

MINUTES
HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL
April 22, 2010
DEQ Multipurpose Room
707 North Robinson
Oklahoma City, Oklahoma

For EQ Board August 24, 2010
 Approved HWMAC October 28, 2010

Notice of Public Meeting The Hazardous Waste Advisory Council convened for a regular meeting at 10:00 a.m. April 22, 2010 in the Multipurpose Room of Department of Environmental Quality, 707 North Robinson, Oklahoma City, 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 on December 3, 2009. The agenda was posted the meeting facility and the Department of Environmental Quality a minimum of 24 hours prior to the meeting. Mr. Lee Grater, Vive-Chair, called the meeting to order and roll call was taken and a quorum was confirmed.

MEMBERS PRESENT

Lee Grater
 Michael Graves
 Earl Hatley
 Bob Kennedy
 Ray Reaves

DEQ STAFF PRESENT

Jon Roberts
 Mike Edwards
 Pam Dizikes
 Barbara Rauch
 Rita Kottke
 Don Hensch
 Myrna Bruce

MEMBERS ABSENT

Wesley Anderson
 Stephen Bogdahn
 Paul Hagameier
 Alan Riffel

OTHERS PRESENT

Christy Myers, Court Reporter

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

Discussion, Amendment, and Roll Call Vote to Approve the minutes of the October 22, 2009 meeting. Mr. Graves made motion and Mr. Kennedy made the second.

See transcript pages 5 - 6

Michael Graves	Yes	Ray Reaves	Yes
Earl Hatley	Yes	Lee Grater	Yes
Bob Kennedy	Yes		

Discussion and Council Action on proposed changes to the Brownfields rules. Ms. Rita Kottke, Brownfields Program Manager advised that proposal would make changes to the Brownfields rules to make them consistent with the recent amendments to the Oklahoma Brownfields Voluntary Redevelopment Act. This re-organization includes revoking 252:220 and replacing it with 252:221. Discussion lead to an amendment to delete 221:1-4-2 and renumber accordingly. Mr. Graves made a motion to amend the language as discussed and Mr. Hatley made the second. Roll call for the amendment was as follows:

See transcript pages 5 - 32

Michael Graves	Yes	Ray Reaves	Yes
Earl Hatley	Yes	Lee Grater	Yes
Bob Kennedy	Yes		

Mr. Grater then called for a motion to adopt 252:221 as amended for emergency rulemaking. Mr. Kennedy made the motion to approve and Mr. Graves made the second.

See transcript pages 32- 36

Michael Graves	Yes	Ray Reaves	Yes
Earl Hatley	Yes	Lee Grater	Yes
Bob Kennedy	Yes		

Mr. Graves then made motion to adopt 252:221 as amended as a permanent rule.

See transcript pages 36-37

Michael Graves	Yes	Ray Reaves	Yes
Earl Hatley	Yes	Lee Grater	Yes
Bob Kennedy	Yes		

Mr. Grater called for a motion to revoke Chapter 220 by emergency. Mr. Kennedy made the motion and Mr. Hatley made the second.

See transcript pages 37-39

Michael Graves	Yes	Ray Reaves	Yes
Earl Hatley	Yes	Lee Grater	Yes
Bob Kennedy	Yes		

Mr. Grater called for motion to revoke Chapter 220 by permanent rulemaking. Mr. Graves made the motion and Mr. Hatley made the second.

See transcript pages 39-40

Michael Graves	Yes	Ray Reaves	Yes
Earl Hatley	Yes	Lee Grater	Yes
Bob Kennedy	Yes		

Discussion and Council Action on proposed changes to Chapter 4, DEQ Rules of Practice and Procedure. Discussion of proposed revocation of the Tier rules pertaining to the Brownfields program. This revocation is consistent with the recent amendments to the Oklahoma Brownfields Voluntary Redevelopment Act. Discussion of emergency rulemaking and permanent rulemaking implications were included in the previous rulemaking. Mr. Grater called for a motion for emergency rule adoption. Mr. Kennedy made the second.

See transcript pages 40-43

Michael Graves	Yes	Ray Reaves	Yes
Earl Hatley	Yes	Lee Grater	Yes
Bob Kennedy	Yes		

And for permanent rulemaking Mr. Kennedy made the motion for approval and Mr. Graves made the second.

See transcript pages 40-43

Michael Graves	Yes	Ray Reaves	Yes
Earl Hatley	Yes	Lee Grater	Yes
Bob Kennedy	Yes		

Because it was unsure as to whether Council had voted to revoke Chapter 220 for permanent rulemaking, Mr. Kennedy moved to do so. Mr. Grater made the second.

See transcript pages 44-46

Michael Graves	Yes	Ray Reaves	Yes
Earl Hatley	Yes	Lee Grater	Yes
Bob Kennedy	Yes		

Director's Report Mr. Scott Thompson provided an update on the legislative session; talked about the Agency's budget issues; and about the big things coming on the Federal horizon.

New Business None

Adjournment Motion to adjourn made by Mr. Graves with the second by Mr. Hatley.

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PROCEEDINGS

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MR. GRATER: I'll call the April
22nd meeting of the Hazardous Waste
Advisory Council meeting to order.

6

Roll call.

7

MS. BRUCE: Michael Graves.

8

MR. GRAVES: Here.

9

MS. BRUCE: Earl Hatley.

10

MR. HATLEY: Here.

11

MS. BRUCE: Bob Kennedy.

12

MR. KENNEDY: Here.

13

MS. BRUCE: Ray Reaves.

14

MR. REAVES: Here.

15

MS. BRUCE: Lee Grater.

16

MR. GRATER: Here.

17

MS. BRUCE: For the record,

18

absent are Steve Bogden, Alan Riffel, Paul

19

Hagameir and Wes Anderson. But we do have

20

a quorum.

21

MR. GRATER: The April 22, 2010

22

regularly scheduled meeting of the

23

Hazardous Waste Management Advisory Council

24

was called in accordance with the Opening

25

Meeting Act. Notice was filed with the

1 Secretary of State on December 3, 2009.
2 The Agenda was duly posted at the DEQ, 707
3 North Robinson, Oklahoma City, Oklahoma.
4 Only matters appearing on the posted Agenda
5 may be considered at this regular meeting.
6 In the event that this meeting is continued
7 or reconvened, public notice of the date
8 time and place of the continued meeting
9 will be given by announcement at this
10 meeting. Only matters appearing on the
11 Agenda of the meeting, which is continued,
12 may be discussed at the continued or
13 reconvened meeting. Thank you.

14 Chairperson's Report. Essentially
15 we have no Chairperson's Report for this
16 meeting, so we can go into the discussion
17 or amendments.

18 Questions or discussion by the
19 Council? Questions or discussion by the
20 public? We are here to discuss the changes
21 to the Brownfields rules. Okay. I am
22 sorry, bear with me, this is my first time
23 doing this. Beat me up as necessary.

