

**DRAFT MINUTES  
HAZARDOUS WASTE MANAGEMENT  
ADVISORY COUNCIL  
January 8, 2004  
Department of Environmental Quality  
Oklahoma City Oklahoma**

Draft for February 27, 2004 EQ Board  
For HWMAC approval April 8, 2004

**Notice of Public Meeting** The Hazardous Waste Advisory Council convened for its regular meeting at 10:00 a.m., January 8, 2004 at the DEQ Multipurpose Room, 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. The agenda was posted the Department of Environmental Quality a minimum of 24 hours prior to the meeting. Mr. David Bradshaw called the meeting to order and roll call was taken.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Wesley Anderson  
Michael Graves

**DEQ STAFF PRESENT**

Catherine Sharp  
Sonny Johnson  
Jerry Sanger  
Tammi Johnson  
Myrna Bruce

**OTHERS PRESENT**

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

**Approval of Minutes** Ms. Reinhart called agenda item number 3, Approval of Minutes of the January 16, 2003 Regular Meeting. Hearing no discussion, Mr. Bradshaw called for a motion to approve. Mr. Elwell made motion to approve Minutes as submitted. Second was made by Ms. Reinhart.

**Roll call.**

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

**Motion carried.**

**Chair Person's Report** – Mr. Bradshaw stated that the Council had a quiet year due to the completion of the re-right/de-wrong process and the maturity of the program but looked forward to upcoming activities.

**Division Director's Report** – Ms. Catherine Sharp mentioned that Martha Penisten had been promoted to Deputy Counsel and introduced Sonny Johnson as the supervising attorney for the land programs; and introduced Don Hensch, supervising engineer in the RCRA permitting section and thanked other RCRA staff members for a job well done. Ms. Sharp

continued by saying that the Land Protection Division budget is healthy. She gave an update on the Tar Creek Superfund site and commended Senator Jim Inhoffe for his work and interest on that site. Ms. Sharp ended her report with an update on the Central States Radiation Compact trial against the State of Nebraska and fielded comments about that and other issues.

**Election of Chair Person** -- Mr. Bradshaw nominated and made the motion that Ms. Reinhart serves as Chair for the next calendar year. Ms. Reinhart accepted and Mr. Kennedy made the second.

**Roll call.**

Bruce Elwell	Yes	Jody Reinhart	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
Bob Kennedy	Yes	David Bradshaw	Yes
Kathy Martin	Yes		<b>Motion carried.</b>

**Election of Vice-Chair Person** -- Ms. Reinhart nominated Mr. Bradshaw. He accepted and the second was from Mr. Kennedy.

**Roll call.**

Bruce Elwell	Yes	Jody Reinhart	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
Bob Kennedy	Yes	David Bradshaw	Yes
Kathy Martin	Yes		<b>Motion carried.</b>

**Rulemaking – OAC 252:205-3-1 Incorporation by Reference**

Ms. Tammi Johnson advised that the proposed changes to Subchapter 3-1 would incorporate by reference 40 CFR as amended through July 1, 2003 and included these new or superseding amendments: 1) 67 FR 48393, published July 24, 2002, regarding zinc fertilizers made from recycled hazardous secondary materials; 2) 67 FR 62618, published October 7, 2002, regarding a national treatment variance to designated new treatment categories for radioactively contaminated batteries; 3) 67 FR 77687, published December 19, 2002, regarding the standards for hazardous air pollutants for hazardous waste combustors. She gave a synopsis of each and fielded questions on those amendments.

After discussion, Ms. Reinhart called for motion. Motion was made by Mr. Bradshaw to approve the rule as recommended and forward to the Environmental Quality Board for permanent rulemaking. Second was made by Ms. Martin.

**Roll call.**

Bruce Elwell	Yes	Jody Reinhart	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
Bob Kennedy	Yes	David Bradshaw	Yes
Kathy Martin	Yes		<b>Motion carried.</b>

**Rulemaking—OAC 252:205-3-2 Corrections to the 40 CFR and Waste Exclusion**

Ms. Tammi Johnson advised that this incorporation by reference proposed changes to Subchapter 3-2 that would correct specific errors in the 2002 and preceding 40 CFR and add

language to implement the waste exclusion rule in Oklahoma. She pointed out the sections of the 40 CFR affected by correction included: 261.4(b)(18) which pertains to Utah only, thus should be excluded; 268.7(a)(9)(iii) to exclude D009 from the list of alternative treatment standards for lab packs, Ms. Johnson added that the proposed amendment to 252:205-3-2(b) would add language to allow Oklahoma to properly implement the waste exclusion rules.

Following discussion, Ms. Reinhart called for a motion to approve amendments as set forth by Ms. Johnson and forward to the Environmental Quality Board for permanent rulemaking. Motion was made by Mr. Elwell and the second was by Ms. Martin.

**Roll call.**

Bruce Elwell	Yes	Jody Reinhart	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
Bob Kennedy	Yes	David Bradshaw	Yes
Kathy Martin	Yes		<b>Motion carried.</b>

**Rulemaking – OAC 252:205-21-5 Fees for Waste Exclusion**

Ms. Tammi Johnson advised that DEQ adopted the Federal waste exclusion rules by reference that became effective in Oklahoma on June 9, 2003. She stated that staff’s proposal would make changes to the Federal rules previously adopted by reference, and would add a new Subchapter 21 to the DEQ rules for fees associated with the waste exclusion program in Oklahoma. She advised that this would be a new chapter identifying fees for waste exclusion submittals, refunds, and monitoring and inspection fees. Ms. Johnson referred to surveys of other states’ fee programs pointed out changes that were being proposed. Mr. Bradshaw suggested a change to list fee amounts only within Appendix D to make future amendments easier to change. There was extended discussion regarding the amount that such fees should be and concerns were raised whether the public had sufficient time to review the proposed amendments. Given the number of questions raised, Mr. Bradshaw moved to table the rulemaking to a subsequent meeting. Mr. Elwell seconded that motion. Mr. Bradshaw amended his motion to continue the hearing January 21 and Mr. Elwell amended the second and Ms. Reinhart asked for roll call. *(NOTE: The January 21, 2004 meeting was canceled. The next regularly scheduled meeting of the HWMAC is on April 8, 2004.)*

**Roll call.**

Bruce Elwell	Yes	Jody Reinhart	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
Bob Kennedy	Yes	David Bradshaw	Yes
Kathy Martin	Yes		<b>Motion carried.</b>

**Rulemaking – OAC 252:205-25 Additional Requirements for Excluding a Waste From A Particular Facility**

Ms. Johnson advised that this rulemaking would change the Federal rules previously adopted by reference to add a new Subchapter 25 to the DEQ rules that would implement the waste exclusion program in Oklahoma. She expounded on the components of the amendments and fielded questions. After considerable conversation, Ms. Reinhart called for a motion. Mr. Bradshaw moved to table the hearing to the continued meeting on January 21, 2004. Mr. Tomberlin made the second. *(NOTE: The January 21, 2004 meeting was canceled. The next regularly scheduled meeting of the HWMAC is on April 8, 2004.)*

**Roll call.**

Bruce Elwell	Yes	Jody Reinhart	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
Bob Kennedy	Yes	David Bradshaw	Yes
Kathy Martin	Yes		<b>Motion carried.</b>

**Rulemaking – OAC 252:205-21 and Adoption of a New Appendix D. Waste Exclusion Fees (combined with) Rulemaking – OAC 252:205 Appendix E. Waste Excluded From the Lists in Subpart D of 40 CFR Part 261 as Applicable in Oklahoma**

Council suggested to roll the last two hearing items together since a continued meeting had been set. For the record, Ms. Tammi Johnson advised that the proposed amendments would add a fee for waste exclusion applications shown in Appendix D and that the proposed new Appendix E was established to include the facility name, location and waste excluded, upon completion of the waste exclusion process.

Mr. Kennedy made motion for the continuation of agenda items 11 and 12 to the January 21, 2004 meeting. Mr. Bradshaw made the second. Before the roll call vote, Ms. Reinhart asked for Council's guidance as to the amount that the fee(s) should be set and whether it should be a fixed or variable fee. *(NOTE: The January 21, 2004 meeting was canceled. The next regularly scheduled meeting of the HWMAC is on April 8, 2004.)*

**Roll call.**

Bruce Elwell	Yes	Jody Reinhart	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
Bob Kennedy	Yes	David Bradshaw	Yes
Kathy Martin	Yes		<b>Motion carried.</b>

**New Business - None**

**Adjournment** -- Ms. Reinhart called for motion to continue the hearings on agenda items 9, 10, 11, and 12 to January 21, 2004. Mr. Elwell made the motion and Ms. Martin made the second.

**Roll call.**

Bruce Elwell	Yes	Jody Reinhart	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
Bob Kennedy	Yes	David Bradshaw	Yes
Kathy Martin	Yes		<b>Motion carried.</b>

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

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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 JANUARY 8, 2004, AT 10:00 A.M.  
IN OKLAHOMA CITY, OKLAHOMA

\* \* \* \* \*

REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE  
(405) 721-2882

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MEMBERS OF THE COUNCIL

- MR. WESLEY ANDERSON - MEMBER
- MR. BRUCE ELWELL - MEMBER
- MR. MICHAEL GRAVES - MEMBER
- MR. JERRY IHLER - MEMBER
- MR. BOB KENNEDY - MEMBER
- MS. KATHY MARTIN - MEMBER
- MS. JODY REINHART - CHAIR
- MR. STEVE TOMBERLIN - MEMBER
- MR. DAVID BRADSHAW - VICE-CHAIR

STAFF MEMBERS

- MYRNA BRUCE - RECORDING SECRETARY
- MARY JOHNSON - SECRETARY
- TAMMI JOHNSON - PROGRAM MANAGER
- CATHERINE SHARP - ASSISTANT DIRECTOR
- SCOTT THOMPSON - DIRECTOR
- SONNY JOHNSON - AGENCY ATTORNEY
- JERRY SANGER - AGENCY ATTORNEY
- DON HENSCH - ENGINEER

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PROCEEDINGS

MR. BRADSHAW: I'm David  
Bradshaw, Chair of the Hazardous Waste  
Management Advisory Council and I'd like to  
call this meeting to order.

This regularly scheduled meeting of  
the Hazardous Waste Management Advisory  
Council was called in accordance with the  
Open Meeting Act.

Notice was filed with the Secretary  
of State on October 13, 2003. The Agenda  
was duly posted on the door of the DEQ at  
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

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1 reconvened meeting.

2                   At this point we will determine if  
3 we have a quorum. Will the Secretary  
4 please call the roll.

5                   MS. BRUCE: Wesley Anderson.  
6 Absent.

7                   MS. BRUCE: Bruce Elwell.

8                   MR. ELWELL: Here.

9                   MS. BRUCE: Michael Graves is  
10 also absent.

11                   MS. BRUCE: Jerry Ihler.

12                   MR. IHLER: Here.

13                   MS. BRUCE: Bob Kennedy.

14                   MR. KENNEDY: Here.

15                   MS. BRUCE: Kathy Martin.

16                   MS. MARTIN: Here.

17                   MS. BRUCE: Jody Reinhart.

18                   MS. REINHART: Here.

19                   MS. BRUCE: Steve Tomberlin.

20                   MR. TOMBERLIN: Here.

21                   MS. BRUCE: David Bradshaw.

22                   MR. BRADSHAW: Here.

23                   MS. BRUCE: We do have a quorum.

24                   MR. BRADSHAW: Thank you, Ms.

25 Bruce.

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1                   Okay, Jody was giving me advice on  
2 how to use the microphone that I don't know  
3 about this.

4                   Okay. Members of the Council have  
5 been provided Minutes of the last meeting.  
6 Are there any questions or comments about  
7 those Minutes?

8                   MR. ELWELL: I make a motion to  
9 approve the Minutes of the last meeting.

10                  MR. BRADSHAW: I hear a motion,  
11 do I hear a second?

12                  MS. REINHART: Second.

13                  MR. BRADSHAW: I hear a second.  
14 Will the Secretary please call the roll.

15                  MS. BRUCE: Wesley Anderson.  
16 Absent.

17                  MS. BRUCE: Bruce Elwell.

18                  MR. ELWELL: Yes.

19                  MS. BRUCE: Jerry Ihler.

20                  MR. IHLER: Yes.

21                  MS. BRUCE: Bob Kennedy.

22                  MR. KENNEDY: Yes.

23                  MS. BRUCE: Kathy Martin.

24                  MS. MARTIN: Yes.

25                  MS. BRUCE: Jody Reinhart.

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1 MS. REINHART: Yes.

2 MS. BRUCE: Steve Tomberlin.

3 MR. TOMBERLIN: Yes.

4 MS. BRUCE: David Bradshaw.

5 MR. BRADSHAW: Yes.

6 MS. BRUCE: Motion passed.

7 MR. BRADSHAW: Item Number 4 on

8 the Agenda. The Chairperson's report.

9 Well, 2003 was kind of quiet and we

10 like it that way. We have on this Council,

11 you know, I think I started back on the

12 first one in about '94 and we have had our

13 turbulent times and we have addressed

14 issues, I don't think we had a quiet year

15 because we're lazy. But I think we had a

16 quiet year because the program is fairly

17 mature. And we got out in front early with

18 the work of the DEQ on the re-write/de-

19 wrong process. So I think that explains

20 the level of activity, which is a good

21 thing, in my opinion.

22 COURT REPORTER: Would you give

23 me one second. I was wondering why I

24 couldn't hear you. My microphone slid off.

25 MR. BRADSHAW: I thought it was

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1 just me I was trying not to blast you out  
2 of here.

3 COURT REPORTER: Now I can hear  
4 you great.

5 MR. BRADSHAW: Did anybody hear  
6 anything I said, by the way, it really  
7 doesn't matter that much but -- I was  
8 making excuses for the fact that we weren't  
9 extremely active last year.

10 Anyway, that's my presentation but I  
11 would like to know from Catherine any  
12 thoughts about where the DEQ is looking  
13 forward to 2004 -- any comments she might  
14 have or information.

15 MS. SHARP: I guess I'd just like  
16 to mention a few things once we have  
17 everybody assembled here. And I don't have  
18 any real formal prepared remarks so if you  
19 all have any questions about anything this  
20 is a real good time to ask.

21 A few things I might mention, most  
22 of you know Martha Peniston, who has been  
23 with our waste and land programs for many  
24 years, she got a promotion within the legal  
25 department upstairs and we now have -- I

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1 don't know if you know -- I'd like to  
2 introduce Sonny Johnson. He's the  
3 supervising attorney for the land programs.  
4 If you've done any work in solid waste you  
5 probably know Sonny. He has also been with  
6 us and brings a wealth of experience and,  
7 sincerely, we are glad to have him in that  
8 role.

9           One other staff -- we've had some  
10 staff changes, but one other person I'd  
11 like to introduce and some of you may know,  
12 to my right is Don Hensch. He is a  
13 supervising engineer in the RCRA permit  
14 section and has a long wealth of experience  
15 in hazardous waste. I think I interviewed  
16 for a job with Don like twenty years ago or  
17 something. I was trying to get a job here  
18 and he didn't hire me. But anyway, Don has  
19 been working in the RCRA field in various  
20 capacities over the years and so we just  
21 consider him an excellent resource and  
22 we're glad to have him with us.

23           I know we probably don't thank you  
24 enough for what you do. And sometimes,  
25 like David said, the Agenda might be light

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1 at times and you may cancel some meetings  
2 but the work that we do here to get the  
3 RCRA program authorized and get the rules  
4 in place is extremely important.

5           The program is, I guess if I had to  
6 give it a report card grade or cast it, I  
7 think our RCRA is quite healthy. It has  
8 transitioned to a more mature program  
9 thanks to people like Tammi Johnson and  
10 other people who have continued to lead it.

11           Any time you talk about State  
12 government right now, people kind of have  
13 questions about our financial status and I  
14 can't speak to the financial status of the  
15 whole agency other than I would say that we  
16 are probably quite a bit healthier than  
17 other state agencies, in that during the  
18 last one or two Legislative sessions there  
19 has been some pretty severe pain felt among  
20 some of our State counterparts.

21           We have felt some of our pain, as  
22 well. I don't know how to cast it -- how  
23 deep it has gone. We've gotten to a point  
24 where we have had to move people around.  
25 Like one program didn't have the budget

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1 that they had had a prior year, so we moved  
2 an FTE from one program to another that has  
3 funding. Within Tammi's section, which is  
4 the hazardous waste compliance section, she  
5 is down one FTE which is not a huge group.  
6 It's about eight or nine people, so when  
7 you lose one FTE that's a big deal but we  
8 just didn't have the funding to re-up that  
9 position.

10           So we're holding our own for the  
11 most part but we're starting to feel kind  
12 of what the other agencies were feeling.

13           I don't know what this session will  
14 hold -- you know the Legislative session is  
15 always kind of looming on our calendar.  
16 And that's about to start. That's when  
17 they work out all the appropriations.

18           Speaking of money, I might mention  
19 one thing that, while it may not be  
20 foremost in your mind, we do a lot of work  
21 in our division on the Tar Creek Superfund  
22 site. And I, without any political  
23 leanings at all, I would like to commend  
24 Senator Jim Inhoffe. And some of you may  
25 or may not know -- if you read the

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1 newspapers, the newspaper in Tulsa  
2 sometimes has a different slant than the  
3 one here -- but anyway, what Senator  
4 Inhoffe has done -- he is the Chair of the  
5 Senate Environment and Public Works  
6 Committee in the United States Senate. And  
7 by virtue of that position and his interest  
8 in working on Tar Creek, he has been just a  
9 priceless ally in getting us some funding  
10 for that. And I won't go into Tar Creek  
11 unless you just want to know but Tar Creek  
12 is on the map nationally because it is a  
13 project that the cost of which is dwarfing  
14 the Superfund Program. The  
15 Superfund Program would like to clean it  
16 up. It is just bigger than what it can do.  
17 So Senator Inhoffe went to bat on behalf of  
18 Oklahomans and is helping appropriate money  
19 directly for that project. And we're just  
20 grateful for it because we were all  
21 struggling with how to clean it up.  
22 Most of the Superfund sites we can  
23 figure out a remedy and we can get it  
24 budgeted somehow -- it may take a few years  
25 longer than you expect. Tar Creek is way

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1 out of that realm. It's almost a class by  
2 itself. The class of sites they call  
3 megasites. Sites for which the remedy is  
4 fifty million dollars or greater. So  
5 anyway, that's something that's big to the  
6 Land Division and might overlap with some  
7 of what you all do.

8           But overall, I think financially we  
9 are what I would call stable. We aren't --  
10 we certainly aren't considering layoffs or  
11 anything like that but we are counting our  
12 resources pretty carefully.

13           We're, I think, still in good stead  
14 with EPA. I'm not getting any indication  
15 that we're not -- our relationship with EPA  
16 is pretty good, thanks again to Tammi. She  
17 has a good rapport with them.

18           I'm trying to think of what else is  
19 noteworthy. I know that a lot of you have  
20 this in front of you -- and without  
21 sounding like we're proud of what we do --  
22 I've seen the annual report more from year  
23 to year. This is the best one yet in that  
24 it has a lot of appeal to people who don't  
25 know much about environmental stuff. Even

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1 my mother could look at it and kind of --  
2 my goal is to try to get my mother to  
3 understand what it is I do for a living  
4 because she still doesn't know. I send her  
5 one of these every year and she's starting  
6 to kind of understand.

7           With that said, I'd be happy to  
8 answer any questions anybody has about  
9 either our division or what is going on.

10                   MS. REINHART: The only one I've  
11 got is, what's happening with the radiation  
12 issue, you know, with that Compact and how  
13 did that court decision ever turn out and  
14 all that stuff?

15                   MS. SHARP: Where the Compact is  
16 and I think you all are kind of familiar  
17 with the background on it. It's extremely  
18 interesting. I did have the pleasure of  
19 giving a presentation at EFO about this.

20                   It is an extremely difficult story  
21 to condense but the condensed version is,  
22 Oklahoma is a member of a five state  
23 Compact that had tried for many years to  
24 site a radiation disposal facility, a low  
25 level facility, out in western Nebraska.

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1 And as time went on and we worked through  
2 that, and this is all work that is  
3 sanctioned with both federal law and state  
4 law, we are in effect told to do this  
5 through our Compact there are four other  
6 states in the Compact.

