

MINUTES
HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL
January 16, 2003
Department of Environmental Quality
Oklahoma City Oklahoma

Approved January 8, 2004

Notice of Public Meeting The Hazardous Waste Advisory Council convened for its regular meeting at 10:00 a.m., January 16, 2003 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. Ms. Jody Reinhart called the meeting to order and roll call was taken.

MEMBERS PRESENT

Jody Reinhart
Wesley Anderson
David Bradshaw
Bruce Elwell
Gerald Ihler
Bob Kennedy
Steve Tomberlin

MEMBERS ABSENT

Michael Graves
Douglas Hawkins

DEQ STAFF PRESENT

Catherine Sharp
Martha Penisten
Jerry Sanger
Tammi Johnson
Mary 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 July 18, 2002 Regular Meeting. Hearing no discussion, Ms. Reinhart called for a motion to approve. Mr. Elwell made motion to approve Minutes as submitted. Second was made by Mr. Bradshaw.

Roll call.

Wesley Anderson	Yes	Gerald Ihler	Yes
David Bradshaw	Yes	Bob Kennedy	Yes
Bruce Elwell	Yes	Steve Tomberlin	Yes
		Jody Reinhart	Yes

Motion carried.

Chair Person's Report – Ms. Reinhart asked for discussion as to whether meetings should continue to be held in January due to possible inclement weather. It was decided that they would consider the effects the weather when the upcoming year's schedule is discussed at the October meeting.

Division Director's Report – Ms. Catherine Sharp announced that Governor Henry had placed Mr. Miles Tolbert as his Secretary of Environment. She advised that the Land Protection Division budget is healthy. She related that the Brownfield rules continue to be high profile and successful and could be revisited within the year. Ms. Sharp ended

her report with an update on the Central States Radiation Compact trial against the State of Nebraska.

Election of Chair and Vice-Chair -- Ms. Reinhart thanked the Council for the opportunity to serve as Chair. She nominated and made the motion that Mr. David Bradshaw fills that position. Mr. Anderson made the second.

Roll call.			
		Gerald Ihler	Yes
Wesley Anderson	Yes	Bob Kennedy	Yes
David Bradshaw	Yes	Steve Tomberlin	Yes
Bruce Elwell	Yes	Jody Reinhart	Yes

Motion carried.

Mr. Bradshaw nominated and made the motion that Ms. Reinhart serves as Vice-Chair stating that her continued expertise would be greatly appreciated. Ms. Reinhart accepted and Mr. Kennedy made the second.

Roll call.			
		Gerald Ihler	Yes
Wesley Anderson	Yes	Bob Kennedy	Yes
David Bradshaw	Yes	Steve Tomberlin	Yes
Bruce Elwell	Yes	Jody Reinhart	Yes

Motion carried.

Rulemaking – OAC 252:205-3-1 Incorporation by Reference Amendment [AMENDED]

Mr. Bradshaw called Agenda item #6 and called upon Ms. Tammi Johnson to make staff presentation. Ms. Johnson pointed out four amendments proposed to OAC 252:205-3-1. One regarded the newly listed hazardous waste from inorganic chemical manufacturing processes which are being added to K161, 177, 178. The second amended the Corrective Action Management Unit requiring more detailed information, such as minimum design in operational standards and application information that include public notice.

Ms. Johnson continued that the third item is a legal challenge in that the D.C. Circuit Court vacated two parts of the Phase 4 LDR. The first part required the deletion of regulatory language that mineral processing characteristic wastes that were by-products of sludges being reclaimed for solid waste and therefore hazardous waste. The second part was the disallowance of the Toxicity Characteristic Leaching Procedure (TCLP) to be used for determining if manufacturing gas plant waste is hazardous was not specific enough. The fourth item was a correction to the CFR where there were errors made in the treatment standard table in 268.40 was not printed in its entirety.

There were no comments from the Council or the public. Mr. Bradshaw entertained a motion to adopt the incorporation by reference as proposed and to recommend adoption by the DEQ Board. Ms. Reinhart made that motion and Mr. Elwell made the second.

Roll call.			
		Bob Kennedy	Yes
Wesley Anderson	Yes	Jody Reinhart	Yes
Bruce Elwell	Yes	Steve Tomberlin	Yes
Gerald Ihler	Yes	David Bradshaw	Yes

Motion carried.

Rulemaking—OAC 252:205-3-2 Incorporation by Reference Amendment [AMENDED]

Mr. Bradshaw called Agenda item #7 and again Ms. Tammi Johnson made the presentation. Ms. Johnson advised that the proposal would adopt by reference 40 CFR 260 through 279 published July 1, 2002.

Ms. Johnson mentioned that additional information had been received from EPA for the latest authorization package submittal with some rule changes that EPA had suggested. She advised that this communication came from EPA after the rule notice had been sent to the Secretary of State for publication. Ms. Johnson stated that it was staff’s feelings at that time that although these changes from EPA were not specifically on the Notice, they were still within the scope of the incorporation by reference.

Mr. Jerry Sanger, DEQ Legal, explained that EPA had delayed getting their comments to us on the changes that needed to be made for last year’s authorization package for the 2001 CFR. He advised of three changes that needed to be acted upon to properly incorporate by reference so that EPA would/could approve our authorization. He pointed out that Council could take action on these changes today or wait until the next Council meeting. He raised concerns that if we wait until the next Council meeting, these changes would not be effective until next year which would delay authorization for at least two years. He advised that delay would make a big difference to permitted facilities that deal with the municipal-type regulations and submit permit modifications not only to the state, but also to EPA. Mr. Sanger then set forth the changes for Council’s consideration.

Council raised questions as to whether the changes Mr. Sanger pointed out were within the scope of OAC 252:3-2(f) and had been properly advertised and whether they could/should be acted upon at this meeting. It was felt that they were within the scope of OAC 252:205-3-2 but not within subparagraph (f) as advertised. After careful consideration, it was decided to vote on the adoption by reference as advertised and bring these new changes to Council’s next meeting. Mr. Bradshaw called for motion to recommend the incorporations as specifically proposed in Agenda item 7 to the DEQ Board. Ms. Reinhart made the motion and Mr. Elwell made the second.

Roll call.			
		Bob Kennedy	Yes
Wesley Anderson	Yes	Jody Reinhart	Yes
Bruce Elwell	Yes	Steve Tomberlin	Yes
Gerald Ihler	Yes	David Bradshaw	Yes

Motion carried.

Rulemaking – OAC 252:205-3-3 Incorporation by Reference Amendment [REVOKED]

Making the staff’s presentation, Ms. Tammi Johnson stated that proposal would revoke a subsequent incorporation in the December 26, 2000 Federal Register which was a deferment of the requirements that PCB's be considered a constituent subject to treatment standards when present in soils that exhibit the toxicity characteristic for metals. These are now contained in the 40 CFR published on July 1, 2002. Hearing no discussion on

this matter, Mr. Bradshaw entertained a motion for recommendation to the DEQ Board. Ms. Reinhart made the motion and Mr. Anderson made the second.

Roll call.			
Wesley Anderson	Yes	Bob Kennedy	Yes
Bruce Elwell	Yes	Jody Reinhart	Yes
Gerald Ihler	Yes	Steve Tomberlin	Yes
		David Bradshaw	Yes

Motion carried.

New Business Ms. Sharp reported that some Council member appointments would be expiring soon and that she would be strongly recommending reappointment for each of those.

The meeting adjourned at 11:05 a.m.

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

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF HAZARDOUS WASTE MANAGEMENT ADVISORY
COUNCIL MEETING
ITEM NOS. 1, 2, 3, 4 AND 5
HELD ON JANUARY 16, 2003, AT 10:00 A.M.
707 NORTH ROBINSON
IN OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE
(405) 721-2882

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MEMBERS OF THE COUNCIL

- 1. MR. WESLEY ANDERSON - MEMBER
- 2. MR. DAVID BRADSHAW - MEMBER (NEW
CHAIR)
- 3. MR. BRUCE ELWELL - MEMBER
- 4. MS. MICHAEL GRAVES - ABSENT
- 5. MR. DOUGLAS HAWKINS - ABSENT
- 6. MR. JERRY IHLER - MEMBER
- 7. MR. BOB KENNEDY - MEMBER
- 8. DR. JODY REINHART - VICE CHAIR
- 9. DR. STEVE TOMBERLIN - MEMBER

STAFF MEMBERS

- MS. MYRNA BRUCE - SECRETARY
- MR. JERRY SANGER - ATTORNEY
- MS. MARTHA PENISTEN - ATTORNEY
- MS. TAMMI JOHNSON - STAFF

1

2

PROCEEDINGS

3

MS. REINHART: Call to order.

4

And, Myrna, if you can do the roll call on

5

the members, please.

6

MS. BRUCE: Mr. Anderson.

7

MR. ANDERSON: Here.

8

MS. BRUCE: Mr. Bradshaw.

9

MR. BRADSHAW: Here.

10

MS. BRUCE: Mr. Elwell.

11

MR. ELWELL: Here.