24 (Multiple inaudible conversations)

25

1 MR. GRATER: We have a -- has
2 everyone read the Minutes and reviewed the
3 Minutes? Do we have a motion to approve?

4 MR. GRAVES: So moved.

5 MR. KENNEDY: I second.

6 MR. GRATER: Motion has been
7 moved and seconded. Myrna, will you please
8 call roll.

9 MS. BRUCE: Michael Graves.

10 MR. GRAVES: Yes.

11 MS. BRUCE: Earl Hatley.

12 MR. HATLEY: Yes.

13 MS. BRUCE: Bob Kennedy.

14 MR. KENNEDY: Yes.

15 MS. BRUCE: Ray Reaves.

16 MR. REAVES: Yes.

17 MS. BRUCE: Lee Grater.

18 MR. GRATER: Yes.

19 MS. BRUCE: Motion approved.

20 MR. GRATER: Now we can do

21 discussion of changes to the Brownfields

22 rules to make them consistent with the

23 recent amendments to the Oklahoma

24 Brownfields Voluntary Redevelopment Act.

25 This re-organization includes revoking

1 252:220 and replacing it with 252:221.

2 Discussion of emergency rulemaking and

3 permanent rulemaking implications.

4 Presentation by Rita Kottke.

5 MS. KOTTKE: Yes.

6 MR. GRATER: Did I get it right?

7

8 MS. KOTTKE: Yes. Good morning.

9 My name is Rita Kottke. I am the

10 Brownfields Program Manager and we are

11 going to talk today about the changes that

12 we are proposing for the Brownfield rules.

13 I'm going to give a brief overview

14 of what Brownfields are for the people in

15 the audience who may not know. The formal

16 definition of Brownfields is abandoned,

17 idled, or underused, industrial or

18 commercial facilities, or other real

19 property at which expansion or

20 redevelopment of real property is

21 complicated by pollution. The more

22 user-friendly one is, property that has

23 lost value due to the perception that it

24 might be contaminated. The purpose of the

25 program is to provide a means for property

1 owners to manage their environmental
2 liability. The main goal is to get
3 derelict properties cleaned up and reused
4 so they do not contribute to the general
5 blight of an area.

6 The overall benefits of the program,
7 big picture are; they increase property
8 values, increases the tax base, it removes
9 sources of pollution, it creates jobs, and
10 it reduces blight.

11 The Brownfield Program is a
12 voluntary program by law. The clean ups
13 are based on risk, and that risk is future
14 use of the property. The Oklahoma
15 Brownfields Voluntary Redevelopment Act was
16 passed originally in 1996. And 2002,
17 Federal Brownfields legislation was passed.
18 And it basically just creates funding
19 mechanisms. It clarifies liability from
20 Superfund and it recognizes state programs
21 that had existing Miranda Agreements with
22 EPA.

23 Our State Program was created in
24 1996. The program was approved by EPA in
25 1999. That's our Miranda Agreement with

1 them. And Congress endorses MOA's and the
2 Federal Small Business Liability Relief and
3 Brownfields Revitalization Act of 2002.
4 Basically what that means is EPA approves
5 our program and we are able to provide
6 liability relief from Superfund if they
7 complete our Brownfield program
8 successfully.

9 Okay. The new amendments, the 2009
10 Amendments to the Oklahoma Brownfield law,
11 basically, what it does is it redefines the
12 Brownfield certificate by adding this to
13 the definition of both the Certificate of
14 Completion and the Certificate of
15 Non-action Necessary. A Certificate of
16 Completion is not a permit, as defined by
17 Section 2-14-103 of this Title which is the
18 Uniform Permitting Act.

19 In the past all projects for our
20 program had to be consistent with the
21 Uniform Permitting Act. It also requires
22 adequate site characterization. It
23 provides authority to require institutional
24 and engineering controls at sites. It
25 provides authority to audit completed

1 sites. It provides authority to require
2 long-term stewardship plans. And it
3 requires long-term compliance with
4 institutional controls.

5 These are the changes as already
6 mentioned. We are adding a new Chapter
7 252:221. We are proposing a full new
8 Chapter as opposed to trying to make all
9 these changes within the existing
10 structure. We're revoking 252:220 which is
11 the existing structure and that's the old
12 program rules. And it revokes 252:4-7-61
13 through 252:4-7-63 which is the defining
14 Brownfields Certificates as permits.

15 The changes are administrative in
16 nature and not substantive. Basically the
17 program will function the same. The
18 requirements for the clean up will be the
19 same. The risk evaluation will be the
20 same. It's only administrative issues that
21 are being changed. What that means is that
22 there is -- we are making it less
23 cumbersome on the participant. They will
24 have to produce less documents for us.

25 Proposed general requirements for

1 this month. This says, must enter a
2 Consent Order with DEQ. They must submit a
3 work plan for site characterization,
4 evaluate the risk that the site poses to
5 the future use of the property. They also
6 have to tell us how they are going to
7 ensure that, that future use remains the
8 use of the property. Evaluate clean up
9 alternatives available. Compare a proposal
10 for the site. Notify the -- this proposal
11 will then be reviewed by DEQ and it won't
12 go out to the public until DEQ approves it.
13 Then they have to notify the public of
14 their opportunity to review and comment on
15 that proposal. They have to reimburse DEQ
16 for our reasonable oversight cost. They
17 have to remedy the risk, and they have to
18 file the Certificate, which is a land use
19 control, and the land records in the county
20 that the site is in.

21 We are no longer requiring Sampling
22 and Analysis Plans -- this is a separate
23 plan; a Quality Assurance Project Plan and
24 a Health and Safety Plan. Instead of these
25 three plans, we are requesting one more

1 plan that includes information about
2 sampling analysis, quality assurance, and
3 health and safety. And these plans should
4 be commiserate with the complexity of the
5 site. We found it a real problem since the
6 rules were first written, Quality Assurance
7 Project Plans especially have become a
8 specific thing. It's not just addressing
9 quality, it's kind of an EPA standard for
10 how to do one of these plans. And it is
11 very expensive for a consultant to prepare
12 these. And very expensive for someone
13 trying to redevelop the Brownfields to meet
14 the standards. So we are proposing
15 something that is commiserate with the site
16 and the complexity of the site.

17 We are doing away with the Separate
18 Site Characterization Report; that is
19 included in the Proposal. All that
20 information will be in the Proposal.

21 We are doing away with the Permit
22 Application, and we are doing away with the
23 Draft Plan that was -- prepared by DEQ that
24 now goes out to the public. Instead, the
25 Proposal, once DEQ approves it, it will go

1 directly out to the public.

2 Public participation. Once DEQ
3 finds the Proposal to be protective of
4 human health and the environment, the
5 participant must establish a document
6 repository in the area local to the site
7 and accessible to the public. They must
8 notify the public of the availability of
9 the documents for review. And they have
10 twenty working days for review. They must
11 notify the public of an opportunity to
12 request a public forum to discuss their
13 Proposal.

14 A public forum. DEQ is proposing to
15 have public forums as opposed to formal
16 public meetings so that the people can talk
17 with us one-on-one. And talk with the
18 participant in the program one-on-one and
19 get their answers without having to stand
20 up in a public meeting and publically ask.
21 DEQ will hold public forum to discuss the
22 proposal that receives timely requests and
23 determines if there is a significant public
24 interest in the proposal. And the
25 participants and its representative, or its

1 representative must attend the public
2 forum.