7           What happened over the years was --  
8 the short answer is, Nebraska began to balk  
9 at siting the facility there. It became  
10 apparent that the thing that none of us  
11 wants to see, was happening. We feel like  
12 there was political influence on the  
13 decision to deny the permit application,  
14 quite simply. And that's not just my view,  
15 we alleged that in federal court repeatedly  
16 -- because you've got to go through several  
17 steps. So the Compact wound up suing. The  
18 major generators who funded the disposal  
19 site brought the law suit and we joined  
20 with them.

21           A year ago, I think I was telling  
22 you we had sat through a nine-week trial --  
23 kind of the high point of my summer, last  
24 summer in Lincoln, Nebraska -- hearing the  
25 whole -- we got to present our whole case

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1 as to why we felt why Governor Ben Nelson,  
2 now Senator Nelson, interfered with what  
3 would have otherwise been an impartial  
4 review of that permit application.

5 The federal judge, Judge Kauf, ruled  
6 a little over a year ago that in fact that  
7 had happened. And he was convinced that  
8 had happened and he awarded us, the Compact  
9 states and the generators, a \$151 million  
10 dollar judgment.

11 Nebraska appealed that and the  
12 pathway of appeal is through St. Paul,  
13 Minnesota, there's an appeal step there.  
14 They went and argued that, our lawyers did,  
15 before a three judge panel and we thought  
16 we'd have an opinion from them in December  
17 and did not get it. We are waiting for  
18 their decision.

19 They can do one of a number of  
20 things. Our greatest fear is -- one thing  
21 that Nebraska argued during that appeal is  
22 that they deserve a jury trial on this  
23 matter in Nebraska which, you know, you all  
24 aren't familiar with --

25 MS. REINHART: Prejudicial.

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1                   MS. SHARP:   Yeah.   It would be  
2   kind of like Tim McVeigh trying to get a  
3   trial here.   But anyway, we're hoping that  
4   that is not the way they're leaning.   If  
5   they agree -- as I understand it, if they  
6   agree with Judge Kauf's decision and it's  
7   appealed again, it will go to the Supreme  
8   Court -- it could go to the Supreme Court.  
9   That's pretty much the last step.

10                  We felt like Nebraska was planning  
11   on that, kind of posturing for it.   They  
12   had hired a law firm, a very prominent law  
13   firm from the Washington D.C. area, to  
14   defend them during the nine-week trial.  
15   They are now using their Attorney General  
16   more and that law firm less.   And so we're  
17   not sure what's going to happen next.   Mine  
18   are kind of off the record notions that  
19   they might consider a settlement offer.

20                  The flat truth of this is anybody  
21   who is involved in any kind of low level  
22   radioactive waste generation and has the  
23   problem of how to dispose of it, is just  
24   really in a tough spot.   There's two places  
25   in the country where they can send it by

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1 and large and those places don't have  
2 indefinite lives. And so whether you think  
3 the government is at fault or Governor  
4 Nelson is at fault or Nebraska or Oklahoma  
5 or whatever, we aren't handling that  
6 problem very effectively. There will never  
7 be a site built in Nebraska no matter the  
8 outcome of this litigation. So we haven't  
9 solved the fundamental problem.

10 So anyway, when we get our cue from  
11 that three-judge panel, we'll know what to  
12 do next. I think this thing is winding  
13 it's way to the end. I think we're close  
14 to the end whatever happens but it will not  
15 result in a good disposal option for the  
16 generators, I don't feel like.

17 MS. REINHART: What do you think  
18 -- where is it going to lend itself to as  
19 far as, like, disposal options?

20 MS. SHARP: It's the strangest  
21 thing -- for those people who have worked  
22 in hazardous waste for a long time --  
23 there's several people in this room who  
24 have, if you remember there was kind of  
25 general national attention several years

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1 ago about do we have adequate capacity.  
2 Congress had the presence of mind to pass  
3 the law. EPA focused a lot of attention on  
4 writing regulations. It was like people  
5 had a sense, this is a problem that needs  
6 to be solved. And now we have the system  
7 that we deal with today. Which is good and  
8 bad but it largely works. And it  
9 definitely worked compared to what they're  
10 doing with radioactive sources.

11           There's not that level of attention  
12 on it now unless Congress does something or  
13 something changes. All the other Compacts  
14 -- there were many other Compacts in the  
15 country, they have all abandoned ship by  
16 now. We're the only one still standing.  
17 The Southeast Compact, North and South  
18 Carolina, is still trying to do something  
19 similar. And Texas is trying to site a low  
20 level facility but it's not clear who would  
21 have access to send waste there. And  
22 they're still a long way from actually  
23 having a facility.

24           So I feel like, if you were giving a  
25 civics lesson you would say that we're not

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1 governing, you know, government or whoever  
2 you think should solve this is not handling  
3 it terribly swiftly.

4           So that's what's going on with that.  
5 Oklahoma is a member and will be until  
6 maybe that Compact gets dissolved or -- I'm  
7 not sure what's going to happen.

8           MS. REINHART: Okay.

9           MS. SHARP: Any other questions?

10           MR. RABITINE: I've got a  
11 comment. I don't know if it ties in  
12 directly or not but isn't there a proposal  
13 at the EPA level that is trying to solve  
14 this problem indirectly by blending in some  
15 of the low level radioactive with RCRA  
16 standard-type facilities?

17           MS. SHARP: Yeah. It's usually  
18 not cast as trying to solve the problem  
19 because it's not apparent what subset of  
20 low level waste would be eligible but that  
21 is something that quite frankly it will  
22 effect Lone Mountain and it will effect  
23 other generators.

24           But EPA -- if anybody has an  
25 interest they should look up this Federal

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1 Register. EPA has floated the notion that  
2 certain types of low level waste could be  
3 safely disposed in a RCRA Subtitle C  
4 disposal facility. And they're gathering  
5 comments and all the groups who might  
6 comment are kind of gearing up and looking  
7 at it. And it's in its infancy, there's  
8 not a great deal of detail there.

9           The DEQ definitely doesn't have a  
10 collective view. We've kicked it around  
11 and we aren't -- technically, a lot of  
12 people think it could be defensible. Our  
13 experience has been that people react even  
14 more vehemently in matters of radiation  
15 than they do in matters of hazardous waste.  
16 You know, it's just harder to get the  
17 public to sort of appreciate what you're  
18 dealing with. And so there would be a lot  
19 of that.

20           MR. RABITINE: It would become  
21 controversial.

22           MS. SHARP: Very.

23           MS. REINHART: Well, I can tell  
24 you from TSDF for generators complaint,  
25 they don't want that stuff mixed together

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1 in the same landfill.

2 MS. SHARP: So there might be  
3 generators who are opposed to it.

4 MS. REINHART: Oh, yeah, because  
5 that means their liability gets tied up  
6 with RCRA stuff. So they won't support  
7 that. They might support like Lone  
8 Mountain having a separate disposal unit  
9 for low level --

10 MS. SHARP: Right.

11 MS. REINHART: -- but not within  
12 the same unit.

13 MS. SHARP: Right. I would  
14 invite, you know, if people have the time -  
15 - intelligent people like yourselves, to  
16 comment on the rule. I mean, EPA is  
17 gathering input and what they need is some  
18 good ideas and some good opinions from  
19 people who work in the field.

20 I don't think people think that rule  
21 could solve the whole low level waste  
22 disposal problem. But yeah, it is kind of  
23 in that direction. And it may have merit.  
24 We're still kind of looking at it.

25 MR. BRADSHAW: Are there any

1 other comments or questions by anyone?

2 Okay, we'll end Item Number 4.

3 I have a final comment and that is  
4 to say that the DEQ is continuing to do a  
5 good job with reduced resources. This is  
6 particularly a challenging time for State  
7 agencies. You know, their budgets are  
8 being cut and the Legislature is not  
9 helping because I believe at the end of the  
10 year they typically rob the till from those  
11 funds that have been paid in by the  
12 industries and by the public into the tire  
13 fund and so on. I think that's something  
14 we need to maintain the consciousness of  
15 and try to turn that around. I see that as  
16 an unfair process where funds are diverted  
17 unfairly into a taxation system from a fee  
18 system. My own opinion.

19 But anyway, the health of the DEQ is  
20 important for maintaining the good  
21 environmental quality to maintaining an  
22 economic environment we can all live in. I  
23 think it's very important.

24 Congratulations to those very  
25 qualified people who keep doing what they

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1 do with what they have.

2           Okay, let's go to Number 5, the  
3 election of the Chairperson. I'm exhausted  
4 from all the work we did last year. As you  
5 can tell, I can hardly speak. So I don't  
6 intend to be Chair the following year but  
7 I'll take the prerogative of nominating  
8 Jody Reinhart, if there might be a second  
9 to that nomination.

10           MR. KENNEDY: I'll second that.

11           MR. BRADSHAW: Okay, now let's  
12 have other nominations. Any other  
13 nominations? I always like to give her  
14 something for her birthday.

15           MS. REINHART: Six months early.

16           MR. BRADSHAW: So don't expect  
17 anything. Okay, we have a motion. We have  
18 a second. We have no other nominations.  
19 Would the secretary please call the roll.

20           MS. BRUCE: Bruce Elwell.

21           MR. ELWELL: Yes.

22           MS. BRUCE: Jerry Ihler.

23           MR. IHLER: Yes.

24           MS. BRUCE: Bob Kennedy.

25           MR. KENNEDY: Yes.

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1 MS. BRUCE: Kathy Martin.

2 MS. MARTIN: Yes.

3 MS. BRUCE: Jody Reinhart.

4 MS. REINHART: Yes.

5 MS. BRUCE: Steve Tomberlin.

6 MR. TOMBERLIN: Yes.

7 MS. BRUCE: David Bradshaw.

8 MS. BRADSHAW: Yes.

9 And I will pass the new gavel that  
10 we have today over to Jody. I don't know  
11 what you're going to do with this.

12 MR. ELWELL: If the meeting gets  
13 out of control.

14 MS. REINHART: That's right.  
15 Item Number 6 is the election of the Vice-  
16 Chair. Do I hear any nominations for Vice  
17 Chair?

18 I hear none but I think that Dave  
19 shouldn't be let off quite so rapidly. So  
20 I would like to nominate David Bradshaw to  
21 be the Vice Chair for the Council for the  
22 2004 year. Do I hear any other  
23 nominations?

24 MR. KENNEDY: Second. We'll give  
25 him that vote of confidence.

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1 MS. REINHART: Okay. Mr. Kennedy  
2 makes that. Myrna, if you would make the  
3 roll call, please.

4 MS. BRUCE: Bruce Elwell.

5 MR. ELWELL: Yes.

6 MS. BRUCE: Jerry Ihler.

7 MR. IHLER: Yes.

8 MS. BRUCE: Bob Kennedy.

9 MR. KENNEDY: Yes.

10 MS. BRUCE: Kathy Martin.

11 MS. MARTIN: Yes.

12 MS. BRUCE: Jody Reinhart.

13 MS. REINHART: Yes.

14 MS. BRUCE: Steve Tomberlin.

15 MR. TOMBERLIN: Yes.

16 MS. BRUCE: David Bradshaw.

17 MR. BRADSHAW: Yes.

18 MS. REINHART: Okay. Item Number

19 7 is the formal rulemaking hearing and vote  
20 of the proposed permanent changes to OAC  
21 252:100-3-1, which is this incorporation by  
22 reference. So I believe Tammi has a  
23 presentation for us on this.

24 MS. JOHNSON: Yes. Thank you.

25 The purpose of the proposed amendment to

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1 252:205-3-1 is to incorporate by reference  
2 40 CFR as amended through July 1, 2003,  
3 including new and superseded amendments.  
4 And, specifically, there are three  
5 amendments. Zinc fertilizer amendment,  
6 LDR national treatment variance to  
7 designate new treatment standards of  
8 subcategories for radioactively  
9 contaminated cadmium, silver and mercury  
10 batteries, and NESHAPs, the hazardous air  
11 pollutants for combustors.

12 I'll kind of give you a brief, as  
13 best I can here, synopsis of each one of  
14 those.

15 The zinc fertilizer amendment  
16 basically establishes a new framework for  
17 legitimate recycling of hazardous secondary  
18 materials in the manufacturing of zinc  
19 fertilizer. This is not applicable to any  
20 other fertilizers than zinc fertilizers.  
21 And there are two separate exclusions --  
22 excludes from regulation the hazardous  
23 secondary materials used in the  
24 manufacturing of the zinc fertilizer and it  
25 excludes the fertilizer products made from

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1 the secondary materials. It also  
2 establishes hazardous waste constituents  
3 for the manufactured fertilizer product and  
4 specifically those constituents are lead,  
5 arsenic, cadmium, mercury, chromium and  
6 dioxins. And it further establishes some  
7 managing requirements for -- well, those  
8 facilities that are managing excluded  
9 hazardous secondary materials -- the  
10 generators, the brokers, and the  
11 manufacturers will be subject to some  
12 reporting and recordkeeping requirements.

13           The reporting is along the lines of  
14 who are you, when did you start managing  
15 this, and what is the secondary hazardous  
16 material you are managing?

17           The recordkeeping for like the  
18 manufacturers is an annual report that will  
19 require them to identify the type of  
20 hazardous secondary material, the quantity  
21 and the origin of those materials.

22           The second amendment is the LDR  
23 issue relative to new treatment  
24 subcategories for the radioactive  
25 contaminated batteries. Under the existing

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1 LDR standards, thermal recovery is  
2 identified as the treatment standard for  
3 cadmium batteries. For the mercury  
4 batteries, it's roasting and retorting --  
5 I'm not clear what that exactly is, but  
6 that's what the standard is. And for  
7 silver there's a numerical constituent  
8 level.

9           The EPA has identified that they  
10 believe existing standards for the cadmium  
11 and mercury batteries are inappropriate  
12 because the recovered metals that would  
13 likely contain radioactive contamination  
14 and would therefore be a low probability of  
15 reuse.

16           For the silver containing batteries,  
17 to meet the existing LDR's would or could  
18 involve manually segregating those  
19 batteries from co-mingled batteries and  
20 could thus entail an increased worker  
21 exposure. So EPA is designating that  
22 microencapsulation be the designated  
23 treatment standard for these batteries  
24 prior to their disposal.

25           The third amendment is the hazardous

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1 air pollutants for hazardous waste  
2 combustors is more or less correcting some  
3 errors. And the issue relative to RCRA is  
4 that to support -- to identify that RCRA  
5 permitting requirements are no longer  
6 applicable to these types of entities, the  
7 incinerators and that sort of thing, they  
8 must conduct a comprehensive performance  
9 test, an air test, and submit a  
10 notification of compliance, a document,  
11 that they are in compliance with air  
12 regulations in Subpart EE.

13           It's basically a tradeoff from if  
14 you want to not be subject to the permit  
15 requirements under RCRA then you have to do  
16 the testing and document that and submit  
17 that, that you are now in compliance with  
18 Subpart EE requirements of the air  
19 regulations.

20           I hope I sufficiently explained  
21 those amendments.

22           MS. REINHART: Do we have anybody  
23 doing manufacturing of zinc fertilizers in  
24 Oklahoma?

25           MS. JOHNSON: Not that I am aware

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1 of.

2 MS. REINHART: I was just  
3 wondering. We don't have any BIF units --  
4 I know we don't have any incinerators in  
5 Oklahoma and we don't have any BIF's  
6 either, do we?

7 MS. JOHNSON: I don't believe so,  
8 no.

9 MS. REINHART: I didn't think  
10 that any of our cement kilns had gone that  
11 route. Okay.

12 So these are just kind of smoothing  
13 over -- taking full adoption of the federal  
14 requirements should anything ever happen in  
15 Oklahoma then?

16 MS. JOHNSON: Yes.

17 MS. REINHART: Are there any  
18 other questions by the Council? Seeing  
19 none, do we have any questions or  
20 discussion by the public? Mr. Public.

21 MR. ELWELL: The public is kind  
22 of under represented today.

23 MS. REINHART: Is there any  
24 further discussion by the Council? Do you  
25 guys have anything further that you'd like

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1 to ask?

2 Ms. Bruce, would you make a roll

3 call vote?

4 MR. BRADSHAW: Is there a motion?

5 MS. REINHART: I keep forgetting

6 that part. Do I have a motion to adopt the

7 rulemaking?

8 MR. BRADSHAW: I make a motion

9 that we recommend to the DEQ Board that

10 they approve the rule as recommended by the

11 DEQ staff.

12 MS. MARTIN: I'll second.

13 MS. REINHART: Okay. Mr.

14 Bradshaw made the motion. Ms. Martin made

15 the second. Now we can have a roll call

16 vote.

17 MS. BRUCE: Bruce Elwell.

18 MR. ELWELL: Yes.

19 MS. BRUCE: Jerry Ihler.

20 MR. IHLER: Yes.

21 MS. BRUCE: Bob Kennedy.

22 MR. KENNEDY: Yes.

23 MS. BRUCE: Kathy Martin.

24 MS. MARTIN: Yes.

25 MS. BRUCE: Jody Reinhart.

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1 MS. REINHART: Yes.

2 MS. BRUCE: Steve Tomberlin.

3 MR. TOMBERLIN: Yes.

4 MS. BRUCE: David Bradshaw.

5 MR. BRADSHAW: Yes.

6 MS. REINHART: Okay. Item Number

7 8 is the formal rulemaking hearing and vote  
8 on proposed permanent changes for 252:205-  
9 3-2, corrections to the 40 CFR and waste  
10 exclusion as amended. Ms. Johnson, you  
11 have the floor again.

12 MS. JOHNSON: Thank you. I would  
13 like to point out -- well, again, this is  
14 an incorporation by reference. If you  
15 would look on your proposed rules under  
16 Item B, Part 260, we'd like to identify an  
17 error in this. The underlined part that  
18 starts in 261.20, it should actually read  
19 in 260.20. I think this first  
20 sentence in 260.20 Federal Register  
21 synonymous -- can't even say the word --  
22 synonymous with the Oklahoma Register, I  
23 think that's fairly self-explanatory.

24 In 260.20(e) strike the words "or a  
25 denial". We believe that there is no need

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1 to state denial. We would not publish a  
2 denial in our Oklahoma Register. We only  
3 publish proposed rules. So, therefore,  
4 that's why we do not need those words in  
5 there.

6 The third sentence in the proposed  
7 rule in 260.22, references to the list in  
8 Subpart D of Part 261 and the reference to  
9 261.3(a)(2)(ii) or (c) some of the list of  
10 Subpart B of Part 261 and 262.3(a)(2)(ii)  
11 or (c) as adopted by reference and  
12 applicable in Oklahoma.

13 What that means is 260.22, is a  
14 petition to amend 261, which 261 identifies  
15 the listed hazardous waste. We want to  
16 make it clear that if a facility  
17 successfully petitions to exclude a waste,  
18 de-list a waste from 261, that that waste  
19 is only de-listed in Oklahoma and is not  
20 de-listed throughout the nation.

21 MS. REINHART: Because they would  
22 have to go through the federal de-listing  
23 process to get it throughout the nation.

24 MS. JOHNSON: That's correct.

25 MS. REINHART: Okay.

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1                   MS. MARTIN:    Tammi, just a --  
2    when you said Part 261 and 262.3(a), I  
3    assume that you meant 261.3, just for the  
4    record.

5                   MS. JOHNSON:   Yes.

6                   MR. KENNEDY:    That was a  
7    reference -- you did.

8                   MS. JOHNSON:    I'm sorry.    I think  
9    it's because I have it written here like  
10   that.

11                   The next proposal is under Part 261,  
12    identificational listing of hazardous  
13    waste, except 261.4(d)(18) which pertains  
14    to Utah only.    That should be excluded.  
15    The rule in the CFR, if you read it, it  
16    doesn't specifically identify that that  
17    waste is only generated or only in Utah so  
18    we believed we needed to -- and I think  
19    this was also a proposal from EPA to  
20    identify in our rules that this is only  
21    applicable in Utah.

22                   The next proposed rule is in Part  
23    264.    I would like to point out in -- I  
24    think it's identified an MCAT in the  
25    proposed rule and I think that is supposed

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1 to be MACT, the MACT standards on that.  
2 But none the less, this proposed rule was  
3 recommended by EPA as part of our  
4 authorization and so forth. We've been  
5 looking at that in assessing this issue and  
6 we determined that there is a need for  
7 further clarification and that the division  
8 is in agreement that until we have more  
9 opportunity to assess the proposed rule, we  
10 would recommend to the Council to not  
11 consider this rule.

