MINUTES
ENVIRONMENTAL QUALITY BOARD
FEBRUARY 25, 2011
DEQ MULTIPURPOSE ROOM
OKLAHOMA CITY, OKLAHOMA

EQB Approved
August 23, 2011

Notice of Public Meeting The Environmental Quality Board convened for a regular meeting at 9:30 a.m. in the Multipurpose Room at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma. This meeting was held in accordance with 25 O.S. Sections 301-314, with notice of the meeting given to the Secretary of State on December 7, 2011. The agenda was mailed to interested parties on February 11, 2011 and was posted at the Department of Environmental Quality on February 24, 2011. Mr. Thompson welcomed the Secretary of Environment, Mr. Gary Sherrer. Mr. Thompson presented a plaque to Lowell Hobbs honoring his 19-year service as an original member of the Water Quality Management Advisory Council. Brita Cantrell, Chair, called the meeting to order. Roll call was taken and a quorum was confirmed.

MEMBERS PRESENT
Brita Cantrell
Mike Cassidy
Bob Drake
Jennifer Galvin
David Griesel (late arrival)
Jerry Johnston
Steve Mason (early departure)
Sandra Rose
Terri Savage
John Wendling
Richard Wuerflein

MEMBERS ABSENT
Tony Dark
Kerry Sublette

DEQ STAFF PRESENT
Steve Thompson, Executive Director
Jimmy Givens, Deputy Executive Director
Martha Penisten, General Counsel
Wendy Caperton, Director, Administrative Services
Eddie Terrill, Director, Air Quality Division
Judy Duncan, Director, Customer Services Division
Gary Collins, Director, ECLS
Scott Thompson, Director, Land Protection Division
Shellie Chard-McClary, Director, Water Quality Div
Mista Turner-Burgess, WQD Supervising Attorney
Mark Hildebrand, Water Quality Division
Skylar McElhaney, Public Information Officer
Myrna Bruce, Secretary, Board & Councils

OTHERS PRESENT
Gary Sherrer, Secretary of Environment
Clayton Eubanks, Assistant Atty General
David Branecky, AQAC Member
Brian Duzan, LSAC Chair
Steve Woods, RMAC Chair
Lowell Hobbs, WQMAC Chair
Christy Myers, Court Reporter

The Attendance Sheet becomes an official part of these Minutes.

Approval of Minutes Ms. Cantrell, Chair, called for motion to approve minutes from the November 16, 2010 Regular Meeting. Ms. Rose made the motion and Ms. Savage made the second.

transcript pages 13 - 15

Mike Cassidy	Yes	Sandra Rose	Yes
Bob Drake	Yes	Terri Savage	Yes
Jennifer Galvin	Yes	John Wendling	Yes
Jerry Johnston	Yes	Richard Wuerflein	Yes
Steve Mason	Abstain	Brita Cantrell	Yes

Election of Officers – Chair Mr. Drake nominated Mr. Jerry Johnston as the Chair and Dr. Galvin made the second. Mr. Thompson presented a plaque to Ms. Cantrell for her service as Chair.

transcript pages 15 - 17

Mike Cassidy	Yes	Sandra Rose	Yes
Bob Drake	Yes	Terri Savage	Yes
Jennifer Galvin	Yes	John Wendling	Yes
Jerry Johnston	Abstain	Richard Wuerflein	Yes
Steve Mason	Yes	Brita Cantrell	Yes

Vice Chair Mr. Johnston then called for nominations for Vice Chair. Dr. Galvin nominated Mr. John Wendling and Ms. Savage made the second.

transcript pages 17 - 19

Mike Cassidy	Yes	Sandra Rose	Yes
Bob Drake	Yes	Terri Savage	Yes
Jennifer Galvin	Yes	John Wendling	Abstain
Jerry Johnston	Yes	Richard Wuerflein	Yes
Steve Mason	Yes	Brita Cantrell	Yes

OAC 252:100 Air Pollution Control Mr. David Branecky, Air Quality Council member, explained the proposal that would amend Subchapter 5 by adding a new section at OAC 252:100-5-2.3 that would allow the Department to assess annual operating fees to certain area sources of hazardous air pollutants. The proposal also amends OAC 252:100-7, Part 2 and OAC 252:100-8, Part 3 to increase permit application fees for both minor facilities and Part 70 sources.

Questions and comments from the Board and the public were fielded by Mr. Eddie Terrill, Division Director. Following much consideration, Mr. Johnston called for a motion on Subchapter 5. Mr. Mason moved approval and Ms. Cantrell made the second.

transcript pages 19 - 40

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	No	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Abstain
Jennifer Galvin	Abstain	Richard Wuerflein	Yes
Steve Mason	Yes	Jerry Johnston	Yes

Mr. David Branecky, Air Quality Council member, advised that the proposal would amend Subchapters 1, 7, and 8 to ensure that State rules affected by recent changes to the U.S. Environmental Protection Agency's (EPA's) policies and programs for greenhouse gas (GHG) emissions are not perceived to be more stringent than the corresponding federal requirements. He explained that these rules were passed by the Board as an emergency at its November 16, 2010. Staff is recommending passage as a permanent rule. Mr. Drake made motion for approval and Dr. Galvin made the second.

transcript pages 40 - 44

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
Steve Mason	No	Jerry Johnston	Yes

Mr. David Branecky, Air Quality Council member, advised that the proposal would amend Subchapter 3 by adding the annual and 24-hour fine particulate matter ($PM_{2.5}$) increments to OAC 252:100-3-4, Significant deterioration increments. Additionally, the

proposal would amend Subchapter 8 to implement the New Source Review (NSR) program for $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS), which includes updating the incorporation by reference of certain federal rules from July 1, 2009 to December 20, 2010. Hearing no questions or comments, Mr. Johnston called for a motion. Motion to approve was made by Dr. Galvin and the second by Ms. Rose.

transcript pages 44 - 46

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
Steve Mason	Yes	Jerry Johnston	Yes

Mr. David Branecky, Air Quality Council member, advised that the proposal would revoke the existing Appendix A and replace it with a new Appendix A to correct an inaccuracy pertaining to the allowable particulate matter emission rate for certain incinerators. Hearing no questions or comments, Mr. Johnston called for a motion. Motion to approve was made by Mr. Mason and the second by Ms. Rose.

transcript pages 46 - 48

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
Steve Mason	Yes	Jerry Johnston	Yes

Mr. David Branecky, Air Quality Council member, advised that the proposal would revoke the existing Appendix E and replace it with a new Appendix E to maintain consistency with the NAAQS. Specifically, the nitrogen dioxide (NO_2) and sulfur dioxide (SO_2) primary standards would be amended to reflect recent changes made by EPA. Hearing no questions or comments, Mr. Johnston called for a motion. Motion to approve was made by Ms. Cantrell and the second by Ms. Rose.

transcript pages 48 - 50

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
Steve Mason	Yes	Jerry Johnston	Yes

OAC 252:302 Field Laboratory Accreditation Mr. Brian Duzan, Chair, Laboratory Services Advisory Council, explained that the proposal would adopt a new Chapter 302 in order to provide standards for accreditation of privately and publicly owned laboratories for performance of analysis of wastewater. This new Chapter would apply to laboratories accredited or applying to be accredited by the DEQ as a field laboratory. A field laboratory is a small laboratory whose owner does not wish to participate in The NELAC Institute accreditation standards in the proposed new Chapter 303 (TNI Laboratory Accreditation) and is limited to analysis for pH, residual chlorine (total residual chlorine, free chlorine, total oxidants or free oxidants), turbidity, temperature and dissolved oxygen. Following questions and comments, Mr. Johnston called for a motion. Motion to approve was made by Mr. Drake and the second by Dr. Galvin.

transcript pages 51 - 57

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes

Jennifer Galvin	Yes	Richard Wuerflein	Yes
Steve Mason	Yes	Jerry Johnston	Yes

OAC 252:303 TNI Laboratory Accreditation Mr. Brian Duzan, Chair, Laboratory Services Advisory Council, explained that the proposal would adopt a new Chapter 303 to provide standards for accreditation of privately and publicly owned laboratories for performance of analysis of water and wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons. Chapter 303 would apply to laboratories accredited or applying to be accredited by the DEQ consistent with The NELAC Institute (TNI) standards. Hearing no questions or comments, Mr. Johnston called for a motion. Motion to approve was made by Ms. Cantrell and the second by Ms. Rose.

transcript pages 57 - 60

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

OAC 252:301 Laboratory Accreditation Mr. Brian Duzan, Chair, Laboratory Services Advisory Council, explained that the proposal would revoke the current Chapter 301, Laboratory Accreditation, and replace it with the new Chapter 303 in order to be consistent with The NELAC[1] Institute (TNI) standards and for ease of reference for the regulated community. In doing so, two subchapters in the current Chapter 301 (Proficiency Testing and Quality Assurance/Quality Control) are proposed to be eliminated in their entirety because TNI standards are to be incorporated by reference. The other subchapters will be included but amended in the new Chapter 303 to come into compliance with TNI standards. This revocation process is progressing in tandem with rulemaking for the new Chapter 303 (TNI Laboratory Accreditation) as well as the new Chapter 302 (Field Laboratory Accreditation). Hearing no questions or comments, Mr. Johnston called for a motion. Motion to approve was made by Mr. Griesel and the second by Ms. Rose.

transcript pages 60 - 62

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

OAC 252:410 Radiation Management Mr. Steve Woods, Chair, Radiation Management Advisory Council, explained that the proposal would amend Subchapter 5 (Certification of Industrial Radiographers), Subchapter 7 (Radiation Management Authorizations), Subchapter 10 (Radioactive Materials Program), Subchapter 11 (Use of X-Rays and/or Particles for Therapeutic Purposes in the Healing Arts and Veterinary Medicine). Additionally, the DEQ proposes to revoke the current Appendix A and replace it with an amended Appendix A (Application and Annual Fee Schedule for Radiation Machines). The purpose of the proposed amendments is to increase fees to meet program costs and to provide an annual fee adjustment to assist in meeting rising costs to the DEQ for

implementation of radiation management programs. Hearing no comments, Mr. Johnston called for a motion. Mr. Wuerflein moved approval and the second was by Ms. Rose.

transcript pages 62- 72

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Abstain	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

OAC 252:606 Oklahoma Pollutant Discharge Elimination System (OPDES) Standards Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would amend the following: increase OPDES annual fees and establish OPDES permit application fees. (Subchapter 3; Appendices B, C, D, and E); amend Chapter 606 to: (1) define categorical industries; (2) allow certain stormwater and discharge monitoring report documents to be submitted electronically, provided the submission meets federal requirements; (3) require additional information in applications from facilities that generate or land apply biosolids in the watershed of an Outstanding Resource Water; (4) move the requirements for closure of a biosolids land application site to the biosolids subchapter; (5) establish minimum control testing requirements for industrial wastewater discharging facilities with permit limits for oxygen demanding substances similar to the currently adopted control tests for municipal wastewater discharging facilities (Appendix A); and (6) establish stream monitoring requirements for industrial wastewater discharging facilities with permit limits for oxygen demanding substances similar to the currently adopted stream monitoring requirements for municipal wastewater discharging facilities; and amend Subchapter 1 to update the date of incorporation by reference of certain federal regulations from July 1, 2009, to July 1, 2010.