3 DEQ will review and consider all
4 comments received; will prepare a
5 Responsiveness Summary of all comments. We
6 may require the participant to revise a
7 proposal to satisfy the public's concerns
8 and we may accept the proposal. We will
9 issue a Certificate of Completion or a
10 Certificate of No Action Necessary for the
11 site upon successful completion of the
12 requirements. And we will audit sites in
13 the future to ensure that they are in
14 compliance with the certificate and with
15 the institutional controls in place at the
16 property.

17 Okay. The next section would be the
18 Revolving Loan Fund. We initially received
19 a Revolving Loan Fund, funding from EPA as
20 a pilot program in 2001.

21 In 2002, the Federal Brownfield Law
22 created a Statutory Revolving Loan Fund
23 Program. The requirements for the old
24 money, the pilot money, is slightly
25 different than the requirements for the new

1 pilot -- from the new Legislative Program.
2 And so after the DEQ loaned out all of its
3 existing funding, we transitioned our pilot
4 RLF into a new Revolving Loan Fund under
5 Circle 104K. So we're going to -- we are
6 proposing these changes to the rules to
7 meet the federal requirements of 104K.
8 This allows DEQ to request supplemental
9 funding in the future.

10 And in 2009, DEQ received almost two
11 million dollars in Revolving Loan Fund
12 Supplemental Funding from the American
13 Recovery and Reinvestment Act.

14 The specific rule changes that apply
15 to the DEQ and Circle 104K requirements.
16 One thing that you will notice is that
17 there is now another definition of
18 Brownfields, which is different than the
19 Brownfield definition for the program.
20 This is because this is the federal
21 definition of a Brownfield and to be
22 eligible for the Revolving Loan Fund money,
23 you have to meet their definition. So that
24 is why it -- there is another Brownfield
25 definition.

1 Okay. It allows us to make
2 sub-grants to non-profit organizations and
3 governmental entities. So this will be new
4 for us. To be eligible for these, and we
5 have to specify in here the eligibility
6 requirements which is a federal
7 requirement, you have to be an innocent
8 landowner, continuous property owner, or
9 bonafide perspective purchaser of the
10 property under Superfund, or you had to
11 have acquired it by eminent domain so that
12 you are not a potentially responsible party
13 under Superfund. If someone is a
14 potentially responsible party under
15 Superfund, they are not eligible for the
16 sub-grants or the loans. It expands types
17 of sites eligible for funding. In the
18 past, it's basically in our jurisdiction
19 that has been, you know, hazardous
20 substances that's what we could loan money
21 for. Now we can loan money for petroleum
22 issues; controlled substances, such as meth
23 labs; mine scarred lands; indoor issues
24 that normally Superfund does not cover,
25 things like indoor asbestos, lead based

1 paint, those type of issues that even if
2 there is not a conduit to the outside,
3 which is what used to be the requirement to
4 use the funding that we had previously. It
5 also creates a means to prioritize projects
6 so the DEQ will have a way to rank sites.
7 Especially for the sub-grants. We expect
8 that we will have a lot of people apply for
9 the sub-grants and we have to have a
10 straight forward way of ranking them.

11 The ranking criteria basically is
12 going to encourage sustainable development.
13 It's not really about what your site is, or
14 that sort of thing, it's trying to
15 encourage sustainable development.

16 And the reason we are asking for the
17 emergency rulemaking is due to the winter
18 weather. As you know, the Council was
19 unable to meet the January 28th date or the
20 February 8th date, due to the ice storm and
21 then the snow storm. The proposed rules
22 contain some critical provisions that once
23 adopted will allow DEQ to award the
24 American Recovery and Reinvestment Act
25 funds for Brownfield clean up projects.

1 And DEQ finds it necessary to offer the
2 proposed rules to the Council as emergency.

3 The ARRA Funding comes with a due
4 date. If we don't make substantial
5 progress towards getting the money out the
6 door by September 30th, EPA reserves the
7 right to take the money back. And we
8 really don't want to give the money back,
9 so that is why we are asking for the
10 emergency rulemaking.

11 The major goals of the proposed rule
12 changes is to ensure the rule changes,
13 implement the changes, that are required by
14 the Oklahoma Brownfield Voluntary
15 Redevelopment Act, the amendments; make the
16 program less cumbersome for the
17 participant; ensure the substantive
18 requirements remain in place; ensure that
19 the public continues to have the
20 opportunity to review and comment on the
21 proposed project; and to revise the RRL
22 funds to meet the new federal requirements.

23 One of the things that we want to
24 do, specifically, about keeping no
25 substantive changes to the program, is that

1 we have that existing Miranda Agreement
2 with EPA. EPA reserves the right to reopen
3 and reconsider that when we change our
4 program. So we want to be able to show
5 them that all of our substantive issues are
6 the same. That it's only the red tape that
7 we are changing.

8 So these are the after-shots from
9 those first sites that I showed with the
10 definitions.

11 On the left is Flint Warehouse,
12 Flintco, Flint Industries in Tulsa. And on
13 the right is Brandon (ps) Chemical, it used
14 to be Oklahoma Steel Casting site.

15 The next one. We are very proud of
16 the Skirvin Hotel, that was a Brownfield
17 Revolving Loan Fund. We had to show that
18 there was conduit to the outside to use the
19 money for the indoor asbestos abatement at
20 the Skirvin. But we were able to do that.

21 And this is Bricktown. Bricktown is
22 one of the -- also one of our Brownfields.
23 They won this year the Phoenix Award, which
24 is a very big deal in Brownfield world.
25 And they also won a new award called the

1 Renewal Award for Economic Development.

2 And so we are very proud of Bricktown.

3 Any questions? I will be happy to
4 try to answer them.

5 MR. GRAVES: I have one question.

6 Referring to the loan program.

7 MS. KOTTKE: Yes.

8 MR. GRAVES: You've got -- the
9 regs in 221-7-7 have projects of election
10 criteria. And under Subsection D, you said
11 priority in that has ten enumerated
12 factors. When you said up there you all
13 were going to prioritize the projects, are
14 you going to look and see and basically
15 count up how many of these ten each one
16 meets and if you get seven out of ten you
17 come to the top?

18 MS. KOTTKE: What we have -- we
19 have actually created a tool, a statement
20 of interest, for people to fill out when
21 they want a sub-grant and they'll address
22 those issues and we have a ranking tool to
23 score them. And so whoever gets the
24 highest score gets the funding. It's, you
25 know, we have limited funding.

1 MR. GRAVES: No, I understand.

2 Will that ranking tool -- is that a public
3 document?

4 MS. KOTTKE: Not yet. It's not
5 final. But I would be able to send you a
6 copy.

7 MR. GRAVES: I would just like to
8 see it.

9 MS. KOTTKE: Okay.

10 MR. GRAVES: I also want to say
11 that I am really pleased to see the
12 Legislature address this because one of the
13 problems I have always had with the
14 original program was, you talk to my
15 clients about it, their eyes would glaze
16 over. And I think it is much simpler and
17 much easier to understand and hopefully
18 will be used a lot more than it was before.