12 MS. REINHART: Are there any  
13 questions?

14 MS. MARTIN: That MACT, is the  
15 Maximum Achievable Control Technology?

16 MR. KENNEDY: That's what it  
17 means.

18 MS. JOHNSON: The MACT standard  
19 really applies to incinerators, you know.  
20 It's additional air emission controls that  
21 they are having to put on incinerator  
22 trains at the end now in order to meet the  
23 standards and stuff.

24 MS. MARTIN: Okay.

25 MS. JOHNSON: And the last

1 proposed rule identified in Part 268, the  
2 rule as we've put it in the proposed rule  
3 reads differently than what we would like  
4 now to have considered. Specifically, we  
5 would like the proposed rule to end after  
6 the words pack or packs. So the rule would  
7 read as in 268.7(a)(9)(iii) "excludes D009  
8 from the list of alternative treatment  
9 standards for lab packs."

10 I think I understand this rule. I'm  
11 not too sure that I can make it clear to  
12 you. But I will try.

13 In 268(a)(9) identifies that if a  
14 generator manages a lab pack and uses the  
15 alternative treatment standards of  
16 268.42(c) and if the lab pack contains  
17 characteristic waste D001 through D0043 which  
18 includes D009, the underlying constituents  
19 would not need to be determined. But  
20 268.42(c)(2) identifies alternative  
21 treatment standards for lab packs are  
22 eligible for land disposal provided the lab  
23 pack does not contain any of the waste  
24 listed in Appendix IV of 268. Appendix IV  
25 includes D009, therefore, D009 needs to be

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1 excluded from 268.7(a)(9)(iii).

2 MS. REINHART: Okay. So that's  
3 all the information. And this is just for  
4 252:205-3-2. There's more information  
5 we've got in our packet that she'll explain  
6 here in just a moment. But this is  
7 rulemaking at this point for item Number 8.  
8 The next part we'll be talking about is  
9 under item Number 9.

10 So does the Council have any  
11 questions about the adoptions we'll be  
12 making in 205-3-2 at this time? Seeing  
13 none. Is there any questions by the  
14 public? Yes, sir.

15 MR. RABATINE: I just want to ask  
16 a clarifying question on the amendment  
17 proposed for Part 260 where you're striking  
18 the words "or a denial". I guess this is a  
19 legal question. If you've adopted the  
20 federal rule and they require publication  
21 of the denial, if you strike the word, is  
22 that as stringent as the federal program or  
23 is that not an issue here? That's all I'm  
24 asking on that?

25 MS. REINHART: I think that's an

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1 attorney question.

2 MR. SANGER: I don't think that  
3 based on discussions I've had with EPA,  
4 that that would be a problem but I haven't  
5 specifically asked them whether that would  
6 be the case or not. They are aware of the  
7 fact that when the state picks up the  
8 programs that they have to publish it in  
9 their state, equivalent to the Federal  
10 Register, which is the Oklahoma Register.  
11 And I don't know that they would require us  
12 to publish denials in the Register.

13 What we would have to do would be to  
14 go through a rulemaking before the Council  
15 and the Board and send everything over to  
16 the Governor every time we did a denial.  
17 Which would be pretty time consuming I  
18 think for everyone involved. But it's an  
19 option that you all can decide on for  
20 yourselves if you want to include that or  
21 not.

22 MS. MARTIN: I have a question.  
23 Are we talking about a denial of permits or  
24 rulemaking?

25 MS. REINHART: No, this is in

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1 260, so we're talking about de-listing.

2 Right, Tammi? It would be the denial of a  
3 de-listing petition that had been submitted  
4 to the agency.

5 MR. RABATINE: But, technically,  
6 isn't de-listing a rulemaking?

7 MS. REINHART: It is at the  
8 federal level, right?

9 MR. RABATINE: It's at the state  
10 level.

11 MS. REINHART: You get certain  
12 things done within the Register.

13 MR. SANGER: Right, it has to be  
14 published. They publish granting the  
15 exclusion in the Federal Register and  
16 publish the denial of the petition in the  
17 Federal Register.

18 MS. REINHART: And then sometimes  
19 -- I mean if it is approved it actually  
20 goes into the CFR, right? For inclusion.

21 MR. SANGER: Correct.

22 MR. RABATINE: And the proposal  
23 if it is approved under this is to be  
24 published as part of the rule.

25 MS. REINHART: So they have to be

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1 published in the Oklahoma Register if they  
2 are approved; is that correct?

3 MS. MARTIN: Correct. But just  
4 if they're not denied. And I would assume  
5 there would be more denials than approvals,  
6 so it's saving a little bit of time.

7 MS. REINHART: I don't know if it  
8 makes the program less stringent or not.

9 MR. SANGER: My answer would be  
10 no.

11 MS. MARTIN: I wouldn't think it  
12 would make it less stringent, as far as  
13 controlling people.

14 MS. REINHART: No. Well, I think  
15 we'll go with what Jerry's opinion is on  
16 that and say it wouldn't make it less  
17 stringent. If you guys, if the DEQ  
18 determines at a later date that that is  
19 different, then we'll just put it on  
20 another agenda -- a future agenda for the  
21 Council and we'll get that corrected.

22 MR. RABATINE: My other question  
23 is just again clarifying. The 264, did I  
24 understand that Tammi is saying that this  
25 language that's in here, it's being

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1 withdrawn? It's not being proposed for  
2 adoption right now?

3 MS. JOHNSON: That's correct.

4 MR. RABATINE: Okay. Thank you.

5 MS. REINHART: Do we have any  
6 further comment on that. Seeing none, is  
7 there any further discussion by Council?  
8 Okay. Seeing none, do I hear a motion to  
9 adopt Item Number 8, formal rulemaking  
10 hearing on proposed changes from 252:205-3-  
11 2.

12 MR. ELWELL: So moved.

13 MS. REINHART: Okay. Do I hear a  
14 second on that?

15 MS. MARTIN: I'll second.

16 MS. REINHART: Okay. Mr. Elwell  
17 makes the motion. Ms. Martin makes the  
18 second. Ms. Bruce would you take the roll  
19 call vote, please.

20 MS. BRUCE: Bruce Elwell.

21 MR. ELWELL: Yes.

22 MS. BRUCE: Jerry Ihler.

23 MR. IHLER: Yes.

24 MS. BRUCE: Bob Kennedy.

25 MR. KENNEDY: Yes.

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1 MS. BRUCE: Kathy Martin.  
2 MS. MARTIN: Yes.  
3 MS. BRUCE: Jody Reinhart.  
4 MS. REINHART: Yes.  
5 MS. BRUCE: Steve Tomberlin.  
6 MR. TOMBERLIN: Yes.  
7 MS. BRUCE: David Bradshaw.  
8 MR. BRADSHAW: Yes.  
9 MS. REINHART: Okay. Item

10 Number 9 is the formal rulemaking hearing  
11 and vote on proposed permanent changes to  
12 OAC 252:205-21-5. Fees for waste  
13 exclusion, which is a new listing for us.

14 MS. JOHNSON: Yes. I hope --  
15 sometime I may use the terms de-listing and  
16 waste exclusion, and they mean the same.  
17 I'd also like to note that on the Agenda,  
18 on the last line, beginning Chapter 25, it  
19 should actually be Chapter 21.

20 MS. REINHART: Okay. So down  
21 here where it says additional requirements  
22 for exclusions?

23 MS. JOHNSON: Up on item Number 9  
24 on the Agenda. It also should say  
25 Subchapter 21 to the DEQ rules, it should

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1 include for fees associated with, exclude  
2 the words "to implement" -- so it should  
3 read "Subchapter 21 to the DEQ rules for  
4 fees associated with the waste exclusion  
5 program in Oklahoma".

6 I wasn't quite clear that this was  
7 dealing with fees in that sentence.

8 MS. REINHART: Okay.

9 MS. JOHNSON: This is a new  
10 chapter identifying fees for waste  
11 exclusion submittals, refunds, and  
12 monitoring and inspection fees. For years,  
13 it has become state policy to avoid using  
14 general tax revenues to support the  
15 programs. Instead we've used a fee-based,  
16 fee-for-service approach so that the  
17 expenses are carried out by the regulated  
18 community -- the ones that are subject to  
19 the benefit or from the service.  
20 Therefore, funding to support the  
21 additional workload -- and I want to  
22 emphasize workload associated with review  
23 and so forth of these petitions, these  
24 waste exclusion petitions. The workload,  
25 personnel and so forth, the processing fees

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1 should be, we believe, paid by fees imposed  
2 on those filing for the waste exclusion or  
3 de-listing petitions.

4           We surveyed some other states, as  
5 many as we could get comments back from and  
6 so forth to get an idea of what the other  
7 states are doing. Do they assess fees and  
8 if so, how much? It ranges from some  
9 states do not assess any fee. Some states  
10 don't assess a fee specifically to de-  
11 listing. Some other states kind of  
12 incorporate it within some of their other  
13 fees. And some states, as well, do have a  
14 fee for the de-listing petitions ranging  
15 from maybe fifty-eight thousand dollars, to  
16 some states may charge a seventy dollar fee  
17 for manpower, review and so forth.

18           The EPA has kind of identified  
19 administrative costs of about twenty-eight  
20 thousand dollars for these de-listing  
21 petitions. And, you know, we really don't  
22 know if any facility that would submit  
23 these, what the scope of the work involved  
24 may be and so they can range from -- we  
25 would anticipate from something like a full

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1 RCRA permit application, another may be  
2 similar to a permit modification. One  
3 state that we talked to worked a number of  
4 years on a de-listing petition and had  
5 commented that they will never do one  
6 again. They said something to the effect  
7 of two hundred thousand dollars is not even  
8 close to what they put into it manpower-  
9 wise.

10 Also, with the fact that our  
11 revenues in Land Protection are down  
12 somewhat, just the nature of the times,  
13 somewhat, we receive grant monies from EPA  
14 and those really have not increased over  
15 time. But we continue to do the work load  
16 that we have and increase our workload.  
17 And we think to maintain or to take on  
18 additional workload of waste exclusion, we  
19 feel fees are necessary.

20 Also, with respect to the monitoring  
21 and inspection fees, we feel that we will  
22 need to provide oversight of waste managed  
23 after they are excluded, as most of the  
24 exclusions typically have conditions with  
25 those, and therefore we'll need to perform

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1 additional compliance and inspection  
2 assessment. And therefore, we, again, deem  
3 those fees necessary. That's all I have.

4 MS. REINHART: Okay. That's all  
5 you have? Any questions or discussion by  
6 the Council.

7 MR. BRADSHAW: Yes. I have  
8 something. Just thinking about the economy  
9 of this, I wanted the DEQ to consider the  
10 following under, you know, we talk about in  
11 (a) the fees and we reference directly the  
12 fees in the text. I think normally we were  
13 discussing that the fees are in the  
14 Appendices only so that when we do go to  
15 make a change, you know, we don't have to  
16 change the text and the table. In this  
17 case it is Appendix D. And I have some  
18 language to consider here to make it read  
19 that way.

20 Can you all hear me well, because  
21 I'm not sure? Anyway, it would read as  
22 follows: Under (a) Number 1 application  
23 fees for waste exclusions are listed in  
24 Appendix D. And it would end there. The

25 rest of Number 1 and all of Number 2, in my

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1 opinion, would be unnecessary once we state  
2 that.

3           And then Number 3 would become  
4 Number 2 and I would suggest reading the  
5 last sentence there that DEQ will not  
6 consider said petitions or -- petition of  
7 petitions until the appropriate fee. I  
8 would suggest having an "s" in parentheses,  
9 since there could be more than one if they  
10 were submitting two wastes, for example, be  
11 paid in full.

12           And that's just some utility text  
13 and I don't know whether it's a good idea  
14 or not. But I'm throwing it out.

15           MS. MARTIN: To clarify what you  
16 just said -- so you're saying rather than  
17 having the actual dollar value in the  
18 regulation itself, to only keep the dollar  
19 value in the appendix to simplify the  
20 changes later? So you have to change it in  
21 two places.

22           MR. KENNEDY: As consistent, we  
23 don't list those fees in any of the other  
24 two areas that have fees associated with

25 them as well, the monitoring and inspection

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1 -- refund and waste.

2 MR. BRADSHAW: And if you'd like  
3 I can read the text as it would read.

4 Would that be helpful to anyone?

5 MS. JOHNSON: I think it would  
6 be.

7 MS. REINHART: I was going to  
8 say, I think we would need that for the  
9 record.

10 MR. BRADSHAW: Then it would  
11 read, as I am suggesting we consider. (A)  
12 Number 1, application fee for waste  
13 exclusions are listed in Appendix D of this  
14 chapter period. Number 2, payment of the  
15 appropriate fee must be made at the time of  
16 the submission of the petition to exclude  
17 the waste stream or streams. The DEQ will  
18 not consider said petition or petitions  
19 until the appropriate fee or fees are paid  
20 in full.

21 That was the way it would read.

22 That's what I would -- at least for  
23 consideration only. I'm not trying to

24 force this on you. There might be a  
25 problem I don't see here.

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1 Jerry, back there, what do you  
2 think?

3 MR. SANGER: I think that's a  
4 wonderful idea. I would agree completely  
5 with your suggestion.

6 MS. REINHART: And I like that  
7 because it just makes things more  
8 streamlined and easier to amend and change  
9 when things change and stuff.

10 MR. BRADSHAW: And think about  
11 the impact on the budget with all the  
12 paper.

13 MS. REINHART: And we'll save one  
14 piece of paper.

15 The only other question that I have  
16 is that I personally don't believe that the  
17 amounts that the DEQ is suggesting actually  
18 are high enough.

19 I got involved somewhat with a TOSCA  
20 de-listing or TOSCA petition to bring some  
21 waste from outside the United States.  
22 Actually it was -- wasn't outside the  
23 United States but they went through that

24 process and it was very time consuming. It  
25 was kind of like one of those deals you're

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1 talking about, two hundred thousand wasn't  
2 enough, you know.

3           This one was actually, from what I  
4 recall, and I think the numbers I quoted  
5 you, Catherine, earlier, were actually  
6 incorrect. It was more like a half a  
7 million -- million dollars is what they  
8 ultimately ended up putting that together.  
9 And that wasn't -- that's not going to be  
10 much different than exclusions.

11           So, I really think that probably the  
12 twenty and fifteen thousand, and I don't  
13 know about the monitoring fees, if that's  
14 an adequate amount.

15           Would you just have to send an  
16 inspector out there for one day to check?

17           MS. JOHNSON: Not necessarily. I  
18 think that it would probably depend upon  
19 what some of those conditions are that are  
20 in the part of the exclusions. Because it  
21 may include some monitoring or something  
22 like that, that may be over a period of

23 days, or sampling, not reporting to the  
24 laboratory.

25 MS. REINHART: So there's

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1 actually some labs fees that would be  
2 entailed as well as the person's time and  
3 things like that?

4 MS. JOHNSON: I believe there  
5 could, yes.

6 MS. REINHART: What did the  
7 federal -- you mentioned that the federal  
8 suggested twenty-eight thousand to do the  
9 petition and so forth? Did they make a  
10 suggestion for the annual monitoring fee?

11 MS. JOHNSON: Jerry, did they?

12 MR. SANGER: Actually, EPA put  
13 together a report -- RCRA Hazardous Waste  
14 De-Listing, the First Twenty Years. And I  
15 have copies if anybody wants to see that.  
16 But in reality that twenty-eight thousand  
17 dollar amount was really the minimum and it  
18 said a lot of times it goes to one hundred  
19 thousand and over for administrative costs  
20 to the government.

21 Now administrative costs to the  
22 petitioner is much much higher than that.

23 But to answer your -- what was your --

24 MS. REINHART: I'm interested in  
25 how much we're going to charge as well as

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1 for additional waste streams and stuff.  
2 And then the monitoring -- does the federal  
3 government monitor the de-listed waste  
4 streams?

5 MR. SANGER: I think the answer  
6 to that is, yes. Because they do and it's  
7 published in the CFR, and has attached very  
8 specific conditions to the exclusion. And  
9 they either defer it to the states to do as  
10 part of their authorized program which is  
11 what we would end up doing with that, or  
12 they would do it themselves as one of the  
13 few targeted inspections that they would do  
14 in the state.

15 But there has to be some kind of  
16 assurance that the facility actually meets  
17 the conditions of the exclusion, because if  
18 they don't then the exclusion is lost. And  
19 then all that waste that they would handle  
20 would then become a hazardous waste.

21 MS. REINHART: Right.

22 MR. BRADSHAW: Okay, Jody, I'd  
23 like to ask a question. Gary, Catherine,  
24 Don, do you believe that if we want to  
25 recommend different fees today, we can do

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1 so? And get them in this rule?

2 MS. SHARP: It would have to be  
3 an amendment to the rule.

4 MR. SANGER: Yes. I think that  
5 it is within your prerogative to either  
6 raise or lower the amount or delete it all  
7 together.

8 MS. REINHART: No, we're not  
9 deleting it.

10 MR. BRADSHAW: Just a minute,  
11 Bob. When I first read this, you know, my  
12 view on it was that a lot of people are  
13 having to spend an awful lot of money.  
14 They are producing high volumes of waste  
15 and they're having to treat them as  
16 hazardous simply because they are listed  
17 and if you look at the underlying  
18 analytical, you know, they are being  
19 treated above and beyond where they should  
20 be treated.

21 And so there may be some people out

22 there who are spending hundreds of  
23 thousands or millions of dollars and  
24 achieving no environmental benefit. And  
25 those are the people or industries or

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1 utilities that, I think, would come forward  
2 first of all, and their needs would be more  
3 so than those people or industries  
4 producing lesser amounts.

5           So those initial petitions which  
6 would hit, I would think would be the most  
7 expensive. So, my thought was, in the  
8 first year, or the first two years of this,  
9 we're going to see the big ones. And  
10 that's when the DEQ is really going to  
11 incur the cost and the generator is really  
12 going to incur the benefits so that if we  
13 do have a high rate during that initial  
14 period, I think that's probably the time  
15 that it is needed. And then after that,  
16 you know, when the playing field is more  
17 level, we should look at these fees and see  
18 if they are too high relative to some real  
19 data.

20           But right now, I, too, am a little

21 bit worried about this level because what  
22 really drives the economy and the  
23 environmental compliance of this state is  
24 you guys being able to do your job. And  
25 this, really, is not going to effect those

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1 things that much but it could tie up your  
2 resources to keep from doing what you  
3 normally have to do and that's the part  
4 that worries me about a low fee.

5 And that's my only comment. And I  
6 know that Bob had one, Jody.

7 MS. MARTIN: That brings up  
8 another question, if I might ask.

9 MS. REINHART: Yes, go ahead, Ms.  
10 Martin.

11 MS. MARTIN: Before this fee,  
12 were there people asking to be de-listed?  
13 Ever?

14 MS. SHARP: Those petitions went  
15 to Region VI.

16 MS. MARTIN: Okay. So is this  
17 just for them to come to us?

18 MS. SHARP: Right. We're in the  
19 process of getting authorization and now  
20 have it, so we would do it in lieu of EPA.

21

22 MS. MARTIN: And so my next  
23 question is, that I absolutely agree with  
24 you, this is that little tidbit, spare  
25 change fee and that it would be more

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1 applicable to have a higher minimum fee  
2 plus a fee based on hours spent at the  
3 agency -- which I know is hard to keep  
4 track of -- so maybe some other comparable  
5 language where if it was a long drawn out  
6 discussion between the agency and the  
7 petitioner, that the agency could continue  
8 to bill them for the cost. But if it was a  
9 short procedure it would just stop. And  
10 that seems more fair.

11 MS. REINHART: How many waste  
12 streams in Oklahoma have been de-listed to  
13 date? Do we have an idea? We've got about  
14 -- almost thirty years of RCRA under our  
15 belt now.

16 MS. SHARP: I know there have  
17 been some in the region, I don't know if  
18 any in Oklahoma have been --

19 MS. JOHNSON: There's been one or

20 two.

21 MS. SHARP: And I do know there's  
22 one -- just by way of the grapevine, there  
23 is an Oklahoma generator who's looking at  
24 this who wants to de-list their waste. So  
25 there will be one at least. And maybe

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1 others like David said, I have only heard  
2 of one pending.