After much discussion, Mr. Thompson and staff fielded comments and questions received from the Board and the public. Mr. Griesel made motion to approve as recommended by Council except Appendix B number 3 should be amended to eliminate reference to years 2013, 2014, and 2015. Mr. Wuerflein made the second.

transcript pages 72 - 137

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	No	Terri Savage	Yes
Bob Drake	Yes	John Wendling	No
Jennifer Galvin	Abstain	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	No		

Agenda item 18 (631) was heard following Agenda item 10 (606)

Rulemaking – OAC 252:631 Public Water Supply Operation Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would amend Chapter 631 to modify annual fees for public water supply systems; and would update the date of incorporation by reference of certain federal regulations from July 1, 2009 to July 1, 2010. Mr. Hobbs related that the Water Quality Management Advisory Council had voted unanimously to recommend Board approval. Mr. Johnston called for

comments and Ms. Cantrell moved approval. Mr. Mason made the second. Mr. Steve Thompson suggested an amendment to the motion that no action be taken on the public water supply fee increase. He explained that portion of the rule would be revisited by Council/Board in the next year or two. Mr. Drake made a motion to amend the motion and Ms. Cantrell accepted the amendment. Roll call vote on the amendment as follows:

transcript pages 137 - 142

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

Mr. Johnston called for a vote of the original motion – the incorporation by reference.

transcript pages 142 - 145

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

Rulemaking – OAC 252:611 General Water Quality Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would establish application fees for certifications required to be issued by the State pursuant to Section 401 of the Clean Water Act. Previously, the DEQ reviewed applications for and issued these certifications at no cost to the regulated community. Additionally, the DEQ proposes to have fees increase automatically each year based on the rate of inflation. The proposal would also amend the rules to update the date of incorporation by reference of certain federal regulations from July 1, 2009, to July 1, 2010. Ms. Shellie Chard-McClary, Water Quality Division Director related that this is a new fee and fielded comments from the Board. Mr. Johnston then called for a motion. Mr. Wendling made motion to approve and Ms. Savage made the second.

transcript pages 145 - 149

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	No	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	No	Jerry Johnston	Yes
Steve Mason	No		

Rulemaking – OAC 252:616 Industrial Wastewater Systems Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would increase annual fees for industrial tank systems, surface impoundments, and land application systems, and to make these fees applicable to all industrial wastewater systems. Additionally, the DEQ proposed to establish a permit application fee for industrial tank systems, surface impoundments and land application systems. Hearing no comments from the Board or the public, Mr. Johnston called for a motion. Mr. Drake moved approval and Mr. Griesel made the second.

transcript pages 149 - 152

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	No	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes

Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	No		

Rulemaking – OAC 252:619 Operation and Maintenance of Non-Industrial Total Retention Lagoon Systems and Land Application Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would increase annual fees for non-industrial total retention lagoon systems and land application sites covered by Chapter 619. The proposed rules include a waiver of 50 percent of the annual fee for public entities. Additionally the DEQ proposed to have the fees increase automatically each year based on the rate of inflation. Questions and comments from the Board were fielded by Mr. Thompson and staff. Following discussion, Mr. Griesel made motion for approval and Ms. Rose made the second.

transcript pages 152 - 156

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	No	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	No
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	No		

Rulemaking – OAC 252:621 Non-Industrial Flow-Through and Public Water Supply Impoundments Including Land Application Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would amend Chapter 621 to: (1) reduce the maximum slope of a wastewater land application site from 10% to no more than 5%; (2) implement Senate Bill 1695, enacted during the 2010 legislative session, concerning ownership of shared sewage systems; (3) remove references to total retention lagoons now covered in OAC 252:619; (4) replace the words "flow-through" with "discharging" and "impoundments" with "lagoons" throughout Chapter 621, including the Chapter title; and (5) amend the title of the fees section in Chapter 621, without changing the existing fee schedule. Hearing no questions or comments, Mr. Johnston called for a motion. Ms. Rose moved for approval and Mr. Mason made the second.

transcript pages 156 - 159

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

Rulemaking – OAC 252:623 Pretreatment for Central Treatment Trusts Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would establish a fee for the review and issuance of permits to industries that discharge to a Central Treatment Trust [Oklahoma Ordnance Works Authority (OOWA)]. Additionally, the DEQ proposes to increase fees automatically each year based on the rate of inflation. The proposal would also amend Chapter 623 to update the date of incorporation by reference of certain federal regulations from July 1, 2009, to July 1, 2010. Hearing no questions or comments, Mr. Johnston called for a motion. Dr. Galvin moved for approval and Ms. Savage made the second.

transcript pages 159 - 161

Brita Cantrell	Yes	Sandra Rose	Yes

Mike Cassidy	No	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

Rulemaking – OAC 252:624 Minor Public Water Supply Systems Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would amend Chapter 624 to establish a fee schedule to help cover the costs of operating the program, which has historically been supported entirely by appropriated funds. Additionally, the proposal would have fees increase automatically each year based on the rate of inflation. Mr. Thompson and staff fielded questions and comments. Mr. Johnston called for a motion. Mr. Drake moved approval and Mr. Mason made the second.

transcript pages 161 - 171

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	No	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

Rulemaking – OAC 252:626 Public Water Supply Construction Standards Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would increase permitting fees for public water supply construction permits and fees for household well inspections. The proposal would also amend the requirements for variances from construction standards in this Chapter so that they are consistent with the proposed variance requirements in OAC 252:656 (Water Pollution Control Facility Construction Standards) and would provide additional options in obtaining variances. Hearing no discussion, Mr. Johnston called for a motion. Ms. Rose moved approval and Ms. Savage made the second.

transcript pages 171 - 175

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	No	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

Agenda item 18 (631) was heard following Agenda item 10 (606)

Rulemaking – OAC 252:641 Individual and Small Public On-Site Sewage Treatment Systems Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would amend Chapter 641 to implement requirements of Senate Bill 1765, enacted during the 2010 legislative session, and which requires the person hiring another to install an on-site sewage treatment system to certify in writing the actual wastewater flow from the residence or business that the proposed system will serve. Additionally, the proposed amendments implement Senate Bill 1695, also passed during the 2010 legislative session, concerning ownership of shared sewage systems. Ms. Rose made motion for approval and Ms. Savage made the second.

transcript pages 175 - 177

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes

Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes
Steve Mason	Yes		

Rulemaking – OAC 252:656 Water Pollution Control Facility Construction Standards Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would amend Chapter 656 to increase municipal wastewater construction permit application fees. Also, the proposal would amend Chapter 656 to (1) implement legislation modifying 27A O.S. § 2-6-401, effective April 2010, concerning ownership of shared sewage systems; (2) make the requirement for variances from construction standards in this Chapter consistent with the proposed variance requirements in Chapter 626 (Public Water Supply Standards) and provide additional options in obtaining variances; (3) create Appendix E, which contains a county rainfall table that includes data from the Oklahoma Geological Survey; and (4) update Chapter 656 concerning various technical requirements related to construction standards. Following discussion, Mr. Drake moved approval and Ms. Rose made the second.

transcript pages 177 - 185

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	No	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes

Rulemaking – OAC 252:690 Water Quality Standards Implementation Mr. Lowell Hobbs, Chair, Water Quality Management Advisory Council, advised that the proposal would amend Chapter 690 to: (1) establish Appendix B as a list of required minimum quantifiable levels; (2) require facilities that have Whole Effluent Toxicity (WET) limits to pass three consecutive retests within a six-month period following a WET testing failure; (3) require that WET retests cannot substitute for regularly scheduled WET testing; (4) require that WET testing will continue once per quarter for the life of the permit in the event of a sublethal test failure; and (5) clarify that WET biomonitoring frequencies cannot be reduced during the first permit cycle.

The proposal would amend Chapter 690 to: (1) allow DEQ to use site specific data to produce a more accurate model for dissolved oxygen criteria; (2) establish secondary body-contact recreational parameters for primary body-contact recreational water bodies during winter months; (3) require industries with permit limits for oxygen demanding substances to conduct control tests that are similar to those currently established for municipalities; (4) require both municipalities and industries to report appropriate control tests in accordance with federal regulations.

Additionally, the proposal would amend Chapter 690 to update the date of incorporation by reference of certain federal regulations from July 1, 2009, to July 1, 2010, and to make other minor corrections and clarifications. Hearing no discussion, Mr. Johnston called for a motion. Mr. Griesel made the motion and Ms. Rose made the second.

transcript pages 185 - 188

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes

Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes

Executive Director's Report – Steve Thompson, Executive Director, provided a handout of Legislation bills and discussed the ECOS initiative to address rules that would be an impediment to jobs.

transcript pages 191 - 193

New Business None

Next meetings

June 14 scheduled in Enid -- August 23 in Tulsa -- November 15 in Norman

Adjournment Mr. Drake moved to adjourn and Mr. Griesel made the second. Meeting adjourned at 1:00 p.m.

transcript pages 193 -194

Brita Cantrell	Yes	Sandra Rose	Yes
Mike Cassidy	Yes	Terri Savage	Yes
Bob Drake	Yes	John Wendling	Yes
Jennifer Galvin	Yes	Richard Wuerflein	Yes
David Griesel	Yes	Jerry Johnston	Yes

The transcript and sign-in sheet become an official part of these Minutes.

PROCEEDINGS

MS. CANTRELL: Good morning. Thank you for coming on this cold February morning to the Oklahoma Department of Environmental Quality Board the February 25th, 2010 regular meeting of the Environmental Quality Board meeting.

The February 25th 2011 regular meeting of the Environmental Quality Board has been called in according to the Oklahoma Open Meeting Act Section 3.11 of Title 25 of the Oklahoma statutes. Notice was filed with the Secretary of State on December 7, 2010. Agendas were mailed to interested parties on February 11th, 2011 and posted at this facility of the DEQ, 707 North Robinson, Oklahoma City, on February 24th, 2011.

Only matters appearing on the posted agenda may be considered. If

1 this meeting is continued or
2 reconvened, we must announce today
3 the date, time, and place of the
4 continued meeting and the agenda for
5 such continuation will remain the
6 same as today's Agenda.
7 With that said, we're so
8 pleased to have you all with us. We
9 have a packed Agenda and we are
10 going to get to it immediately. But
11 first we have some special guests
12 that have joined us today. And for
13 that we turn to our Executive
14 Director, Steve Thompson.
15 STEVE: Thank you, Brita.
16 We are honored today to have with us
17 the new Secretary of Environment,
18 Gary Sherrer.
19 Gary has served previously as
20 the Secretary of Environment,
21 previously as the Secretary of
22 Agriculture, as a former legislator
23 from Snow, Oklahoma, and has more
24 political lives than a cat, and a
25 great guy, and we really look forward

1 to working with him.
2 Gary, would you like to say a
3 few words?
4 (Applause)
5 MR. SHERRER: I just want
6 to say thank you, Steve. It's a
7 privilege to be appointed to this
8 position by Governor Fallon and I
9 look forward to working with all of
10 you. I certainly have an open door
11 policy and I want to hear from you.
12 If there are issues that concern you
13 that I can be of help on, I want to
14 hear from you. So thank you, very
15 much, and I'm very pleased to be
16 here with you today.
17 STEVE: Thank you. And one
18 other very special presentation we
19 want to make today. It's my
20 understanding that Lowell Hobbs is
21 leaving the Water Quality Advisory
22 Council after having served there for
23 around 4,000 years. Lowell actually
24 has served on that Board for 19
25 years and was one of the original

1 members that was appointed when the
2 Agency was formed. It was under
3 Lowell's leadership that the rules
4 necessary for the state of Oklahoma
5 to seek NPDS delegation were
6 developed. I think the most defining
7 characteristic that Lowell has is his
8 good common sense, which in the
9 environmental field is something that
10 is much needed. He's been an asset
11 to the Council, I know an asset to
12 the Board and certainly an asset to
13 the Agency. So he's going to be
14 greatly missed. Now you've got a
15 lot of work -- if you've looked at
16 your Board packet -- and I do want
17 to apologize for the forest we
18 killed. We've got a lot of work
19 left to do today. But we wanted to
20 make a special presentation to Lowell
21 today.
22 So Lowell, if you would come
23 forward or I'll come back there or
24 I'll meet you half way which is
25 generally the way that works.

Now this plaque that we want to present to you that commemorates your 19 years of service to the state of Oklahoma in the Water Quality Advisory Council and through the Department of Environmental Quality. Thank you so much for your good work. Thank you.

(Applause)

MR. HOBBS: The last time I got a standing ovation everybody was leaving. I would like to -- I appreciate that very much. Certainly didn't expect that. My leaving the Water Quality Advisory Council did not come with a quick decision. In October of 2009 I had open heart surgery and as a result of that surgery I've lost most of the vision in this left eye. And it has impaired my reading and as you said a great deal of material. It keeps me from being able to read and study and do the job that I felt was necessary.