19 MS. KOTTKE: I hope so, that is
20 one of our goals.

21 MR. GRAVES: Yes, I understand.
22 Mine too.

23 MR. REAVES: I think I know the
24 answer but I want to just verify. You've
25 referred to innocent landowners.

1 Two questions. One, innocent versus
2 guilty, and how do you determine that?

3 MS. KOTTKE: Well it's an actual
4 definition in CERCLA in the Superfund law.
5 They -- actually it's SARA, the Superfund
6 Amendments Re-authorization Act of 1986.
7 Congress created the term innocent
8 landowner, saying that if you are an
9 innocent landowner then you are not --
10 you're not liable under Superfund.

11 They didn't really define it. And
12 they said if you conducted all appropriate
13 inquiry into the history of the site, then
14 you were an innocent landowner. But then
15 there was a question, what constituted all
16 appropriate inquiry? And not until 2002,
17 did Congress tell EPA to write regulations
18 to say what all appropriate inquiry is. So
19 there is now a regulation that tells you
20 what all appropriate inquiry is.

21 The ASTM standards for Phase One
22 Environmental Assessment now meets that
23 requirement. So if you do a phase one, you
24 have done your all appropriate inquiry, and
25 then you're an innocent landowner. And

1 you're an innocent landowner -- innocent
2 landowner is if they do the due diligence,
3 (inaudible), they find no reason to believe
4 that the site is contaminated, and later it
5 is, and it comes (inaudible) superfund
6 site, you can be an innocent landowner
7 because you had no reason to believe that
8 they created continuous property owner and
9 bonafide prospective purchaser as a
10 separate category of protections. Bonafide
11 prospective purchaser specifically can
12 acquire the property fully with knowing
13 that it was contaminated but not acquire
14 the liability. So it's a good thing. It
15 does have continuing obligations that
16 require you to do things, like, cooperate
17 with EPA when they show up and want to
18 clean your site. So there are continuing
19 obligations that you have to maintain to
20 maintain that protection.

21 Did I go too far to answer your
22 question?

23 MR. REAVES: Okay.

24 MS. KOTTKE: Okay. There is a
25 definition for it, I think that was your

1 question.

2 MR. KENNEDY: I did have a
3 question about the DEQ approval process.
4 Because while I was looking through it
5 earlier, I couldn't find in the sequence
6 when the final approval of the plan --

7 MS. KOTTKE: The proposal? What
8 it would be is that the proposal -- I
9 thought this was in there, but the proposal
10 -- once DEQ approves the proposal, we are
11 happy with it, we tell them that the public
12 look at it, comment on it. Once the public
13 comment period is over and we evaluate the
14 comments, then we either finalize the
15 proposal or we ask for changes. If we
16 finalize it, it depends on whether it's a
17 proposal for no action necessary or a
18 proposal to actually do work. If the
19 proposal is no action necessary, we can
20 issue the No Action Necessary Certificate
21 at that point. If it's to do work, they
22 have to submit a work plan for the actual
23 clean up, the technical issues of the clean
24 up. And then --

25 MR. KENNEDY: I thought I heard

1 you earlier say that DEQ will approve it
2 before it goes to public comment.

3 MS. KOTTKE: Well, what it is, is
4 a proposal -- in other words, they can't
5 just send any proposal to the public. We
6 have to be on board and we have to agree
7 with it before it goes to the public.

8 MR. KENNEDY: Okay.

9 MS. KOTTKE: Does that make
10 sense?

11 MR. KENNEDY: Yes. So is there
12 any time frames associated?

13 MS. KOTTKE: Time frames?

14 MR. KENNEDY: Have there been any
15 time frames, like, in the past?

16 MS. KOTTKE: You mean the review
17 times?

18 MR. KENNEDY: Yes. DEQ --

19 MS. KOTTKE: We didn't put those
20 in. And the reason we didn't put those in
21 is because if we give 60 days, say, you
22 have to get this reviewed in 60 days, you
23 would take 60 days. So we want to make it
24 more of a priority that they make their
25 reviews as soon as they come in. We are

1 trying to shorten that time as much as
2 possible.

3 MR. GRAVES: And it gives the
4 opportunity now to call them up every other
5 day and find out.

6 MR. KENNEDY: And a question
7 about the language in 252:211-3-4 (B).
8 When the DEQ and participant are satisfied
9 with the proposal; will be protective of
10 human health and environment and that the
11 proposal adequately addresses long-term
12 stewardship. Is that sort of EPA's big
13 mandate?

14 MS. KOTTKE: Well one of the
15 things we have found in the past is that --
16 and I can understand why they do this, they
17 would like to do a very cheap clean up,
18 maybe leave waste onsite. Bury it and
19 create a disposal cell. But they don't
20 want to allow for that long-term cost,
21 maintaining that disposal zone, making sure
22 nothing happens monitoring it. And this is
23 the way to say, no, you have to have a plan
24 if you're leaving it there. You have to
25 have a plan if you're not cleaning it up to

1 pristine or to residential standards.
2 There has to be a way to put the
3 responsibility on the participant to ensure
4 that something less than an unrestricted
5 use cleanup remains as that land use. In
6 other words, to make sure that it does
7 remain industrial. That nobody is digging
8 into an area that they shouldn't dig into.
9 To make sure that landfills that were
10 created onsite are maintained.

11 Does that answer your question? Or
12 do I need to --

13 MR. KENNEDY: No, I think that --
14 yes, that does. That's more quantifiable
15 and qualitative, I think, than just the
16 term protect human health and environment.
17 I was just wondering how that -- if that's
18 the requirement of it finally being
19 approved, that's kind of a big term.

20 MS. KOTTKE: Well it's still
21 based on the risk that the site presents to
22 the land use. In other words, if they say
23 they are going to clean it up to industrial
24 standards, there is a different risk
25 evaluation. The screening levels are

1 higher. It's just a different animal,
2 because you have adults being exposed eight
3 hours a day as opposed to a child being
4 exposed 24 hours a day. So -- and once
5 someone -- say, they bought the property,
6 they cleaned it up, put industrial
7 standards on it and then sold it to
8 somebody who decides it's a good idea to
9 put a daycare in there, and it's an
10 industrial facility. That is not okay with
11 us. And we need to have that kind of
12 mechanism to say, ut-oh, you are violating
13 your consent order. You are violating your
14 certificate.

15 Mr. KENNEDY: Okay.

16 MR. GRAVES: I have one other,
17 I'm not sure it's a question. It may not
18 be a question for you, it may be a question
19 for Pam or Barbara. In 221-1-4, terms not
20 defined by code of rule.

21 Number two, first part starts out
22 fine; any term that defines in the act or
23 in the code shall be defined by -- and my
24 problem is with the second one, which is
25 EPA guidance documents because I don't know

1 what that means. I mean when I -- every
2 time I get a new matter, first thing I do,
3 I say, oh, the statute and see what's
4 required according to the rules and see if
5 anything is different than the statute and
6 those rules are the legal requirements.
7 And that is where you get the rule of law.
8 Guidance documents aren't law. They are
9 guidance documents. And not only are they
10 not something you have to follow, but this
11 doesn't even tell you which EPA guidance
12 document. There are hundreds of EPA
13 guidance documents spread across numerous
14 programs. That really bothers me because
15 it makes -- to me, it makes the whole thing
16 imprecise. Why is that there?