12

MS. BRUCE: Mr. Graves, absent.

13

Mr. Hawkins, absent. Mr. Ihler.

14

MR. IHLER: Here.

15

MS. BRUCE: Mr. Kennedy.

16

MR. KENNEDY: Here.

17

MS. BRUCE: Mr. Tomberlin.

18

MR. TOMBERLIN: Here.

19

MS. BRUCE: Ms. Reinhart.

20

MS. REINHART: Here.

21

Okay. With that over, we'll go on

22

to Item Agenda Number 3, which is

23

Discussion, Amendment and Roll Call Vote To

24

Approve The Official Minutes from our July

25

18, 2002, Council meeting. Has everybody

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1 had a chance to review those Minutes?

2 MR. ELWELL: I'll make a motion
3 to approve the minutes.

4 MS. REINHART: Okay. I have a
5 motion.

6 MR. BRADSHAW: Second.

7 MS. REINHART: Second. Any
8 discussion on those? Okay. Myrna, if
9 you'll do a roll call.

10 MS. BRUCE: Mr. Anderson.

11 MR. ANDERSON: Yes.

12 MS. BRUCE: Mr. Bradshaw.

13 MR. BRADSHAW: Yes.

14 MS. BRUCE: Mr. Elwell.

15 MR. ELWELL: Yes.

16 MS. BRUCE: Mr. Ihler.

17 MR. IHLER: Yes.

18 MS. BRUCE: Mr. Kennedy.

19 MR. KENNEDY: Yes.

20 MS. BRUCE: Mr. Tomberlin.

21 MR. TOMBERLIN: Yes.

22 MS. BRUCE: Ms. Reinhart.

23 MS. REINHART: Yes.

24 Okay. With that, we'll move on to

25 Item Number 4, which is the Chair Person's

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1 Report, and I don't have much to say.

2 About our Council meeting -- we were
3 kind of wondering on Tuesday whether or not
4 we were going to have this opportunity to
5 have the Council meeting. I talked with
6 Mary about it and Tammi, Ms. Johnson, and
7 so we were kind of concerned about whether
8 or not we were actually going to get to
9 hold this meeting.

10 This meeting is quite important
11 because of the annual adoption of the regs
12 and so forth that the CFR contained as of
13 last July. And so I was just going to kind
14 of open it up to see if there was some
15 other opportunity.

16 January in Oklahoma tends to have
17 some questionable weather, right? I'll
18 tell you what, on Tuesday, if it was going
19 to be snow packed, there was no way I was
20 going to make it down from northwest
21 Oklahoma.

22 So, does anybody have any ideas
23 about how we might be able to look at this
24 situation in the future, so that should
25 something like this ever really happen,

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1 that we won't end up with a gap in the
2 adoption of the regs as we need them to
3 happen?

4 Because from what I understand, if
5 this is correct, Tammi, we would have a gap
6 between rulemakings and so forth. I'm not
7 certain I fully understand that. You and
8 Jerry can help me with that.

9 MS. JOHNSON: Well, I think for
10 this particular year, the Board meets in
11 February.

12 MS. REINHART: Right.

13 MS. JOHNSON: And it's not
14 scheduled to meet again until July. And --
15 I believe that's right. So we're missing
16 the legislative -- we would miss the
17 legislative session for 2003 and would not
18 be able to go before the Legislature or
19 have these rules before the Legislature
20 until legislative session 2004.

21 MS. REINHART: Right.

22 MS. JOHNSON: If we missed this
23 or in the future something like that should
24 happen in this type of time frame.

25 MS. REINHART: And we have to

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1 have legislative approval, is that correct,
2 before any of the rulemakings are
3 absolutely permanent; is that correct?

4 MS. JOHNSON: That's my
5 understanding.

6 MS. REINHART: Okay. Jerry, can
7 you help us with that?

8 MR. SANGER: Well, the -- we
9 usually need at least a month lead time
10 before a Board meeting to get whatever
11 recommendations that the Council has put
12 together in a Board packet and get it to
13 the Board.

14 So -- and I think Tammi has probably
15 explained that we have to have it -- these
16 rules to the first Board meeting of the
17 year in order to get them passed as
18 permanent rules for that calendar year.

19 MS. REINHART: Right.

20 MR. SANGER: If we go past that
21 first Board meeting, which is typically
22 February, we will probably miss the
23 legislative session and the deadline by
24 which we need to get our rules to the Board
25 to get them finalized and permanent in that

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1 calendar year.

2 So the only recommendation -- the
3 only alternatives that I can see off the
4 top of my head are two. One, is you can
5 either meet earlier -- late in the year
6 before, maybe December or November or
7 sometime like that.

8 MS. REINHART: Right.

9 MR. SANGER: And I don't know
10 that that's any less problematic than
11 January. Or if the -- if this particular
12 meeting falls through as a regularly
13 scheduled meeting, then we would have to
14 hold a special meeting.

15 MS. REINHART: Right.

16 MR. SANGER: And we wouldn't have
17 much time between realizing that we
18 couldn't hold our regularly scheduled
19 meeting, to try to squeeze in that special
20 meeting before the Board meeting comes
21 around.

22 MS. REINHART: Right, because
23 there's -- there has become an additional
24 time frame requirement, right, that have to
25 be publicly noticed for thirty days now; is

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1 that correct? Because of -- is that what
2 we talked about the other day, Tammi?

3 MS. JOHNSON: We did. There is a
4 -- I can't remember, let me get this
5 correct. There is a small business group
6 that has to be noticed or has to receive
7 notice thirty days prior. I think maybe
8 there is still the twenty days, or
9 something like that, to the Secretary of
10 State's office.

11 MS. REINHART: Right.

12 MS. JOHNSON: But what we're
13 basically looking at is thirty days because
14 of the thirty day notice or informational
15 notice to the Small Business
16 Administration.

17 MS. REINHART: So in reality
18 we're actually talking about a fifty day
19 period, because the notice is sent to the
20 Office of the Federal Register; is that
21 right? I don't remember, the Office of
22 Administrative Code or whatever? Have it
23 publicly noticed and then the thirty day
24 notice period; is that correct? That's a
25 total of fifty days?

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1 MR. SHARP: They overlap.

2 MS. REINHART: Do they overlap?

3 MS. SHARP: But it's still
4 extended some.

5 MS. REINHART: Right.

6 MR. BRADSHAW: So a meeting early
7 in the first week of December would enable
8 us to have one in January if we could not
9 make it. So maybe we ought to think about
10 that, that would be fine with me.

11 MS. REINHART: Right. How does
12 the rest of the Council Members feel about
13 that? And we're just trying to think
14 proactively, because we were pretty
15 panicked about the weather on Tuesday
16 because everybody was predicting blizzard-
17 type conditions and stuff. And we were
18 looking at this gapping that might occur.

19 So, anyway, I guess when it comes
20 time to look at time frames or meeting
21 dates for next year, we might consider
22 doing a meeting in late December --
23 sometime in December rather than waiting
24 until January to do this adoption.

25 I'm also very pleased that it seems

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1 like we have kind of developed into a
2 system where we have a seamless adoption of
3 rules and so forth. Rules that are issued
4 in between this annual adoption time period
5 we're looking at and we're able to --
6 enable stakeholders, you know, an
7 opportunity to be able to adopt them
8 faster, quicker, and not wait for the
9 annual meeting.

10 And I think for the regulated
11 community out there, that that really helps
12 them, you know, adjust through these time
13 periods when there are things like that
14 going on.

15 The only other thing that I would
16 like to suggest is that the DEQ look at a
17 time period that happens between April and
18 November, so that when we -- anything that
19 comes out during that time period, we can
20 also look at those when we come to this
21 late December or January meeting and
22 possibly adopt some rules that come out
23 during that time period.

24 I went back and looked to see what
25 had happened -- there was about three

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1 rulemakings, I believe, that happened
2 between April and November. They did have
3 significant consequences, I guess, for the
4 rulemaking -- or regulated community. So I
5 didn't feel like it was worth even
6 addressing at this point. So that might be
7 something that we look at as a Council in
8 the future.

9 The only other question I have is,
10 in regards to when we do some of these
11 adoptions, like in the November 20th
12 Federal Register, it talks about the state
13 having to submit a modification to their
14 program, as well in order to have
15 authorization.

16 Can you guys clarify some of that
17 for us, because I had understood that when
18 we adopt them and they become rulemakings
19 for us, such as for when they list the new
20 hazardous wastes out there, that that would
21 enable you as the DEQ to be able to perform
22 your job, to be able to look at permit mods
23 and approve permit mods for facilities and
24 entities and things like that. So what
25 else needs to happen for something like

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1 that to occur?