I served on the National Beef Board and they too, had voluminous things to read.

My mailman loved me. My rural mail carrier told me that his money is based on the miles he travels and amount of material that he delivers and I was his number one customer.

I want to quickly review just a little bit about my life and tell you some things that I've done that you might not know. And I won't take long. But I felt it's important that you know kind of where I come from. I served on my local rural Water Board for 12 years, most of that as Chairman. I've been involved and interested in water since I was a young fellow in FFA in high school in Cleveland, Oklahoma and I got the soil and water conservation award through the FFA Chapter there, we lived on the Arkansas River before the Keystone Dam was built and I thought it was

crazy if the people would think they could dam up the Arkansas River because it had flooded our place so many times and I thought there was no way that they could dam that up and I learned that they actually can.

And my interest in water has continued on by being a part of my local -- we couldn't get water to my place so that's why I got involved in the water board trying to get water out to our ranch. I have been involved in the Water Research Institute and that's an ongoing thing that has to do with water and then the Water Quality Management Advisory Council. I'm appalled at people who get in power somewhere and they think that because you belong to one political party or the other political party that you don't have sense enough to figure out what's good for the people. And it becomes a political fight. Everybody wants to create chaos and dissension and

some people are so good at that. I like to do that but on a much lower level.

A little bit about my family. My wife and I together have five sons. My oldest boy was recognized by the Unites States Jaycees as one of the ten outstanding young men of America. My second son was a -- is outstanding coach of the year in his district several times and is now a full time evangelist for the Southern Baptist belief. My youngest son is actively engaged on the ranch there at home and got three boys who's coming on and a great help with the ranch. My mother and dad both lived to be 93 years old, and I told my wife, I said, you don't have much to look forward to if I live that long. My two stepsons, the oldest one is the Mayor of Haskell and involved in our insurance agency there in Haskell and our youngest stepson is in Missouri where he is home-schooling

six kids. I believe in public education so I don't go see them much. I have trouble with that. My older son has got two girls in Arkansas and they both graduated their class as valedictorians. They too were home schooled. It's not hard to be valedictorian when you're the only one in the class. We tease them a lot about that.

I've served on a great number of boards and committees and things. Dedicated a lot of my life to trying to be a part of the community and I think I learned some of that through my FFA upbringing. My dad was VO-AG teacher, so naturally I made straight A's in agriculture. My mother was my English teacher and I made straight A's in English. If my dad had been superintendent I could have probably make straight A's all the way through. My friends couldn't write plain enough that I could copy off of them or I'd have made better

grades probably.

But I've enjoyed being on the Water Quality Council. We have got a great Council. And I want you to know as you look through those things and the many things that we have to present today, there has been a lot of hours of deliberation and study and thought put in that. Staff has done an excellent job of providing us information and reaching out to the public that is governed by these rules and regulations and we spent a lot of hours with very qualified Council Members coming up with this to make this presentation to you. So as I present this to you today, later, don't think that it's me. I recommend (inaudible) the Council and as Chairman I don't have to do much. All I have to do is recognize those that want to speak. And so I don't have a lot of influence on that. And I have no agenda other than water is a very important asset to

our life is becoming more and more important every day. I don't know what the future holds but I'm still going to be a part of it, but I'm going to be over at the Barefoot Ranch in Haskell, Oklahoma making those calls. Thank you, very much.

(Applause)

MS. CANTRELL: Thank you, very much. And I can't think -- in fact there is no better way to start today's important meeting than with your fine example of service and your remarks. Thank you, very much.

We now turn to our Agenda and let's begin with our roll call please.

MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Here.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Here.
MS. BRUCE: Mr. Dark is absent. Mr. Drake.
MR. DRAKE: Here.
MS. BRUCE: Dr. Galvin.

DR. GALVIN: Here.
MS. BRUCE: Mr. Griesel is absent. Mr. Johnston.
MR. JOHNSTON: Here.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Here.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Dr. Sublette is absent. Mr. Wendling
MR. WENDLING: Here.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Here.
MS. BRUCE: And we do have a quorum.
MS. CANTRELL: Thank you, Myrna. The next item on the Agenda is approval of the Minutes of the November 16th, 2010 meeting of the Board.

Do I have a motion?

MS. ROSE: I move for approval.

MS. CANTRELL: Thank you. Is there a second?
MS. SAVAGE: Second.
MS. CANTRELL: May we have a vote, please.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Yes.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Abstain.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein,
MR. WUERFLEIN: Yes.

MS. BRUCE: And motion passed.
MS. CANTRELL: Thank you, Myrna. The next item on the Agenda is the election of the officers for the calendar year 2011. And as is custom with the Board our fine Vice-Chair will be taking over the gavel at this point upon the election of officers. We will have a -- an opportunity for the Board to consider both a Chair and Vice-Chair for calendar year 2011.
Do I have a motion?
MR. DRAKE: I'd like to nominate a long time friend of this Board and also all across the state and DEQ in general, Jerry Johnston as Chair.
MS. CANTRELL: And do we have a second?
DR. GALVIN: I second.
MS. CANTRELL: We have a motion and a second. Do we have a vote?

MR. DRAKE: Close nominations and elect by acclamation.
MS. CANTRELL: Let's have a vote, please.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Yes.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Abstain.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Thank you.

Motion passed.
MS. CANTRELL: Thank you, Myrna. And at this time it is with great pleasure that this gavel is turned over to an excellent Vice-Chair who will be an even better Chair, Jerry Johnston.
MR. JOHNSTON: Great pleasure for her.
MR. THOMPSON: Before you get too far, Brita, the Members of the Board have gotten a few dollars together to present you with this plaque in appreciation of your service for the last two years on the Board. It has been a pleasure for me to serve with you and I know that I speak for the Board as well. So thank you so much for your service.
(Applause)
MS. CANTRELL: Thank you, very much.
MR. JOHNSTON: Are we ready for Vice-Chair? Ready for a

nomination for Vice-Chair.
DR. GALVIN: Mr. Chairman, I would like to nominate John Wendling for Vice-Chair.
MR. JOHNSTON: Is there a second?
MS. SAVAGE: Second.
MR. JOHNSTON: Are we ready to --
MR. DRAKE: I move that nominations cease and we elect by acclamation, Mr. Chairman.
MR. JOHNSTON: Okay.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Yes.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.

MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling
MR. WENDLING: Abstain.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Thank you.
Motion passed.
MR. JOHNSTON: Okay. We're ready for rulemaking on OAC 252:100 Air Pollution Control. I won't go through these unless you want me to and I think David is going to -- it says Laura but it looks like David. Welcome David.
MR. BRANECKY: Thank you. For some reason Laura decided to be in Hawaii.
MR. JOHNSTON: It sounds good.
MR. BRANECKY: Yeah. Thank you, Mr. Chairman. And we do have several items that the Council wants

to bring to you this morning. I just want to understand how you would like to do this. We have five items. Do you want to go through one item and take a vote and then next item, take a vote?
MR. JOHNSTON: Yes.
MR. BRANECKY: Okay. I'll proceed with that. The first item on the Agenda we have is a proposal from the Council to be passed as a permanent rule, Subchapter 5 OAC 252:100, having to do with fee increases for air emission sources in Oklahoma.
As you remember at the last Board meeting the DEQ staff gave you a presentation on the fees for additional funding for the Air Quality Division. Primarily, the appropriations were down for the Air Quality Division, cost of employee benefits as we all know for those of us in business, have gone up.
The revenue from emission fees

has gone down because of the economy and because people are actually reducing their emissions so the income from the fees for emission sources have gone down. And so what the staff came to the Council with initially was a proposal to begin fee emissions on some HAPS, on lead and mercury, and operating fee increase and also fees on area sources, particularly gas dispensing facilities and bulk terminals.
The Council had a little concern about additional operating fees. Some facilities in Oklahoma -- some companies in Oklahoma pay a bundle (inaudible). Some of them pay a million dollars a year in operating fees, emission fees. And we found it would be a little more equitable if we could try and spread that around a little differently rather than just add on another fee on top of the operating fee. So the staff came back at the last Council meeting

with a proposal to increase the permit application fees and we felt that was more equitable. If you have a permit application you are requiring DEQ to do work, you should pay for that work. And fees that were currently in place did not really reflect the cost of DEQ doing the work. So we asked them to look at that and make that a little more reflective of the actual cost of the staff doing the work. So that's why you see in your packet today the request that DEQ -- the Air Quality Council passed to increase those permit application fees.

Some states -- I know in Texas the cost for an application, for a major source application, is like $50,000.00 because it does take a lot of work for a major source construction application fee. So we're not quite that much but we have increased -- we're asking to increase that today.

In addition, if Council, and Council has felt this way along time that the mobile sources are a major contributor to pollution in Oklahoma, particularly in the metropolitan areas. And they should share some of the burden of funding the program because a lot of the work the DEQ staff does in Air Quality has to do with mobile sources. So the only way that we could try and fee that was through the area source provision where we could fee the gasoline dispensing facilities, gas stations and the bulk terminals. So we're proposing an increase of -- well, it's varying and dependent upon throughput, but up to $500.00, I think, per year for those facilities -- or up to $750.00 per year if you (inaudible) and 100,000 gallon throughput.

So in addition, the Council also recognized that well, staff you're asking for these increases, we

want to make sure that you're doing what you need to do to control your costs. We passed -- the division came back to us in October with kind of an update, where you are, how these fees -- how you're using these fees, and how things are going. So they are supposed to come back to us with that.

We've also put in the rule a provision that if the DEQ is able to secure funding through legislation, some additional funding, that these fees will be reduced proportionally. So we've asked that that -- and I think there is still opportunity at the legislature for making some additional funding and if that's the case then these fees will be reduced.

So that's kind of a brief summary. As I said, we're asking for you to pass this as a permanent rule. I'd be happy to try and answer any questions at this point.

MR. JOHNSTON: Questions

from the Board? Questions from the Board? Steve.

MR. MASON: I think we've struggled for along time about mobile sources which represent probably half of the smog in our urban cities, and this is wonderful that we've come up with a mechanism basically to make my car pay. And I think that's wonderful.

Two questions. How are we going to find the mailing list of all the gas stations? And since we don't permit gas stations, how are we going to enforce this when they don't pay?

MR. BRANECKY: Mr. Terrill can answer that one.

MR. TERRILL: But you were doing so well. Well, not only the service stations, but we're going to have to figure out the universe of the other area sources, so we'll use a number of mechanisms to do that. We'll use the Tax Commission and

there are a number of trade publications that we can sort through and get a list. Getting a list of service stations is not going to be a problem. The bigger problem is going to be sending a fee request out to the Panhandle and expecting them to say, yes, we approve and we want to pay that. And that's something that we'll cross when we get to it. We do have a mechanism that we do with all of our fee payers that we don't -- we take an enforcement action against them and it -- we would have a logical -- extension that we could take it all the way to district court. But generally we try to explain and educate. And so far we have, like, a 99.9 percent collection rate of everything we bill. I mean, it just never has been a problem. But you're exactly right and the Council raised this and I think it will be even more of a challenge to make it

more equitable when we're looking at the other area sources because they are going to be difficult to track. But that's part of the reason that we're coming back in October and explain to the Council, here's how we went about finding these sources; here's how we went about billing them; here's our success rate; do we believe that we've been fair in spreading this cost out equitable across the state? And so it's going to be up to us to figure out how to do that. We've got the list and we're prepared to start the mailings and the outreach to do that. And we'll just see how it works from there. Hopefully, we'll find another source and this will all become a moot point.

MR. CASSIDY: Eddie, this throughput, is it a monthly average, it's not a yearly --

MR. TERRILL: Annually.

MR. CASSIDY: It's annual.

MR. TERRILL: It's annual, yes.

MR. CASSIDY: So it's 10,000 gallons per year --

MR. TERRILL: Right.