3 MS. REINHART: We've kind of  
4 likened this to a permit application. I  
5 think that fee is set at twenty thousand  
6 dollars, right, for a permit application?  
7 Don, can you tell us about that?

8 MR. HENSCH: That's the minimum  
9 with a maximum of fifty thousand.

10 MS. REINHART: Maximum. Okay.  
11 How do you guys determine that you hit  
12 fifty thousand?

13 MR. HENSCH: It's based on the  
14 number of permitted units and like tanks or  
15 storage areas or landfills. And there's a  
16 table at the back of the rules.

17 MS. REINHART: Right. So the  
18 minimum is twenty and then depending on the  
19 type of units you have permitted, add the

20 additional monies to it, that's how much  
21 your permit application fee is right?

22 MR. HENSCH: Correct.

23 MS. REINHART: I couldn't  
24 remember because it's been a while since I  
25 looked at that table.

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1 MS. MARTIN: My other question, I  
2 think those fees have been that value for a  
3 long time, haven't they? Have they been  
4 increased for the cost of doing business?

5 MR. HENSCH: I don't think  
6 they've been increased for eight or ten  
7 years.

8 MS. MARTIN: That's what I  
9 remember back in the '90s.

10 So I hate to base a new fee on an  
11 older value that may not reflect our true  
12 cost.

13 MR. KENNEDY: But based on  
14 something you have experience with which is  
15 RCRA permits of those fees, have you done  
16 some assessment as to, "yeah, we're doing  
17 all right within that fee on these  
18 permits?" Or are you --

19 MS. SHARP: Well, we've just  
20 started revisiting that. I'm not sure that  
21 the --

22 MR. KENNEDY: (Inaudible) We'd  
23 like also for the RCRA permit fees to be  
24 higher.

25 MS. REINHART: Speak for

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1 yourself. I can tell you right now that  
2 landfills are not doing well throughout the  
3 whole nation.

4 MR. SCOTT THOMPSON: Scott  
5 Thompson. That's a bit of a hard question  
6 to answer because the truth is, our whole  
7 RCRA program has been carried for the most  
8 part by our commercial waste disposal fees.  
9 And those have shrunk from over three  
10 million dollars at one point down to half a  
11 million and they continue to shrink at ten  
12 to fifteen percent a year.

13 So I'm not sure that we've fully  
14 supported all our permitting activities  
15 with our permit fees in the past but we're  
16 hitting a point where -- and the truth is,  
17 we seem to be kind of level. Several years  
18 back we had a budget shortfall and we cut

19 several positions that we cease to fund  
20 anymore. And we've never returned to  
21 funding those positions. So we're about  
22 four or five FTEs short of where we were  
23 three or four years ago.  
24 And the whole division has continued  
25 to shrink since DEQ got created. I think

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1 we were at one point around a hundred  
2 people and now we're right about seventy-  
3 five. And the RCRA program is shrinking  
4 somewhat. So we don't have good  
5 figures, really, for permit fees  
6 translating to fully supporting the whole  
7 permit function but we're getting to the  
8 point where the RCRA commercial fees are  
9 getting so low the whole program is just  
10 flat. I mean, we're really at a point  
11 where we do need to -- we're going to be  
12 coming to you guys with more fee issues,  
13 and funding issues over the next couple of  
14 years because we're at that door where we  
15 break even right now. We're -- we think  
16 we're at about as low of staffing as we can  
17 stand in the program and still maintain a

18 viable program. And if things shrink  
19 anymore then we're going to be hurting a  
20 little bit.

21 Now we could help somewhat with some  
22 other fee sources within our division but  
23 we're also being tugged on pretty hard  
24 across the whole agency in that way. And  
25 there's not very much give there either.

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1 And actually, our solid waste fees  
2 are being hit pretty heavy over the last  
3 year because we took about a million and a  
4 half cut over the last two years in the  
5 agency and most of that has been taken in  
6 our solid waste fees which is the other  
7 major fee that the division has to support  
8 all of our programs.

9 And we will be glad to look at that.  
10 I think, we're not going to have really  
11 accurate answers for you in terms of what's  
12 the ideal number for the fee to be right  
13 now. I think what we have to do is to take  
14 a shot at it and get some -- and we're open  
15 to any suggestion you have on what the fee  
16 ought to be.

17 We just pretty much said "let's go

18 for the minimum, see how the track record  
19 goes, and see if we need to adjust it."  
20 But it may be wiser to go somewhere above  
21 the minimum at this point and then make the  
22 adjustment up or down as we begin to get  
23 trackers.

24                   And the truth is, we don't expect to  
25 see a flood of de-listing petitions. It's

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1 barely even used in the past because  
2 historically EPA refused to actually do  
3 them, for a number of years. And only in  
4 the last few years did EPA actually start  
5 using the de-listing process really to any  
6 extent at all.

7                   And so, it's sort of newly used but  
8 we wouldn't want it to be free because we  
9 might get people using the de-listing  
10 process as a shield to try to thwart on-  
11 going enforcement or something. Or people  
12 flooding us with all kinds of de-listing  
13 stuff that really doesn't make any sense.  
14 And we are at a point where we've got to  
15 start recovering some of the costs of these  
16 activities.

17 MS. REINHART: Yeah, okay.

18 MS. MARTIN: I want to ask  
19 another question to Catherine. You said  
20 you thought there might be one person or  
21 one group that was going to ask for de-  
22 listing, do you know what list that would  
23 be?

24 MS. SHARP: I don't know anything  
25 more about it than that, just that there is

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1 an Oklahoma generator that is interested in  
2 sending in a petition.

3 MS. MARTIN: I have a suggestion  
4 that this fee would be considered an  
5 administrative fee and that there would be  
6 technical fees associated with long term  
7 costs by the agency.

8 MS. REINHART: All right. Do you  
9 have suggestions on how that would be,  
10 language-wise?

11 MS. MARTIN: I'll think about it  
12 for a few seconds.

13 MR. BRADSHAW: Let me make a  
14 comment on that.

15 You know, what I'd like to see  
16 today, if this Council approves this, is to

17 go ahead on this rule but I think if we  
18 don't have fixed fees, if we try to  
19 incorporate some kind of variable equation  
20 into this, we're going to have a lot of  
21 trouble today. Because that is something  
22 that the DEQ needs to go away and think  
23 about very hard. I see it's going to be  
24 very difficult to do. So if we do make a  
25 suggestion, my thought is, let's just try

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1 to keep it at a fixed level so it's simple.  
2 Because doing this kind of technical  
3 analysis, I believe, is going to be a  
4 little bit difficult today, in this  
5 Council. Feel free to argue with that.

6 MS. MARTIN: Okay. I was just  
7 thinking that you could make it an equation  
8 of so many times an average FTE cost in the  
9 division. Something real easy based on the  
10 difficulty. Yeah, I'll agree maybe we  
11 can't come up with the correct language so  
12 maybe the solution is to come up with a  
13 higher minimum fee. But if there's one  
14 person coming down the pike, they're not  
15 going to be very happy that once we pass

16 this today and they file their petition  
17 tomorrow and then they're in with the  
18 minimum fee, right? They're the only  
19 person using it.

20 MR. BRADSHAW: Well, the thing  
21 about having a variable fee in there that  
22 is not well understood, is that it's going  
23 to put off people from actually using the  
24 process. Because they'll think that DEQ  
25 could game this thing. Whereas, if it's a

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1 fixed fee, and I'm a generator, then I feel  
2 very comfortable -- I know what this is  
3 going to cost me.

4 I don't like cost-plus contracts,  
5 you know, the government kicked those out  
6 on us a long time ago, for good reason.  
7 And that's my only thought and I'll quit  
8 preaching.

9 MS. MARTIN: Well, I just know  
10 from experience, for example, in Utah, they  
11 actually calculate their NPDES permits as  
12 the actual costs the agency incurs in  
13 developing a permit. And so, it's not  
14 unusual for that type of fee to be  
15 calculated by the agency.

16                   And I'm only saying that if you're  
17 really fearing that someone is going to  
18 come and really tie up your time and it's  
19 someone who might get a large financial  
20 benefit from it, then I think you should  
21 protect yourself. But, if not, then don't  
22 worry about it.

23                   MS. SHARP: I might speak to  
24 that. When you were asking about the  
25 permit fees and that they haven't changed

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1 over time. One of the things that they  
2 were expressly authorized to do in our  
3 Brownfields program, and we'd have to  
4 really have the lawyers look at this, I  
5 think we're allowed to do it -- I don't  
6 want to speak for any lawyers here, so you  
7 guys don't say anything, yet. They charge  
8 back to applicants by the hour which is  
9 what I think you're describing. In other  
10 words, voluntary clean-up program, the  
11 Brownfields program, those clients so-to-  
12 speak, for those PRPs, they sign a consent  
13 order and they deposit money with the DEQ  
14 and it's drawn down and it seems to be

15 actually a very workable and harmonious  
16 kind of an arrangement.

17           And so that's one thing that when I  
18 started to mention permit fees to you, that  
19 Don's done some study of maybe something  
20 like that in the RCRA program. And other  
21 states do that so that you're billing by  
22 time. The problem with the current permit  
23 fees when you're asking about them is it's  
24 always hard to predict how complex one of  
25 those permit applications is going to be

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1 and so you could argue that this other  
2 system is more fair, however much time and  
3 energy we would put in on it, that's what  
4 the applicant has to pay.

5           So there's some incentive to maybe  
6 get, on the part of the applicant as well,  
7 to sort of get it done. But what I  
8 wouldn't want to do maybe is -- we're very  
9 open to that idea and as Scott said we have  
10 to examine other fee structures. I don't  
11 know that I'd want to deviate too far from  
12 some flat fee today. Because it takes a  
13 while to kind of think that through and I  
14 would welcome the Council's input on that,

15 and some brainpower and suggestions on that  
16 matter. What is a fair way to pay for the  
17 services rendered? I wouldn't want to try  
18 to draft that language today I don't think  
19 but it's potentially a good idea.

20 MS. REINHART: Okay. Go ahead,  
21 Don. You're our one public member. Bob --  
22 I'm sorry.

23 MR. RABATINE: Yes. Bob  
24 Rabatine. I have a suggestion to make and  
25 that is that the Council not take action on

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1 this but defer the decision until the next  
2 meeting, presumably the next quarter.

3 And the reason I suggest that, to me  
4 it's being supported a little bit by the  
5 discussion today that there are a lot of  
6 things yet to work out. But the reason I'm  
7 suggesting that is because the language  
8 only came to me two days ago. And I work  
9 with the Environmental Federation of  
10 Oklahoma, I work on one of the  
11 subcommittees, and have been attempting to  
12 get language distributed to people so that  
13 it could be reviewed and discussed. And it

14 was not available.

15                   So I just feel like -- the magnitude  
16 of this change that there is an important  
17 consideration for input from the affected  
18 public, and that the notice was published  
19 and I received it November 14th but was not  
20 able to get copies of the draft of the new  
21 proposed Chapters and that includes Chapter  
22 21 and 25.    So I'm going to make the same  
23 comment for that one -- until two days ago.

24                   MR. BRADSHAW:    Bob, may I make a  
25 comment about that.    I understand what

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1    you're saying and we had thought about that  
2    before but I believe that if we don't do it  
3    at this meeting it won't get done this year  
4    and we'll be here next year with different  
5    language and that's why I was thinking  
6    let's go ahead today and get it out there.

7                   If someone wants to avail themselves  
8    of it during this year they'll be able to.  
9    And if we have a better fix for it from the  
10   EFO or whomever, we can do that at the  
11   meeting next year, and get that while the  
12   Legislature is in session.    Now, am I right  
13   about that, Jerry?    Catherine?

14 MR. SANGER: Yes.

15 MS. REINHART: It would take  
16 effect in June of this year, because once  
17 everything goes through then the rule could  
18 be back open for -- I mean, we could even  
19 have a meeting later this year to make  
20 amendments to it because it would be made  
21 permanent at that point, right?

22 Because we can't change a rule, we  
23 can't make any changes to any rules while  
24 they're in motion until they have been  
25 permanently adopted, right?

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1 MR. SANGER: That's true if  
2 you're voting on them as permanent rules.  
3 Once you -- once the Board adopts a rule,  
4 you can't amend it until it is actually  
5 published in the Oklahoma Register.

6 And there's only one Board meeting  
7 now before the Legislature goes into -- or  
8 are in session before they end, which will  
9 be February 27th. So if we don't get it to  
10 that Board meeting, it will completely miss  
11 this Legislative year and they wouldn't be  
12 able to pass it -- it wouldn't become

13 effective as a permanent rule until next  
14 year.

15 MR. BRADSHAW: And I'm sure this  
16 rule is imperfect like all the rules. But  
17 there might be those who would want to use  
18 it and this is about the only opportunity  
19 we're going to have to give them a chance  
20 to use it in the next year. And I know  
21 this Council pretty well, and I think that  
22 if there are changes that are needed, we're  
23 certainly willing to go back in and change  
24 those. Do you understand what I'm saying?

25 MR. RABATINE: Oh, I understand

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1 perfectly. And I'm approaching this from a  
2 practical perspective that I have a  
3 question about the due process part of it  
4 because it wasn't available for anybody to  
5 look at. And so I'm concerned about that.

6 I don't object at all to the  
7 provisions of the rule, the fact that a  
8 standard is going to be set, a fee is going  
9 to be set. I understand the need for all  
10 of that and I don't have any objection to  
11 the dollar amount. But I'm bringing up the  
12 question that, we, the public -- and I'm

13 representing my company but also EFO, and  
14 we've just not seen it. And it's not been  
15 posted on the web despite notice that it  
16 was -- and it just -- if you want to move  
17 forward, I understand but I just wanted to  
18 voice my concerns about the fact that it  
19 wasn't available.

20 MR. BRADSHAW: Okay. I divided  
21 this into two parts in my head. One is,  
22 maybe the DEQ hasn't done a sufficient job,  
23 and I would like them to address that in  
24 terms of notifying but -- and to you. But  
25 we're down to the practical part of this

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1 right now so given the practicality of it,  
2 what are your thoughts? And we'll deal  
3 with the notice as a separate issue.

4 MR. RABATINE: Again, I don't  
5 object to moving ahead with it from the  
6 practical perspective. It's just that, I  
7 didn't think through the part about the  
8 Board and the time frame. And I know  
9 that's always an issue.

10 MS. REINHART: Right. And that's  
11 what we've got to keep in mind whenever

12 we're doing these rules and making certain  
13 -- I mean this caught me offguard because  
14 there's one section where you adopt by  
15 reference any new rulemakings but while  
16 that's in motion until it gets final you  
17 can't come back and do any further  
18 amendments to that.

19           So whatever we do, we got to make  
20 certain that we have addressed all the  
21 concerns at one time because once this  
22 thing goes into motion then 205-21-5 or  
23 whatever we approve today is a closed issue  
24 for any further Council meetings until it  
25 becomes permanent.

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1           So the rule was not really available  
2 for public comment? I came back to work on  
3 Monday from being on holidays and stuff and  
4 it was in my mailbox on Monday. So when  
5 did you actually get the rules, Bob?

6           MR. RABATINE: What's today,  
7 Thursday? Tuesday.

8           MS. REINHART: Tuesday. Was it  
9 not published on the DEQ website. When did  
10 we get it on the website so that the public  
11 could have looked at it and --

12 MS. JOHNSON: I don't know  
13 exactly the reasons. I thought that it had  
14 been put on the website until I actually  
15 received a call from Bob and I don't  
16 believe it got on the website until  
17 yesterday.

18 MS. REINHART: Okay. So how  
19 would people that were interested parties,  
20 how would they have known besides getting  
21 the public notice and so forth, what the  
22 proposed language would be?

23 MS. JOHNSON: Well, we had the  
24 rule. We had the proposed rule and we  
25 could have provided that to them if they

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1 had come in or some other means. I mean,  
2 we had it. We had the proposed rule.

3 MS. REINHART: So they just had  
4 to call and request that. Is that what  
5 you're saying?

6 MS. JOHNSON: Yes.

7 MS. MARTIN: I have a question,  
8 did anybody call and request a copy?

9 MS. JOHNSON: I did not receive  
10 any calls. Gail Hamill was identified as

11 the contact and I believe Bob had called  
12 her.

13 MR. BRADSHAW: Well, I don't want  
14 to make this into --

15 MS. JOHNSON: No. That's the  
16 only -- and I don't know -- and I don't  
17 know if anybody else was contacted, I  
18 hadn't heard of any other calls.

19 MR. RABATINE: I contacted Gail  
20 about the second week in December. Again,  
21 I received the notice and then was called  
22 and was told that nothing was available and  
23 that it would be on there shortly. I  
24 called Gail every week and then the last  
25 time I think I spoke to her was I think the

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1 second week in December. And at that  
2 point, the rule wasn't yet available in  
3 print either. She said it was still in the  
4 review process, it was being polished and  
5 that there was nothing to distribute.

6 And I had already sent out an e-mail  
7 to my subcommittee with EFO basically  
8 saying, "Hey, this announcement is out.  
9 These are rules for you to take a look at  
10 and consider and that they were posted."

11 And they weren't available. And I got a  
12 flood of calls back from my committee  
13 members saying well, what's the deal? And  
14 I didn't have much of an explanation.

15 (MEETING RECESS)

16 MS. REINHART: Well, let's go  
17 ahead and start back up with our meeting.

18 We're still on Item Number 9 which  
19 is the formal rulemaking hearing and vote  
20 on proposed permanent change of OAC  
21 252:205-21-5 which is fees for waste  
22 exclusion.

23 So I think we left off at -- we have  
24 concerns about availability of the proposed  
25 rulemaking language and then we also are

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1 still debating about the fees that are  
2 appropriate for doing a waste exclusion  
3 evaluation by the agency.

4 MR. BRADSHAW: Madam Chairman,  
5 may I speak?

6 MS. REINHART: Yes, please.

7 MR. BRADSHAW: Okay. I'd like to  
8 propose a motion at this time and I'm going  
9 to propose it in light of the following.

10 We have a lot of questions about the fees  
11 and about how they should be constituted  
12 that I think the DEQ needs to do some  
13 thinking about that.

14           Also, certainly this notice has been  
15 made in a legal fashion but the affected  
16 community has perhaps not had the  
17 opportunity they would like to review the  
18 rule. Certainly the EFO has commented to  
19 that effect. The EFO represents most of  
20 the regulated entities in the state. I  
21 believe they should have that opportunity.

22           Given the number of questions, I'm  
23 just proposing that we table this  
24 rulemaking for this meeting and pick it  
25 back up at a subsequent meeting.

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1           MR. ELWELL: Second that motion.

2           MS. REINHART: Okay. Mr. Elwell  
3 made the second. Is there any further  
4 discussion about this at this time? Any  
5 comment from the public?

6           MR. RABATINE: I do have a  
7 question. In the interest of timeliness is  
8 this something that the Council would  
9 consider a meeting, you know, like two

10 weeks from now to be able to move forward  
11 with it and still get the decision made and  
12 get to the Board meeting.

13               Because, again, my purpose was not  
14 to de-rail the process but just to express  
15 concern about not seeing the documentation.

16               MS. REINHART: I don't know that  
17 it's worthy of calling an emergency meeting  
18 by the Council.

19               MR. BRADSHAW: Let's ask the  
20 question first of all is there time even to  
21 do that?

22               MS. REINHART: We'd have to do a  
23 public notice again for the emergency  
24 meeting.

25               MS. SHARP: Yeah. We were just

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1 trying to figure out how many days notice  
2 you need for an emergency meeting.

3               MR. JOHNSON: You can continue  
4 this meeting.

5               MS. SHARP: Or continue this one.

6               MR. JOHNSON: Just make certain,  
7 it's just a matter of the same publication  
8 as we have now which is twenty-four hour

9 notice.

10 MS. SHARP: So if you continue  
11 this there is very little lag time.

12 MR. JOHNSTON: So you can  
13 continue this meeting and you don't have to  
14 publish a new agenda. Only those ten items  
15 will be discussed at that meeting. If you  
16 want to have an emergency meeting then you  
17 have to start again.

18 MS. REINHART: You have to do  
19 public notice and go forward and stuff. My  
20 question is, is there anybody, I mean,  
21 pushing the agency for this type of -- what  
22 happens if I want to do a de-listing  
23 petition right now? What happens if I were  
24 to bring that to the agency?