2 MR. SANGER: Would you like for
3 me to address that?

4 MS. REINHART: Yes. Yes, Jerry.

5 MR. SANGER: Okay.

6 MS. REINHART: If you could
7 explain that to us, because that way --
8 we're kind of --

9 MS. SHARP: If anybody
10 understands it.

11 MR. SANGER: Well, for purposes
12 of authorization, there are really two
13 types of rules that affect whether or not
14 the state will immediately become
15 authorized, if you want to call it that, or
16 implementing them or not. If it's a -- if
17 it's a rule that's passed pursuant to
18 statutory authority and it's pre-HSWA if
19 it's RECRA authority --

20 MS. REINHART: Right.

21 MR. SANGER: -- then EPA is not
22 going to hold on to it until authorization
23 is given.

24 MS. REINHART: Right.

25 MR. SANGER: The states can

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1 immediately start implementing that and EPA
2 is not going to come in and over-file or do
3 any direct implementation of those rules as
4 long as the state is doing it.

5 Now, HSWA provisions, that's rules
6 that are passed pursuant to statutory
7 authority from a 1984, I believe, Hazardous
8 and Solid Waste Amendments.

9 MS. REINHART: Right.

10 MR. SANGER: Those particular
11 rules, EPA does not delegate authority to
12 states to implement those rules until
13 they're authorized, until they get
14 authorized for those rules.

15 MS. REINHART: Okay.

16 MR. SANGER: So when the state --
17 when the DEQ adopts a rule then that's a
18 HSWA rule then -- or it's promulgated
19 pursuant to HSWA authorities, then they
20 have to submit the authorization
21 application to EPA for review and approval
22 before EPA will advocate their authority to
23 the state.

24 MS. REINHART: Okay.

25 MR. SANGER: To implement those

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1 provisions in lieu of EPA.

2 MS. REINHART: Okay.

3 MR. SANGER: So, typically, we're
4 probably two years behind on that.

5 MS. REINHART: Okay.

6 MR. SANGER: So even if we're
7 authorized, even if we -- I mean, even if
8 we had adopted a -- if you want to call it
9 a HSWA rule.

10 MS. REINHART: Right.

11 MR. SANGER: EPA is still not
12 going to give up their federal authority
13 over that until they give us authorization.

14 MS. REINHART: Okay. So -- but
15 under a RECRA, regular RECRA authorization
16 type-thing, you guys automatically are
17 given authority on that?

18 MR. SANGER: Right. That's
19 correct.

20 MS. REINHART: Okay.

21 MR. SANGER: That's correct.

22 MS. REINHART: Okay.

23 MR. SANGER: And, you know, most
24 of your HSWA regulations have to do with
25 LDRs.

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1 MS. REINHART: Right.

2 MR. SANGER: And listing new ways

3 --

4 MS. REINHART: Okay. Okay.

5 Well, that makes a lot of sense to me now.

6 I just needed to have that explained to me
7 so that, you know, when questions come to
8 us as Council Members, we understand what
9 the process is that we go through, but as
10 well as what you go through, as the Agency,
11 to be able to explain some of these time
12 frames that we're being asked about. So,
13 okay, well, that's all that I have.

14 Catherine, do you have anything that
15 you want to communicate to us?

16 MS. SHARP: I might just mention
17 a couple of things to you all that are
18 going on at the DEQ, just in the interest
19 of getting information out. And if you
20 have any questions about any of this,
21 please ask me. I never know what level of
22 detail or level of information is of
23 interest to people outside the DEQ.

24 But that question about
25 authorization, there is a whole behind the

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1 scenes process of authorization that the
2 states go through. It's a continuing
3 dialogue with EPA, where they are trying to
4 ensure that we have adequate capability and
5 capacity to implement these programs. And
6 Oklahoma is a little bit irritated about it
7 at times, no where near as irritated as
8 some other states are. We have a
9 philosophy to get authorized in all our
10 programs as much as we can. Whatever
11 they'll delegate to us, we feel like we
12 should be implementing that stuff, anything
13 that's delegable. So that's going on all
14 the time.

15 I might introduce a staff member
16 that you may not be familiar with. Gail
17 Hammil, you might -- she works with Tammi
18 Johnson in RECRA and she's handling a lot
19 of the authorization process right now and
20 kind of finding out how this all works.

21 Just one -- the frustration is, you
22 know, we tell them that we're doing this
23 program and we have been authorized since,
24 like, '83. Well, they do various levels of
25 review, their job is oversight and they

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1 never -- for the last several years, have
2 found very little wrong with our program.
3 You know, they can re-do inspections or
4 look at our stuff, you know, anything we do
5 is open to them.

6 And, yet, in authorization, you have
7 to resubmit with a relatively high level of
8 frequency a lot of the same stuff that
9 they've already reviewed and, you know,
10 hasn't changed much and that sort of thing.
11 So there is a fair amount of labor that
12 goes into retaining your authorization, and
13 Gail is kind enough to be handling that
14 right now.

15 Just a few things that are going on.
16 You all probably know about this, but
17 Governor Henry has appointed a guy named
18 Myles Tolbert as the Secretary of the
19 Environment. And I don't personally know a
20 lot about Myles, I think our attorneys have
21 worked with him some. He was with the
22 Attorney General's office, he's done
23 environmental law in the past.

24 We had, what I thought was -- the
25 few things I worked with him on, a good

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1 rapore with him, he's good to work with. I
2 don't know much more about him than that.
3 He used to staff the EQ Board as legal
4 counsel, so he knows kind of what the
5 agency does and that sort of thing. So
6 we're kind of looking forward to working
7 with him.

8 I've had a few questions about what
9 exactly does the Secretary of the
10 Environment do. And I don't know, he's
11 kind of like our liaison to the Governor's
12 office. He answers directly to the
13 Governor, but he also oversees the Oklahoma
14 Water Resources Board. And, so, they tend
15 to be more involved in water issues than
16 anything else.

17 But, for example, one important
18 thing they do, one very important thing to
19 us, is we've been under a hiring freeze
20 since pre-Governor Keating, since a good
21 ten, twelve years now.

22 What the freeze does now is, if a
23 person vacates a position, we can submit a
24 freeze exception and try to get approval to
25 fill a vacancy. And it's very important to

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1 us, otherwise our work force would
2 continually shrink.

3 So what they're letting us do right
4 now, for the time being, is submit freeze
5 exceptions to the Governor's office. And
6 that's one thing the Secretary does, is he
7 looks at those and either approves those or
8 doesn't approve those. So it's important
9 to have somebody in that position who
10 understands our needs so you can fill a
11 vacancy when you need to.

12 And then there's other things. His
13 predecessor, Brian Griffin, was heavily
14 involved in the Tar Creek project, which
15 while this Council doesn't get that much
16 involved in that Tar Creek SuperFund site,
17 it is a site with a great deal of national
18 vision and it just gets a lot of attention.
19 It's considered a mega site under
20 SuperFund, if you've heard that term, and
21 it's nationally -- the SuperFund is trying
22 to figure out how to solve these larger
23 sites, sites that have a remedy of greater
24 than a fifty million dollar cost.

25 So, anyway, Brian Griffin was really

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1 a lot of help on that. So we're looking
2 forward to working with Myles. I don't
3 know what areas he'll be involved in or not
4 involved in, we'll just kind of have to get
5 to know him.

6 Most people want to know how our
7 budget is doing because, if you read the
8 Daily Oklahoman, and I don't know what's in
9 the Tulsa papers, but the state agencies
10 are all facing at least somewhat grave
11 conditions.

12 I think I've mentioned this before
13 but, you know, we get very little of our
14 budget from state appropriations and that's
15 fortunate. A long time ago, it seems like
16 a long time ago now, the Legislature saw
17 fit to enact fees for most of the programs,
18 solid waste fees, tire fees, hazardous
19 waste fees.

20 So right now, I think where we are
21 right now is we are trying to cut seven
22 percent out of our budget. We're trying to
23 operate at seven percent below what our
24 budget had been, but we only get about
25 twenty percent of our money, agency-wide,

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1 from a state appropriation.

2 So I believe that seven percent only
3 has to come out of that twenty percent, so
4 that's a lot better. You can see where I'm
5 going with that. But it's a month-by-month
6 thing, you know, they tally it up with what
7 the tax revenues are. You'll notice there
8 is a monthly report about how bad it is,
9 and that's the Office of State Finance or
10 whoever does that, kind of reports out on
11 that. So that's where we are.

12 The way it's impacted the DEQ, we've
13 had to move some people around, re-budget
14 people where the money -- you know, some
15 divisions, like you all deal with the Land
16 Protection Division, we're reasonably
17 healthy because of fees. There is other
18 divisions that don't have the fee revenue
19 and we help support them, the lab and so
20 forth, and they're having to move some
21 people around.

22 And you know, we can give you all
23 any level of detail you want on all this,
24 because we have people in finance that are
25 dealing with it every day.

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1 But right now, what I would say is,
2 I think the Land Protection Division
3 programs are healthy, we're holding our own
4 employee-wise, we're keeping up with what I
5 think is the same work load as we have for
6 some time, you know, we're not shrinking
7 any, per se. That doesn't mean you won't.