MR. CASSIDY: -- for the low --

MR. TERRILL: The low end.

MR. BRANECKY: 100,000 gallons a year --

MR. CASSIDY: How do we determine the throughput?

(Multiple inaudible conversations)

MR. TERRILL: They corrected me. It's a monthly average.

MR. CASSIDY: It's a monthly average.

MR. TERRILL: Yes.

MR. CASSIDY: So you would have to do over a 100,000 gallons a month --

MR. TERRILL: Right.

MR. CASSIDY: -- to get over that?

MR. TERRILL: Right.

MR. CASSIDY: How do we determine their throughput?

MR. TERRILL: We'll probably ask for their records. I think that's probably in the information that we'll get from -- through the Corporation Commission or the Tax Commission. I think they have a way to back into that. It should be fairly easy. The difficult one, I think, will probably be those that are on the borderline between the cutoff points, but we'll use that -- the records that already exist.

MR. JOHNSTON: Richard, did you have a question?

MR. WUERFLEIN: My question might be more further down the Agenda. But I've had a hard time just -- or placing how much money we're raising compared to the funding cuts that we've got from the state and EPA in the past. How much revenue does this proposal or all of the Air Quality proposals plan to

generate?

MR. TERRILL: It's right at 3 million dollars and the way we broke that down is we try to recoup the amount of money that we were losing from general appropriations; the amount of money that we didn't get when benefits were increased and we didn't get the passthrough to pay for that.

A big part of this is our ability to fill our funding but our inability to pay for -- we fund vacancies but for the last four years we have not filled a lot of those vacancies because we use that money to basically operate during the year. And then if we have an emergency, we lose someone, we fill it back, we go -- we go that route. But what we're trying to do is fully staff the FTEs that we've been given but we never have been able to fill. And part of the reason for that is we're really struggling with how we're going to do

the work that's coming down from the federal government, for instance, gas permitting. The area source MACT program is going to be a real issue for us because there's so many of them, and you try to figure out how you implement that in a environmental -- you get the biggest environmental bang for the buck. So how do you do that and satisfy EPA that you've got a program that they don't need to anything but just general oversight. So a lot of this is geared towards us ramping up with staff that we haven't been able to fill so that we can accept these programs. But we quit accepting area source MACTs earlier this year because I don't know how we're going to do the work. And if we're able to fill these positions then we're going to accept them and figure out how we implement the EPA programs. So it's just really designed to a breakeven point where we're no longer relying on

general revenue for our funding and we're able to fully staff to do the work that we're being asked to do by EPA. So it's about 3 million dollars.

Part of what we're going to do is when we come back to the Council, if it turns out that we have a lot more of these area sources than we think we do, then we'll ratchet down these fees in some form or fashion that the Council agrees with, where we kept that -- we don't -- I don't want more than I need to run the program. So if it turns out there is 10,000 of these area sources that we didn't realize and we get a lot more money than we think, then we'll ratchet down our fees in other areas to spread that cost out equatability.

Does that make sense? Sort of?

MR. BRANECKY: Kind of an example of the increase in workload, the way EPA codifies their rules in

the subpart, they will go from Subpart A, you know, as a rule then they will go down to Subpart Z so you have 26 rules. Well now they are on to Subpart CCCCCCC. They will start A to Z and then they go AA, ZZ, and now we're up to CCCCCCC. So there is a lot going on in Air Quality and it continues to grow.

MR. TERRILL: Yeah. That's correct. That's good.

MR. JOHNSTON: Steve.

MR. THOMPSON: I think it's important for the Board to know that I don't think that the petroleum marketers commented at the Council. They certainly have commented to me, as you could expect. I see more impetus out there for an alternative mobile source fee at the legislature than I have ever seen. The nature of that alternative has not been totally defined yet. But there is an awful lot of interest in that. And if that were to happen, we think

we can design a system where the rules that you're passing today may not have to be implemented. But it's important that we keep this fee moving in case that doesn't happen. And so we've had those discussions and there is an agreement amongst all the regulated community that is effected by that to keep the rules moving and to work diligently on an alternative mobile source fee.

MR. JOHNSTON: More questions from the Board? Go ahead.

MR. CASSIDY: Steve, so what you're saying is if we pass this today, we're not going to quit seeking out alternative mobile source fee?

MR. THOMPSON: No, we're not. But I want to -- it's important to encourage people that are seeking that source to remain interested in it and having fees moving along inspires that interest. But, I mean, we are really working

hard -- there is a lot of interest out there working very hard on an alternative to these fees.

MR. CASSIDY: But do you think by passing this it encourages them not to seek another source?

MR. THOMPSON: No. I think it encourages them to seek it.

MR. WENDLING: Steve.

MR. THOMPSON: Uh-huh.

MR. WENDLING: Just another comment of -- kind of related to what Richard mentioned about the stack of information here that's going to be repetition of the theme through the material. One of the things is the CPI which is -- as it's in the material that there's an auto increase each year. So what incentive mechanism is there going to be from an accountability standpoint for the Board to be informed on how we're doing so that we -- that the fees don't necessarily automatically increase every year without some sort

of feedback to the Board.

MR. THOMPSON: Well, as I understand it and Eddie, as he often does, will correct me. On the CPI on the air fees, that reflects the federal program.

MR. BRANECKY: It's in the statute. It's only on major sources.

MR. THOMPSON: On major sources. So that --

MR. BRANECKY: Minor sources do not have a CPI.

MR. THOMPSON: Pardon me?

MR. BRANECKY: Minor source fees do not have a CPI.

MR. THOMPSON: Okay. But the --

MR. MASON: Does this rule have the CPI inflation in it?

MR. BRANECKY: No.

MR. MASON: Okay.

MR. THOMPSON: But there are some that do.

MR. MASON: Okay.

MR. THOMPSON: The answer to

your question is that we have traditionally relied -- as Eddie and David mentioned, we have traditionally relied on Councils (inaudible) for the Agency to report back to the Councils, particularly the Air Quality Council, with that information and to make adjustments as necessary. And then I would expect that when those kind of things occur, the Council will then report the result of those discussions with the Agency, to the Board. So there is a feedback mechanism -- the short answer is the feedback mechanism is through the Councils.

MR. TERRILL: That's right. And the Council showed a lot of trust in us in that when they passed this it was unanimous. There was a lot of discussion but they passed it unanimously. And our commitment back to them, like David said, was to come back in October and explain how the program worked; how much did we

collect; what were our issues; are we implementing the program we said we would; how are we doing that. So the trust that they've shown in our program we want to make sure that we back that up by demonstrating, you know, that their money is being spent wisely.

MR. BRANECKY: And I would reiterate that the Council did not take this lightly. And it was a difficult decision. We never like to pass any fee increases but we recognize the need for a good Air Quality Program in Oklahoma.

MR. JOHNSTON: More questions from the Board? Questions from the audience? Questions from the audience? Back to the Board.

MR. MASON: Just for clarification. We're just voting on Chapter 5 at this time?

MR. BRANECKY: Yes.

MR. MASON: The one page or --

MR. BRANECKY: Just the first item, Item A.

MR. MASON: I would move approval.

MS. CANTRELL: Second.

MR. JOHNSTON: There's a motion and a second. Roll call.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: No.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Abstain.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.

MR. WENDLING: Abstain.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion Passed.

MR. JOHNSTON: Okay. We'll go to Item B.

MR. BRANECKY: All right. What we're bringing back to you is a request to update or amend Subchapters 1, 7, and 8. And this is -- we're bringing this to you as a permanent rule. This is the same rule that you passed back in November as an emergency rule dealing with greenhouse gas emissions. We've made a couple of changes to the rule but there is a little bit of difference between the emergency and the permanent rule. We've added a definition of Carbon Dioxide equivalent and there's also some changes or corrections, some Scrivener's errors to formatting some subscripts, things like that with respect to Subchapter 7 and 8.

Also we're asking to -- with

this rule the Council passed -- you have Items B and C on your Agenda. We passed those together as one. So when we vote on this if you reject either B or C, you're rejecting both of them because of the way the Council passed the rule. And I would default to legal counsel on that subpart about how we have to do this one.

On Subchapter 1, 7, and 8, like I said, having to do with greenhouse gas emissions. What we did there as you remember if we had not changed it to the levels we have, there's 100,000 tons per new source of greenhouse gas equivalent emissions or 75,000 tons of greenhouse gas equivalent emissions, then the default numbers in the existing PSD rule of 100 or 200 tons would trigger the PSD requirement. So in order to prevent that we upped it to the 175,000 which is what EPA recommended.

There will be no sources that will be affected by this unless there is a new or modified source. So existing sources will not be affected by this.

We amended also in Subchapter 8, I believe -- let me get my notes here real quick. Having to do with PM2.5, there's some changes -- well, maybe Subchapter 5 is just strictly greenhouse gas emissions. Is that 2.5 -- is there 2.5 in Subchapter 8?

MS. PENISTEN: That would be in Part 5.

STAFF: Subchapter 3, I believe, David.

MR. BRANECKY: All right. Subchapter 3 is Item C. I'm trying to separate the two here in my mind. We're going to deal with Subchapter 3 under Item C so I'm trying to discuss Item B.

Item B is strictly greenhouse gas emissions. We're bringing back the permanent rule that was passed as

emergency with those two changes, we're updating to add the definition of greenhouse gas equivalent emissions and make those corrections.

MR. JOHNSTON: Questions from the Board? Questions from the Board? Questions from the audience? This is on B, greenhouse gases. Back to the Board.

Is there a motion?

MR. DRAKE: So moved.

DR. GALVIN: Second.

MR. JOHNSTON: Moved and seconded. Roll call.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: No.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.

MR. WENDLING: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

MR. JOHNSTON: Okay. Item C.

MR. BRANECKY: Item C. Subchapter 3 of OAC 252:100. What we're doing there is proposing to modify Subchapter 3 to add the 24 hour and annual PM2.5 particulate matter of two and a half microns or less increment to the PSD provisions. That will just enable the Department to maintain its delegated authority for the NSR, New Source Review program.

Additionally, we're proposing under Item C to amend Subchapter 8

to update the PM2.5 National Ambient Air Quality Standards.

MR. JOHNSTON: Questions from the Board? Questions from the Board? Questions from the audience? Back to the Board.

DR. GALVIN: I move we approve.

MS. ROSE: Second.

MR. JOHNSTON: Roll call.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.

MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. JOHNSTON: With that, I guess both of them are passed?
MR. BRANECKY: Yes.
MR. JOHNSTON: Both B and C?
MR. BRANECKY: Yes.
MR. JOHNSTON: Okay. Item D.
MR. BRANECKY: All right. Item D. What we're -- here we're asking the Board to consider revocation of Appendix A in OAC 252:100 and the adoption of a new Appendix A. And the reason, probably you all remember, we have to do that is the Office of Administrative rules does not allow any fly-by-night changes in appendices, tables and things like that. So we have to

revoke the whole appendix and then adopt a new appendix. And all we're doing here is there were some errors that the staff found having to do with the pounds per hour numbers, and an error in the formula. One of the numerical values in the formula was not quite right so we're proposing to replace those and correct those. We're asking for adoption as a permanent rule.
MR. JOHNSTON: Questions from the Board? Questions from the Board? Questions from the audience? Questions from the audience? Back to the Board?
MR. MASON: I move approval.
MS. ROSE: I second.
MR. JOHNSTON: Roll call, Myrna.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Yes.
MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. BRANECKY: Last one, Appendix E. This is similar to Appendix A. We're asking you to revoke Appendix E and replace it with a new Appendix E. And what we're doing here is that last year I know that EPA passed or updated their Ambient Air Quality Standards for NO2 and SO2, and what we're doing here

is incorporating those new standards in the Appendix E of OAC 252:100.
MR. JOHNSTON: Questions from the Board? Questions from the audience? Back to the Board.
MS. CANTRELL: Move approval.
MS. ROSE: Second.
MR. JOHNSTON: Roll call.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Yes.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.

MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. JOHNSTON: Number 6. Okay. Steve.
MR. THOMPSON: I apologize to the Board for not having made this announcement earlier. When we get to it, I think it would be convenient for the Board and convenient for some in the audience who have come to comment that we move Item 18 for consideration along with Item 10. I think those two ideas need to be considered in tandem. I think there are people here from the regulated community that want to talk about both of those. So I would recommend to you that we move those two items together, when we get to them.
MR. JOHNSTON: Vote on that or is that or just -- is that okay

with the Board?
MR. THOMPSON: I think without objection that would be (inaudible).
MR. JOHNSTON: Okay. We'll do that when we get to 10 and 18 -- move 10 and 18 together. Okay. We're ready for Brian, rulemaking Number 6. OAC 252:302 Field Laboratory accreditation.
MR. DUZAN: This Agenda Item and the two following it address changes to the DEQ's program of accreditation of environmental laboratories. Over the last ten years changes have been made to the laboratory accreditation rules in order to make them consistent with the national consensus standards for accreditation of environmental laboratories.
All of this has been done with the end goal of full adoptation of these standards in recognition of the Oklahoma program as a recognized

Accreditation Body. As a reminder, The NELAC Institute, TNI, is the national body that adopts consensus standards and manages the initial recognition of state bodies that accredit environmental laboratories. Oklahoma is now ready to apply for that recognition and the rules before you today are necessary to make this possible. This Agenda Item and the two that follow it propose that there be two tiers of laboratory accreditation, and to accomplish this, they propose that the existing laboratory accreditation rules be revoked and replaced with the two new chapters. We ask that you first adopt the two new rules and then revoke the existing rules.
The DEQ proposes adoption of a new Chapter 302 in order to provide standards for accreditation of privately and publicly owned laboratories for the performance of analysis of wastewater. The agency

and the Laboratory Services Advisory Council developed this rule in recognition of the fact that some small laboratories perform a limited number of tests that must be done on site and thus are much less complex than other environmental labs. This new chapter would apply only to laboratories accredited or applying to be accredited as a DEQ Field Laboratory. A field laboratory is a small laboratory whose owner does not wish to participate in the TNI standards and is limited to analysis for pH, residual chlorination, like total residual chlorine, free chlorine, total oxidants, free oxidants, turbidity, temperature and dissolved oxygen.
The fees in this rule are the same as the ones in the existing rule as they apply to this size laboratory with a slight reduction due to the simpler inspection required for this sort of operation.

The DEQ estimates that 25 of the currently accredited labs will choose this option for accreditation. The Laboratory Services Advisory Council recommends adoption of the new proposed Chapter 302 rules for Field Laboratory Accreditation.

MR. JOHNSTON: Questions from the Board?

MR. WUERFLEIN: Jerry, I guess I'm -- does this mean that the DEQ is wanting to accredit some of these field labs rather than them being accredited by an actual source so that would be another level of workload for the DEQ?

MR. DUZAN: What we're doing is basically -- the laboratory program right now is one set. And you have to fulfill all the rules and all the requirements for this. What we're trying to do is separate and say, well, if you're a field lab out in the Panhandle and you only do pH and total residual chlorine, well,

it doesn't make sense for you to have, you know, extra staff and a quality assurance officer and all these other things that apply to that. So we're trying to setup a special program just for them so that they can do the things that they need to do to keep their operation going and still be able to meet the national rules for the big laboratories that do most of the wastewater testing within the state.

MR. JOHNSTON: Steve.

MR. THOMPSON: I think it's just an effort to try to give these smaller labs some regulatory relief.

MR. DUZAN: Relief. Yes.

DR. GALVIN: And, in fact, I would note too that in some of the Council minutes that were attached, they're commending ODEQ as far as being responsive to the public. Because -- because these small labs that help me out.

MR. DUZAN: Absolutely.

OG&E and -- it deals with a lot of the power companies that have operations in extremely rural areas that, you know, they're not close to normal commercial laboratories so they've kind of been forced to set their own programs up. And this rule allows them to keep those operations and to keep that locally so that they can stay in compliance.

MR. JOHNSTON: More questions from the Board? Questions from the audience? Back to the Board.

MR. DRAKE: Move approval.

DR. GALVIN: Second.

MR. JOHNSTON: Roll call.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.

MR. WENDLING: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed. Thank you.

MR. JOHNSTON: Number 7, Brian.

MR. DUZAN: Okay. The second set of rules proposed for your consideration today is a new Chapter 303 to provide standards for privately and publicly owned laboratories for performance of water, wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons.

Chapter 303 would apply to laboratories accredited or applying to be accredited by the DEQ consistent with the NELAC Institute standards. The TNI standards are being incorporated by reference. New subchapters contain rules for Management and Technical Requirements as well as Secondary Accreditation. There are no fee increases in these rules.

In July 2008, the Environmental Quality Board adopted a rule against fee based on annual changes in the Consumer Price Index. The fees in these rules have been updated to reflect current fees. The Laboratory Services Advisory Council recommends adoptation of the new proposed Chapter 303 rules for the TNI Laboratory Accreditation.

MR. JOHNSTON: Adoptation, that's quite a word. Questions from the Board? Questions from the Board? Questions from the audience? Any

questions from the audience? Back to the Board.

MS. CANTRELL: Move approval.

MS. ROSE: Second.

MR. JOHNSTON: Roll call, Myrna.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Yes.

MS. BRUCE: For the record, Mr. Griesel has arrived.

(Comments)

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.

MR. WENDLING: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed. Thank you.

MR. JOHNSTON: Okay. Brian.

MR. DUZAN: Okay. Having adopted both the Field and TNI Laboratory Accreditation rules, the Laboratory Services Advisory Council now recommends that OAC 252:301 be revoked. In adopting Chapters 302 and 303, two subchapters in the current Chapter 301 Proficiency Testing and Quality Assurance/Quality Control have been eliminated in their entirety because the TNI standards were incorporated by reference. The other subchapters were included but amended in the new Chapter 303 to come into compliance with the TNI

standards. This revocation process is progressing in tandem with the rulemaking for the new Chapter 303 TNI Laboratory Accreditation as well as the new Chapter 302 Field Laboratory Accreditation.

The Laboratory Services Advisory Council recommends revocation of the Chapter 301 rules for Laboratory Accreditation.

MR. JOHNSTON: Questions from the Board? Questions from the Board? Questions from the audience?

MR. GRIESEL: Motion to approve.

MS. ROSE: Second.

MS. BRUCE: Are you ready for a roll call, sir?

MR. JOHNSTON: Roll call, yes.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. DUZAN: Thank you.
MR. JOHNSTON: Thank you, Brian.
Number 9. Steve Woods.
MR. WOODS: Thank you, Chairman Johnston. I am Steve Woods, the Chairman of the Radiation

Management Advisory Council. I am presenting to you today proposed changes in fees for radiation users in the state. The most important thing to know about this proposed change is that it has broad support from the affected community. When the Radiation Management staff sent notice asking for comments, and held a hearing on the proposal, not a single word was spoken in opposition to the proposed fee increase. Several affected users commented in support of the increase, and the Radiation Management Advisory Council unanimously voted to recommend this fee increase to the Board. Note that this change is needed to maintain an effective regulatory program, as most of these fees have not been changed since 2004, and the costs of the radiation program have increased significantly in that time.

The great majority of this section's income is from annual fees

that are paid each year by radioactive material licensees. The proposal will raise fees for most of these users by 15 percent. It will raise fees for radiation machine users such as particle accelerators, x-ray machines by 15 percent. For all radiation machine users for the 77 percent of radioactive material users who have only one location of use listed on their license, this will be the only change.

There will be another change for the 23 percent of radioactive material users who have larger and more complex programs. There has been an increasing trend to consolidate multiple locations of use of radioactive materials under one license, particularly in the medical field. These consolidated licenses covering multiple facilities take considerably more DEQ resources for licensing and particularly inspection, than licensees that

operate at only one location.

To address this situation, in addition to the 15 percent increase, DEQ proposes to add a 25 percent per additional location surcharge for licensees that authorize radioactive materials use at two or more locations in Oklahoma. This means that a radioactive material licensee authorizing two locations of use would pay 1.25 times the annual fee charged for a single location, a license authorizing three locations of use would pay 1.5 times the annual fee for a single location, and so on. The surcharge would be capped at two times the annual fee for a license authorizing five or more locations of use.

For this purpose, location of use means places listed on the license where radioactive materials are permanently stored or used. Twenty-three (23) percent of our facilities have more than one

1 location of use, and would be subject
2 to this surcharge. Less than 4
3 percent of our facilities have five
4 or more locations of use, and would
5 benefit from the maximum cap. Use
6 of radioactive material at temporary
7 job sites would not result in this
8 additional surcharge. This change
9 affects only radioactive material
10 licensees, it does not affect
11 radiation machines such as x-ray or
12 particle accelerators. Charging
13 additional fees for licensees with
14 multiple permanent locations of use
15 is based on similar systems used
16 successfully in Texas and Louisiana
17 radiation control programs.
18 Note that our rules currently
19 mandate a separate, lower radioactive
20 materials fee for small entities, and
21 the proposed revisions continue with
22 that practice. Small entities
23 include businesses with gross
24 receipts under $5,000,000 per year,
25 and small governmental jurisdictions

1 with a population of less than
2 50,000. To our knowledge, Oklahoma
3 is one of the few states that gives
4 such a break to smaller companies.
5 Another change is made to fees
6 for industrial radiography
7 certification. The industrial
8 radiographers are required by federal
9 and state regulations to be
10 certified, which require
11 demonstrating certain training and
12 experience, and passing a test. Only
13 seven states have been approved by
14 the NRC to administer the test.
15 Oklahoma provides the test as a
16 service for the industrial
17 radiographers in the state, who
18 otherwise would have to travel out of
19 state to be certified.
20 We previously had separate fee
21 levels for the initial certification
22 of a radiographer, and for renewal of
23 an existing certification, which
24 requires less work by the agency.
25 This created a problem when our test

1 supplier, the state of Texas, raised
2 the cost of our tests to a level
3 higher than the fee we were charging
4 for renewal of a certification. DEQ
5 was giving the test for a charge
6 lower than it cost to acquire the
7 test. To avoid this happening again,
8 we are setting a single fee for all
9 radiography certification tests. The
10 new proposed fee is about the average
11 of that charged by Texas. It is far
12 below the fee charged by the Health
13 Department for registration of body
14 piercing and tattoo artists, and is
15 not expected to be a hardship on
16 industrial radiographers.
17 To reduce the need for future
18 fee rulemaking, the proposal
19 institutes an annual fee adjustment
20 based on the Consumer Price Index.
21 The annual adjustment used has been
22 approved by the Board for other DEQ
23 programs. This will help ensure our
24 ability to maintain a strong and
25 effective program for the use of

1 radiation in future years.
2 Overall, this proposal will
3 lead to Oklahoma fees similar to
4 those charged in Louisiana and Texas.
5 Fees under this proposal will be
6 sharply lower than those charged by
7 the Federal Nuclear Regulatory
8 Commission. The Radiation Management
9 Advisory Council wants the DEQ to
10 have a strong and effective
11 regulatory program for radiation use
12 in the state.
13 New requirements for security
14 of radioactive materials mandated in
15 the wake of 9/11 have increased the
16 demands on the Section with no
17 corresponding fee adjustment. The
18 Nuclear Regulatory Commission is
19 planning further increases in
20 security requirements over the next
21 few years that will place additional
22 burdens on the Section. The proposed
23 fee changes will let the DEQ meet
24 those needs, and appropriate the cost
25 in a fair and responsible way.

Every comment received in this rulemaking, supported the fee increase.

On behalf of the Radiation Management Advisory Council, I request that the Board approve these changes. I will be happy to answer any questions you have.

MR. JOHNSTON: Questions from the Board? Questions from the audience? I guess you were right. Back to the Board.