25 You've got authorization to do it,

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1 correct? To do a de-listing petition.

2 MS. SHARP: I started to answer  
3 but there's actually two ways to look at  
4 it.

5 MS. REINHART: Well, I'm just --

6 MR. SANGER: Well, I think  
7 there's a couple of issues that you are  
8 asking. Number one is, do we have

9 authority on our state program to do it and  
10 number two is whether or not that part of  
11 the program has been authorized by EPA.

12 To answer your first question, we  
13 have adopted the federal rules by reference  
14 but the way the federal rules are written  
15 it requires publication in the Federal  
16 Register of the notice, either the granting  
17 or denying of the petition. We can't do  
18 that in Oklahoma. So the way the language  
19 is worded that we've adopted, that is the  
20 actual rule language in place now, is  
21 really inappropriate to do it in Oklahoma  
22 and publish it as a rulemaking in Oklahoma.

23 So I think that we would need an  
24 amendment to make that change.

25 The fees, I think, are a separate

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1 issue. I don't think that's a real legal  
2 issue. Now as far as the authorization  
3 goes, Gail Hamill, who is doing the  
4 authorization now, has told us that that  
5 part of the program has received  
6 authorization. I personally can't speak to  
7 that because I haven't seen that.

8 MS. REINHART: So if I came to  
9 you with a petition right now, we're not  
10 certain Oklahoma -- the DEQ can grant that  
11 regardless of the issue about fees?

12 MR. SANGER: Well, we don't have  
13 a legal mechanism in our rules to go  
14 through the rulemaking procedure to take it  
15 to the Council and the Board and to publish  
16 it anywhere in an equivalent to the Federal  
17 Register at the federal level.

18 MS. REINHART: Okay.

19 MR. SANGER: So it would be a  
20 real problem to try to do it now.

21 MS. REINHART: Okay. So if we  
22 delay this, this is not going to hurt any  
23 proposed waste exclusions at this time.

24 MS. SHARP: Wouldn't we encourage  
25 them to send that to EPA and encourage EPA.

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1 MR. SANGER: Well, that's another  
2 legal problem is EPA has said for years  
3 that once a state receives authorization  
4 for the de-listing portion of the program,  
5 that EPA automatically will stop processing  
6 petitions in that state and will forward  
7 any pending petitions to the state to

8 process.

9                   And they have also stated that even  
10 if EPA did go ahead and process it, that it  
11 would have no legal effect anywhere except  
12 in states that are unauthorized.

13                   So, in other words, I don't think  
14 EPA is -- if indeed it is part of the  
15 authorized program, EPA would not review  
16 and/or approve petitions for Oklahoma at  
17 this time.

18                   MR. BRADSHAW: Yeah. I question  
19 again, if we continue the meeting do we  
20 have time to get this before the Board's  
21 next meeting? Do we have time to do that  
22 process?

23                   MS. SHARP: The Board meets  
24 February 27th.

25                   MR. SANGER: Right. Typically in

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1 the past we've required at least a month  
2 lead time from the Council meeting to the  
3 Board meeting to have time to put all the  
4 Board packet information and everything  
5 together. Now I think in the past we have  
6 done it in a shorter time frame.

7 MR. BRADSHAW: So it's a possible  
8 thing.

9 MR. SANGER: I would say, yes.

10 MR. BRADSHAW: And what's the  
11 DEQs feeling about the importance of doing  
12 that -- continuing it and getting it done.

13 MR. SANGER: I'll leave that up  
14 to Catherine and Scott to address.

15 MS. SHARP: I guess, and Scott  
16 you can react to this, too. When I thought  
17 the alternative was clear that if it didn't  
18 pass today there was a clear path for a  
19 generator -- I want a generator, in all  
20 fairness, to all generators who might want  
21 this to have some kind of clear path to get  
22 what they need. I thought there was a  
23 clear alternative if this didn't pass.

24 Now what Jerry has described is kind  
25 of a messy authorization thing between us

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1 and EPA. Sometimes we can work those out,  
2 they sort of informally just say to us, you  
3 all handle it, when you're in that weird  
4 juncture of authorization we can divide up  
5 the work coherently. I can't promise we  
6 could on this because of what he said.

7                   So I guess that makes me want to  
8 answer your question like I'd sort of like  
9 to get it resolved, if we could. Which  
10 would mean looking at a calendar. Jimmy  
11 Givens used to demand all the stuff for a  
12 Board meeting twenty or so days, now he's  
13 up to thirty days to have everything that  
14 he wants which makes it about January 27th  
15 would be the day we'd have to have it done.

16                   It takes some work for us and Myrna  
17 and some other people once a meeting --  
18 when your meeting finishes to get the  
19 paperwork prepped and everything for them  
20 so we need a few days there.

21                   It's really going to depend on  
22 whether you all want to look at your  
23 calendars and see when you have a day you  
24 are available between now and maybe the  
25 next ten to twelve work days.

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1                   MS. REINHART: I have two days  
2 available until the end of the month.

3                   MS. SHARP: You have two open  
4 days.

5                   MS. REINHART: That's it, just

6 two. It's the 21st, I think, and the 23rd.  
7 That's it.

8 MS. SHARP: A Wednesday and a  
9 Friday.

10 MS. MARTIN: Before we talk about  
11 dates, what the attorney said, that the  
12 state of Oklahoma has authorization but we  
13 have no regulations in place on how to go  
14 about doing a de-listing so there would be  
15 no mechanism right now to do a de-listing.  
16 And all we're looking at today is a fee  
17 related to this.

18 MS. REINHART: No. Actually the  
19 subsequent --

20 MS. JOHNSON: The next item --

21 MR. KENNEDY: -- is going to  
22 resolve the issue.

23 MS. REINHART: About the process.  
24 It's item -- yeah. If you look at items 10  
25 -- the first part we just got through was

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1 just the fees because they are in Part 21.

2

3 Part 25 would be new and additional  
4 requirements -- it's your process by which  
5 you guys are going to go through.

6 MS. JOHNSON: Right. Basically  
7 our de-listing rules --  
8 MS. REINHART: Okay.  
9 MS. JOHNSON: -- are in the  
10 proposed Subchapter 25.  
11 MS. MARTIN: So later on in this  
12 meeting we will have a procedure for de-  
13 listing but we just won't have the fee  
14 associated with it, if we table this  
15 particular item?  
16 MS. REINHART: Or we could  
17 continue --  
18 MS. MARTIN: Both items.  
19 MS. REINHART: Right.  
20 MR. KENNEDY: My understanding --  
21 25 is the same issue. We have the same  
22 time frame for people to look at.  
23 MS. REINHART: And that's the  
24 only issues that the EFO has had questions  
25 about on this? Okay.

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1 MR. BRADSHAW: Jody, one thing we  
2 might think is kind of polling the Council  
3 here to see if we could propose a date and  
4 get a quorum back together.

5 MS. REINHART: Right.

6 MR. BRADSHAW: I'm willing to do  
7 what I can.

8 MR. TOMBERLIN: One of the things  
9 that we're looking at though is exactly  
10 what Bob has mentioned. We're going to be  
11 putting things out with minimal time before  
12 the Board comes up. So we're kind of doing  
13 it again. We're doing the same thing  
14 again.

15 MS. REINHART: Yes. We're doing  
16 it again.

17 MR. BRADSHAW: Well, I'm not sure  
18 that couldn't be overcome. You want to  
19 submit this by the end of January. You can  
20 beat Jimmy up and get a few days out of  
21 him.

22 MS. SHARP: Right.

23 MR. BRADSHAW: He needs to work  
24 some more anyway. So we need to get this  
25 done, you know, out and I don't know how

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1 much time EFO needs. Bob, how long do you  
2 need it before we get back together in this  
3 room?

4 MR. RABATINE: I would be happy

5 with three or four days and get the final  
6 version that everybody thinks is the right  
7 one and get it out to distribution and get  
8 the comments back.

9 MS. REINHART: So, if you could  
10 have the proposed language again by the  
11 16th -- no later than the 16th.

12 MS. SHARP: Well, could I just  
13 pause and understand, would we be getting  
14 some direction from the Council as to how  
15 to modify the language? Because I'm not  
16 hearing wholesale changes to what you're  
17 looking at. I'm hearing, the fee may be  
18 too low, the fee may be too high.

19 MR. BRADSHAW: Well, I think  
20 we'll give you some feedback here in a  
21 minute. Let's talk about and we're not  
22 voting yet on the next continued meeting  
23 date.

24 MS. SHARP: So what I was going  
25 to say is you could probably do it sooner

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1 to the extent you all put up a pretty  
2 distinct definition of what you want the  
3 language to say, it can get out very

4 quickly. So it wouldn't have to be a week  
5 from today or the 16th, it could be sooner.

6

7 MS. REINHART: Okay.

8 MR. BRADSHAW: Okay. I think  
9 that we are going to table the thing, we  
10 are agreed on that. We've got a motion and  
11 we'll see how the Council votes on that.  
12 And I guess we would be tabling the next  
13 agenda item as well. Is that correct,  
14 Jody?

15 MR. ELWELL: Should we do that  
16 after. Can we do that now without the  
17 presentation.

18 MS. REINHART: Why don't we just  
19 do that as a separate one, once we go  
20 through the presentation we'll determine at  
21 that point whether it should be tabled for  
22 the continuation or a separate meeting.  
23 Okay?

24 MR. BRADSHAW: Okay, so we could  
25 go ahead and vote on the continuation.

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1 MS. REINHART: Let's poll the  
2 members. How many of you -- my last week  
3 of January, I'm going to be out of the

4 state and, like I indicated, I only have  
5 the 21st or the 23rd that's available for a  
6 subsequent meeting. So do either of those  
7 dates -- are the other Council Members  
8 available for either of those dates?

9 MS. BRUCE: The 23rd I've got a  
10 Waste Water Works Council meeting here in  
11 this room.

12 MS. REINHART: The 21st is the  
13 only date that -- how about the rest of the  
14 Council members.

15 MS. MARTIN: I'm pretty sure I'm  
16 available.

17 COURT REPORTER: Myrna, can you  
18 record the meeting. I'm booked on the  
19 21st. The 16th, I'm open.

20 MS. SHARP: It's not essential  
21 that we have both of you all, right, for a  
22 Council meeting. It is for a Board  
23 meeting.

24 COURT REPORTER: She can tape  
25 record it.

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1 MS. BRUCE: Record it, she can  
2 transcribe it off the tape.

3 MS. SHARP: Yeah. So let's look  
4 at the 21st.

5 MR. BRADSHAW: So we're looking  
6 at who's available.

7 MR. RABATINE: The 21st sounds  
8 good to me and I was just going to remind  
9 everyone that the EFO is having a technical  
10 seminar on Tribal Issues on the 22nd in  
11 Tulsa. I don't know how many of the  
12 Council members are participating. I know  
13 that a bunch of DEQ folks are going to be  
14 attending that. So that's a bit of a  
15 conflict on the 22nd.

16 MS. REINHART: So the 21st. Bob  
17 are you available.

18 MR. KENNEDY: Yes.

19 MS. REINHART: Mr. Elwell? Okay.  
20 Why don't we -- would you like to amend  
21 your motion because I think it has been  
22 seconded at this time.

23 MR. BRADSHAW: Okay. I would  
24 amend that we will continue this agenda  
25 item until the 21st of January this year.

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1 And the DEQ to make the appropriate  
2 notifications of the continuance.

3 MR. ELWELL: I'll second that.

4 MS. REINHART: Can we do that?

5 Mr. Elwell had already done the first

6 second.

7 MR. ELWELL: I'll second the

8 amendment to the motion.

9 MS. REINHART: Okay. I think

10 that's the proper way to do it. Mr.

11 Bradshaw made the motion and Mr. Elwell has

12 made the second. Any comments or

13 discussions on that? Hearing none. Myrna,

14 could you take the roll call?

15 MS. BRUCE: Bruce Elwell.

16 MR. ELWELL: Yes.

17 MS. BRUCE: Jerry Ihler.

18 MR. IHLER: Yes.

19 MS. BRUCE: Bob Kennedy.

20 MR. KENNEDY: Yes.

21 MS. BRUCE: Kathy Martin.

22 MS. MARTIN: Yes.

23 MS. BRUCE: Jody Reinhart.

24 MS. REINHART: Yes.

25 MS. BRUCE: Steve Tomberlin.

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1 MR. TOMBERLIN: Yes.

2 MS. BRUCE: David Bradshaw.

3 MR. BRADSHAW: Yes.

4 Before we go to the next item, we  
5 should discuss what we think --

6 MS. REINHART: Right. That's  
7 what I was just getting ready to say.

8 Which is the Council in favor of so  
9 we can give the agency direction. Are we  
10 looking at a fee structure that is kind of  
11 structured, it gives -- based upon the  
12 amount of time and hours or whatever -- or  
13 are we looking at set fees and looking at  
14 changing the fee amount that would be more  
15 appropriate for what we believe that one of  
16 these petitions is going to cost. So  
17 what's everybody's thoughts on that.

18 MS. MARTIN: My thought is, I  
19 would probably like to reserve my ideas  
20 until after I hear about how the program  
21 will be implemented in the proposed regs  
22 and then maybe that will help solve a lot  
23 of our questions internally.

24 Maybe after we look at item 10 we  
25 can come back to how we think the fee

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1 language should be worded.

2                   I do think we ought to have some  
3    idea before we leave today so that it can  
4    be a part of the notice.

5                   MS. REINHART:    Is that  
6    satisfactory to the agency?   Catherine, can  
7    you wait until we finish going through the  
8    rest of the agenda items to let you know  
9    about how do we want the fees to be  
10   structured or what we think?

11                  MS. SHARP:    Sure, and before we  
12   leave this matter, were you all imagining  
13   meeting here on the 21st?

14                  MS. REINHART:   I think so.

15                  MS. SHARP:    Is this the easiest  
16   for everybody?    So we'll try to get a room  
17   here.

18                  MS. REINHART:   Yeah.    It doesn't  
19   have to necessarily be this room, I mean,  
20   if you have another conference room or  
21   something like that is acceptable.

22                  MS. SHARP:    Is ten o'clock the  
23   best?   This one is available.   Is ten  
24   o'clock the best starting time for people?  
25   That works.   Okay.   Just so we know what to

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1 put down.

2 MS. REINHART: Okay.

3 Item Number 10. Formal rulemaking  
4 hearing and vote on proposed permanent  
5 changes OAC 252:205 Subchapter 25. Tammi.

6 MS. JOHNSON: As identified in  
7 the agenda, the purpose of this rulemaking  
8 is to change federal rules previously  
9 adopted by reference, and to add a new  
10 Subchapter 25 to the waste exclusion or de-  
11 listing rules.

12 The proposed rule has seven main  
13 components with the general component,  
14 which includes the purpose, the scope, the  
15 applicability, and the procedures. The  
16 second item would be the conditions  
17 applicable to approved petitions,  
18 conditions of exclusion, reconsideration of  
19 an approved petition, monitoring of the  
20 waste approved for exclusion, failure to  
21 follow approved conditions, and identifying  
22 the effective date for those rules.

23 Do you think it would be best if we  
24 just kind of go through and read each one  
25 of those or has everybody had an

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1 opportunity to review those and see if  
2 anyone has any questions or comments?

3 MS. MARTIN: I wouldn't mind if  
4 she paraphrased each part for the record.

5 MS. REINHART: Right. I think  
6 that would be excellent, just paraphrase  
7 it.

8 MS. JOHNSON: I may need some  
9 input here from some of the people who were  
10 involved in the development of this rule.  
11 The purpose, scope, and applicability, we  
12 adopted the reg, 260.22 by reference,  
13 petitioning and to allow persons and  
14 facilities to exclude their waste.

15 The waste would be excluded only in  
16 Oklahoma, it wouldn't be considered  
17 excluded in any other states.

18 And the waste -- excluded waste may  
19 still be hazardous waste under Subpart C of  
20 261 meaning the characteristic -- it could  
21 still be characteristic under this  
22 regulation.

23 MS. REINHART: Okay.

24 MS. JOHNSON: All facilities that  
25 would be seeking the exclusion must submit

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1 a petition.

2 MS. MARTIN: Can I ask a  
3 question?

4 MS. JOHNSON: Sure.

5 MS. MARTIN: Someone that --  
6 let's say you might get a waste excluded  
7 because the type of waste it is but it may  
8 still be a hazardous waste because of a  
9 characteristic like pH or something like  
10 that?

11 MS. JOHNSON: Yes.

12 MS. MARTIN: Okay.

13 MS. JOHNSON: The exclusion of a  
14 waste pursuant to the DEQ approved petition  
15 shall be a rulemaking and shall follow the  
16 procedures specified in the agency  
17 rulemaking procedures.

18 And then the person submitting such  
19 the application -- the application shall  
20 follow the exclusion procedures as  
21 described below. Which are a pre-petition  
22 letter of interest to be filed. A scoping  
23 meeting for that pre-petition. A pre-  
24 petition sampling and analysis plan. And  
25 at least three copies of the approved waste

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1 exclusion petition to be submitted.

2 MS. MARTIN: Ms. Chairman, may I  
3 interrupt you one more time? I thought I'd  
4 get you right when I have a question.

5 MS. JOHNSON: Yeah.

6 MS. MARTIN: On this  
7 sampling/analysis plan, Tammi, is that an  
8 established plan requirement somewhere else  
9 in the rule that you're going to be using?  
10 I'm not asking this straight-forward.

11 MS. REINHART: Is it a sampling  
12 plan or something like that, right?

13 MS. JOHNSON: Don, can you?

14 MR. HENSCH: There's nothing else  
15 in the rule that says a sampling/analysis  
16 plan is this. But I think it is an  
17 accepted word or term in the industry that  
18 a sampling/analysis plan describes what you  
19 are going to do. What the samples are, how  
20 they are analyzed. I think maybe, Bob,  
21 maybe you can -- is it an accepted word or term?

22 MS. MARTIN: I understand that.  
23 In some of my work that's not -- people  
24 have very different opinions of what that  
25 means. I was wondering if you were going

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1 to include maybe a minimum requirement  
2 that's already in your rules or -- I guess  
3 when I was reading this I thought, Oh,  
4 well, they probably already have what they  
5 consider to be a sampling/analysis plan and  
6 maybe that should be included right there.

7 MS. REINHART: Well, I know that  
8 they have a template for like permits to be  
9 issued and stuff like that. So do they  
10 have a template that they begin with to  
11 develop a sampling/analysis plan for like  
12 Superfund sites, things like that?

13 MR. HENSCH: I'm not aware that  
14 EPA has developed one. We have not  
15 developed one. I think, one thing to keep  
16 in mind, is that we want to have this  
17 scoping meeting way up front in the process  
18 so we can define what we want.

19 They can tell us what they want to  
20 do and then we can say, okay, to get to  
21 this point, here's the samples you need to  
22 take and they'll need to be analyzed.

23 MS. MARTIN: Yes, and I totally  
24 understand that. I was just asking if  
25 there was something already in the rules

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1 that described what that was. And I  
2 totally understand where you're coming  
3 from, that people -- that it gives you a  
4 lot of freedom to say what that plan would  
5 be in this pre-petition. That's all I  
6 wanted to know. Something I could read.

7 MS. REINHART: Okay. Any other  
8 questions at this point on this paragraph?  
9 Okay, Tammi.

10 MS. JOHNSON: We are on 25-2.  
11 I'm kind of going to just read this. "Any  
12 petition to exclude a waste approved by the  
13 DEQ shall apply only to the particular  
14 waste described in the petition which must  
15 be managed and described in the approved  
16 petition. The generator manages the waste  
17 in the manner other than that approved by  
18 the DEQ, the exclusion is lost and the  
19 waste becomes a hazardous waste as defined  
20 in the applicable state and federal  
21 regulation. I think that's fairly  
22 straight-forward.

23 MS. REINHART: Yeah.

24 MS. JOHNSON: Conditions for  
25 exclusion. I think we kind of hit on this

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1 earlier that we may define your waste as  
2 excluded with the following conditions and  
3 those would be described, and I believe,  
4 would also be specifically spelled out in  
5 the state rules or in the rule describing  
6 their approval.