8 For example, our fee revenues, while
9 they're healthy, they are down. The RECRA
10 grant, for example, the rules that you all
11 look at, we have always overmatched that
12 grant. We always put more state money into
13 that program than we need to and that's why
14 we have, what I think, is a healthy program
15 that we're proud of. We get all the
16 authorization from the EPA we need and
17 have, you know, not all states have the
18 luxury to do that.

19 As that fee revenue shrinks, at some
20 point we'll probably get down to matching
21 what the minimum is to match, it's twenty-
22 five cents on the dollar that you have to
23 match that EPA grant with. So long range,
24 I don't know where that's going to go, but
25 right now we're still, you know, there is

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1 nothing that we're really wringing our
2 hands over, so to speak.

3 One thing that might be on the
4 horizon for you all is, you probably
5 remember passing the Brownfields Rules
6 about a year and a half or so ago. Our
7 program continues to be very high profile
8 and very successful. There are some issues
9 in the program that we would like to change
10 now that we've implemented it, you know,
11 that law, that Brownfields Law is not too
12 old. And when it went through the
13 Legislature with some -- as all laws are,
14 subject to some influences that we don't
15 think are in the best interest of the
16 program.

17 Now that we've been implementing it,
18 it would be nice to see some legislative
19 change. Whether those happen this session
20 or not, nobody knows. But there are some
21 rule changes that we can make that would
22 improve that program. So the rules that
23 you all passed to enact the Brownfields
24 Program, you are likely to see revisited,
25 perhaps later this year. So that's

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1 something that I'm really kind of looking
2 forward to.

3 Speaking of money a minute ago, EPA
4 -- there was federal Brownfields law passed
5 -- well, going on two years ago now, it
6 earmarked fifty million dollars to go to
7 the states to implement Brownfields
8 programs. Congress hasn't made that
9 appropriation yet, but the law says that
10 that money will be out there and they are
11 asking for applications.

12 We are submitting an application to
13 EPA for some money. We're just now putting
14 the finishing touches on that -- it's due
15 the end of this month -- of things we could
16 do with that money, assuming it's funded,
17 we would expand the program, we would give
18 the money to cities and other entities to
19 do site assessment and so forth. Just,
20 again, to overall Brownfields idea (sic),
21 is to kind of spur redevelopment and
22 continue to grow that program. It's a feel
23 good program in that it really has a lot of
24 spinoffs that are positive. It's not so
25 much a regulatory program, but we're kind

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1 of dealing with urban sprawl and different
2 issues like that. So we're really hoping
3 that happens, because that's really a good
4 thing that we're involved in.

5 And at some point today -- I don't
6 know if it's on the agenda -- are we going
7 to talk about the future meetings of this
8 group? And the only reason I ask is, I
9 couldn't remember this morning what our
10 schedule is and where we're going to be
11 later in the year. So we could either do
12 it on the record or off the record.

13 MS. JOHNSON: It's set up and
14 there is a list.

15 MS. SHARP: Okay. We ought to
16 talk about planning logistics for the
17 future meetings at some point. The only
18 other thing -- I can't remember if you all
19 keep up with Oklahoma's involvement in the
20 Central States Radiation Compact. I can't
21 remember -- you know, H.A. used to be the
22 Commissioner and I'm now the Commissioner.

23 And to make a long story short, we
24 are involved in -- it's the highest level
25 litigation I've ever been involved in. We

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1 are a member of a five state compact trying
2 to site a low level radiation waste site in
3 Nebraska and it's been going on for about
4 fifteen years. Do you all remember H.A.
5 briefing you on this? It culminated the
6 whole process, I think, just to be brief,
7 culminated this summer in nine weeks of a
8 trial -- a nine week trial in Lincoln,
9 Nebraska.

10 The Judge rendered a decision
11 September 30th, giving us a hundred and
12 fifty-one million dollar judgment in favor
13 of the Compact against Nebraska. And
14 Nebraska estimates that they would have to
15 raise their sales tax a half a cent for two
16 years, statewide, to pay off that debt,
17 which is not popular with them.

18 It's on appeal, it's going to go to
19 appeal in St. Louis sometime in the coming
20 year. Ultimately, we'll go to the Supreme
21 Court. And, so, Oklahoma is a party in
22 that, we're trying to work our way through
23 that. And if anybody wants any more
24 information on that, it's sort of an
25 interesting thing to study and that is

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1 rocking along.

2 So with that said, I can't think of
3 any other news from the DEQ, unless you all
4 have questions.

5 MS. REINHART: Does anybody have
6 questions? Okay.

7 MS. SHARP: Thank you.

8 MS. REINHART: Thank you,
9 Catherine, for that update. I was curious
10 about how that trial turned out with the
11 Radiation Compact. You and I were at the
12 Board Meeting in September.

13 MS. SHARP: Okay.

14 MS. REINHART: And they were
15 right in the midst of that trial.

16 MS. SHARP: Yeah, I didn't think
17 I had briefed you all on the outcome of
18 that. I mean, that Judge -- I'll just tell
19 you, we were very fortunate. We have a
20 Judge who understands things just as clear
21 as they come. He went out to the site in
22 western Nebraska and toured it. He asked
23 questions during that trial that were just
24 amazingly perceptive about geology and
25 hydrogeology.

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1 And it took him nine weeks to go
2 through all the testimony and then he wrote
3 a lengthy, lengthy opinion, but in effect
4 said that the State of Nebraska acted in
5 bad faith, there was political influence on
6 the decision, it was inappropriate, and
7 awarded a hundred and fifty-one million
8 dollars. And the interest on that is still
9 accruing because obviously they haven't
10 paid it yet. So at the next level the
11 amount -- if the Judge agrees with us in
12 St. Louis, the money is just accruing as we
13 go along.

14 And there is some interesting
15 lessons about sort of the relationship
16 between the politics and the regulatory
17 agency, it's kind of a textbook example of
18 that. But anyway, that's where that
19 stands.

20 MS. REINHART: Okay. I
21 appreciate it, very much.

22 The next item on the agenda is
23 Election Of Chair And Vice Chair. And last
24 year I got pretty confused about that whole
25 process. So we're going to definitely make

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1 it very clear this time. We will be taking
2 nominations for Chairperson first and then
3 we will go back and do Vice Chair.

4 So, do I hear any nominations on
5 Chair? And before we get there, I would
6 like to say, I've been doing this for a
7 while. I do appreciate the opportunity to
8 do this job and so forth, but I really
9 don't -- I would like to share that
10 pleasure with somebody else.

11 So I will withdraw my name if it's
12 nominated. So do I hear any nominations
13 for Chairperson for the next year, 2003?

14 I have one. I would like to
15 nominate David Bradshaw as Chair. He's
16 participated, I think, on this Council
17 almost consecutive years ever since its
18 inception. If not, he's been here for
19 quite a long time and I think that his
20 knowledge of the rules and regs would hold
21 us in good stead before the Board and so
22 forth.

23 Do I hear any other nominations?
24 Seeing none, do we have a vote at this
25 time? Okay. Would somebody like to second

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1 that nomination?

2 MR. ANDERSON: I'll second that
3 nomination.

4 MS. REINHART: Okay. Thank you.
5 Myrna, if we could do a roll call.

6 MS. BRUCE: Mr. Anderson.

7 MR. ANDERSON: Yes.

8 MS. BRUCE: Mr. Bradshaw.

9 MR. BRADSHAW: Yes.

10 MS. BRUCE: Mr. Elwell.

11 MR. ELWELL: Yes.

12 MS. BRUCE: Mr. Ihler.

13 MR. IHLER: Yes.

14 MS. BRUCE: Mr. Kennedy.

15 MR. KENNEDY: Yes.

16 MS. BRUCE: Mr. Tomberlin.

17 MR. TOMBERLIN: Yes.

18 MS. BRUCE: Ms. Reinhart.

19 MS. REINHART: Yes.

20 Well, with that, I understand that I
21 am to turn this over to the new Chair. So,
22 Mr. Bradshaw, you are now Chair of the
23 meeting.

24 MR. BRADSHAW: Okay. Can I hear
25 myself?

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1 Our next item will be nomination of
2 the Vice Chair. And I guess my first
3 thought is, Jody has been doing this and
4 doing it very well for a very long time, so
5 I think we really owe her a debt of
6 gratitude for doing that. It's been a lot
7 more work than you would like to think.

8 I, personally, having opened the
9 nominations, I don't know if this is
10 totally appropriate, but I don't really
11 want to let her off the hook so quickly,
12 because of her work. I would understand
13 her need to back out of it and focus on her
14 (inaudible) company and give others an
15 opportunity. But I would like to take the
16 opportunity to nominate her as Vice Chair
17 to hold on for one more year, perhaps if
18 that's appropriate.

19 MS. REINHART: That's fine.

20 MR. KENNEDY: I'll second that,
21 if you're willing.

22 MS. REINHART: Yes, I'm willing.

23 MR. BRADSHAW: See there, no good
24 deed goes unpunished. Are there any other
25 nominations? Okay. Hearing none, if the

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1 secretary will call the roll on the motion.

