before, but anyway -- the next  
22 Council meeting will be held July 8th.  
23 It's scheduled for Tulsa. I don't know if  
24 we will have any business at that time to  
25 conduct. If we do, we'll have that

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1 meeting. Next Board meeting is June 22nd  
2 at Stillwater. So if anybody would like to  
3 go see what that is like.

4 UNIDENTIFIED PERSON: You can  
5 handle it.

6 MS. REINHART: I know, but it's  
7 real close to the people in Tulsa. Okay.  
8 That finishes our --

9 MR. GRAVES: You could give that  
10 to your Vice-Chair.

11 MS. REINHART: I know. I should,  
12 shouldn't I? There is good reasons to hand  
13 it off to him. Anyway, is there any new  
14 business to present to the Council at this  
15 time? Seeing none, I have -- Item Agenda  
16 10 is adjournment. Do I have a motion?

17 MR. GRAVES: So moved.

18 MS. REINHART: Second?

19 MR. BRADSHAW: Second.

20 MS. REINHART: Okay. All in  
21 favor --

22

23 MR. SANGER: Jody.

24 MS. REINHART: Yes.

25 MR. SANGER: One more thing I

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1 would like to clarify. A couple of staff  
2 members brought up they were not really  
3 clear when these rules need to go to the  
4 Board.

5 MS. REINHART: Okay.

6 MR. SANGER: Number one, fees can  
7 only go -- fees can only be passed while  
8 Legislature is in session. And as I  
9 recall, we noticed these rules originally  
10 as a permanent rulemaking.

11 MS. REINHART: Yes, we did.

12 MR. SANGER: So, really the next  
13 Board meeting, if we get it through as a  
14 permanent rulemaking, would be whenever --

15 MS. SHARP: Let me ask a  
16 clarifying question.

17 MR. SANGER: Yes.

18 MS. SHARP: Can it go to the  
19 Board and let the Board take their action  
20 and then not take effect until -- the fee  
21 portion cannot take effect until the  
22 Legislature is in session? They can't  
23 consider it unless the Legislature is  
24 physically in session during that time?

25 MS. REINHART: Right.

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1                   MS. SHARP:    So does that create a  
2 bifurcated choice?    You take the rules  
3 excluding the fees or take the whole thing  
4 later?

5                   MR. SANGER:    Well, I don't have  
6 the APA, Administrative Procedure Act with  
7 me, and I'm not sure if it says an Agency  
8 cannot adopt rules.

9                   MS. SHARP:    I know they can't  
10 become -- can't take effect.

11                   MR. SANGER:    Right.    So the  
12 question is, can the Board even vote on  
13 them.

14                   MS. SHARP:    Right.

15                   MR. SANGER:    If the Legislature  
16 is not in session.    I don't know the answer  
17 to that.

18                   MS. REINHART:   Okay.    So we don't  
19 know when we'll be taking these before the  
20 Board meeting throughout the remainder of  
21 the year.    It may not happen until January  
22 of next year; is that what I'm  
23 understanding?

24                   MS. SHARP:    (Inaudible) take  
25 effect.

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1 MS. REINHART: Yes. Well, I'll  
2 get with the DEQ as to when these rules  
3 will be taken before the Board, once we  
4 figure out what the Administrative  
5 Procedures Act allows us to do. Yes,  
6 ma am.

7 UNIDENTIFIED PERSON: Along the  
8 same lines, if industry wanted to start  
9 delisting, timeline on what industry can do  
10 -- is there -- can we begin any delisting,  
11 or is there anything we can do in the  
12 interim?

13 MS. REINHART: That's an answer -  
14 - a question for the DEQ to answer. It's  
15 not for the Council to do. So you'll have  
16 to visit with them about that.

17 MS. SHARP: I think Don Hensch  
18 would be a good place to start with that  
19 question.

20 MS. REINHART: He's volunteering,  
21 he's way over there. Yes.

22 MR. GRAVES: Jody, the DEQ Board,  
23 they don't have one scheduled until June  
24 21?

25 MS. REINHART: Right.

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1                   MR. GRAVES:    Is that what you're  
2   saying?

3                   MS. REINHART:   Right.   That s  
4   their next meeting --

5                   MR. GRAVES:    You guys had  
6   intimated that there may be three  
7   industries that were interested in these  
8   rules.   I mean, is that a hard and fast  
9   number?   Is somebody who is really hot to  
10   trot for this?   Because, if so, if it was  
11   really important, we could ask the DEQ  
12   Board to have a special meeting while the  
13   Legislature is still in session.

14                  MS. MARTIN:   They weren't even  
15   here.   Right?   If they were so hot to trot.

16                  MR. GRAVES:    Well, what I'm  
17   thinking -- I asked if there was only  
18   (inaudible) I don't think that's the case,  
19   but I want to make sure that we aren't  
20   leaving somebody in the (inaudible).

21                  MS. SHARP:    That's what I was  
22   asking.   Number one, I think calling an  
23   emergency meeting with the Board is --

24                  MR. GRAVES:    Well, Jody can do  
25   it.

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1 MS. SHARP: -- somebody besides  
2 me needs to request that, but -- somebody  
3 higher up.