7           Reconsideration of approved  
8 petitions. This more or less is the  
9 allowance for the agency to re-open or re-  
10 look at the approved petition should new  
11 information become available. Or that if  
12 the facility determines that the  
13 information they had previously submitted  
14 on which they got their approved petition,  
15 they have now determined that there may be  
16 some problems or issues with that technical  
17 data, that they are obligated to submit  
18 written notice to the agency.

19           MS. MARTIN: What happens if they  
20 don't?

21           MS. JOHNSON: I think they would  
22 --

23           MS. REINHART: It would be under  
24 like 25-6, failure to follow, that would be  
25 a permit condition that they failed to

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1 follow, they became aware of it, they  
2 didn't notify in thirty days, therefore  
3 they are subject to fines and penalties.

4 I think that's where you'd end up  
5 with that. Or at least that's what it  
6 looks like to me.

7 MS. MARTIN: That's the way you'd  
8 solve it?

9 MS. REINHART: I think so. Okay.

10 MS. JOHNSON: 25-5 allows for  
11 periodic monitoring and sampling of the  
12 waste, reporting of the monitoring results,  
13 identification of quantities handled and  
14 similar information to be provided in order  
15 for the petition to remain valid.

16 25-6, this is what we hit on here  
17 about the provisions that the petition  
18 being followed and if it's not being  
19 followed it would be subject to enforcement  
20 action by the agency which they would deem  
21 appropriate.

22 And then the effective date, the  
23 waste for which an exclusion is approved  
24 will not be excluded until the rulemaking  
25 process is complete and the rule is in

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1 effect. In other words, through the  
2 Council, the Board and through that  
3 process.

4 MS. REINHART: Okay. My only  
5 question goes back to 25-1. I know that in  
6 some other part of the rules that when you  
7 do some types of permits and so forth, they  
8 are deemed to be -- I forget what levels  
9 that they are. You know, they are  
10 classified.

11 MR. HENSCH: There are tiers.

12 MS. REINHART: Tier 1, 2, 3.  
13 Right.

14 MR. HENSCH: Administrative  
15 review.

16 MS. REINHART: So do we need to -  
17 - you know, and that Tier system was put  
18 into effect so that there was  
19 accountability on both the person  
20 submitting the application as well as on  
21 the agency. So have we thought about where  
22 this is going to fit into the Tiers, as far  
23 as things like that?

24 MS. SHARP: We were trying to

25 avoid that.

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1                   In all honesty, there's some  
2    approvals and one of our waste lawyers, who  
3    is not in the room right now, has spent a  
4    fair amount of time kind of sorting through  
5    which things the DEQ does as licenses,  
6    approvals, permits and so forth, have to be  
7    subject to the Tier system.    And I was  
8    assuming this one was not subject to that -  
9    - to the Tier classification.    There may be  
10   a legal argument.

11                   MR. HENSCH:    One other thing, if  
12   it is subject to the Tier system then there  
13   are certain public notice requirements that  
14   automatically kick in.

15                   MS. SHARP:    There's time lines as  
16   well.

17                   MS. REINHART:   Right.

18                   MR. HENSCH:    I don't think we'd  
19   have a problem with timelines but all the  
20   public notice things are not required until  
21   the actual final approval.

22                   MS. REINHART:    Yeah, like Tier 3  
23   is the most major one.    It's got a lot of  
24   public notices, it's like a Class 3 permit

25 mod.

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1 MR. HENSCH: Yeah, public  
2 meetings, things like that.

3 MS. SHARP: If requested, yeah.

4 MS. MARTIN: One question related  
5 to that, if it's going to be like a Tier 3  
6 or whatever, there's a public notice upon  
7 acceptance of the petition right away.  
8 Like a pre-agency activity public notice.

9 MS. SHARP: That's right.

10 MS. MARTIN: And then another  
11 public notice after the agency has done  
12 their job. And the agency is going to be  
13 getting a pre-petition letter, basically  
14 saying we're coming and we want to do a de-  
15 listing and at that time there could be  
16 public notice of that that would fit along  
17 with your process already. Right? But I  
18 would think a de-listing would be something  
19 -- it would never be a Tier 1 category.

20 It would just be whether it would be  
21 a Tier 2 or Tier 3 and I thought Tier 3 has  
22 a dual public notice. I don't know if it's  
23 the same as when I looked at it years ago.

24 MR. RABATINE: The -- I guess the  
25 observation I would make is I thought this

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1 was a rulemaking process and not a permit.  
2 So I'm not sure that the Tier system has  
3 anything to do with it which, I think,  
4 Catherine was correct that it didn't apply.  
5 That we are paving new ground.

6 This is rulemaking and I would think  
7 that all the rulemaking public notices  
8 would apply to it.

9 MR. BRADSHAW: Well, let me agree  
10 with you, Bob. That's exactly what I  
11 thought and also I think we're starting to  
12 encumber this with steps that's going to  
13 make it untenable. I prefer staying out of  
14 this Tier thing.

15 MS. REINHART: My only interest  
16 in the Tier system is that there is  
17 accountability for time frames about how  
18 long each party had responsibility.  
19 Because, you know, you get the letter of  
20 interest, so then they have their meeting.  
21 So how much time are we going to allow.  
22 The bottom line is how much does -- a  
23 generator can -- I expect this to be in the

24 agency's hand before I get a decision back,  
25 saying, yes, we agree with it and this

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1 needs your approval and stuff like that.

2 Are we saying three months, six months, you  
3 see what I'm saying?

4           There's some accountability of time  
5 frames within the Tier system that I think  
6 we would want to have to see listed also  
7 within paragraph B. So, I don't know.  
8 What does everybody else -- I mean, you're  
9 with Boeing, being a generator.

10           MR. BRADSHAW: Well, I think the  
11 -- and Bob Rabatine can speak to this as  
12 well -- I think probably our experience  
13 with DEQ has been very positive. They do  
14 get around to these things fairly quickly  
15 and take care of it. But maybe there  
16 should be some minimal time frame or steps  
17 that would be followed within certain time  
18 frames. And I think maybe the DEQ should  
19 formulate that language based on their  
20 capabilities and whatever those steps may  
21 be. But yeah, perhaps it should be  
22 addressed.

23                   But I think the DEQ could formulate  
24   that language better than this Council in  
25   an initial draft.   Bob, as part of my

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1   question, what's your response as a  
2   generator?

3                   MR. RABATINE:   I had not  
4   anticipated that being an issue and again,  
5   I haven't had a chance to spend much time  
6   reviewing these things but I viewed this as  
7   following the rulemaking process and not  
8   following the permitting process.   And so  
9   we're paving --

10                   MR. BRADSHAW:   We're talking  
11   about not referring to the permit making  
12   process but to put language directly in  
13   here to say that the DEQ will respond to  
14   the petition in "x" number of months.

15                   And I don't know if the DEQ is  
16   comfortable with that or not.   They may not  
17   have thought about it.   But obviously if  
18   you pay them twenty thousand dollars, you  
19   don't want to wait two years to get  
20   something in the mail either.   Don.

21                   MR. HENSCH:   If I could  
22   contribute one other thing.   Although

23 within our group we can put timelines on  
24 our staff to do certain things, we cannot  
25 put timelines on the Council or the Board

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1 to act. To actually approve or deny.

2 MR. BRADSHAW: Well, then, you  
3 could specify what those timelines are that  
4 apply to the staff only.

5 MS. REINHART: Right. Because  
6 you can't control -- like on permits, some  
7 issues that crop up and stuff. And, you  
8 know, it's just more of a guideline to help  
9 keep accountability that a permit wouldn't  
10 languish forever with no activity being --  
11 happening on it from either side. Because  
12 when you kick something back to a regulated  
13 party you expect them to respond to it  
14 within thirty, sixty, ninety, hundred and  
15 twenty days -- whatever time frame is  
16 established.

17 So we just want to make certain that  
18 once -- because there's a good chunk of  
19 change that's going to be put out for  
20 something like this. There's really a deep  
21 interest for somebody who wants to go

22 through this process. So we want to have  
23 something, some type of guidelines there.  
24 And that could be referred to as guidelines  
25 as well, within the language.

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1 MS. SHARP: Maybe what we could  
2 do is -- and I know, David, you don't want  
3 it encumbered, you don't want the process  
4 slowed down -- I think it's important to  
5 look at it in the context of the Tier rules  
6 since some of the legal opinions say that  
7 any approval you do is a permit under the  
8 law.

9 Maybe we could look at both options  
10 -- having some nominal -- we want the  
11 language to be brief because I don't want  
12 to re-create -- what happened when we went  
13 through those Tier rules that set the  
14 timelines, that set the stipulations, it  
15 became lengthy because it was permit  
16 requirements for the whole agency.

17 And I'm afraid that if we embark  
18 upon that in our rules here, we're going to  
19 start re-creating that and I just don't  
20 want that to become encumbered as well.  
21 Why don't we consider language in the

22 hazardous waste rules that would stipulate  
23 at least some kind of prompt response and  
24 turnaround, is what I'm hearing you're  
25 after. And also take another look at

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1 whether it fits with the Tier rules  
2 understanding that we're not trying to slow  
3 it down, but if it fits, and that sets --  
4 time lines that are adequate, then maybe  
5 that is a good fit.

6 MR. BRADSHAW: I think we're all  
7 comfortable with the DEQ working that issue  
8 and putting it into the new draft.

9 MS. SHARP: Yeah. I kind of see  
10 it as -- kind of the two options I see  
11 unless you all choose another route.

12 MR. BRADSHAW: I had one concern  
13 that I wanted to kind of straighten out --  
14 or has somebody got another comment on  
15 that?

16 MS. REINHART: Mr. Elwell, did  
17 you have a comment on that?

18 MR. ELWELL: No.

19 MR. BRADSHAW: I heard Jerry say  
20 a while ago, and I don't know if I heard

21 this correctly, but once we approve this,  
22 it becomes effective. If somebody sends  
23 something to Region VI, then they refer it  
24 to Oklahoma; is that correct? Did I hear  
25 that?

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1 MR. SANGER: Once it becomes a  
2 part of the authorized program, I can't  
3 definitely say that it is a part of our  
4 authorized program. Gail told me that it  
5 is but I haven't personally seen the  
6 authorization for it. So I can't tell you  
7 definitely.

8 MR. BRADSHAW: I would ask that  
9 DEQ research that because here's my  
10 concerns.

11 Okay, I'm a generator, I send this  
12 to Region VI. Oklahoma has passed this,  
13 it's in effect. They send it up to  
14 Oklahoma and then the Oklahoma rules says  
15 this waste excluded by Oklahoma are not  
16 considered excluded in other states. Well,  
17 if Region VI did it, they would be, at  
18 least within Region VI states. So as a  
19 generator, this could be a real issue for  
20 me because perhaps I could only dispose of

21 my waste in Oklahoma and I would have a  
22 much less effective program and that's not  
23 where we want to go.

24 MR. SANGER: Well, that's  
25 actually correct. If Region VI does the

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1 exclusion then it's effective for the  
2 entire country. Originally, these started  
3 with headquarters, EPA headquarters did all  
4 of them and then they gave the Regions the  
5 authority to do them. But the Region has  
6 the same effect. If one Region does it, it  
7 is as if headquarters had done it so it's  
8 Region over the entire country.

9 MR. BRADSHAW: So, I got it. The  
10 Region speaks for the country. Oklahoma  
11 only speaks for Oklahoma. And I'm afraid  
12 what we might be doing here is narrowing  
13 the generators options down to Oklahoma  
14 only, which is much less powerful in terms  
15 of the effect of the exclusion. And I  
16 think we need an answer on that.

17 MR. SANGER: Okay, what's the  
18 question?

19 MR. BRADSHAW: Well, the rule

20 here says wastes excluded by Oklahoma are  
21 not considered excluded in other states.

22 MR. SANGER: That's correct.

23 MR. BRADSHAW: So by passing this  
24 we're forcing the exclusion to become an  
25 Oklahoma exclusion because that's what the

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1 EPA is going to do with it, they're going  
2 to give it to us.

3 So it would be much less effective  
4 for the generator. They might say well,  
5 it's going to have to be disposed of in  
6 Oklahoma because folks over in Arkansas  
7 aren't going to have it.

8 MR. SANGER: That's correct.

9 MR. BRADSHAW: Is my question  
10 understood?

11 MS. REINHART: But I don't know  
12 that they have a choice either because  
13 they've gotten -- let's assume that we do  
14 have authorization for the program, right.  
15 Even if you sent an application to the feds  
16 or to Region VI, they're going to kick it  
17 back to Oklahoma no matter what.

18 MR. SANGER: That's correct.

19 MS. REINHART: And the bottom

20 line is that if I want to dispose of my  
21 waste in Arkansas, I'm going to have to  
22 petition every state in the nation because  
23 we have authorization now.

24 MR. SANGER: That's correct.

25 MS. REINHART: So it really

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1 doesn't matter, I mean, because now that we  
2 have authorization, we've effectively kind  
3 of limited the options. We can only de-  
4 list in Oklahoma. It cannot be a federal  
5 de-listing.

6 MS. JOHNSON: And this is common  
7 from talking with the other states, they do  
8 -- it's only good in their state. They  
9 would not recognize a de-listed waste from  
10 Oklahoma to come to their state and also be  
11 de-listed.

12 MS. REINHART: So in essence the  
13 feds actually killed the de-listing program  
14 in a way.

15 MS. JOHNSON: Yes.

16 MS. MARTIN: Completely.

17 MR. KENNEDY: Through the  
18 authorization process, it's doing what he's

19 saying, it's making it state by state, very  
20 ineffective.

21 MS. MARTIN: It's okay for state  
22 companies but national companies would not  
23 get any benefit.

24 MS. SHARP: I mean, I wouldn't  
25 conclude that it ruined it or made it

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1 ineffective. It has definitely narrowed  
2 its utility.

3 Often, as I understand it, when  
4 generators proposed this they also model  
5 out and plan a disposal option so if they  
6 sought that within Oklahoma and that became  
7 the preferred disposal option that's  
8 actually simpler and the waste stays in  
9 Oklahoma which is a good or bad depending  
10 upon your perspective.

11 But you're right, they can't just  
12 ship it anywhere they want then but if  
13 there's an option in state for disposal and  
14 there's a lot of disposal options in  
15 Oklahoma then they've solved their problem  
16 that way.

17 So I don't know how bad -- I  
18 understand exactly what you're asking,

19 David. I don't know how bad it is.

20 MR. BRADSHAW: Well, let me  
21 restate it. Right now, if I'm a generator,  
22 I can go to Region VI and get it excluded,  
23 I'm excluded in all states. If we pass  
24 this I'm only going to be excluded in  
25 Oklahoma.

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1 MS. SHARP: Right.

2 MR. BRADSHAW: And I'm worried  
3 about that. And I think Bob Rabatine has  
4 got an insight to that.

5 MR. RABATINE: I was just going  
6 to, I guess, reinforce what David was  
7 saying is that there is a very limiting  
8 aspect of that. And I was going to in turn  
9 ask Catherine or Jerry, I didn't know if  
10 there was some provision in the federal  
11 delegation process that would basically  
12 allow a state action -- a state de-listing  
13 to be recognized nationwide. And I didn't  
14 know if they had considered that or not.  
15 If you followed their specific procedures  
16 and protocols if that was going to be  
17 accepted or not. But if it isn't, it does

18 make the --

19 MS. REINHART: It really narrows

20 the --

21 MR. RABATINE: -- it narrows it

22 because -- and we talked a little bit about

23 this on break -- you're located in the

24 state. You generate the waste in the

25 state. You have to dispose of the waste in

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1 the state. So that becomes a very unique  
2 set of companies that would be willing to  
3 take advantage of that.

4 What disturbs me, if I've understood  
5 the discussions, what disturbs me is that  
6 when Oklahoma became delegated that it  
7 sounds very much like it's completely  
8 closed the door to a nationwide de-listing.

9 If, indeed, someone applies to EPA  
10 and then they defer it to the state where  
11 the business is located then it's a  
12 completely different program.

13 MR. BRADSHAW: Yeah. That's what  
14 I heard but I really believe that sounds  
15 illogical to me whenever I say it but it's  
16 what I'm reading and that's why I think the  
17 DEQ needs to go investigate that aspect of

18 that question. Although I'm fearful that I  
19 see comfort in their eyes that they already  
20 believe that that's true.

21 MS. SHARP: You can't have it  
22 both ways.

23 MR. BRADSHAW: Well, I think --

24 MS. SHARP: That's what we were  
25 told by EPA, we actually did ask.

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1 MR. BRADSHAW: I think that as a  
2 generator, I'm not sure I want the state to  
3 have the program.

4 MS. SHARP: Right.

5 MR. BRADSHAW: As a member of  
6 this Council how do I feel about it? I'm  
7 not sure that I see any protection to the  
8 environment.

9 MR. RABATINE: So are you  
10 proposing a rule that removes the de-  
11 listing language from this?

12 MS. REINHART: Once you guys got  
13 authorization, it's a done deal, right?

14 MR. BRADSHAW: I'm not proposing  
15 anything, I just have a concern here. And  
16 I don't know how important that concern is.

17 And maybe that's something the EFO and the  
18 DEQ can work on a little bit as we move  
19 forward with this.

20 MS. REINHART: Yes, Don.

21 MR. HENSCH: Ms. Reinhart, if I  
22 can -- it is my understanding the  
23 authorization process is set up so that EPA  
24 recognizes that a state program is  
25 equivalent to and no less stringent than

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1 the federal program. And when EPA  
2 authorizes a state for whatever aspect of  
3 RCRA, they in effect say the state can  
4 perform all federal functions in their area  
5 of jurisdiction in lieu of the federal  
6 government.

7 And I think -- and again, Jerry and  
8 Sonny probably need to look at this a  
9 little bit more, but I think the effect of  
10 Oklahoma being authorized particularly for  
11 de-listing is that the federal government,  
12 EPA, would recognize the de-listing  
13 nationally because it comes from an  
14 authorized state. Other states would have  
15 the option of accepting that or not in that  
16 they can be more stringent than EPA.

17                   So Arkansas could look at our  
18 process and say no, we don't agree or they  
19 could say, yeah, bring it on. And it's  
20 going to be each individual state would  
21 have that option.

22                   MR. BRADSHAW: So they would have  
23 that option on the federal de-listing as  
24 well then. So I think you need to clean  
25 this language up here where it says "waste

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1 excluded by Oklahoma are not considered  
2 excluded by other states." I think that's  
3 misleading then.

4                   MS. REINHART: If they can --

5                   MR. KENNEDY: It's a strong  
6 statement. Is it true, basically?

7                   MR. SANGER: I can read to you  
8 from EPA's guidance, authorization  
9 guidance, or I can read to you from EPA's  
10 actual memos on that issue if you'd like to  
11 hear it right now.

12                   MS. REINHART: Yes, go ahead.

13                   MR. SANGER: It says in the  
14 authorization guidance which was revised as  
15 of June 4, 2003, "States should also note

16 that an exclusion issued by an authorized  
17 state is only in effect in that state.  
18 Thus, if a facility located in an  
19 authorized state wishes to transport and  
20 dispose of its waste in another state, the  
21 facility must obtain an exclusion from the  
22 other authorized state or if the other  
23 state is not authorized for de-listing, a  
24 federal exclusion from EPA."

25 MS. MARTIN: Can I give you the

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1 other side of this coin? I am a business  
2 in Washington state and there's no  
3 exclusions -- nobody is going to de-list my  
4 waste there but Oklahoma will and I'd be  
5 glad to truck my de-listed waste all the  
6 way across the United States and deposit it  
7 in an Oklahoma landfill.

8 And that's what I think the value of  
9 the state de-listing is, is a commercial  
10 availability for accepting what was once a  
11 hazardous waste which is now a de-listed  
12 waste here into our landfills. And that  
13 would be the value to businesses all over  
14 the United States which is totally the  
15 other side of the coin to what you're

16 talking about.

17           And then when we talk about  
18 protecting public health and the  
19 environment of Oklahoma, we're not just  
20 talking about protecting it from waste  
21 generated in the state of Oklahoma, but any  
22 waste out there that would like to come in  
23 for twenty thousand dollars and take  
24 advantage of our de-listing program. And  
25 that's where I have a concern.