2 MS. BRUCE: Mr. Anderson.

3 MR. ANDERSON: Yes.

4 MS. BRUCE: Mr. Bradshaw.

5 MR. BRADSHAW: Yes.

6 MS. BRUCE: Mr. Elwell.

7 MR. ELWELL: Yes.

8 MS. BRUCE: Mr. Ihler.

9 MR. IHLER: Yes.

10 MS. BRUCE: Mr. Kennedy.

11 MR. KENNEDY: Yes.

12 MS. BRUCE: Ms. Reinhart.

13 MS. REINHART: Yes.

14 MS. BRUCE: Mr. Tomberlin.

15 MR. TOMBERLIN: Yes.

16 (End of Proceedings)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF HAZARDOUS WASTE MANAGEMENT ADVISORY
COUNCIL MEETING
ITEM NO. 6
OAC 252:205-3-1 INCORPORATION BY REFERENCE
HELD ON JANUARY 16, 2003, AT 10:00 A.M.
707 NORTH ROBINSON
IN OKLAHOMA CITY, OKLAHOMA

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REPORTED BY: Christy A. Myers, CSR

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- 1. MR. WESLEY ANDERSON - MEMBER
- 2. MR. DAVID BRADSHAW - CHAIR
- 3. MR. BRUCE ELWELL - MEMBER
- 4. MS. MICHAEL GRAVES - ABSENT
- 5. MR. DOUGLAS HAWKINS - ABSENT
- 6. MR. JERRY IHLER - MEMBER
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- MS. MARTHA PENISTEN - ATTORNEY
- MS. TAMMI JOHNSON - STAFF

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PROCEEDINGS

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MR. BRADSHAW: Okay. And we're

ready to go to Item 6 on the agenda, which

is Formal Permanent Rulemaking Hearing And

Vote On Proposed Amendment To OAC 252:205-

3-1, that's Incorporation By Reference, and

with presentation for the DEQ to be made by

Tammi Johnson.

MS. JOHNSON: Can I come up here

and sit down?

MS. REINHART: Yes, please do.

By the way, I really appreciate the

microphones and I know that Christy really

appreciates the microphones, to be able to

hear me.

MS. JOHNSON: The amendments to

252:205-3-1, there are four particular

items. One of those -- the first one deals

with newly listed hazardous waste from

inorganic chemical manufacturing processes.

These being added, I believe they are K161,

177, 178.

The second item is the amendment to

the Corrective Action Management Unit,

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1 which require -- basically, requires more
2 detailed information, such as minimum
3 design in operational standards and
4 application information that includes
5 public notice.

6 The third item is a legal challenge.
7 The D.C. Court, Circuit Court, vacated two
8 parts of the Phase 4 LDR. The first part
9 required the deletion of regulatory
10 language that mineral processing waste,
11 characteristic wastes that were byproducts
12 of sludges being reclaimed for solid waste
13 and therefore hazardous waste. So this was
14 to delete such language.

15 The second part was the disallowance
16 of the Toxicity Characteristic Leaching
17 Procedure, TCLP, to be used for determining
18 if manufacturing gas plant waste is
19 hazardous. Apparently, it was not specific
20 enough, it just didn't adequately make that
21 determination using the TCLP.

22 The fourth item was a correction to
23 the CFR. There were errors made in the
24 treatment standard table in 268.40. And
25 basically the table was not printed in its

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1 entirety. So those were the -- that was
2 that issue and those were the four items.

3 MR. BRADSHAW: Okay. Thank you,
4 Tammi. Are there questions and discussion
5 of this proposal by the Council? Are there
6 questions and discussion by the public or
7 comments? Would the Council like to
8 comment on the discussion from the public?
9 Okay.

10 Hearing none, I will entertain a
11 motion that we adopt the proposed
12 incorporation as proposed on Agenda 6 to
13 recommend that adoption to the DEQ Board.
14 Do I hear such a motion?

15 MS. REINHART: So moved.

16 MR. ELWELL: Second.

17 MR. BRADSHAW: Moved and
18 seconded. Will the secretary call roll,
19 please.

20 MS. BRUCE: Mr. Anderson.

21 MR. ANDERSON: Yes.

22 MS. BRUCE: Mr. Elwell.

23 MR. ELWELL: Yes.

24 MS. BRUCE: Mr. Ihler.

25 MR. IHLER: Yes.

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1 MS. BRUCE: Mr. Kennedy.
2 MR. KENNEDY: Yes.
3 MS. BRUCE: Ms. Reinhart.
4 MS. REINHART: Yes.
5 MS. BRUCE: Mr. Tomberlin.
6 MR. TOMBERLIN: Yes.
7 MS. BRUCE: Mr. Bradshaw.
8 MR. BRADSHAW: Yes.

9 (End of Proceedings)

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DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF HAZARDOUS WASTE MANAGEMENT ADVISORY
COUNCIL MEETING

ITEM NO. 7

OAC 252:205-3-2 INCORPORATION BY REFERENCE

HELD ON JANUARY 16, 2003, AT 10:00 A.M.

707 NORTH ROBINSON

IN OKLAHOMA CITY, OKLAHOMA

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REPORTED BY: Christy A. Myers, CSR

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PROCEEDINGS

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MR. BRADSHAW: Okay. Item 7,

Formal Permanent Rulemaking Hearing And

Vote On Proposed Amendment To OAC 252:205-

3-2, Incorporation By Reference. The

presentation, again, will be by Tammi

Johnson.

MS. JOHNSON: This is basically

the adoption by reference where we update

our -- the CFR. So this is the -- to adopt

the 40 CFR 260 through 279 that was

published July the 1st, 2002.

In addition, we recently received

some information from EPA for our latest

authorization package submittal and some

rule changes that they were suggesting.

And the communication came from EPA

after our rule was noticed or sent for

notice to the Secretary of State for

publication. So although it's not

specifically on here, it still is within

the scope of the incorporation by

reference. And I'll let Jerry explain a

little bit more about those items, specifically.

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1 MR. SANGER: There were -- can
2 you all hear me okay? Okay. There were a
3 couple of things, I think, that kind of
4 threw our incorporation by reference --
5 actually our authorization package, behind
6 this year.

7 EPA's funding is down, of course,
8 just like, you know, states and a lot of
9 other federal agencies, but they have for
10 several years used a contractor to produce
11 guidelines for state adoption of federal
12 regulations by reference that we use.

13 And as EPA finds mistakes in the CFR
14 or if they find things that states should
15 not adopt by reference in a wholesale
16 adoption by reference, then they try to
17 have the contractor note those things in
18 this guidance document that the states can
19 use.

20 Well, this is a year behind. The
21 personnel at Region 6 that review our
22 authorization applications, the lady that
23 does that was sick for over a year. So, in
24 any event, EPA was a little behind in
25 getting their comments to us on the changes

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1 that we needed to make for last year's
2 authorization package.

3 So they sent some comments and
4 things that they wanted us to change in the
5 adoption by reference for -- actually this
6 was for the 2001 CFR. So what I've tried
7 to do was walk through and find the ones
8 that were actually corrected by the EPA in
9 the 2002 CFR, which I found one, believe it
10 or not, that they actually corrected
11 themselves. So we won't have to talk about
12 that one today.

13 But there are still -- it looks to
14 me like three changes that we need to look
15 at today to properly incorporate by
16 reference and fashion that EPA will go
17 ahead and approve our authorization.

18 Now, I'm going to kind of leave it
19 up to you as the Council to decide whether
20 or not you wanted to take this up today or
21 if you want to wait until the next Council
22 meeting. If we wait until the next Council
23 meeting, these things won't be effective
24 until next year as we discussed earlier in
25 this meeting. And that will delay our

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1 authorization -- that will put us at least
2 two years behind in authorization.

3 So that will make a big difference
4 to permitted facilities that have to deal
5 with the municipal-type regulations and
6 that have to submit permit modifications
7 not only to the state, but to EPA, also.

8 But in any event, I'm going to go
9 ahead and give you the information and let
10 you act on it as you see best.

11 The first one in this little handout
12 that I've given you are excerpts from this
13 guidance document. And the first one on
14 page twenty-five refers to 261.4(b)(18).
15 And as you can see in the guidance, it says
16 that only Utah can adopt these provisions
17 because it deals with their state alone and
18 they don't -- EPA does not want other
19 states adopting that particular
20 subparagraph, 261.4(b)(18).

21 So in 3-2(c), which deals with 261,
22 we would need to simply say -- we would
23 need to exclude 261.4(b)(18) for
24 authorization purposes.

25 MS. SHARP: So that's within the

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1 action that they're considering today, that
2 this would be a modification to that, in
3 other words?

4 MR. SANGER: Correct.

5 MS. REINHART: Right.

6 MS. SHARP: Okay. Got you.

7 MR. SANGER: Okay. Are there any
8 questions on that particular one? I think
9 that's pretty straightforward. Okay.

10 The next one deals with
11 265.340(b)(2), and that is, I believe, on
12 the page that's numbered thirty in the
13 handout that I gave you. This would affect
14 our rule 3-2(g) where we list the
15 exceptions to 265.