17 MS. KOTTKE: I think one of the
18 reasons -- I mean, this is actually a
19 hangover from the old rules. It's -- EPA
20 tends to create terms that they define, and
21 usually they will issue guidance documents.
22 And maybe it's not in the rules some place.

23 To clarify, the way this program
24 really works, you know, I mean, it's nice
25 to have the rules. But the way it really

1 works is it's up to the participant to put
2 an argument forward to DEQ that they are
3 following all of these rules and
4 regulations. That they are ensuring that
5 the project is safe and will be safe in the
6 future. But they are making the argument,
7 and they are telling us, you know, we are
8 doing this by EPA guidance, this; we are
9 doing it by EPA guidance, that, or ASTM
10 guidelines. In other words, they are
11 making the argument to us and they are
12 allowed to use that. Does that help at
13 all? They are basically making an argument
14 that they need to substantiate well enough
15 for DEQ to accept it.

16 MR. GRAVES: No, I understand
17 that. And I think that burden is
18 appropriate. But I am not sure that is a
19 definition issue.

20 MS. RAUCH: As a matter of fact,
21 there aren't any words in our rules that
22 are not either defined in the Environmental
23 Quality Code or in this document. There
24 are none of the words that we use. And it
25 wouldn't really matter for us to take that

1 out. You know, if somebody else uses a
2 word in some document they give us, then
3 they can define it. And they can say EPA
4 Guidance Document
5 Number-something-or-other-else. But all
6 the words that we use are defined in here
7 or in our statute. And like Rita said,
8 this is just exactly what our old rule
9 said.

10 MR. GRAVES: I didn't realize
11 that or I would have complained about it
12 years ago.

13 MS. RAUCH: Here we go.

14 MR. GRAVES: I would prefer that,
15 that, be taken out. I don't like that as a
16 precedent. I don't think it makes it
17 imprecise.

18 MS. RAUCH: It doesn't matter to
19 me.

20 MR. GRATER: I think Mr. Graves
21 makes a good point. As far as somebody
22 using EPA guidance terms or concepts as a
23 justification and argument, if you were to
24 drop that Number 2 from that paragraph,
25 there is nothing that would prohibit

1 someone from doing that. And it removes a
2 certain degree of, shall we say,
3 undefinability. You guys can live with
4 that.

5 MS. KOTTKE: Yes. That's fine.

6 MR. GRATER: Thank you.

7 MR. KENNEDY: Then Mr. Graves
8 will have to talk about changing the
9 numerology here so that we can -- if we are
10 going to approve this. You want to take a
11 stab at that?

12 MR. GRAVES: Well, okay, I don't
13 think that --

14 MR. KENNEDY: We approve that,
15 then we will change that and make the
16 motion for "3" and "4" would now become "2"
17 and "3", or however you want to word that.

18 MR. GRAVES: Yes. I move that
19 proposed 221:1-4-2 be deleted, and that the
20 Subsection (3) and (4) become respectively
21 (2) and (3).

22 MR. HATLEY: I second.

23 MR. KENNEDY: If we are going to
24 approve these rules, then we will state
25 that as --

1 MR. GRAVES: But typically don't
2 you have to vote on the motion.

3 (Inaudible Conversations)

4 Mr. KENNEDY: Do we do that now
5 or do we do it when --

6 MS. BRUCE: I believe you should
7 do that now. And then you will also vote
8 on the same thing, emergency; the same
9 thing, permanent. I don't know if that
10 makes three votes or two. Barbara?

11 MS. RAUCH: They can vote on the
12 motion. And then when you get ready to
13 adopt -- get ready to recommend by
14 emergency and by permanent, they can do it
15 as amended. And it only needs to be on the
16 permanent, as amended. The emergency, it
17 doesn't matter.

18 MR. REAVES: I need to ask one
19 question. Do we have anyone in the
20 audience that has a problem with what Mr.
21 Graves has recommended?

22 (Multiple inaudible conversations)

23 MR. GRATER: Okay. No comments
24 from the public. Myrna, roll call.

25 MS. BRUCE: Michael Graves.

1 MR. GRAVES: Yes.

2 MS. BRUCE: Earl Hatley.

3 MR. HATLEY: Yes.

4 MS. BRUCE: Bob Kennedy.

5 MR. KENNEDY: Yes.

6 MS. BRUCE: Ray Reaves.

7 MR. REAVES: Yes.

8 MS. BRUCE: Lee Grater.

9 MR. GRATER: Yes.

10 MS. BRUCE: That motion passed.

11 MR. GRAVES: That was my only

12 complaint. I think this is a great job.

13 Thank you.

14 MS. KOTTKE: Thank you.

15 MR. GRATER: Any discussion by

16 the public of these rules, overall? None.

17 We have action by the Council

18 recommendation to adopt 252:221 by

19 emergency rulemaking as amended.

20 MR. KENNEDY: I make a motion to

21 approve.

22 MR. GRAVES: Second.

23 MR. GRATER: Motion has been

24 approved and seconded. Roll call. Oh,

25 wait a minute, I think I have to read

1 something; right?

2 MS. RAUCH: Please.

3 MR. GRATER: Legal has told me I
4 have to do this. Bear with me.

5 Finding of emergency. The Hazardous
6 Waste Management Advisory Council was
7 unable to hold this meeting originally
8 scheduled for January 28, 2010, and then
9 rescheduled for February 8, 2010, due to
10 snow and ice storms that moved through the
11 state on those dates. Because the proposed
12 rules that were considered during the
13 January and February 2010 time frame
14 contains some critical provisions that once
15 adopted will allow the DEQ to award ARRA
16 Funds for Brownfields projects, the DEQ
17 finds it necessary to offer the proposed
18 rules to the Hazardous Waste Management
19 Advisory Council as emergency rules at this
20 time.

21 Chapter 221, Subchapter 7, contains
22 proposed rules dealing with the Brownfields
23 Revolving Loan Fund, RLF, which provides
24 low interest loans and sub-grants to any
25 private entities, political subdivisions,

1 units of local government, including
2 municipal and county governments, and
3 school districts, and federally recognized
4 Indian tribes for Brownfield clean up
5 activities. The RLF funds may be used to
6 clean up hazardous substances, pollutants,
7 contaminants, petroleum, mine scarred
8 lands, and controlled substances. The DEQ
9 has received ARRA stimulus money for the
10 RLF, and must make reasonable progress on
11 making loans and/or sub-grants from the
12 funds by October 1, 2010. The new proposed
13 RLF rules must be effective before DEQ can
14 make loans and or sub-grants using the ARRA
15 funds. The Council therefore finds that a
16 compelling public interest exists requiring
17 an emergency rule adoption.

18 MR. GRAVES: Mr. Chairman, I
19 would also like to point out that and if
20 you read the actual legislation, the
21 Oklahoma Legislature put a provision in
22 there, off, basically, leaving it up to the
23 DEQ to make emergency -- they recognized
24 that this needed to be done.