MR. THOMPSON: I would just make one comment. As Steve mentioned, this, along with the major source air fees is the one fee that we can measure, or one of the fees that we can measure against the federal fee and it is significantly lower than the federal fee to operate these programs. So we can measure value to radiographers in the state based on the differences in the federal program. It's because we're so much more efficient, by the way.

MR. JOHNSTON: Back to the Board.

MR. WUERFLEIN: I would move approval, especially since we didn't have any opposition and we're cheaper than Texas.

MS. ROSE: I want to second that.

MR. JOHNSTON: Roll call, Myrna.

MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: I abstain.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. WOODS: Thank you.
MR. JOHNSTON: Thank you, Steve.

Number 10. Lowell Hobbs.

MR. HOBBS: I mentioned a while ago that Jerry and I were in school together, he was so far ahead of me in knowledge and age that I thought he was a professor. All joking aside, he didn't remember me but I remember him because he was as he is now --

MR. JOHNSTON: Terrible.
MR. HOBBS: -- an outstanding guy.

The Water Quality Management Advisory Council has requested the

regulated community address its fee increases in new complex technical issues in at least two Council meetings before sending to the Environmental Quality Board for action. I want you to hear that. We've had two meetings on this fee increase.

In the case the rules that I will present to you today, the required Notice of Rulemaking Intent documents were published in the Oklahoma Register on September 1, 2010 and December 1, 2010. Email notifications were sent to the Council mailing list on September 3, 2010 and December 7, 2010. In addition to the two Council meetings where the rules were discussed, DEQ held two public meetings. One in Tulsa on December 15, 2010, and one in Oklahoma City on December 16, 2010 to allow for additional discussions on the proposed rules.

I will add to you a comment

that I made earlier, that our Council reviews and studies these issues at length. It's not something that we just meet and pass on and go on. We have an excellent staff in the Water Quality Management Advisory Council. Christy and Myrna serve our Council well. I want to applaud them and the staff for the things that they do. And, again, I want to tell you that I represent the Council. This is not a private presentation. We have a very qualified Council and they've worked on this very hard and were diligent and they studied this in depth. We had quite a few discussions that last a long time. And as Chairman, I endure that.

Okay. We're fixing to talk about Title 252 Chapter 606. The Oklahoma Department of Environmental Quality proposed the following changes to the Water Quality Management Advisory Council to update its rules concerning Oklahoma

Administrative Code 252, Chapter 606.

The proposed changes will do the following.

It will allow the electronic submission of specified documents.

It will require notification to DEQ if biosolids are generated or land applied in the watershed of an outstanding resource water.

It will move the requirements for closure of a biosolids land application site to the biosolids subchapters.

It will establish minimum control testing and stream monitoring requirements for industrial wastewater discharging facilities that contain permit limits for oxygen demanding substances.

It would update the date of the publication date from July 1, 2009 to July 1, 2010 for the federal rules incorporated by reference.

It will increase the annual fees for municipal and industrial

OPDES dischargers.

It will increase the annual fee for the industrial users.

It will increase the annual fee for MS stormwater and general permits.

It will add a fee for permit applications and add an annual automatic fee increase based on the Consumer Price Index.

The Department received written comments concerning the proposed changes. The majority of the comments came from OML and OML members who opposed the fee increases that impact municipalities.

Additionally, they requested an extension to the comment period, which they alleged did not comply with the Administrative Procedures Act because they thought DEQ had not provided the 30 day notice.

There were a few technical comments that were primarily from industry opposing the addition of

control testing and stream monitoring requirements. And after discussions with industry, DEQ agreed to allow facilities to develop and follow their own control testing process with DEQ's prior approval.

After extensive discussion at two public hearings, which were held on October 12, 2010 and January 11, 2011, the Council voted six to one to recommend that the Board approve the changes to Chapter 606 as proposed by the Department.

Now Mr. Chairman, would you like for me to do all of these and vote them all at one time, or do you want to do them one at a time?

MR. JOHNSTON: Do them all at one time.

MR. HOBBS: I kind of said that as a joke because as I said a while ago we didn't just move on these last week. So I'm trying to run something by you there, Jerry.

MR. JOHNSTON: It probably

depends on what the Board -- what pleases the Board.

DR. GALVIN: Mr. Chairman. Mr. Chairman, let's do it as presented in the Agenda as A, B, and C. Is that a question?

MR. THOMPSON: That's probably the best way.

MR. JOHNSTON: Probably the best way.

MR. HOBBS: I was kind of blowing smoke at you anyway. I didn't think that we would get that done.

(Background conversation)

MR. HOBBS: I'm talking about all the things I'm going to present. I'm talking about 10 through 19 or whatever it is.

MS. BURGESS-TURNER: I think that Dr. Galvin just said do it as A, B, C.

MR. HOBBS: No. This whole thing. We need to take everything that I presented, in as one. We're

not going to divide that up. You either approve it or you disapprove it. 252:606. All the proposed changes that I noted there --

MR. JOHNSTON: Wait a minute.

MR. HOBBS: Am I not right?

MS. BURGESS-TURNER: Yes. All of 606.

MS. CHARD-MCCLARY: This is one rulemaking though --

MR. HOBBS: Yes.

MR. THOMPSON: Well, look.

(Comments)

MR. THOMPSON: Irrespective of that, there are -- I'm not sure. Are the industrial fees in this? Are the industrial fees included in this?

MS. CHARD-MCCLARY: Yes.

MR. THOMPSON: Okay. I think I need -- I think I owe the Board an explanation.

Last summer I asked the Water Quality Division to go to the Council

with a set of fee increases. And I asked them to do so for a number of reasons. We're 19 people short of where we were two years ago in the Water Quality Division because of funding shortfalls and general revenue shortfalls and things of that nature. There are impending new federal requirements including drinking water standards; expanding reporting requirements from EPA's enforcement office which we believe include backdoor inspection requirements; and a renewed emphasis by EPA, it appears to me, on minor drinking water and wastewater facilities and many other issues coming from EPA to us. And the fact that over the last two years we've had a 17.5 percent reduction in general revenue funding and we're anticipating somewhere between 5 and 10 percent this year, probably 5.

Since that time a fourth concern, which is significant

reductions we believe that will be coming at us in federal support for state programs. HR-1, which is the Congressional House Resolution cutting EPA funding, cuts state funding for all programs, for all state programs, not just in the water program, by 250 million dollars.

So I asked the Division to ask the Council to consider two principles. One because of the ever-increasing number of federal requirements that they ask the Council to consider funding for multiple years, that allowed us to plan.

The second instruction was -- and I want to make sure that everybody understands that these ideas were mine and not the Division's and not the Council's -- was that we ought to began to move fees to a more per capita basis in the drinking water program. If you live in Oklahoma City, per capita,

1 rather than the system approach that
2 we would always take. If you live
3 in Oklahoma City you're paying
4 pennies for our services. If you
5 live in Ft. Towson you're paying
6 dollars per capita.
7 Well, that idea has proven to
8 be pretty damn unpopular, quite
9 frankly. And I don't -- I do
10 understand why. I do understand why.
11 So as the result of that,
12 I've had discussions with -- as you
13 all are aware I'm sure, these rules
14 go to the legislature for approval,
15 and to the Governor's office for
16 approval. And in my conversations
17 with legislative appropriation
18 leadership, they told me that those
19 fees will not pass.
20 Now it is extremely
21 uncomfortable for me to make
22 suggestions to the Board that don't
23 come from the Council, particularly
24 after the extraordinary work that was
25 done by that group. But it is also

1 -- it would be irresponsible of me
2 not to tell you the political
3 realities of this.
4 So I'm going to suggest that
5 after we've had public comment and
6 after we -- when you start to act on
7 these rules that for the 606 rules
8 that we adopt two of the five years.
9 When we get to the 631 rules I will
10 recommend to you no fee increase. I
11 won't recommend anything because I
12 don't have any power to recommend
13 anything. I will suggest to you,
14 that.
15 But the industrial sector --
16 the reason this came up, in the
17 industrial sector, there has been no
18 opposition for these. Nobody has
19 come up and slapped me on the back
20 and told me what a great guy I am,
21 but the industrial sector as far as
22 I know, and I talked to them last
23 week, are not opposing this. So
24 we're going to -- I didn't know when
25 the appropriate time to bring this to

1 your attention was but I guess I've
2 done it now.
3 On the drinking water side I
4 know there was -- I do actually
5 realize now that what I asked the
6 Council to do was probably too big a
7 change. And I apologize to them for
8 putting them through that. But it
9 is also fair to say that as
10 resources dwindle within the DEQ, we
11 have -- we have for years -- we have
12 spent an 18 year life of the agency
13 building an assistance and compliance
14 culture. That's what we do. We
15 bring the regulated community in and
16 we ask them to comply. And it is
17 only after that has failed that we
18 move to a more enforcement nature.
19 As resources diminish -- it is very
20 costly to operate an assistance
21 culture, because we have people that
22 spend a lot of time talking to the
23 regulated community, settlement
24 conferences, and discussions about
25 moving forward on their scheduled

1 compliance. It is much cheaper to
2 simply issue an administrative
3 compliance order. We'll have to have
4 a few more lawyers but we won't have
5 to have much of anything else.
6 I hate that. I can just tell
7 you I hate. And we will to the
8 extent that we can, we will always
9 -- the reason we will do that is
10 that our penalties have traditionally
11 been 10 percent of what communities
12 would face, and the regulated
13 community generally 10 percent, of
14 what EPA does. So we will continue
15 to work with our communities to, I
16 guess, shield them from EPA
17 enforcement. And we will continue to
18 work with the regulated community to
19 do what we need to do to have liable
20 programs. But there are political
21 realities about this thing that the
22 Board needs to understand. So I
23 just wanted to take the time to
24 explain those to you.
25 MR. HOBBS: My understanding

and if my memory serves me right, we agreed in Council that if proposals came from the legislature to up the funding that we could back off from this. It wasn't going to be set in stone forever. That could be reviewed at any time you got enough funding to cut back. This wasn't just going to be in addition-to, this was to prevent it.

MR. THOMPSON: All right. I would say to you that the -- I know that I've been in conversation with OML. There is an interest in OML -- by OML in seeking funding and to the extent we -- this is not -- we don't want a windfall to the extent that we have funding other than through the fees. We will come back to the Council as quickly as possible to reduce those; we will withhold billings until we can get back to the Council and Board with those things. We'll do what it takes not to create a windfall in

this effort. But, nevertheless, there are -- so that's exactly right. Yes.

MR. HOBBS: Let the record show that the Council did not cave. We met our challenge and we stood up to it. And it was not without a lot of deliberation.

MR. THOMPSON: All right. So how do we proceed?

MR. JOHNSTON: That was my question.

DR. GALVIN: I would still like to proceed -- I don't know if everyone is privy to what we have on our desk.

MS. CHARD-MCCLARY: Well, what I want to make sure is that when you look at the Agenda, "Letter A" talks about fees in all of this chapter and that particular piece of paper you have in front of you only applies to Appendix B in Chapter 606. We have the other changes where -- because all of the fee items are in

"Letter A" at the -- you do have a choice to vote individually. The staff would recommend, as we did to the Council, all of these issues were addressed as one rulemaking item for the entire chapter. I don't know if that makes a difference to the Board or not, but the motion or what the staff at this point is recommending -- and I know we still have public comment and lots of discussion that you may choose something different -- but our thought is, or our desire based on the input we've had from the legislature would be, that the rule be passed as it is presented from the Council with the exception of Appendix B, and that Appendix B be modified to remove references to the last three years. We did a five year fee plan. And so basically what we're asking is that those last three years be chopped off -- deleted from Appendix B, which are the municipal wastewater discharge and

also the pretreatment fees that are associated. The five year fees that are in some of the other appendices, the industrial groups were not opposed. They viewed it as a five year plan and if there is funding they expect us to bring that back to them and modify, but they had no reservations with it moving forward as it was presented in the full five years. So we're attempting to reach a compromise with what we've been given from the capitol that we would just take off those last three years. Does that make sense?

(Off-the-record discussion)

MR. JOHNSTON: Okay. We're getting ready to go to the Board here.