16 The language in the Federal Register
17 and in way of explanation, the Code of
18 Federal Regulations is supposed to be an
19 accurate representation of the rules that
20 were passed and noticed in the Federal
21 Registers. Well, sometimes, from the time
22 that it goes out in the Federal Register to
23 the time the Code of Federal Regulations
24 Office gets the publications, there's
25 mistakes made.

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1 And somehow they left -- apparently
2 left the old language in this subparagraph,
3 in the 1999 Federal Register ruling that
4 was published September 30th of 1999, the
5 new amending language to Subparagraph
6 265.340(b)(2) was not -- never made it into
7 the Code of Federal Regulations.

8 So the language that you see there
9 in quotes and italics, the following
10 requirements continue to apply even where
11 the owner or operator, so on and so forth,
12 is the language that EPA wants us to
13 substitute for Subparagraph (b)(2), because
14 that's actually what the Federal Register
15 passed and that's the real rule.

16 When EPA enforces rules, they
17 enforce the actual language in the Federal
18 Register, not the CFR. So, that would get
19 us on par with EPA. Are there any
20 questions on that particular rule?

21 MR. BRADSHAW: Jerry, I do have a
22 question, just to be sure. In Item 7 on
23 the agenda, the proposed amendment is to
24 265:3-2(f), do all of these fit into that
25 paragraph? I mean, I think you said that,

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1 but I may have drifted off. I just wanted
2 to be sure we noticed it.

3 MS. REINHART: I think, Tammi,
4 did you think that this was within the
5 scope of this rulemaking here?

6 MS. JOHNSON: That's what I was
7 told, that it would be within the scope --
8 well, within the OAC 252:205-3-2.

9 MS. REINHART: Right, within that
10 scope?

11 MS. JOHNSON: Yes. But I think
12 the answer to Mr. Bradshaw is if it is
13 within (f), I don't believe that's correct.
14 I think it's different. I think these
15 would be --

16 MS. PENISTEN: Part (f) just
17 pertains to Part 264.

18 MS. JOHNSON: Right. And then
19 the others would be -- the 265 would be
20 (g), the 268 would be -- both of those
21 would be (i).

22 MR. BRADSHAW: Okay. So there is
23 some difference. Jerry, do you feel
24 comfortable with going ahead, if we pass
25 that today? Are we okay in terms of the

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1 noticing?

2 MR. SANGER: Well --

3 MS. SHARP: We've thought so
4 until now.

5 MR. SANGER: The agenda really, I
6 think, should have just said 205-3-2 and
7 not at any particular subparagraph (f), (a)
8 or anything in there. This would have left
9 the door open to change all of these.

10 MR. BRADSHAW: Well, I certainly
11 agree. I -- so I'm relying on your legal
12 counsel here to tell this Council just what
13 we can do. I mean, I don't want to do it
14 personally.

15 MR. SANGER: Right. As much as I
16 would like to get this done, honestly, I
17 think since we put (f) on the agenda, that
18 (f) would be the only one that we could act
19 on today because they are completely
20 separate. If we had just said 3-2, then I
21 think we could have changed any of them
22 within 3-2.

23 Now, that's my opinion. There is
24 another staff attorney here, my supervisor,
25 you can ask her opinion. My opinion is

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1 that since (f) was specifically listed on
2 the agenda, that I would not personally
3 feel comfortable in changing these other
4 subparagraphs.

5 MR. BRADSHAW: Okay.

6 MS. REINHART: I've got a
7 question. My question, could we handle
8 this under New Business then? Because, I
9 mean, I know where you're coming at because
10 it wasn't public notice, but it could be
11 handled as New Business?

12 MR. SANGER: Are you asking me?

13 MS. REINHART: Yes.

14 MR. SANGER: My answer would be,
15 no. My reading of the statute is that --

16 MS. REINHART: It has to be
17 publicly noticed as such?

18 MR. SANGER: This could have been
19 reasonably foreseen before the meeting and
20 it should have been noticed or it should
21 have at least been on the agenda.

22 MS. REINHART: Okay.

23 MR. BRADSHAW: I think then, you
24 know, as far as this agenda item and as far
25 as this meeting, we should not go outside

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1 the scope of notice, that's the advice I'm
2 hearing. I think that when we get down to
3 New Business, I do want to discuss the next
4 meeting of this Council and if we can help
5 this process by considering a meeting at an
6 earlier time, then we'll try to weigh that
7 into the process.

8 I think it's very important that we
9 do these incorporations as quickly as
10 possible, but I want to make sure that we
11 have all the "i's" dotted when we do so.

12 MR. SANGER: Would you like me to
13 go ahead on the explanation on the next
14 one?

15 MR. BRADSHAW: Yes. I'd like to
16 hear the rest of it.

17 MR. SANGER: Okay. The next one
18 is 268.7(a)(9)(iii) and that's on page
19 thirty-three. And I think that one also is
20 pretty straightforward.

21 It just says that D009 should not
22 have been included in the reference. It
23 says the Federal Code refers to the lab
24 text containing D001 through D043. And
25 they're saying that, if you read through

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1 that, that A9 addresses the requirements
2 for using alternative treatment standards
3 in compliance with 268.42(c).

4 After an opportunity to read that,
5 are there any other questions on that?

6 MR. BRADSHAW: There are
7 apparently no comments.

8 MR. SANGER: Well, that's all I
9 have for today. And I think your idea to
10 go ahead and just move it to the next
11 meeting would probably be better.

12 MR. BRADSHAW: Okay. Tammi, we
13 have -- you did present some material to
14 us, being 205-3-2(f); is that correct?

15 MS. JOHNSON: Of the new stuff?

16 MR. BRADSHAW: Yes.

17 MS. JOHNSON: Well, we had the
18 adoption of reference of the CFR for July
19 the 1st, 2002.

20 MR. BRADSHAW: Okay. So that
21 motion would be appropriate for that?

22 MS. JOHNSON: That's my
23 understanding.

24 MR. BRADSHAW: We do have
25 (inaudible). Really, this notice -- you

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1 know, the agenda really doesn't list -- are
2 we sure, now -- I don't know if I'm raising
3 this issue correctly or not, but 205-3-2 is
4 in the title and then it says the purpose
5 of the proposed amendments to 205(f) for
6 some reason.

7 MS. PENISTEN: Yes, that's
8 appropriate. If you have your copy of the
9 text in the rules, you can see that Part
10 264 of the 40 CFR.

11 MR. BRADSHAW: Yes.

12 MS. PENISTEN: Turns out to be
13 Paragraph (f) in 205-3-2 and that's where
14 our changes appear.

15 MR. BRADSHAW: Okay. On some of
16 the ones Jerry was talking about is 265, so
17 --

18 MS. PENISTEN: Right.

19 MR. BRADSHAW: So we can't really
20 do those.

21 MS. PENISTEN: Right.

22 MR. BRADSHAW: So what this
23 motion addresses are those changes in (f)
24 that would come under 264 Federal Regs?

25 MS. JOHNSON: Right.

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1 MR. BRADSHAW: So, I guess, then,
2 do I hear a motion to make the
3 incorporations as proposed in Item 7, to
4 recommend those to the DEQ Board?

5 MS. REINHART: So moved.

6 MR. ELWELL: Second.

7 MR. BRADSHAW: Are there any
8 questions by the Council? Discussion?

9 MR. KENNEDY: So we're looking at
10 the 261.4(b)(18)?

11 MS. REINHART: What Jerry talked
12 about wouldn't -- this Paragraph (f) only
13 talks about Part 64. So the things that
14 Jerry spoke to about, 261.4 Paragraph
15 (b)(18) and so forth, they are not
16 effective for all states; is that correct,
17 Jerry?

18 MR. SANGER: That's correct.

19 MS. REINHART: Okay.

20 MR. SANGER: The changes I
21 referenced fall in Subparagraph (c)(g) and
22 (i) and none of those proposed changes were
23 in Subparagraph (f). They deal with
24 different sections of the CFR: 261, 265 and
25 267.

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1 MS. REINHART: Right.

2 MR. SANGER: Whereas (f) only
3 deals with 264.

4 MS. JOHNSON: Was that one item
5 264.1(b), wasn't that in (f)?

6 MS. REINHART: That's 265.

7 MR. KENNEDY: 261.4(b)(18) or
8 261, I'm sorry.

9 (MULTIPLE CONVERSATIONS)

10 MR. SANGER: That first one,
11 261.4 would fall in Subparagraph (c) of 3-
12 2, which deals with Part 261.

13 MR. BRADSHAW: Okay. So I think
14 the clarified motion is dealing with those
15 changes as specifically addressed in the
16 agenda item and those that are appropriate
17 are on the table to be incorporated.

18 And we have a motion on the floor.
19 Do we have any more discussion by the
20 Council? Any discussion from the public?
21 Okay. Do I hear a motion that we recommend
22 this to the Board as proposed? It's
23 already --

24 MS. REINHART: It's already --
25 it's been seconded.

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1 MR. BRADSHAW: The stress is
2 unbelievable. Will the secretary call the
3 roll, please.