25 MR. GRATER: Thank you, Mr.

1 Graves.

2 Motion has been presented and
3 seconded and the necessary protocol
4 statement has been read. Roll call.

5 MS. BRUCE: May I ask Barbara a
6 question?

7 Barbara, we need a roll call for
8 finding of emergency and then a roll call
9 for emergency approval? And then permanent
10 approval?

11 MS. RAUCH: Two.

12 MS. BRUCE: Emergency and
13 permanent?

14 MS. RAUCH: Yes.

15 MS. BRUCE: Okay. Just wanted to
16 check.

17 MR. GRATER: That's all right.
18 So we need a vote --

19 MS. RAUCH: Well you can vote
20 first on the emergency rules, and then come
21 back and vote on the permanent rules.

22 MS. BRUCE: For the emergency
23 rulemaking, roll call.

24 MS. BRUCE: Michael Graves.

25 MR. GRAVES: Yes.

1 MS. BRUCE: Earl Hatley.
2 MR. HATLEY: Yes.
3 MS. BRUCE: Bob Kennedy.
4 MR. KENNEDY: Yes.
5 MS. BRUCE: Ray Reaves.
6 MR. REAVES: Yes.
7 MS. BRUCE: Lee Grater.
8 MR. GRATER: Yes.
9 MS. BRUCE: Motion did pass for
10 emergency rulemaking.
11 MR. GRAVES: I move that we adopt
12 252:221 as amended as a permanent rule.
13 MR. KENNEDY: I'll second.
14 MR. GRATER: Motion has been made
15 and seconded. We've got 251:221 by
16 permanent rulemaking. Any comments? No
17 comments.
18 MS. BRUCE: Michael Graves.
19 MR. GRAVES: Yes.
20 MS. BRUCE: Earl Hatley.
21 MR. HATLEY: Yes.
22 MS. BRUCE: Bob Kennedy.
23 MR. KENNEDY: Yes.
24 MS. BRUCE: Ray Reaves.
25 MR. REAVES: Yes.

1 MS. BRUCE: Lee Grater.

2 MR. GRATER: Yes.

3 MS. BRUCE: Motion passed.

4 MS. KOTTKE: Thank you, very
5 much.

6 MS. RAUCH: They have to revoke,
7 next.

8 MS. KOTTKE: Thank you, very
9 much, for passing that. I appreciate it.

10 MR. GRATER: Okay. Now we have
11 to consider a recommendation to revoke
12 252:220 by emergency rulemaking.

13 MR. KENNEDY: I move that we
14 revoke 252:220 by emergency rulemaking, so
15 to make room for the new rule.

16 MR. HATLEY: Second.

17 MR. GRATER: Motion's been made
18 and seconded.

19 (Multiple inaudible conversations)

20 MS. BRUCE: Michael Graves.

21 MR. GRAVES: Yes.

22 MR. GRATER: Oh, wait a minute.
23 I have to read this. It won't be as long
24 as the last one.

25 Finding of emergency. The Hazardous

1 Waste Management Advisory Council was
2 unable to hold its meeting originally
3 scheduled for January 28, 2010 and then
4 rescheduled for February 8, 2010 due to the
5 two snow and ice storms that moved through
6 the state on those dates. Because the
7 proposed rules that were considered during
8 the January/February 2010 time frame
9 contains some critical provisions that once
10 adopted will allow DEQ to award ARRA funds
11 for Brownfield projects, the DEQ finds it
12 necessary to offer the proposed rules to
13 Hazardous Waste Management Advisory Council
14 as emergency rules at this time. The
15 Council therefore finds compelling public
16 interest exists requiring emergency rule
17 adoption.

18 MS. BRUCE: Michael Graves.

19 MR. GRAVES: Yes.

20 MS. BRUCE: Earl Hatley.

21 MR. HATLEY: Yes.

22 MS. BRUCE: Bob Kennedy.

23 MR. KENNEDY: Yes.

24 MS. BRUCE: Ray Reaves.

25 MR. REAVES: Yes.

1 MS. BRUCE: Lee Grater.

2 MR. GRATER: Yes.

3 MS. BRUCE: Motion passed.

4 MR. GRATER: Next item on the

5 Agenda is the recommendation to revoke

6 251:220 by permanent rulemaking.

7 Any comments by the Council?

8 Comments from the public? Do we have a

9 motion?

10 MR. GRAVES: So moved.

11 MR. HATLEY: Second.

12 MR. GRATER: Earl Hatley seconds.

13 Let me read this statement again.

14 Finding of emergency. The Hazardous

15 Waste Management Advisory Council was

16 unable to hold its meeting originally

17 scheduled on January 28, 2010 and then

18 rescheduled for February 8, 2010 due to the

19 snow storms and ice storms that moved into

20 the state on those dates. Because the

21 proposed rules would be considered during

22 the January/February 2010 time frame

23 contains some critical provisions that once

24 adopted will allow the DEQ to award the

25 ARRA funds for Brownfield projects. The

1 DEQ finds it necessary to offer the
2 proposed rules to the Hazardous Waste
3 Management Advisory Council as emergency
4 rules at this time. The Council therefore
5 finds that a compelling public interest
6 exists requiring an emergency rule
7 adoption. Roll call.

8 MS. BRUCE: Michael Graves.

9 MR. GRAVES: Yes.

10 MS. BRUCE: Earl Hatley.

11 MR. HATLEY: Yes.

12 MS. BRUCE: Bob Kennedy.

13 MR. KENNEDY: Yes.

14 MS. BRUCE: Ray Reaves.

15 MR. REAVES: Yes.

16 MS. BRUCE: Lee Grater.

17 MR. GRATER: Yes.

18 MS. BRUCE: Motion passed.

19 MR. GRATER: Next item on the Agenda is
20 discussion by the Council on proposed
21 changes to Chapter 4, DEQ Rules of Practice
22 and Procedure.

23 Discussion of proposed revocation of
24 the Tier rules pertaining to the
25 Brownfields program. This revocation is

1 consistent with the recent amendments to
2 the Oklahoma Brownfields Voluntary
3 Redevelopment Act. Discussion of emergency
4 rulemaking and permanent rulemaking
5 implications.

6 Presentation by Rita.

7 MS. KOTTKE: I think it was
8 included in that. I didn't realize they
9 wanted it separate.

10 MR. GRATER: It was included in
11 that. Rita has made her presentation.

12 Do we have any questions or
13 discussions by the Council? Any questions
14 or discussions by the public?

15 Council is being asked to recommend
16 or revoke 252:4-7-61 through 252:4-7-63 by
17 emergency rulemaking.

18 MS. RAUCH: It's your last time
19 to read it.

20 MR. GRATER: Okay. Do we have a
21 motion to vote on, or do I read this first?

22 MS. RAUCH: Either way.

23 MR. GRATER: Okay. I'll read it
24 first and get it over with.

25 Finding of emergency. The Hazardous

1 Waste Management Advisory Council was
2 unable to hold its meeting originally
3 scheduled for January 28, 2010 and then
4 rescheduled for February 8, 2010 due to the
5 two snow storms and ice storms that moved
6 through the state on those dates. Because
7 the proposed rules that were to be
8 considered during the January/February 2010
9 time frame contains some critical
10 provisions that once adopted will allow DEQ
11 to award the ARRA funds for Brownfield
12 projects, the DEQ finds it necessary to
13 offer the proposed rules to the Hazardous
14 Waste Management Advisory Council as
15 emergency rules at this time. The Council
16 therefore finds that a compelling public
17 interest exists requiring an emergency rule
18 adoption.