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1           MR. BRADSHAW: I guess my summary  
2 is that I'm hearing two different things  
3 from the DEQ here. I think they need to --  
4 Don, you need to get together with the guys  
5 and discuss this because -- I don't know  
6 about the other members of this Council,  
7 but I want to make sure that I know what  
8 I'm doing when we do get around to voting  
9 for this. Right now, I'm not sure that I'm  
10 not making this more stringent -- I mean  
11 more restrictive in the ability to deal  
12 with de-listed waste. I want some comfort  
13 one way or the other.

14           And Bob Rabatine from EFO, we need

15 to look at what does this really mean to  
16 the generators of waste.

17 MR. RABATINE: I agree. I do  
18 have a question. The last sentence that  
19 you read, Jerry, it suggested -- if I was  
20 listening thoroughly it suggested that if a  
21 person -- if a business didn't want to have  
22 their waste stream restricted to that one  
23 state, that they could go to EPA. Did I  
24 misunderstand you?

25 MR. SANGER: Well, actually what

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1 it says is, if the facility wanted to  
2 dispose of waste in a state that was not  
3 authorized for de-listing then they would  
4 go the route.

5 MR. RABATINE: I see, I see.  
6 Okay. All right. I did misunderstand.

7 MR. SANGER: Here's another  
8 statement, actually, in an EPA memorandum  
9 that says "Please recognize that EPA loses  
10 its authority to de-list hazardous waste in  
11 any state that has been authorized to  
12 administer a RCRA de-listing program."

13 MR. KENNEDY: So that's the other  
14 portion of sort of a limbo in the sense

15 that if we don't like this or want to  
16 proceed on that, then generators have no  
17 options, because EPA is going to kick it  
18 back saying your state has authorization  
19 but we don't have the mechanism to make it  
20 happen. Something has to be done.

21 MS. REINHART: Well, I think  
22 that, you know, when you guys look at this,  
23 number one, look at -- I think what you're  
24 saying is correct -- that sentence is a  
25 true statement. But we just want to make

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1 certain and confirm that and then just look  
2 at time frames and through the tier systems  
3 and see if this would amend itself to that  
4 system.

5 MS. MARTIN: Could we consider  
6 only de-listing waste that is generated in  
7 Oklahoma?

8 MS. REINHART: I don't think you  
9 can because that's going to be a trade  
10 barrier and that would -- you're going to  
11 interrupt commerce that way and you can't  
12 do that. Do you see what I'm saying?

13 MS. MARTIN: Yeah. But I think I

14 fear more from the people outside of  
15 Oklahoma than I do the businesses in  
16 Oklahoma to a certain extent because the  
17 agency already has relationships with the  
18 generators here in Oklahoma.

19 MS. REINHART: They have lots of  
20 relationships with people outside of  
21 Oklahoma, too. Don't they, Tammi?

22 MS. JOHNSON: Yes.

23

24 (Multiple conversations)

25 MS. MARTIN: Do our de-listing

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1 regulations mimic other states de-listing  
2 regulations?

3 MS. JOHNSON: I couldn't really  
4 honestly address that, I haven't seen any  
5 other state's de-listing.

6 MS. REINHART: Well, they're  
7 going to have to be -- the states can't  
8 adopt anything less stringent than the  
9 federal. And these are basically the  
10 federal guidelines, right here, right?

11 MS. JOHNSON: That's my  
12 understanding, yes.

13 MS. REINHART: So there's nothing

14 going to be less than what we have before  
15 us.

16 MS. MARTIN: Except before, the  
17 feds weren't even doing it.

18 MS. REINHART: Yeah, they were.

19 MS. MARTIN: For all intents,  
20 they said they weren't.

21 MS. REINHART: Well, but they had  
22 the program. They had the authorization.  
23 They hadn't given it out to the states.  
24 So they were doing it. They may have been  
25 sitting on the applications but they just

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1 weren't moving forward with them.

2 But I don't know what the volume of  
3 waste outside of Oklahoma that comes into  
4 Oklahoma? I know that we have lots of --  
5 there's a process by which they have to  
6 give disposal plans. So that's pretty much  
7 how you guys have an estimate of the  
8 volumes coming from outside.

9 And if we put the price tag high  
10 enough, they're going to have to want to  
11 jump through some significant hoops here in  
12 Oklahoma.

13 MS. MARTIN: This brings another  
14 question, and I apologize for asking so  
15 many questions on my first day, but you  
16 know that I'm very inquisitive. But if you  
17 can de-list a waste then you no longer have  
18 to dispose of it in a hazardous waste  
19 landfill. So your hazardous waste fees  
20 would drop. Would they drop significantly?

21 MS. REINHART: Yes.

22 MS. MARTIN: And the would be  
23 transferred to a solid waste permit, I'm  
24 assuming? Which would be a significant  
25 lesser fee for the agency? So basically,

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1 it would be allowing a program that would  
2 reduce your budget. And subsequently it  
3 would be a much smaller budget.

4 MR. BRADSHAW: Yes.

5 MS. MARTIN: And, be that as it  
6 may, I think the price tag for that should  
7 be incredibly high. An incredibly high  
8 deterrent. I see this -- I see somebody  
9 taking advantage of us versus helping out  
10 an Oklahoma industry get out from  
11 underneath the burden of an over zealous  
12 categorization of a hazardous waste.

13                   I see this as -- probably from an  
14 environmentalist tree-hugger thing -- the  
15 thing I would fear is somebody taking  
16 advantage of this on what is a serious  
17 waste and especially putting pressure on  
18 you, this agency, to do rulemaking, go  
19 through a quick public notice -- maybe the  
20 public is not even aware of what that means  
21 to us.

22                   And then, boom, boom, boom, before  
23 you know it we have some kind of hazardous  
24 waste going into a landfill in a small  
25 community that can't handle it. Do you

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1 know what I mean? Because once it is de-  
2 listed, do you have any control of what  
3 landfill it goes into?

4                   MS. JOHNSON: Well, that may be  
5 part of the conditions of the approval. I  
6 mean, there's allowance for the conditions  
7 and it may be specified or maybe the  
8 facility, itself, the applicant may specify  
9 here's the way we're going to handle it.

10                   MS. REINHART: And that's my  
11 concern about the monitoring fees, are the

12 monitoring fees adequate for you guys to be  
13 able to go out and check these waste  
14 streams that are coming in? Do you know  
15 what I'm saying?

16                   Twelve hundred dollars doesn't sound  
17 adequate to me for somebody to be able to  
18 go out and pull random samples and do  
19 checks and examine paper work and do checks  
20 that are necessary in order to verify that  
21 they are following the permit exclusions  
22 and stuff like that.

23                   MS. JOHNSON: It may not be,  
24 especially if you run into some problems  
25 and that just builds and builds and builds.

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1                   MS. REINHART: Right.

2                   MS. MARTIN: Why isn't the public  
3 waste management people here today? How  
4 come they aren't here today to observe what  
5 we're talking about? Did they get notice  
6 of these rules?

7                   MS. SHARP: It would depend on  
8 whether they're on our mailing list or not.  
9 And I don't know.

10                   MS. MARTIN: They would be so  
11 affected by this.

12 MS. SHARP: Could I just mention  
13 a couple of quick things to try to respond  
14 to your concerns, Kathy.

15 Number one, I think it is well-  
16 placed to be concerned that people might  
17 abuse anything that we do. The fact that  
18 there would be decreased fee revenue on  
19 this or could potentially be, is a fact.  
20 The purpose of a de-listing, if we come  
21 back to why de-listing was created in the  
22 first place, is that there is a belief that  
23 some hazardous waste became trapped, if you  
24 will, in the RCRA C system. And it is just  
25 inordinately unfair to those generators if

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1 they can prove the hazard doesn't warrant  
2 that kind of treatment. And that's why the  
3 whole think came about. And originally  
4 when we sought authorization for this, we  
5 thought that we were helping deliver that.  
6 So if it causes Oklahoma's fees to go down  
7 we can't really weigh that, even though I  
8 understand what you're saying. We can't  
9 weigh that against the same kind of risk  
10 facts about that situation.

11                   The other thing is with respect to  
12 out of state waste being de-listed and  
13 coming here, as Don pointed out, a state  
14 can always be more stringent and presumably  
15 -- I guess it could happen without our  
16 knowledge but I'd be shocked because it's  
17 not a hazardous waste once it's de-listed  
18 so it could be disposed. I'd just be  
19 shocked if that happened and I've been  
20 shocked before, but we could refuse -- we  
21 have the right of first refusal if a waste  
22 -- if we think a de-listing has been done  
23 in error and part of the contingency of it  
24 was to dispose of it in a solid waste  
25 landfill in Oklahoma we can be more

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1 stringent than a RCRA rule, and say we  
2 aren't going to recognize that. So I think  
3 there are some guards in place that would  
4 correct that, maybe.

5                   MS. MARTIN: I think my question  
6 was not that another state de-listed it but  
7 that we de-listed it for an out of state  
8 generator.

9                   MS. SHARP: In which case we  
10 could definitely control ourselves to the

11 point where we would have satisfied our  
12 needs.

13 In other words, we would not approve  
14 it unless we felt it would be defensible  
15 and protective.

16 MS. REINHART: Bob?

17 MR. RABATINE: Sorry.

18 MS. REINHART: Well, I think  
19 we've beat this one to death as well. Do I  
20 hear any type of motion either approving it  
21 or saying we're going to consider this -- I  
22 think our general gist is to just have it  
23 discussed on the 21st as well; is that  
24 correct?

25 MS. MARTIN: Ms. Chairwoman, if

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1 we do just vote on it today or in two  
2 weeks, there's just two words I'd like to  
3 change.

4 In sections 25-6 and 25-7 at the end  
5 it says "may be taken", and in -7 it says  
6 "will not be excluded" and those are very  
7 light terms for requirements. You know  
8 "may" versus "shall".

9 Maybe the agency doesn't like to tie

10 their hands that they "shall" have  
11 enforcement actions taken but it does have  
12 the word appropriate enforcement actions,  
13 and so I'd like to see that that word says  
14 "shall be taken" for the public to be  
15 assured that the appropriate action will be  
16 taken.

17 MS. REINHART: Well, let's just  
18 take these one at a time.

19 Tammi, what type of appropriate  
20 enforcement actions are you guys  
21 envisioning? Because it will probably come  
22 out of your office, right?

23 MS. JOHNSON: Right. It depends  
24 upon the severity of the issue. Anywhere  
25 from a Notice of Violation letter would be

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1 considered an informal enforcement action  
2 to an administrative order with a penalty  
3 for very severe --

4 MS. REINHART: You can do NOV's  
5 without any fines assessed with that.

6 MS. JOHNSON: That's correct.

7 MS. MARTIN: So let's just say  
8 "shall be taken" allows for anything from  
9 no action to the most severe action but

10 something shall occur. See when I'm on the  
11 other side of the table and I'm  
12 representing people that are irritated by  
13 the agency -- this "may be taken" means  
14 well, they can do something or not. And  
15 it's nice to know that they absolutely will  
16 do something. Whether it be an informal  
17 letter or a complete legal consent decree.  
18 I just hate to see soft language when we  
19 have in the same sentence enforcement.

20 MS. REINHART: Do you have any  
21 questions? Yes, Bob.

22 MR. RABATINE: I guess just to  
23 make my formal comment. I raise the same  
24 objection that I raised for Item 9 which is  
25 that my recommendation is that the Council

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1 not act on this today because there had  
2 been inadequate delivery of the text for  
3 review.

4 MR. BRADSHAW: Bob, we're not  
5 really acting, we're talking about what the  
6 new draft may include.

7 MS. REINHART: So, the agency  
8 might take a look at that language right

9 there.

10 MS. MARTIN: Do you guys know  
11 what I'm talking about? And then the last  
12 one is "the waste for which an exclusion is  
13 approved will not be excluded until the  
14 rulemaking process is complete." And I  
15 think that needs to be strong. It "shall"  
16 not be excluded until the process is  
17 complete. "Will" is just a very soft word  
18 that allows the agency to do something  
19 maybe for a one time thing.

20 MS. REINHART: I don't  
21 necessarily agree with that but I  
22 understand what you're saying. You want --  
23 because I think "will" does exclusively  
24 state that they are going to --

25 MS. MARTIN: I've seen it abused,

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1 not by this agency but by --

2 MS. REINHART: So, the only  
3 language change I think that we ought to do  
4 would be also in 25-2, just remove the  
5 phrase "approved by the DEQ" right behind  
6 petition. So it would say, "Any petition  
7 approved by the DEQ to exclude a waste".  
8 that way it would make the language a

9 little bit more clear. So just move that  
10 phrase more forward in the sentence. It  
11 would read, "Any petition approved by the  
12 DEQ to exclude a waste shall apply only" et  
13 cetera. Okay?

14 So what is the Council's wishes at  
15 this time. Are we going to postpone any  
16 rulemaking on this?

17 MR. BRADSHAW: I move that we  
18 table this until a subsequent meeting.

19 MR. TOMBERLIN: Second.

20 MS. REINHART: Did I hear a  
21 second? Okay. Mr. Tomberlin makes a  
22 second. Mr. Bradshaw made the motion. Any  
23 further questions? Discussion? Hearing  
24 none. Ms. Bruce, will you take the roll  
25 call?

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1 MS. MARTIN: May I suggest an  
2 amendment to the table to set it for the  
3 date of January 21st.

4 MR. BRADSHAW: That amendment is  
5 accepted.

6 MS. REINHART: Mr. Bradshaw  
7 accepted the amendment.

8 MR. BRADSHAW: Right. Did you  
9 say the 22nd or the 21st?  
10 MS. MARTIN: 21st. I said the  
11 21st. I hope that was correct.  
12 MS. REINHART: Mr. Bradshaw  
13 accepted the amendment. Mr. Tomberlin  
14 seconded the amendment as well. Seeing no  
15 further discussion, Ms. Bruce, will you  
16 take the roll call, please.  
17 MS. BRUCE: Bruce Elwell.  
18 MR. ELWELL: Yes.  
19 MS. BRUCE: Jerry Ihler.  
20 MR. IHLER: Yes.  
21 MS. BRUCE: Bob Kennedy.  
22 MR. KENNEDY: Yes.  
23 MS. BRUCE: Kathy Martin.  
24 MS. MARTIN: Yes.  
25 MS. BRUCE: Jody Reinhart.

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1 MS. REINHART: Yes.  
2 MS. BRUCE: Steve Tomberlin.  
3 MR. TOMBERLIN: Yes.  
4 MS. BRUCE: David Bradshaw.  
5 MR. BRADSHAW: Yes.  
6 MS. BRUCE: Motion passed.  
7 MS. REINHART: Item number 11 is

8 formal rulemaking hearing and vote on  
9 proposed permanent changes OAC 252:205  
10 Subchapter 21 and adoption of a new  
11 Appendix D. I think we've beat this one to  
12 death already.

13 MS. JOHNSON: I think, looking at  
14 it, it is pretty clear the table to  
15 identify the fees and I think we've kind of  
16 discussed this whole issue.

17 MS. REINHART: Yes. We have. So  
18 do I hear a motion on this?

19 MR. KENNEDY: I would move that  
20 item 11 be incorporated into the other two  
21 items that we're going to be addressing.

22 MS. REINHART: Table --

23 MR. BRADSHAW: Until the 21st.

24 MR. KENNEDY: Until the 21st of  
25 January.

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1 MS. REINHART: Okay.

2 MR. BRADSHAW: Before we second  
3 the motion, does item 12 need to be  
4 included in that too?

5 MS. JOHNSON: It will, I think --  
6 it's a matter whether we want to do item by

7 item. But yes, it falls into this same  
8 category.

9 MS. REINHART: Why don't we just  
10 do it all together within the same motion?  
11 Is that -- can we do that? You know more  
12 about this than I do.

13 MR. KENNEDY: I don't see why we  
14 can't include all of them in the same  
15 motion.

16 MS. REINHART: Okay. Well, let  
17 me read item number 12 and then we'll let  
18 you make a motion. Item number 12 is a  
19 formal rulemaking hearing and vote on  
20 proposed permit changes of OAC 252:205  
21 Appendix E which is the waste excluded from  
22 the lists in Subpart D of 40 CFR Part 261  
23 as applicable in Oklahoma.

24 MS. JOHNSON: That would just be  
25 the new Appendix E that would identify any

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1 facilities that would have been approved  
2 for the de-listing. As you can tell, the  
3 table identifies where they are, the waste  
4 and conditions.

5 MS. REINHART: Okay.

6 MR. KENNEDY: Then I guess I move

7 to amend that agenda items 11 and 12  
8 represented by these appendices D and E be  
9 addressed with agenda items 9 and 10 --  
10 that will be agenda items 9 through 12,  
11 that we will be addressing in our January  
12 21st meeting.

13 MS. REINHART: Continuation.

14 MR. KENNEDY: Continuation  
15 meeting.

16 MR. BRADSHAW: I would second  
17 that motion and request that before we vote  
18 on it though that we discuss giving the  
19 feedback on fees because I think it might  
20 fit well in the agenda here if the Chair  
21 thinks so.

22 MS. REINHART: Okay.

23 MR. BRADSHAW: So, the motion is  
24 seconded now so --

25 MS. REINHART: Mr. Kennedy has

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1 made the motion, Mr. Bradshaw has seconded.

2 Discussion by Council.

3 MR. BRADSHAW: Well, I'd like to  
4 throw in and I think it addresses this  
5 tabling issue and some feedback to the DEQ

6 on the fee issue. It could fit under any  
7 of these tabling motions but I think it's  
8 important that we do it before this vote is  
9 taken.

10           And you know we had two basic  
11 discussions before, two different  
12 approaches. One was a fixed fee and the  
13 other one was a variable fee. And you  
14 know, I don't have a vision of what that  
15 variable fee might look like and I'm a  
16 little bit bothered by it unless it's black  
17 and white.

18           So my input to the DEQ on this is --  
19 and I'll just give you some raw numbers.

20           Thirty thousand dollars for the  
21 first petition.

22           Twenty thousand for each subsequent  
23 petition.

24           Twenty-five hundred dollars  
25 monitoring fee. That's my initial ideas.

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1 So that's my input but we need to hear from  
2 the variable folks now.

3           MS. MARTIN: One thing I might  
4 say is that at least a thirty thousand  
5 initial fee is more comparable to what EPA

6 estimated the costs would be at twenty-  
7 eight thousand.

8 I think there should be some  
9 mechanism for the agency to charge  
10 additional money for a long term dispute.  
11 So maybe an annual fee or -- I just think  
12 you're going to get stuck if that's all the  
13 money you get. And the only way to end the  
14 nightmare is to just deny the de-listing  
15 for the agency.

16 MR. BRADSHAW: Well, the only  
17 comment is the annual fees, that is the  
18 twenty-five hundred dollars.

19 MS. MARTIN: That's an annual fee  
20 or a one time fee?

21 MR. BRADSHAW: It's an annual  
22 fee.

23 MS. MARTIN: So it pays for like  
24 a half-person.

25 MR. BRADSHAW: Well, no, twenty-

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1 five hundred dollars, that would be pretty  
2 cheap.

3 MS. MARTIN: A twenty-five  
4 hundred dollar fee.

5 MR. BRADSHAW: But after the  
6 initial work has been done what they're  
7 doing is maybe they're doing an analysis or  
8 maybe they're looking at analysis required  
9 to be done by the generator and having  
10 their industrial or their hygienist look at  
11 that, et cetera.

12 So that initial or subsequent cost  
13 or out year costs are no where near the  
14 initial approval costs. So that's why I  
15 think twenty-five hundred dollars per year  
16 in the out years is a reasonable approach.

17 MS. REINHART: Actually, I think  
18 like fifty thousand dollars for the first  
19 petition because I think that twenty-eight  
20 thousand was actually mentioned as the  
21 minimum fee; is that right?

22 MS. SHARP: Right.

23 MS. REINHART: And then maybe  
24 forty thousand for subsequent and then ten  
25 percent of the initial fee to be your

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1 annual monitoring fee which would be five  
2 thousand.

3 Because I can just see having to go  
4 collect samples, and sample analysis is not

5 cheap. So I want to make certain that the  
6 agency doesn't lose any money should  
7 something like this ever come around.

8 I guess also in conjunction with  
9 what Ms. Martin's comments are, do you  
10 think that we could come up with some type  
11 of fee schedule that could be weighted as  
12 to, you know, how complex the waste stream  
13 would be or something like that. Kind of  
14 like how the haz waste permit fees are  
15 structured in that how many waste  
16 management units and stuff like that.