4 MS. BRUCE: Mr. Anderson.

5 MR. ANDERSON: Yes.

6 MS. BRUCE: Mr. Elwell.

7 MR. ELWELL: Yes.

8 MS. BRUCE: Mr. Ihler.

9 MR. IHLER: Yes.

10 MS. BRUCE: Mr. Kennedy.

11 MR. KENNEDY: Yes.

12 MS. BRUCE: Ms. Reinhart.

13 MS. REINHART: Yes.

14 MS. BRUCE: Mr. Tomberlin.

15 MR. TOMBERLIN: Yes.

16 MS. BRUCE: Mr. Bradshaw.

17 MR. BRADSHAW: Yes.

18 (End of Proceedings)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF HAZARDOUS WASTE MANAGEMENT ADVISORY
COUNCIL MEETING
ITEM NO. 8
OAC 252:205-3-3, INCORPORATION BY REFERENCE
HELD ON JANUARY 16, 2003, AT 10:00 A.M.
707 NORTH ROBINSON
IN OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

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MEMBERS OF THE COUNCIL

1. MR. WESLEY ANDERSON - MEMBER
2. MR. DAVID BRADSHAW - CHAIR
3. MR. BRUCE ELWELL - MEMBER
4. MS. MICHAEL GRAVES - ABSENT
5. MR. DOUGLAS HAWKINS - ABSENT
6. MR. JERRY IHLER - MEMBER
7. MR. BOB KENNEDY - MEMBER
8. DR. JODY REINHART - VICE CHAIR
9. DR. STEVE TOMBERLIN - MEMBER

STAFF MEMBERS

- MS. MYRNA BRUCE - SECRETARY
- MR. JERRY SANGER - ATTORNEY
- MS. MARTHA PENISTEN - ATTORNEY
- MS. TAMMI JOHNSON - STAFF

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PROCEEDINGS

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MR. BRADSHAW: Agenda Item 8,

4

Formal Permanent Rulemaking Hearing And

5

Vote On The Proposed Permanent Changes To

6

OAC 252:205-3-3, Incorporation by

7

Reference. And, Tammi, will you present

8

the proposal?

9

MS. JOHNSON: This was a

10

subsequent incorporation and it revokes the

11

Federal Register of December 26th, 2000,

12

which was a deferment of the requirements

13

that PCB's be considered a constituent

14

subject to treatment standards when present

15

in soils that exhibit the toxicity

16

characteristic for metals. Revoking this.

17

MR. BRADSHAW: Okay. Is there

18

any discussion from the Council? Questions

19

by the public? Okay. Then I would

20

entertain a motion for a recommendation to

21

the DEQ Board that we enact Item -- Agenda

22

Item 8 for incorporation as recommended or

23

stated.

24

MS. REINHART: So moved.

25

MR. ANDERSON: Second.

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1 MR. BRADSHAW: Okay. And no
2 further discussion on the motion, I'll call
3 for roll call.

4 MS. BRUCE: Mr. Anderson.

5 MR. ANDERSON: Yes.

6 MS. BRUCE: Mr. Elwell.

7 MR. ELWELL: Yes.

8 MS. BRUCE: Mr. Ihler.

9 MR. IHLER: Yes.

10 MS. BRUCE: Mr. Kennedy.

11 MR. KENNEDY: Yes.

12 MS. BRUCE: Ms. Reinhart.

13 MS. REINHART: Yes.

14 MS. BRUCE: Mr. Tomberlin.

15 MR. TOMBERLIN: Yes.

16 MS. BRUCE: Mr. Bradshaw.

17 MR. BRADSHAW: Yes.

18 (End of Proceedings)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF HAZARDOUS WASTE MANAGEMENT ADVISORY
COUNCIL MEETING
ITEM NO. 9
NEW BUSINESS
HELD ON JANUARY 16, 2003, AT 10:00 A.M.
707 NORTH ROBINSON
IN OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

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MEMBERS OF THE COUNCIL

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4. MS. MICHAEL GRAVES - ABSENT
5. MR. DOUGLAS HAWKINS - ABSENT
6. MR. JERRY IHLER - MEMBER
7. MR. BOB KENNEDY - MEMBER
8. DR. JODY REINHART - VICE CHAIR
9. DR. STEVE TOMBERLIN - MEMBER

STAFF MEMBERS

- MS. MYRNA BRUCE - SECRETARY
- MR. JERRY SANGER - ATTORNEY
- MS. MARTHA PENISTEN - ATTORNEY
- MS. TAMMI JOHNSON - STAFF

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2

PROCEEDINGS

3

MR. BRADSHAW: New Business. I

4

think one of the things we want to address

5

right away is our new meeting schedule.

6

Now, in listening to Jerry Sanger of

7

the DEQ, I got the impression that the

8

proposals he was making for incorporation,

9

we'll probably need to get that -- that's

10

something we need to go ahead and get done

11

as quickly as possible.

12

MR. SANGER: Well, actually, if

13

we passed that even as an emergency

14

rulemaking, it won't make any difference

15

for authorization. It has to be a

16

permanent rule change before they will

17

consider it in our authorization package.

18

MR. BRADSHAW: And there is no

19

way to get a permanent rule before the

20

Board or anything like that.

21

MR. SANGER: Well --

22

MS. SHARP: We're looking at

23

schedules. Mary's passing it around to you

24

guys.

25

MS. REINHART: Right.

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1 MR. BRADSHAW: Okay. So we've
2 already got --

3 MR. SANGER: I don't see how
4 we're going to be able to have this,
5 because of the Environmental Quality Board
6 meeting schedule, I don't see how we could
7 get -- passed this as a permanent rule
8 change to get it in this legislative
9 session.

10 MR. BRADSHAW: No reason to
11 advance our schedule for the rest of this
12 year to try to deal with this.

13 MS. REINHART: How is this going
14 to effect the implementation? I mean, is
15 there going to be negative consequences?

16 MR. SANGER: Well, EPA will
17 probably just hold the authorization
18 package until we make those permanent rule
19 changes. I don't know that -- I mean, I
20 can't say for sure what they're going to
21 do, but that's their indication, that they
22 want these changes made before they are
23 going to approve the, what they call the
24 cluster eleven authorization package. That
25 particular package deals with provisions

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1 made through the 2001 CFR.

2 MS. PENISTEN: Do we know if they
3 are HSWA or non-HSWA?

4 MR. SANGER: These?

5 MS. PENISTEN: Cluster eleven.

6 MR. SANGER: Cluster eleven
7 probably has both HSWA and non-HSWA
8 rulemaking changes in it. Most of them
9 have both, but without doing a lot of
10 research, I couldn't answer for sure.

11 MR. BRADSHAW: We've just been
12 handed a tentative schedule for 2003 of the
13 Council meetings and Board meetings and so
14 on. And this, of course, today is January
15 16th and the next one that's on here is May
16 the 1st in Tulsa, and following that July
17 17th in, I guess, where Fairview Northwest
18 Technical Center is. I'm sure it's
19 somewhere in Oklahoma. October 2nd is in
20 (inaudible).

21 So one of the things we talked
22 about, though, was having a December
23 meeting so that in the event of weather, we
24 wouldn't be faced with this emergency
25 business again to figure out how we're

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1 going to get those incorporated before the
2 Board meets.

3 Could we do that adoption in October
4 for the previous year, or is that going to
5 be ready to go by then? Do we need to move
6 that to, say, in December? Jerry?

7 MR. SANGER: Well, of course,
8 these need to be done as permanent rule
9 changes and once you do a permanent rule
10 change, you can't amend it until it's
11 actually published.

12 So we get caught in the little web
13 of Secretary of State rules and so forth
14 that we send it over as a permanent change
15 too soon, then we can't change it. We
16 would have to put it into maybe 3-3 or some
17 other rule section if you wanted to make
18 some subsequent changes before our final
19 meeting where we do the next update,
20 incorporation by reference.

21 So my personal recommendation would
22 be to just go ahead and wait on these
23 changes until we're ready to go ahead and
24 do our next update of the incorporation by
25 reference for next year. That way, if we

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1 do need to make an emergency rule change
2 somewhere down the line through the year,
3 we can still amend this rule on an
4 emergency basis. These rules -- these
5 changes don't need to be done and I don't
6 think we can justify doing them on an
7 emergency basis.

8 MR. BRADSHAW: Okay. So you
9 don't really -- do you see the need for a
10 December meeting to compensate the
11 possibility of bad weather for this
12 meeting? It sounds like you're comfortable
13 with that risk?

14 MR. SANGER: I'm sorry?

15 MR. BRADSHAW: Let me try -- you
16 know, what we were talking about earlier.
17 Jody was talking about if we're unable to
18 make this meeting -- this January meeting,
19 that can create some problems in getting
20 these incorporations made before the Board
21 meets. So we talked about meeting in
22 December to make sure that we did that.
23 But is that an important thing to go
24 accomplish or not?