4 MS. REINHART: Right.

5 MS. SHARP: That's a workable  
6 idea, that's a practical idea.

7 MS. REINHART: It is.

8 MS. SHARP: But getting them  
9 together is actually pretty hard. That's  
10 why I was asking about whether the  
11 Legislature had to physically be in session  
12 or not. We're going to look that up.  
13 Maybe, I don't know if this is workable,  
14 Jerry, if we could get -- I don't want to  
15 make this any more complicated than it's  
16 already been but, you know, if there were a  
17 way to pass the rules but leave the fees  
18 alone to accommodate industry in the  
19 meantime, so that we could have a dialogue  
20 with them and start the process. While we  
21 want fees in place for this process  
22 because, frankly, I think you know our  
23 financial condition. It wouldn't bother me  
24 (inaudible).

25 MS. MARTIN: We can't, because it

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1 says the DEQ will not consider said  
2 petition (inaudible).

3 MS. REINHART: Yes.

4 MS. MARTIN: And that's a  
5 problem. That's a problem. (Inaudible).

6 MS. REINHART: But discussions  
7 can begin with DEQ. That doesn't prohibit  
8 that. Application can't be submitted,  
9 there can't be any work until then. But  
10 you can have meetings with them, dialogue,  
11 things like that.

12 MR. SANGER: Well, the next Board  
13 meeting is in June and it can't go  
14 (inaudible) Legislative Session.

15 MS. REINHART: Board meeting and  
16 they've never pulled emergency meetings.

17 MS. SHARP: They have, actually.  
18 Maybe, one. But I'm just saying that's an  
19 Executive Director call.

20 MS. REINHART: That's fine.

21 MS. SHARP: We would have to be  
22 quite persuasive. It would take, quite  
23 frankly, and we don't know, it would take  
24 someone in industry to make a compelling  
25 argument to the head of the DEQ. And you

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1 say, we've had dialogues (inaudible)  
2 considering, you know, as soon as you get  
3 this, call us. They haven't said that to  
4 me (inaudible).

5 MS. REINHART: Okay.

6 UNIDENTIFIED PERSON: I always  
7 thought kind of the standard thing was, you  
8 know, we go before the Board (inaudible)  
9 the Legislature had to do something, then  
10 whenever they came in Session, they either  
11 do it or they did nothing and it became  
12 effective.

13 MS. SANGER: Every time I look  
14 down at the lawyers, (inaudible) that twice  
15 now and they're both kind of going like  
16 this.

17 UNIDENTIFIED PERSON: So what do  
18 you all know different?

19 MS. MARTIN: (Inaudible)  
20 appropriate time that the Board doesn't  
21 like to hold on to things -- they can  
22 approve it. It just doesn't become  
23 effective until next year.

24 MS. SHARP: The situation where  
25 fees can't happen when the Legislature is

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1 not in Session (inaudible) Board level or  
2 is it at the (inaudible) level. Can the  
3 Board take an action in June and then that  
4 can wait and actually get finalized  
5 whenever it becomes legal.

6 MR. SANGER: That really depends  
7 how the statute is worded and there is two  
8 different --

9 MS. SHARP: Right.

10 MR. SANGER: -- two different  
11 statutes we have to look at. One is  
12 emergency rules can't be passed during  
13 Legislative Session and another one is  
14 regular permit rules can be passed. They  
15 are two completely different --

16 MS. SHARP: If they involve fees.  
17 Isn't there a fee catch in it?

18 MR. SANGER: Right. Right. For  
19 fees. So I would just have to look at the  
20 language.

21 MS. REINHART: That's fine. You  
22 can just get back to me and let me know.  
23 Okay.

24 UNIDENTIFIED PERSON: We've also  
25 got a situation where the Legislature can't

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1 -- I don't think you can pass something in  
2 one and try to get it approved by the next  
3 one. (Inaudible) dichotomy of the  
4 different Sessions.

5 MR. UNIDENTIFIED PERSON: For  
6 God's sakes, we do all this other stuff.

7 MS. REINHART: Okay. I think we  
8 need to --

9 MS. MARTIN: I make a motion to  
10 adjourn.

11 MS. REINHART: Motion to adjourn.  
12 Anybody that is not going to say aye, stand  
13 up. Meetings adjourned.

14 (End of proceeding)

15

16

17

18

19 C E R T I F I C A T E

20 STATE OF OKLAHOMA ) ss:

21 COUNTY OF OKLAHOMA )

22

23 I, CHRISTY A. MYERS, Certified  
24 Shorthand Reporter in and for the State of  
25 Oklahoma, do hereby certify that the above

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proceedings is the truth, the whole truth,  
and nothing but the truth; that the  
foregoing proceedings were tape recorded by  
me and thereafter transcribed under my  
direction; that said proceedings were taken  
on the 14th day of January, 2004, at  
Oklahoma City, Oklahoma; and that I am  
neither attorney for nor relative of any of  
said parties, nor otherwise interested in  
said action.

IN WITNESS WHEREOF, I have hereunto  
set my hand and official seal on this, the  
6th day of June, 2004.

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CHRISTY A. MYERS, CSR