MR. THOMPSON: I think, if I could -- I think that it needs to be taken as one piece with the amendment, assuming you don't change your mind about the amendment after you've heard public comment, because

I think there will be public comment that will be different from what we're recommending.

MR. JOHNSTON: We're trying to get our ducks in a row with the AG's office here so we don't get kicked clear out of --

MR. EUBANKS: I just want to make sure that the Board knows what they are voting on when they are voting on it. That's my main concern.

MR. JOHNSTON: So do we.

MR. EUBANKS: Okay. And that everybody in the room is clear on what is and is not being voted on in any one particular time. So I think you can proceed now.

MR. JOHNSTON: Am I down to asking the Board?

MR. THOMPSON: You're down to asking the Board.

MR. JOHNSTON: Okay. We're going to the Board now.

MR. MASON: I have a

comment about the fees. If I'm reading Appendix B correct, the existing fee is about $33.51.

MS. TURNER-BURGESS: That's per point. There is a --

MR. MASON: Okay. I understand.

MS. TURNER-BURGESS: -- yes.

MR. MASON: And then we had these existing or proposed this per point also.

MS. TURNER-BURGESS: Right.

MR. MASON: If we were to accept the rule as proposed at a five year increase it goes to $93.20 from $33.51 which is a 178 percent fee increase. If we accept this tentative language just for the two year fee increase to $50.00 -- 50.7 that's a 51 percent fee increase. If we just implement year one and quit that's a 30 percent fee increase. That's a pretty -- no matter what the situation is here, a 30 percent fee increase just on year

one is a lot of fee increase.

If what I was paying for a service jumped in one year 30 percent and ultimately in five years 178 percent -- it's kind of like I learned a long time ago in the restaurant business, it's better to raise prices three percent a year than raise them once every five years. The public freaks out. And I have some real concern about the percent of fee increase that we're proposing here.

MR. DRAKE: Mr. Chairman, when I got all this big package, it cost us about 12 to 15 dollars to send them out. It didn't take very long because all needed to read was one page to know that we weren't going to have a particularly pleasant meeting and I called Steve pretty quick. I hate fee increases. I find them abhorrent, it's going to effect the people that I represent. However, I place confidence in the

people that we have in the staff of DEQ and certainly Steve. So I -- he had the opportunity to explain to me a few of the things going on. And then I had the opportunity to be in a group the other day with senators of both parties and representatives of both parties, ranking senators and representatives, and they were talking about there would absolutely be no tax increases -- because they couldn't anyway because of (inaudible). And then there would be no fee increases if they could help it because that was a tax. Well, it's hard to disagree with that. Except after the meeting and I will not name the names but I will tell you that they were ranking.

And after the meeting I had the opportunity to have a visit with a good friend. And I said let me pose a question to you. No tax increases; no additional money.

That's right.

Fee increases are out.
Well, that's right.
All right. I'm still on the Board of DEQ, what do you want us to do. Tell me how I go to the Board on Friday knowing that we are going to be looking at fee increases; knowing that we have little choice in the matters; what do you want me to do when you're telling me that you may not approve the fee increases?
He said, well, I don't know.
And I said, well, I can tell you what we can do if this is what you want.
Well, you tell me.
I said well, if we can't do our job and we don't have the people to do our job, and we don't have the money to do our job, the job is going to be done by someone; and that someone will be EPA. And I'll give you an example. There is a little town just south of me, Lone Grove, Oklahoma. It's having a

terrible time. We fined them, I believe, 35 or $36,000.00. Had it been EPA, it would have been 350 or $360,000.00. Ten times higher. With the fact that we have offered to go in and mitigate and work these things out even with the fine, they would offer nothing. They would send someone down that doesn't know Oklahoma; doesn't know the people; doesn't care. Young and vibrant and don't care.
And I said, so you tell me would you rather have our people, DEQ, Oklahoma, or would you rather have the loving hands of EPA? I said, because that's what we're looking at.
Well, I'm just not sure you're right.
I said, well, you don't know that I'm not right.
But I'm telling you this is where we're coming from. This is not something that's pleasant.

You've already said that many times; Steve has said that many time. There's nothing pleasant about raising fees. There is no way that we're going to be popular with the people that we're raising them on, including the people that I'm going to hear from and already have heard from. But you get down to the point where -- and Steve said 5 percent, I was told 7 percent, Steve. You probably are right, but I was told 7 percent. We've already had a 17 percent.
We're down in numbers. So you get to the point that what do you do? Do you keep it in-house; try to keep it in Oklahoma? Which means we have to pay for this.
So I would suggest that we give serious thought in understanding that this has not been done lightly. It's a miserable situation and task to bring this before this body and the people that will hear about it

later if they are not here.
But I would suggest that before we begin to turn down the work that's been done, and the fees that we're going to have to generate to do the job, that we think about the alternative. And my good friends, the alternative is not a pleasant thought.
MR. JOHNSTON: Anymore from the Board? I guess we're ready to go to the public.
Questions from the public?
Introduce yourself, in case you need introduction.
MS. STAGER: Thank you, Mr. Chairman, and Members of the Board. I'm Carolyn Stager (ps), Executive Director of the Oklahoma Municipal League and my Board President and several of our members are here today. And I want to applaud Mr. Thompson first of all. I mean we've worked very closely with him. I have personally for many, many years.

I think we have a mutual respect for each other just, you know, when our members are being effected by these major fee increases. We have to come forward and present our position.

The OML Board obviously, I mean I've been in discussions with Mr. Thompson, also with Representative Sears and we're certainly aware of the proposals or the issues that are on the table and what politically is likely to happen at the legislature and what is not.

What our Board has proposed and asked for is a one year increase and then to put together a working group and we want to work with DEQ. We've told the legislators that and we certainly will be there with them to help ensure that they receive the funding that they need. All the agencies have been forced to cut; all of our cities and towns have actually had to take major reductions because

(inaudible) we've had to do it municipally, we used to be a staff of 24, we're down to 15 people now. So I understand what it's like to multi-task and we're all are mentally and physically exhausted in doing so.

But again the -- I don't know if what I had presented to Mr. Thompson was part of your packet but we're just asking that the fees be fair and equitable in regard to the amount and fee structure and the OML staff will commit to work in a cooperative manner with DEQ to explore whether there are alternative measures that DEQ can take to reduce the need for some or all of the fees.

We again propose -- this is coming from the OML Board of Directors that was adopted last week at their meeting, a one year moderate fee increase for fiscal year '11-'12. That DEQ and OML would establish a working group composed of DEQ

representatives and municipal representatives to study future fee increases, fee structures, and alternative operational methods and priorities that can reduce costs and lower fee increases.

I think with the water reuse group that this particular model worked particularly well. And that we would commit to participate in the process and to coordinate with private sector representatives of the regulated community and work cooperatively with DEQ in seeking appropriations for the legislature for state share in funding DEQ's operations.

So that concludes my remarks.

MR. JOHNSTON: Any comments from the audience?

MR. WILLIAMS: Good morning. I'm Ken Williams and I'm with the Hall Estill Law Firm. I am a part of the environmental practice group. I see some old friends, new faces.

Several of you I've not had a chance to meet or work with.

I am curious, in your packets do you happen to have full text of comments that my client, Valero, has provided to you, or do you only have the synopsis?

Valero's letter is about three or four pages. If you do not have it, I just happened to bring a few copies along that I would be happy to share.

MR. MASON: Could the staff point us towards the Valero comments in this packet so we get to the right page, please?

MR. EUBANKS: It's on Page 9 following the --

MS. BURGESS-TURNER: The comments that we received on all the rules are summarized by chapter, and you will see Valero's name attributed to comments that they made.

MR. MASON: Could you help me find the summary of the Valero's

1 comments.
2 MS. TURNER-BURGESS: I'm
3 sorry. It's the page right after
4 the page that says Executive Summary.
5 Look for the Executive Summary.
6 MR. EUBANKS: If you will
7 look in the middle of your packet,
8 252:606 Summary of Comments and
9 Responses. It's on Page 9 following
10 that.
11 MR. WILLIAMS: Director, if
12 I may distribute them or share.
13 MR. JOHNSTON: No objection.
14 Go ahead.
15 MR. WILLIAMS: I will pass
16 them out as far as they go.
17 (Distributing comments from Valero)
18 MR. WILLIAMS: Thank you for
19 that accommodation. The reason that
20 I'm sharing this with you is that
21 Valero's Ardmore Refinery's
22 Environmental Manager, Greg Elliot,
23 sent his regrets and his regards.
24 He really wanted to be here. I
25 think that DEQ will confirm -- Water

1 Quality Group will confirm that he's
2 been very involved in participating
3 in discussion of these rules that are
4 about to be considered. And he
5 really wanted to be here today but
6 could not. So I'm here as sort of a
7 poor substitute.
8 But I did want you to see that
9 Valero made what I feel is a very
10 thoughtful response to technical
11 aspects of the proposed rule changes.
12 And what I hope is significant, is
13 this.
14 It's a shame that so much of
15 our discussion today is focused on
16 fees. And I absolutely understand
17 why that's important. I'm in a firm
18 that is blessed to get to work
19 nationally on environmental matters.
20 And I know how all the state
21 agencies across the country with whom
22 we deal, are struggling financially
23 and need to look at their fee
24 structures to keep operating,
25 particularly, in states like Oklahoma

1 where you kind of generate your own
2 budgets. You don't get a lot of
3 help from the legislature, if any.
4 I remember when it was different, but
5 it's changed. So I appreciate that
6 we're focused on that. And I wish
7 these fees were broken out separately
8 from the rule changes because Valero
9 has not registered -- as the Director
10 said, has not registered an objection
11 to the fee increase. Our concern is
12 with the technical impact of the rule
13 change.
14 So let's talk about -- I will
15 say I'm a bit schizophrenic because I
16 do represent small communities that
17 are very unhappy about the fees --
18 but specifically with regard to
19 Valero's comments. These were not
20 made lightly. And I want to preface
21 my further comments this way. I've
22 gone up and down the breadth of the
23 country for many years bragging on
24 DEQ as a being a business
25 facilitating agency. One that tries

1 to work with the regulated industries
2 to reach solutions rather than just
3 being road blocked. I'm a little
4 troubled by staff's responses to
5 Valero's comments because it is not
6 what I'm used to seeing.
7 If you look at our comments,
8 Valero suggested that staff, even
9 today, has not really provided an
10 explanation of the benefit, the
11 environmental benefit, that is to be
12 achieved by the technical rule
13 changes. What staff has basically
14 said is make these changes and we'll
15 have assurance of compliance. Of
16 course, DEQ's claim that compliance
17 assurance is -- you can use that
18 argument to justify anything. Even
19 to the point of taking over a
20 business operation to make sure it's
21 run right. Staff's suggestion that
22 it is confident that documentation of
23 process control testing will actually
24 work to the permittee's advantage as
25 protection from an overzealous

1 inspector, is a very odd reason to
2 give for changing these technical
3 requirements.
4 We're not complaining about
5 overzealous inspectors, so please
6 don't save me from what I'm not
7 complaining about.
8 Staff also seems to be
9 suggesting that these new rules will
10 allow facilities to implement their
11 own unique process control plan to
12 demonstrate proper operation and
13 maintenance of the wastewater
14 treatment facilities. Again
15 respectfully, the regulations -- the
16 regulated industries already has the
17 right to make sure that it's
18 operating properly and it has the
19 obligation to comply with its permit.
20 So it just seems to us that
21 since we're not asking for help on
22 that don't give it to us. We
23 believe that if you look at the full
24 text of our comments and you look at
25 the responses you're seeing in

1 (inaudible) that staff has simply
2 ignored or declined to respond to our
3 comments. Part of why I'm giving
4 you our full-blown comments is
5 because I think if you look at them
6 you'll see that we're suggesting as
7 clearly as we can that these proposed
8 changes are unsupported invasion of
9 our business operations.
10 Right now our NPS permit
11 requires end of pipe compliance. We
12 have to make sure that we're not
13 discharging in anyway except in
14 compliance with our permit. What
15 these rules do and it's not real
16 clear if you read the synopsis, but
17 if you look at the rule change, this
18 allows DEQ to come back into the
19 plant and pretty much look at how
20 we're operating. It also proposes
21 that not only do we sample our
22 discharge stream as it goes into our
23 closed system pipe -- what we're
24 saying is by the time we've treated
25 it and put it in this closed system