25 MR. SANGER: Well, if you wanted

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1 to go earlier than January of next year,
2 you could do it at the October meeting, as
3 proposed, and then you just wouldn't -- you
4 wouldn't have the option really of making
5 any changes to those rules until they're
6 published in the State Register.

7 So you can always -- see, we
8 wouldn't need to do changes to 3-3, which
9 is our subsequent incorporations rule
10 anyway, that one will be left open. We
11 could make the permanent changes in 3-2 and
12 then if there is some -- some rule that
13 comes along and EPA didn't want to pick it
14 up on an emergency basis, you would put it
15 into 3-3, in subsequent incorporations.

16 MR. BRADSHAW: So you feel like
17 maybe in October we could do what we just
18 did today and that way we kind of covered
19 it, or maybe move that October to December
20 or something like that. Do we need that
21 one in October or is that something we can
22 comfortably move to December?

23 MS. SHARP: You know what I might
24 recommend is that we not move it yet. I'm
25 thinking about those Brownfields rules that

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1 we might bring before you guys and you
2 might watch that along, because we can
3 always move it later in the year and make
4 the decision, you know, canvas you all
5 about your schedules and then if November
6 or December looks better --

7 MR. BRADSHAW: Okay.

8 MS. SHARP: So maybe we can leave
9 it where it is, but everybody is aware that
10 it could have to change.

11 MR. BRADSHAW: Okay. Are Members
12 of the Council comfortable with the
13 schedule as presented here? Do you all
14 have this? It's May 1, July 17th, October
15 2nd.

16 MR. TOMBERLIN: Are these dates
17 and places already set? They're already
18 set. I would have a conflict with one,
19 that's May the 1st.

20 MS. SHARP: You can't do the May
21 the 1st one?

22 MR. TOMBERLIN: I can't. But if
23 the rest of the Board can handle it, that's
24 no problem. That's the only problem I see.

25 MS. SHARP: Yes, and I was just

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1 thinking if we don't have Brownfields rules
2 ready by then, there may be no rules to
3 consider that day. So that meeting might
4 be somewhat tentative and I just won't know
5 for about another few weeks.

6 So we'll leave it where it is now,
7 but that one might not have any agenda
8 items, the May 1, one. One other question
9 that Jerry just mentioned and I thought
10 about this.

11 So the codified book is not actually
12 published until, what, early January or
13 late December?

14 MS. REINHART: Right.

15 MS. SHARP: That was one of the
16 reasons that we originally got into doing
17 this when we did it, you know, then you
18 have a book and then you say, even though
19 it's everything through July of the prior
20 year, it's codified into one book by
21 January 1 or so. Can you pick it up before
22 it's actually combined into a book? It's
23 always published in the Federal Register.

24 MR. SANGER: Well, the problem
25 is, is we adopt -- we actually adopt the

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1 Code of Federal Regulations. So this is
2 the language that we enforce, whether it
3 matches the Federal Register or not.

4 Now, EPA does it the other way.
5 They actually enforce the rules that are
6 published in the Federal Register. So if
7 we -- if we adopt -- if we notice a rule
8 for adoption, we have to have it available
9 to look at and to comment on. So that --
10 that could be a problem if it goes to the
11 Board meeting in November.

12 So if you wanted to act on it at the
13 Council level in October, we're not even
14 close to having that published and out at
15 that time.

16 MS. REINHART: I mean, I've
17 ordered CFR's for many years. Usually
18 January is about the earliest you can
19 order. I mean, many publication houses --
20 even government (inaudible) they won't --
21 they'll take orders but they won't deliver
22 until January or February.

23 MR. SANGER: Correct. So we kind
24 of flirt with having it not out soon enough
25 for the Board meeting and for public notice

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1 and, you know, public comment, even doing
2 it as early as we're doing it now.

3 MR. IHLER: So you're saying you
4 wouldn't want to go any sooner than the
5 middle of January? The concern about the
6 bad weather situation that we could have
7 possibly ran into, if we scheduled a fifth
8 meeting for December, middle of December,
9 that's too early to address what we've done
10 today? And when I say a fifth meeting,
11 then next year we would not do a January
12 meeting because we took care of that in
13 January -- or in December.

14 MR. SANGER: Right. State law
15 requires us to have the actual rule
16 language that we're proposing available for
17 public review here at the DEQ offices.

18 And so if we're proposing adopting
19 the CFR by reference and it won't be out
20 for three more months, then the public
21 won't have it to review and comment on and
22 we won't be in compliance with state law
23 that way. So that's potentially a problem.

24 MS. REINHART: January is
25 actually -- maybe a week (inaudible) but

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1 not necessarily. So, I mean January is
2 absolutely the earliest we can hold this
3 type of meeting to incorporate by reference
4 those July type of rules, right?

5 MR. SANGER: Right. In order to
6 have a CFR available for public review.

7 MR. BRADSHAW: Any more
8 discussion on the meeting dates? It sounds
9 like we're probably just going to try to
10 hold this agenda for now and, you know, and
11 keep in mind Mr. Tomberlin's situation.
12 Your (inaudible) right now, I don't know.
13 We haven't been having that May meeting so
14 that may not be a concern at this point.
15 Okay. Any other new business? Catherine?

16 MS. SHARP: Yes, I have one thing
17 if the Council doesn't have anything.

18 One thing I wanted to do is, and I
19 probably haven't done enough, is number one
20 thank you all for the time you put in on
21 this. You are one of several councils in
22 the DEQ, as you know, and I realize you all
23 have day jobs, and you have lives, and it's
24 hard to take your time out and to come here
25 to do this. It is immensely valuable to us

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1 that you all continue to do this, it really
2 is.

3 You just figured out today, it's one
4 pivotal piece in how we get our programs to
5 advance. From time-to-time, I've contacted
6 you all individually when your term on the
7 Council is perhaps up for renewal. And we
8 have an individual who works in our agency
9 who is a liaison of the Governor's office,
10 separate from the Secretary of the
11 Environment's liaison. We have a person
12 who does this for the whole agency, kind of
13 tracks all this and keeps up with it. And
14 what I usually tell her -- what she does
15 is, when the appointment is close to
16 expiring, she gets asked, you know, do you
17 want this person to re -- not that we get
18 to pick, but you know, sometimes you have a
19 problem with somebody not participating.
20 And so we give that feedback to the
21 Governor's office that, you know, they
22 haven't been the greatest member because,
23 number one, they don't show up for
24 meetings. I've been blessed that we
25 haven't had that problem on this Council.

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1 We support everybody on this
2 Council. When I'm asked, right now, we
3 have a great group and I just say, you
4 know, I would be happy to have any of them
5 reappointed. The reason I'm bringing this
6 up, she just asked me about a few of you
7 all and I'm going to tell her that again,
8 that any of your names -- and I don't even
9 know which ones they are, I've got to go
10 call her -- but I will tell her that the
11 system is working, the members we have are
12 engaged and they're getting the work done
13 and I would be more than happy if any were
14 reappointed for further terms.

15 The reason I mention it is, if
16 anybody wants off of the Council, you need
17 to make that known, too. And she's also,
18 incidentally -- you all have colleagues and
19 she's frequently looking for other
20 candidates for other Councils in different
21 roles in the agency. So when you know
22 someone who wants to be involved, who wants
23 to do a little sort of government advising,
24 she's always looking for good people there,
25 as well. So I just mention that so if you

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1 all have any feedback you want to give to
2 me about any of that, please feel free to
3 email me or call me or whatever.
4 Otherwise, I'm going to recommend you all
5 strongly.

6 MR. BRADSHAW: Thank you,
7 Catherine. Like I said, I've been on this
8 Council almost continuously since it's
9 formation, it's a good group. I think
10 we've done well. In fact, I think we've
11 done so well that we tend not to have a lot
12 of controversial issues which is not
13 necessarily what it use to be. It's a good
14 place to be.

15 Anyway, is there any other new
16 business? Before entertaining a motion for
17 adjournment, I would like to say, please
18 feel free to keep your seat after we
19 adjourn, because we're going to open it up
20 for a forum, open forum. And do I hear a
21 motion to adjourn the meeting?

22 MS. REINHART: So moved.

23 MR. BRADSHAW: Do I hear a
24 second?

25 MR. KENNEDY: Second.

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1 MR. BRADSHAW: Roll call, please.
2 MS. BRUCE: Mr. Anderson.
3 MR. ANDERSON: Yes.
4 MS. BRUCE: Mr. Elwell.
5 MR. ELWELL: Yes.
6 MS. BRUCE: Mr. Ihler.
7 MR. IHLER: Yes.
8 MS. BRUCE: Mr. Kennedy.
9 MR. KENNEDY: Yes.
10 MS. BRUCE: Ms. Reinhart.
11 MS. REINHART: Yes.
12 MS. BRUCE: Mr. Tomberlin.
13 MR. TOMBERLIN: Yes.
14 MS. BRUCE: Mr. Bradshaw.
15 MR. BRADSHAW: Yes.

16 The meeting is closed.

17 (End of Proceedings)

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