19 Do we have a motion?

20 MR. REAVES: So moved.

21 MR. KENNEDY: Second.

22 MR. GRATER: We have a motion and
23 a second. Myrna, roll call, please.

24 MS. BRUCE: Michael Graves.

25 MR. GRAVES: Yes.

1 MS. BRUCE: Earl Hatley.
2 MR. HATLEY: Yes.
3 MS. BRUCE: Bob Kennedy.
4 MR. KENNEDY: Yes.
5 MS. BRUCE: Ray Reaves.
6 MR. REAVES: Yes.
7 MS. BRUCE: Lee Grater.
8 MR. GRATER: Yes.
9 MS. BRUCE: Motion passed.
10 MR. GRATER: We have a
11 recommendation to revoke 252:4-7-61 through
12 252:4-7-63 by permanent rulemaking.
13 MR. KENNEDY: So moved.
14 MR. GRAVES: Second.
15 MR. GRATER: Roll call, please.
16 Immediately. I'm sorry, do we have any
17 comments from the Council? Any comments
18 from the public? It's been moved and
19 seconded.
20 MS. BRUCE: Michael Graves.
21 MR. GRAVES: Yes.
22 MS. BRUCE: Earl Hatley.
23 MR. HATLEY: Yes.
24 MS. BRUCE: Bob Kennedy.
25 MR. KENNEDY: Yes.

1 MS. BRUCE: Ray Reaves.

2 MR. REAVES: Yes.

3 MS. BRUCE: Lee Grater.

4 MR. GRATER: Yes.

5 MS. BRUCE: Motion passed.

6 MS. RAUCH: I need to ask Myrna a
7 question. Did we get the permanent rules
8 on 220 revoked? Did we get all the
9 permanent rules done?

10 MR. KENNEDY: Well I was a little
11 confused on that as well. I'm sorry to
12 interrupt and answer here, but I thought we
13 -- if you look at the Agenda, it says
14 emergency, twice, there and I think --

15 MS. RAUCH: Well the one you have
16 does, because I really messed up on that.
17 But the one that we posted on the door and
18 what should have been passed out today
19 doesn't.

20 MR. KENNEDY: I felt like we read
21 this one more time than we needed to.

22 MS. RAUCH: You did.

23 MR. KENNEDY: And I was wondering
24 if we did --

25 MS. RAUCH: I would appreciate it

1 if you would vote again on that one as a
2 permanent --

3 MR. KENNEDY: It's a double on
4 the emergency. So, yeah, if there's any
5 question, why don't we go back to Agenda
6 Item 5(d)(4) and do that.

7 MS. RAUCH: Yes. It was revoking
8 220 by permanent. Yes. Because the Agenda
9 you were mailed was incorrect.

10 MR. KENNEDY: So --

11 MS. RAUCH: The Agenda we posted
12 on the door and that was passed out here is
13 correct.

14 MR. KENNEDY: I now move that we
15 revoke 252:220 by permanent rulemaking.

16 MR. GRATER: Second.

17 Any comments from the public? From
18 the Council? Do I need to read this again?

19 MS. RAUCH: No.

20 MR. GRATER: Good.

21 MS. RAUCH: Please don't.

22 MS. BRUCE: Michael Graves.

23 MR. GRAVES: Yes.

24 MS. BRUCE: Earl Hatley.

25 MR. HATLEY: Yes.

1 MS. BRUCE: Bob Kennedy.

2 MR. KENNEDY: Yes.

3 MS. BRUCE: Ray Reaves.

4 MR. REAVES: Yes.

5 MS. BRUCE: Lee Grater.

6 MR. GRATER: Yes.

7 MS. BRUCE: Motion passed.

8 MR. GRATER: Next order of
9 business is the Director's Report.

10 MR. THOMPSON: I am Scott

11 Thompson and glad to have you guys here.

12 Thanks for showing up and getting these

13 rules through. And somebody is going to

14 have to tell Steve Mason, on the Board,

15 that we have a real emergency this time.

16 This time of year, the Legislature

17 is in session and things are always wild.

18 For the most part, I think the Bills worked

19 out the way we kind of thought they would.

20 Nothing that pertains to this Council that

21 I can think of, offhand.

22 We have a few -- couple of rules

23 that went to the Governor already got

24 signed. The NELAP rule for the

25 laboratories. We got an AG Tire Rule that

1 is coming through, it's going to add some
2 agriculture tires to the tire program. And
3 then later on, add the bigger implement
4 tires even, I think. So that looks like it
5 is probably going to go through this time.

6 We had a Bottle Bill earlier in the
7 session that didn't survive but I expect it
8 to come back next year. The difference
9 this time around from the last 20 years, is
10 that we have an industry pushing it pretty
11 heavily. And I think even some of the
12 bottlers are going to be pushing for it.
13 So I think it has a really good shot next
14 year to get set up and work with the folks
15 who typically oppose it and try to make
16 sure it doesn't cost them undue hardship,
17 et cetera. So that is on the horizon for
18 next year.

19 Financially, things don't look
20 great. We have taken at least a ten
21 percent cut during this existing year from
22 appropriated dollars. And we are
23 anticipating at least another ten percent
24 for next year. So a twenty percent total
25 appropriated dollars cut. The story I am

1 hearing at the moment is that they hold
2 higher education harmless, and they take
3 zero cuts. Then almost all state agencies
4 are going to have to take a much larger cut
5 than that. Maybe as much as thirty percent
6 total.

7 So the only good news on the horizon
8 is the last two months of state revenue
9 have looked -- at least met the projection.
10 So that's looking good. Because previously
11 for almost the whole year we have been
12 under what was projected for revenue. But
13 I don't think they count on that as they
14 are doing the appropriations. Hopefully we
15 will get one more month's data in before
16 the final appropriations are done. If
17 that's good, then maybe that helps a little
18 bit.

19 But things are tight for all state
20 agencies. Some state agencies are already
21 doing buyouts furloughs. There is a Buyout
22 Bill that may get through but it would
23 cause the Agency -- if the Agency
24 participated in that buyout, we would get
25 reimbursed a five thousand dollar payment

1 for employees that choose to take it. But
2 all the other costs, the Agency would have
3 to bear. So an additional 18 months of
4 insurance and quite a bit of other costs,
5 as well as we would lose the FTE for three
6 years. Which with our Agency, that's a
7 pretty big deal because we are maxed out on
8 FTEs. We are not getting any new ones. So
9 if we lost too many people, especially in
10 key places, that could cripple us. So I
11 don't anticipate that if that goes through
12 that we will participate in that one. But
13 we will see.

14 Fortunately, some of our income is
15 not based on appropriations. A lot of it
16 is based on fees and/or federal dollars.
17 Federal dollars is kind of holding steady.
18 It's reducing some. We anticipate a little
19 bit less next year than we received this
20 last year with some programs.