17 I don't know what the variables are  
18 in that we could have two different  
19 proposals here and I don't know that they  
20 would be -- I don't know if they could be  
21 come up with easily within the next week or  
22 so.

23 MS. MARTIN: And I'd like to add  
24 to your question. Is, for example, if the  
25 petition came from Washington state, that

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1 they had a waste they would like to be de-  
2 listed and disposed of in Oklahoma, is  
3 twenty, thirty, or fifty thousand dollars

4 enough money to get staff in Oklahoma to go  
5 to Washington state to look at where the  
6 waste is generated?

7                   Those are the ones I worry about.    I  
8 don't worry about the ones -- I don't worry  
9 about the ones in the state.    I think you  
10 can drive around Oklahoma in a day and get  
11 there and your costs are going to be pretty  
12 much low key.    But it's these other guys.

13                   MS. REINHART:    The out-of-  
14 staters.

15                   MS. MARTIN:    Maybe you could have  
16 an in-state fee and an out-of-state fee  
17 that takes care of that.    But then, like  
18 you say, you have an across the state trade  
19 deal but I think there are naturally higher  
20 costs to deal with the company that's  
21 coming from --

22                   MR. ELWELL:    Aren't we just  
23 talking about minimums anyway and they can  
24 be increased, these numbers we are setting.  
25 Correct?    Correct me if I'm wrong or --

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1                   MS. REINHART:    We don't really  
2 want to say minimum because as Mr. Bradshaw  
3 indicated walking into this you want to

4 know what the cost is so you can do a  
5 cost/benefit analysis so you can figure  
6 out, is it worth it for me upfront to go  
7 through this process to de-list it or am I  
8 better off just paying out the fees from  
9 here to eternity just managing it as a  
10 hazardous waste.

11           So there's got to be some type of  
12 cost/benefit analysis that people go  
13 through because they are not going to  
14 embark upon this lightly. That's a big  
15 chunk of change no matter what the dollar  
16 amount we're going to put out there,  
17 whether it's twenty, thirty, fifty,  
18 whatever it is.

19           So, I think that we don't want to  
20 say minimums but we've got to have -- I  
21 think a variable factor is good but also  
22 setting fees administratively high enough  
23 that the agency won't lose any money out of  
24 this.

25                           MR. BRADSHAW: One question that

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1 was raised about out of state, and I worry  
2 about things that Jody mentioned before,

3 you know, inhibiting interstate commerce.

4 I can't imagine why the DEQ would  
5 need to go to Washington other than they  
6 might want to get some salmon. I mean,  
7 does the DEQ have an opinion that they  
8 would need to go see how it's generated?  
9 Don't you really focus on what the waste  
10 is? And, of course, how it's generated  
11 determines its listing anyway.

12 I don't know why you would need to -

13 -

14 MS. REINHART: Well, if it's  
15 being -- only disposed of in Oklahoma you  
16 wouldn't have to go to Washington because  
17 it's being shipped to Oklahoma, you could  
18 collect it at the disposal site.

19 MS. MARTIN: Yeah, but a part of  
20 these rules when you read them is that the  
21 waste will be excluded for a very specific  
22 waste generated and if that method changes,  
23 they are no longer excluded. So there's  
24 got to be some type of monitoring by the  
25 agency to ascertain that the waste is

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1 generated the same way every time. Which  
2 would mean that our agency would have to

3 either hire someone in that state to do it  
4 for them or they'd have to go out there and  
5 do it themselves or ignore it. Those are  
6 the only three options you have. Right?  
7 Or just assume, honor system, that they  
8 never change the way they generate  
9 hazardous waste at Boeing in Seattle.  
10 Okay.

11 But otherwise you have to go out  
12 there and check or use the agency over  
13 there to check for you or whatever.

14 MR. BRADSHAW: I'd like to hear  
15 from the DEQ on this.

16 MS. SHARP: I think there's --  
17 whether it's an accepted norm in  
18 environmental practice or what you want to  
19 hang your hat on -- I believe there's a  
20 notion that we would not be doing our job  
21 if we actually did a full de-listing  
22 petition and didn't visit the site where  
23 the waste was generated.

24 It's just -- it could be cast as  
25 negligent is all I'm saying whether it is

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1 or not. You can have a lot of technical

2 data on your desk, but if you don't do a  
3 site visit in this field, you are suspect.  
4 I feel like.

5 MR. BRADSHAW: Well, to avoid  
6 that then I would suggest instead of  
7 discriminating by state that you have a  
8 variable associated with travel whether  
9 it's in-state or out-of-state. I don't  
10 want to get into this. Thank you.

11 (Inaudible-multiple conversations)

12 MR. BRADSHAW: Trust me, Boeing  
13 is not an issue with disposal in Oklahoma.

14 MS. SHARP: One thing, and I  
15 didn't know if you all were going to go  
16 there, we've got some kind of bookends or a  
17 framework of possible one-time costs and  
18 subsequent costs if we are directed by the  
19 Council to explore the hourly compensation  
20 that would take care of this issue. I  
21 mean, if you have to travel and take  
22 several days then you can tack that costs  
23 on -- that covers it. So that's --

24 MR. BRADSHAW: Well, we need to  
25 wrap this up at some point, and my thought

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1 is maybe polling some of the other Members

2 and I'm going to stick with my position,  
3 the numbers that I gave you plus travel  
4 costs -- you know, direct travel costs.

5           And I think, Madam Chair, that we  
6 should poll each Member of the Council to  
7 kind of get a sense of this thing because  
8 you and I are twenty thousand apart and I  
9 think fifty is too high. I'll just be fair  
10 about it.

11                   MS. REINHART: I understand, I'm  
12 just -- the cost is a minimum of twenty-  
13 eight and can go as high as -- what was the  
14 high number? You said, what, two hundred  
15 thousand wasn't enough?

16                   MS. JOHNSON: That's what one  
17 state said.

18                   MS. REINHART: Yeah, so I'm just  
19 saying that I don't want us to end up --

20                   MR. BRADSHAW: If we're that  
21 high, then I'm not sure I want this program  
22 in Oklahoma because right now I can go to  
23 Region VI and do it for nothing. And I  
24 want a reason to do it here if I do it  
25 here.

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1                   You said twenty-eight thousand  
2 dollars was the average cost -- we're  
3 talking about averaging here, we're not  
4 talking about worst case or best case  
5 scenario, we're talking about something  
6 that is reasonable, that's fixed. So,  
7 that's my position.

8                   MR. IHLER: Was that the average  
9 cost of the minimum cost?

10                  MS. REINHART: That's the minimum  
11 cost, yeah.

12                  Mr. Elwell, how would you like to  
13 see the fees structured? Do you want to  
14 see a fixed cost or variable cost. Or  
15 both?

16                  MR. ELWELL: I'd like to see more  
17 information, if you really want to know the  
18 truth. I just don't feel like I'm informed  
19 well enough to even say right at this time.

20                  MS. REINHART: Okay. Mr. Ihler.

21                  MR. IHLER: If I'm a business, I  
22 would prefer to see knowing that there is a  
23 fixed cost associated. I guess I like a  
24 combination of a fixed cost with a smaller  
25 cost like travel and so forth be added in

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1 above that.

2 MS. REINHART: Okay. I think Mr.  
3 Bradshaw has already expressed his.

4 MR. BRADSHAW: Yeah. I think you  
5 got mine.

6 MS. REINHART: And I think we  
7 have mine as well. Mr. Kennedy?

8 MR. KENNEDY: I'd like to see a  
9 fixed cost as well. Could be that when we  
10 look at kind of what Mr. Bradshaw was  
11 saying earlier -- earlier, earlier -- set  
12 something that could be changed at a later  
13 date. Really the industries that might  
14 take advantage of it early on are the ones  
15 that have an interest and financially could  
16 afford certainly more significant than  
17 twenty thousand dollars.

18 I think someone said that if it was  
19 free that it's almost an incentive to come  
20 to Oklahoma. And if you're a particular  
21 generator, a significant waste exclusion  
22 over their disposal costs -- twenty  
23 thousand with a twelve hundred dollar  
24 annual is -- could be pretty close to free  
25 to them in a sense. It still might be an

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1 incentive. So a higher fee whether that's  
2 thirty or fifty makes sense.

3 MS. REINHART: Okay

4 MR. KENNEDY: I mean the way  
5 businesses operate, the same way, if you've  
6 got to give someone a fixed bid on  
7 something you have some cushion in there to  
8 be sure -- you're not going to do a cost  
9 plus.

10 MS. REINHART: You're covered.

11 MR. KENNEDY: Which you've  
12 already said you don't like.

13 MR. BRADSHAW: Unless I'm getting  
14 it.

15 MR. KENNEDY: In the same way  
16 that to -- if in the event the first few  
17 were done and it was just way more cash  
18 than you really needed and they went well,  
19 later on those fees could be adjusted  
20 lower.

21 But I would say initially that is  
22 too low. And somewhere in that thirty to  
23 fifty is a reasonable fee, I would think,  
24 with a five thousand dollar on the annual I  
25 think.

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1 MS. REINHART: Okay. Ms. Martin.

2 MS. MARTIN: Yes. I would like  
3 to see enough fee dollars available for the  
4 staff, a sufficient staff to travel -- not  
5 just one person. And if that can be  
6 handled with an open travel fee that would  
7 be great.

8 MS. REINHART: So you want a  
9 fixed or a variable?

10 MS. MARTIN: I would be happy  
11 with either type opportunity. Obviously  
12 there's quite (inaudible) that needs to be  
13 de-listed and this is an opportunity to  
14 clear those things up. So you don't want a  
15 price tag so high that things that have  
16 been egregious in the past can't be fixed  
17 but then again we're not limiting which  
18 wastes are going to be de-listed. So you  
19 also have to be prepared for the ones that  
20 are serious and so you need to have a  
21 serious fee associated with that. Unless  
22 you wanted to break down those wastes,  
23 where you know which ones are innocuous and  
24 you know which ones are not. Then I think  
25 you have to have higher fee.

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1                   MS. REINHART:    Mr. Tomberlin,  
2   fixed or variable?

3                   MR. TOMBERLIN:    I like fixed.  
4   I'd like to see the fifty thousand dollar  
5   basic application fee.    I like the twenty-  
6   five hundred annual monitoring fee.    I'd  
7   like to see something added in, if it's  
8   possible.    I don't know what you would call  
9   it, if you'd call it a testing fee where it  
10  doesn't have to be announced -- I guess  
11  when I see annual monitoring fee, that's  
12  once a year.    I'd like to see -- and to the  
13  companies that's doing it -- when you're  
14  making these requirements that there be  
15  four unannounced inspection fees.    Where  
16  you just pull a sample, you know, three,  
17  four, six, whatever is agreeable on and  
18  that those costs would be by the company.

19                   I don't want to pad it up or  
20  anything but where the DEQ could recover  
21  the cost.    Also I'd like to look at an  
22  annual renewal fee.

23                   One of the things, when I look at  
24  this, is when we see it and once it's set  
25  in place there's never any other annual

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1 fees coming back in. So I'd like to see  
2 kind of an annual -- I don't know what that  
3 number would be but --

4 MS. REINHART: Every five or ten  
5 years they would have to re-submit their  
6 petition?

7 MR. BRADSHAW: Every year.

8 MR. TOMBERLIN: Well, no, not re-  
9 submit it. Have it double-reviewed by the  
10 DEQ.

11 MS. REINHART: Do you see what  
12 he's saying? It's kind of like a permit  
13 renewal fee.

14 MR. TOMBERLIN: But annual. Does  
15 that annual monitoring fee -- do you review  
16 it again?

17 MS. REINHART: The petition.

18 MR. TOMBERLIN: The petition.

19 MS. JOHNSON: Well, I think that  
20 in a way it would be. I think that we were  
21 looking at the annual monitoring fee be  
22 associated with whatever those conditions  
23 were specified and confirming those. I  
24 don't think that really would be looking at  
25 the whole petition again.

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1                   MR. TOMBERLIN: I'm not really  
2 interested in looking at the whole petition  
3 again. A renewal-type fee. Is the annual  
4 monitoring fee a renewal-type fee? That's  
5 just monitoring, isn't it? I'd like to see  
6 an annual renewal fee. So it doesn't go on  
7 for fifty years and all we got was fifty  
8 thousand dollars for the DEQ or for the  
9 state of Oklahoma.

10                   MR. BRADSHAW: Could I ask a  
11 question then? Why are you concerned about  
12 the money coming to the DEQ versus the cost  
13 to the DEQ and the benefit to the generator  
14 and to the environment?

15                   I don't mean this in a bad way but  
16 it's almost sounding like we're talking a  
17 punitive view of environmental regulations  
18 here. And I'm probably mistaken.

19                   MR. TOMBERLIN: On which item, on  
20 the annual fee?

21                   MR. BRADSHAW: Yes. I mean, to  
22 what purpose? I think Catherine said  
23 earlier, the purpose of the environmental  
24 regulations is not to fund the DEQ. The  
25 purpose is to make sure that we protect the

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1 environment and that we do it in a way that  
2 doesn't thwart our economic systems, so  
3 that we're all living in outhouses.

4           So my -- when I talk about a fee, my  
5 focus is always on what does it take to do  
6 the work? And I don't see in any work  
7 associated with this annual fee that you're  
8 talking about.

9           MR. TOMBERLIN: Well, one of the  
10 comments that you had earlier today was  
11 that there would be substantial savings if  
12 this does happen, for a company that is  
13 producing waste -- I see a one-time fee  
14 coming into the state.

15           MR. BRADSHAW: No, there's the  
16 twenty-five hundred dollar annual fee.

17           MR. TOMBERLIN: Okay. That was a  
18 monitoring. And I -- maybe I'm misstating  
19 but do they go out and monitor that  
20 annually or is that just a fee that they  
21 just say "bang" twenty-five hundred  
22 dollars.

23           MR. BRADSHAW: I think that they  
24 have work associated with that fee.

25           MR. KENNEDY: Monitoring in the

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1 sense of monitoring the program for the --

2 MS. REINHART: That would be at  
3 the discretion of the agency and the  
4 workload.

5 MR. TOMBERLIN: Then I'll go back  
6 to saying that I'd like to see that twenty-  
7 five hundred dollars a little bit higher.  
8 And monitoring off the annual fee. dropped.

9 MS. MARTIN: I also think, in  
10 answer to Steve's and Brad's question is  
11 that the agency is obligated to review the  
12 de-listing if new information comes up.  
13 And there is no other fee language  
14 associated with that future review, that an  
15 annual fee might be a nominal fee to help  
16 pay for that staff review.

17 Now I have a totally different  
18 question. What if a group of manufacturers  
19 got together to de-list a particular waste  
20 because they all have that type of waste  
21 generated at their facilities in basically  
22 the same manner, can they do it all as a  
23 joint petition or does each individual  
24 company have to get -- it's the waste

25 that's de-listed or is it the companies --

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1 MS. JOHNSON: The facility's  
2 waste at that location. It cannot apply to  
3 its operations in Muskogee and Tulsa and  
4 Oklahoma City. It would be just for the  
5 facility, as I understand it.

6 MS. REINHART: Only if the  
7 federal program itself went through and re-  
8 evaluated the whole waste stream all across  
9 the nation would you be able to see  
10 something like that occur. Because even on  
11 these de-listing petitions that the feds  
12 grant right now, they are facility-  
13 specific. They don't go across --

14 MS. MARTIN: Well, that's not  
15 clear in the rules, number one. Because I  
16 was thinking of one company that got that  
17 particular type of waste de-listed and the  
18 waste is described by the way it is  
19 generated, then anybody else who would  
20 qualify under that is de-listed for the  
21 state, it's done. So anybody else can come  
22 in right after that. So maybe a group of  
23 companies would do it. And it's not clear  
24 to me that that's not the way it occurs.

25

MS. REINHART: But it is.

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1 MS. MARTIN: If it is on an  
2 individual basis, why is that, except that  
3 you are going to double check exactly how  
4 the waste is generated at that facility.  
5 Which then goes back to Catherine saying,  
6 you have to go to the facility.

7 MS. REINHART: I think it is  
8 described. It is the top sentence on page  
9 four, it says --

10 MS. MARTIN: (Inaudible).

11 MS. REINHART: Okay, that's fine.  
12 But our rule is intended to allow persons  
13 to exclude a waste at a particular  
14 generating facility from list. So we're  
15 adopting the federal program, so I think it  
16 is very specific to the facility not --  
17 it's not a blanket.

18 COURT REPORTER: Jody, if you're  
19 going to keep on, I need a break. If  
20 you're about ready to wrap up, I'm fine.  
21 But if not.

22 MS. REINHART: What does  
23 everybody think? I think we're about ready

24 to wrap up.

25 MR. ELWELL: I'm ready to wrap

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1 up.

2 MR. IHLER: Do you have enough  
3 information to go forward?

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

6 MR. IHLER: Do you need more  
7 guidance or -- you've had enough from us  
8 today, I'm sure.

9 MS. SHARP: I think we're ready.  
10 I need to follow up with you and perhaps  
11 with the Chair real briefly afterwards.

12 MS. REINHART: I think we're at  
13 the point where we take a roll call vote  
14 for the tabling of items 11 and 12 to  
15 January 21st. Ms. Bruce, will you take a  
16 roll call vote, please.

17 MS. BRUCE: Bruce Elwell?

18 MR. ELWELL: Yes.

19 MS. BRUCE: Jerry Ihler.

20 MR. IHLER: Yes.

21 MS. BRUCE: Bob Kennedy.

22 MR. KENNEDY: Yes.

23 MS. BRUCE: Kathy Martin.

24 MS. MARTIN: Yes.

25 MS. BRUCE: Jody Reinhart.

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1 MS. REINHART: Yes.

2 MS. BRUCE: Steve Tomberlin.

3 MR. TOMBERLIN: Yes.

4 MS. BRUCE: David Bradshaw.

5 MR. BRADSHAW: Yes.

6 MS. REINHART: Okay. Item 13 is  
7 any new business.

8 MR. BRADSHAW: We need to set the  
9 continuance. Do we need a motion to  
10 continue instead of to adjourn?

11 MS. MARTIN: Yes.

12 MS. REINHART: Right.

13 MR. ELWELL: I make a motion that  
14 we continue to the date set and take up  
15 items that were on the agenda that have  
16 been carried over.

17 MS. MARTIN: I second that  
18 motion.

19 MS. REINHART: Okay. Mr. Elwell  
20 made a motion to continue the meeting on  
21 January 21st at ten o'clock a.m. here in  
22 the DEQ building, multi-purpose room. Ms.

23 Martin seconded that. Do we hear any  
24 discussion? Seeing none. Roll call,  
25 please.

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1 MS. BRUCE: Mr. Elwell.  
2 MR. ELWELL: Yes.  
3 MS. BRUCE: Jerry Ihler.  
4 MR. IHLER: Yes.  
5 MS. BRUCE: Bob Kennedy.  
6 MR. KENNEDY: Yes.  
7 MS. BRUCE: Kathy Martin.  
8 MS. MARTIN: Yes.  
9 MS. BRUCE: Jody Reinhart.  
10 MS. REINHART: Yes.  
11 MS. BRUCE: Steve Tomberlin.  
12 MR. TOMBERLIN: Yes.  
13 MS. BRUCE: David Bradshaw.  
14 MR. BRADSHAW: Yes.  
15 MS. REINHART: Okay. This  
16 meeting is continued.

17

18 (End of Proceedings and continued until  
19 January 21, 2004, at 10 a.m.)

20

21

22

23  
24  
25

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2

C E R T I F I C A T E

3

STATE OF OKLAHOMA )

) ss:

4

COUNTY OF OKLAHOMA )

5

I, CHRISTY A. MYERS, Certified

6

Shorthand Reporter in and for the State of

7

Oklahoma, do hereby certify that the above

8

proceedings is the truth, the whole truth,

9

and nothing but the truth; that the

10

foregoing proceedings were tape recorded

11

and taken in stenography by me and

12

thereafter transcribed under my direction;

13

that said proceedings were taken on the 8th

14

day of January, 2004, at Oklahoma City,

15

Oklahoma; and that I am neither attorney

16

for nor relative of any of said parties,

17

nor otherwise interested in said action.

18

IN WITNESS WHEREOF, I have hereunto

19

set my hand and official seal on this, the

20

30th day of January, 2004.

21

22

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

23

24

25

Christy A. Myers

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