21 So, there is a fair chance that we
22 will look at fees next year, not during
23 this session. There may be something that
24 effects fees come through this session from
25 some other parties. Not something that we

1 have proposed. But I don't anticipate the
2 hazwaste fee, for example, to be an issue
3 in this session. But I think the Agency is
4 going to look hard at all income sources
5 next year and try to see where we are
6 depending on how the finances go -- has our
7 appropriations actually done how we do
8 throughout the year. We had quite a bit of
9 shortfalls this year and some of our fee
10 incomes that we anticipated, because we had
11 some of our Solid Waste fees got diverted
12 to sources that don't pay fees. So that
13 may get sorted out fairly soon. But
14 overall, we are doing okay. We are holding
15 steady.

16 And in Land we are not appropriated
17 dollars based at all. But we do have to
18 help support the rest of the Agency who is,
19 with some of our funds.

20 That's all that is going on right
21 now. I don't see anything big. There is
22 big things on the federal horizon. They
23 are looking at coal combustion waste, fly
24 ash from coal-fired power plants,
25 primarily, and may be some boilers, things

1 like that, back east. But here, it's just
2 power plants, pretty much. They are trying
3 to decide whether to make that hazardous
4 waste, or come up with some hybrid approach
5 to regulate solid waste. I think some of
6 you folks were here when we had the folks
7 from Pucoshe (ps) who have a real serious
8 problem there that's out of our
9 jurisdiction under state laws, handled by
10 the department lines. Where what is
11 suppose to be a reclamation, has become a
12 big giant disposal site; and they are also
13 receiving a bunch of salt water from
14 Arkansas. EPA shut the salt water disposal
15 down. And that is unfortunate because, I
16 think, some of the reclamation that we need
17 to do on old mine lands, we are probably
18 not going to have any material to fill
19 those with except something like fly ash or
20 cement kiln dust, things like that. And
21 so, you know, hopefully at some point,
22 somebody will begin to cause real
23 reclamation to occur with that kind of
24 material. If it stays available for that
25 purpose. We have kind of opposed going to

1 hazwaste because there is a lot of markets
2 for fly ash for construction uses, for
3 highway construction in particular, where
4 it's used for civil engineering purposes in
5 making the soil stronger, support more
6 weight, have more compressive strength, et
7 cetera. They concrete roll better and not
8 use as much concrete and, thus, reduce the
9 amount of concrete that has reproduced, and
10 how much carbon gets emitted from the
11 concrete production. So, we think that is
12 kind of overkill. And the EPA has admitted
13 from a technical standpoint it's not
14 necessary to be a hazardous waste. They
15 have already studied these stats and they
16 know that. But politically, they may still
17 do it. But I think less words we have
18 heard, maybe the hybrid approach is what is
19 going to come out. But we really don't
20 know. We haven't seen the words on paper
21 that they are going to propose.

22 I can't think if there is any other
23 significant federal issues on the horizon,
24 but that is probably the main one that
25 would effect the Hazardous Waste Program is

1 whether we would takeover fly ash disposal.

2 That is all I have, unless you all
3 have some questions.

4 MR. GRAVES: What happened to the
5 bill you guys sent around notice about term
6 limit volunteers?

7 MR. THOMPSON: That is still
8 alive. It's not suppose to be, is what I
9 hear. I think there is a key date today
10 where -- I don't remember. I try to stay
11 away from the Capitol so they don't tell
12 me. They tell me, but it doesn't stick,
13 all the special dates for the committees
14 and all of that sort of stuff. But I think
15 there is a real key day-to-day, this week,
16 about, if something is not heard by the
17 opposite house then it's pretty much dead.
18 And that is still alive. I don't think it
19 directly effects Councils. I think it
20 primarily effects Boards. Originally, it
21 came out and it would limit number of terms
22 you could serve on Boards. I think it got
23 modified to where it would effect the term
24 itself. The duration of the term itself.
25 And limit it to no more than six years.

1 Which would effect only the Air Council
2 here. I believe. Now whether it stayed
3 that way or not, I don't know for sure.
4 But I will be surprised if that one makes
5 it all the way and gets signed and
6 everything. But you never know.

7 And Rita reminded me that we need to
8 do a commercial. Next week at the Skirvin
9 Hotel down here in Oklahoma City, we are
10 having the Brownfields conference. It was
11 an excellent conference last year. I have
12 never received such rave reviews from
13 people at a conference I attended, let
14 alone one that we hosted. Had vendors who
15 had been in this business for 20 years tell
16 me it was the best thing they had ever been
17 to. And I think it was primarily the
18 content that was excellent, you know, a
19 wide variety of content. It had some for
20 legal side, stuff on the real estate side,
21 stuff for developers, et cetera. I think
22 Tulsa is going to play a bigger role this
23 year. And the Corporation Commission has
24 a Brownfields program, so you can learn
25 about that. That's a really good deal. I

1 think there are still some slots open,
2 probably, for that. And if you want to,
3 you can get a hold of Rita, or staff, and
4 find out more details about it. I am sure
5 there is a link on our website.

6 MS. KOTTKE: Yes. There is a
7 link and a post cards on the table.

8 MR. THOMPSON: There is cards,
9 post cards on the table. So grab those, if
10 you're interested in going.

11 MS. RAUCH: And a member of Mr.
12 Graves' Law Firm is going to be speaking at
13 least twice. Going to moderate two
14 different sessions for us, Derek
15 Hardberger.

16 MR. GRATER: Who did you say?

17 MR. THOMPSON: Derek Hardberger.
18 All right, thank you.

19 MR. GRATER: Thank you. Next
20 issue on the Agenda would be new business.
21 Is there any new business to be brought
22 forth? It doesn't appear that there is.

23 I believe that completes our
24 schedule for today. Is there a motion for
25 adjournment?

1 MR. GRAVES: So moved.

2 MR. HATLEY: Second.

3 MR. GRATER: Motion has been
4 moved and seconded. I would like to thank
5 everyone in the Council that made the trip
6 today. Thank you, it was nice to have a
7 quorum. And I would like to thank
8 everybody who participated today. Thank
9 you.

10 MS. BRUCE: Michael Graves.

11 MR. GRAVES: Yes.

12 MS. BRUCE: Earl Hatley.

13 MR. HATLEY: Yes.

14 MS. BRUCE: Bob Kennedy.

15 MR. KENNEDY: Yes.

16 MS. BRUCE: Ray Reaves.

17 MR. REAVES: Yes.

18 MS. BRUCE: Lee Grater.

19 MR. GRATER: Yes.

20 MS. BRUCE: We are adjourned.

21 Thank you.

22 (Meeting Concluded)

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C E R T I F I C A T E

STATE OF OKLAHOMA)

) ss:

COUNTY OF OKLAHOMA)

I, CHRISTY A. MYERS, Certified
Shorthand Reporter in and for the State of
Oklahoma, do hereby certify that the above
meeting is the truth, the whole truth, and
nothing but the truth; that the foregoing
meeting was taken down in shorthand and
thereafter transcribed under my direction;
that said meeting was taken on the 22nd day
of April, 2010, 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
30th day of April, 2010.

CHRISTY A. MYERS, C.S.R.
Certificate No. 00310