1 to discharge a couple of miles away
2 there is no reason to think it's
3 going to change. So why do we have
4 to go to the end of the pipe to
5 catch a sample there where it is
6 unsafe, unavailable, and can't get
7 there? These new changes for end of
8 pipe discharge sampling and up
9 receiving stream sampling are going
10 to make requirements on industry that
11 will be very challenging to fulfill.
12 We don't have access; we don't have
13 easements; we don't have property
14 rights necessarily to go upstream on
15 the receiving stream and take these
16 samples. Our discharge pipe, I think
17 you will see in the Valero comments
18 is not easy to get to.
19 So we're suggesting that -- and
20 proud of our compliance record.
21 We're in compliance. If you have a
22 regulated industry who's a repeated
23 offender, they're not doing right,
24 the agency always has the ability to
25 impose restrictions and conditions on

1 getting into compliance and
2 continuing to be in compliance and
3 demonstrating that. Why in the world
4 do you need to change the regs on
5 one of the most heavily regulated
6 industries in the country who's in
7 compliance?
8 Everybody knows this is tough
9 economic times, not just for DEQ but
10 for the regulated industries. We're
11 struggling to stay in business. So
12 why impose costs on us that aren't
13 supported either technically, by our
14 record, or by federal or state
15 mandate. Look at our comments and
16 look at the response. There is
17 simply no mandate in what is being
18 offered up.
19 I'm happy to answer any
20 questions you might have but I think
21 that if you just consider our
22 comments, you'll see that there is a
23 lot of good solid practical reasons
24 not to pass these rules. Send them
25 back. Sounds like you've already got

some things you need to address on the fees. Send them back and let's talk about this some more. And then before you put together this package and consider all at once, possibly breaking the fee structure out from the technical side would make some sense to me. Just sitting here listening today, I'm hearing a lot of confusion about how this is going to work anyway. So again, Valero's not complaining about the fees; Valero is very much complaining about invading behind the discharge point our business operations and there is no reason to do that. There is no mandate to do that. We've even cited a reason why we think that it's precluded under federal regs.

Thank you for your courteous receipt of our comments.

MR. THOMPSON: I would just remind the Board this is a process issue -- it doesn't have anything to do with your comments -- that should

the Board decide to have the Council take another look at this that's clearly your decision. The fee piece has to be done while the legislature is in session so we have to break that piece out to get it done at this Board meeting, so we'll have to -- staff will have to -- assuming -- depending upon what happens during the discussion we'll just need to be working on how that gets done. That's just a process issue.

MR. HILDEBRAND: Hello. My name is Mark Hildebrand and I'm the liaison to the Water Quality Advisory Council. And with respect to Mr. Williams' comments, we did have two public meetings in which we received comments from several industries and we did discuss with Mr. Elliot, who couldn't be here, and several other refineries about these issues, which they did not like. But we explained them at these meetings that we had in Oklahoma City and Tulsa, I believe

the majority of the refineries were here in Oklahoma City and we discussed these control tests. And we kind of met -- I mean first when we had written them we made them for ease of effort but for whatever reason, we made them just like municipal dischargers. And then we changed this to allow them to use their own control tests. And I would also like to point out that the reason we didn't respond to each item in everybody's letter is because we've got about a half inch of responses so we grouped these answers together for our sanity, I guess, I would say. Because there was no way we could have done it.

But also in this letter from Mr. Elliot, if you will read into it also, he says that they already have a control testing procedure and that's why they've been in -- he doesn't say that's why they've been in compliance but they're very proud

of their control testing facility procedures and they haven't been out of compliance since 2004, I believe -- 99 percent since 2004, and their last sample was February of 2006. And then also in that first paragraph it says they've developed and implemented the process control testing program that fits our specific manufacturing operations.

And that was the point of this regulation. And this is only for industries that discharge oxygen demanding substances. And we did look before our Water Quality Council meeting, and we have just like 51 or 52 industries that discharge these substances; 12 or 13 of them have had a violation within the last year. And we go to these places, some of them are really good, have their process control testing; some of them they just send the fellow that's about to retire out to the wastewater plant and tell him to go run it.

They don't have procedures. So the staff saw this as a big problem.

So I guess our point here is we feel like it is needed. I think the Water Quality Management Advisory Council, they did get a copy of all the letters and comments from everybody and they looked that over and we discussed it at the Water Quality Management Advisory Council and I don't recall if Valero was represented there. I talked to Greg about this issue at our meeting. He doesn't want extra regulations. He doesn't want us telling them what to do but from talking at the meet he said that that would be much better than what we had originally. I mean we kind of came to a, meet in the middle portion, there.

MS. CANTRELL: I have a question.

MR. HILDEBRAND: Yes.

MS. CANTRELL: What is the source of the upstream water that is

being sampled? What is the source of that water?

MR. HILDEBRAND: It would be the stream, so -- and this is only if it's noted in their permit. So if we don't -- if our permitting group needs information to do a waste load allocation on the stream and we do not have that data then we ask the facility to do this in the permit and it's specifically cited in this regulation that this will be as required in the permit. So if we put it in the permit then we ask them to do that. And industries have been -- industries and municipalities have been doing this, but we just added this to the rule to say if it's in the permit go ahead and do the sample upstream, up pipe, and downstream so we can do modeling.

MR. JOHNSTON: Lowell, do you have any comment on this?

MR. HOBBS: I just want to

remind you that the Council serves without pay. Me, in particular, I can speak for myself. I'm not on anybody's payroll to say you should or should not do this stuff. I don't get money. I am the regulated community as well as on the Water Quality Advisory Council. And these issues, that the two previous people spoke to, were certainly talked about in our Council meeting. My gosh, we talked about that forever. And as far as the sampling upstream and downstream and at the end of the pipe and all that stuff, we discussed that and certainly it has to be what comes out the end of the pipe. It's not what might go in because it's what comes out that's important down in the stream. And being one of the landowners that stuff happens on; I understand that they have a problem getting across there because they don't want pay for a right to go across our land to do that stuff.

But that being said, I want to remind the Board that all of these issues that have been brought up, the Council faced and made the difficult decision to accept this idea. It wasn't pleasant and all of us on the Council are the regulated community. We're not benefitting from accepting or rejecting it. We made these decisions in good faith. We studied it and we worked on it and we present them to you for your approval.

MR. WILLIAMS: Can I make one response to that?

MR. JOHNSTON: Yeah.

MR. WILLIAMS: I wasn't present for the conversations between Mr. Hildebrand and Mr. Elliot. But I can tell you that I'm here because Valero still feels very strongly about this. And I would remind you that you still haven't heard either federal or state law for regulation that has mandated these changes. And

you haven't heard the direct environmental benefit. All you've really heard was that staff would like to have this. Respectfully, that's not a good enough reason to impose further burdens on a heavily burdened industry. Thank you.

MR. THOMPSON: There are two issues on the table, I would say. One is dealing with the fees, and one is dealing with this technical issue. I think the Board needs to deal with both. So if we could put the technical issue in abeyance for just a moment and come back to it. We had talked -- I had talked to OML and Carolyn had presented this position to me. The process problem for their position was the -- on the drinking water side -- what they have said is that they wanted a moderate fee increase based on the current fee structure. And that's the fee structure that existed prior to my knot headed idea that we ought to do

per capita. Okay. Now in order to go back, I thought that that was a significant enough change that I was unwilling not to have the Council consider it before we brought it back to you and we were out of time. We were just simply out of time to get it to that Council, give the public notice and then get it back to you. Because we have to get it -- we're going to get this -- keeping in mind that if we do any fee increase, we will bill that not in May but a year from May. And if we run out of time based on the requirements of the legislature to get rules to them we simply wouldn't have time to get through the entire process. So I understand the position, I understand -- I don't -- but it was such a fundamental change on the drinking water side from what the Council had adopted that I didn't feel comfortable in any way not going back to them and we were just precluded

from doing that. And while it may not sound like it -- and that's the first thing. And the second thing is that we had communication from the legislature on what they would except which is what we bring to you today. So it was -- I don't argue that a moderate fee increase on the drinking water side is not a good idea, I simply -- the problem was that by the time we had gotten to that point there was no time to take it back to the Council. And it was such a fundamental change that I just felt we shouldn't -- that I shouldn't make that call, that that was an issue between the Council.

On the one that we're proposing, it's simply a modification -- in one case a major modification, which is not to accept the Council's recommendation in drinking water but at least it is some modification of what the Council had already proposed.

MR. DRAKE: Mr. Chairman.

MR. JOHNSTON: Yes, sir.

MR. DRAKE: Some of us don't really understand everything that we've been hearing and so we have to rely on people that we have confidence in. And for one, the moment that I quit having confidence in those people, I would want to see them replaced very quickly. But up until that time I have to place my vote and my confidence on the people that have brought it, that have studied it, that have spent hours on it and have presented these proposals to us and I would hope that we honor those decisions in time and pass this out.

MS. SAVAGE: Mr. Chairman.

MR. JOHNSTON: Yes, ma'am.

MS. SAVAGE: I'd like to -- I agree with what Bob just said and I would just like -- do I need to hit this?

MS. BRUCE: Yes, please.

MS. SAVAGE: And I'd just like to add, I've been apart of working groups where we determined -- we were implementing regulations and I've seen this before where -- and I understand the regulated community and I've never -- especially refiners and the oil industry and I'm sympathetic to everyone. Because Mark Colman our former Executive Director, he was always emphatic about one thing and that -- one of the things that the DEQ wants is for industry to profit and prosper. And I don't think and that I heard that very -- you know, that was emphatic in the beginning but it's something that you learn and it's something -- because it's in everybody's interest.

And one thing that I've seen demonstrated over and over again over time is that there are no rogue members of staff here at DEQ. I've never seen a more reasonable group of people, ever, and I'm in my third

term. And by the time something gets in here, it's reasonable. I have been to -- I have been to the Water Council meetings and what Lowell said is true. The Council is the regulated community. Everyone is reasonable. Nobody likes fees. Nobody wants to cripple industry because if you cripple industry everybody gets hurt. It gets down to the end -- you know, to the end of people, our children, retired people, people on fixed incomes, I mean, everybody hurts, so it's a balancing act. And I've never seen a group of people try so hard to balance. So we got a little bit off on a tangent as to -- we started off with let's compromise on the fees a five-year were proposed. We have -- I believe we need to probably make an -- have an amendment that we're going to have to address to reduce the five-year to the two-year. And I think -- I personally can be --

I'm fine with that. But that's just my own opinion. But as to whether or not we should parse out something in here and send it back to Council because I know if it's in here Council has worked hard on it. Hard. The staff worked hard. So I think we address the one and not address the other. I think if we're going to make an amendment, let's make an amendment to go from the five-year to the two-year and be done with it and I think proceed on. Because I think the two-year is a win-win. And I don't think this is the time to send the other item back to the Council.

MR. JOHNSTON: Other public comments?

MR. MASON: Jerry, I'd like to make a Board comment.

MR. JOHNSTON: Board comments. Okay, Steve.

MR. MASON: I started my life when the DEQ as was formed, on

the Solid Waste Council. I set there for about eight years. I've been on this Board for about ten years. And I certainly agree that the Council is where the heavy lifting should occur. But our job at the end of the day is to occasionally to send something back to a Council. And I think if a couple of percent of the time we question the decision of Council that is our role, and I think we are trusting the Council. And, you know, one thing that troubles me is the years that we sit here is on this emphasis to always trust the Councils, we never say no to anything. And I think that is our role. Occasionally, we just say please look at it again.

On the fees increases I think a 178 percent fee increase that was proposed by the Water Council, as much as we trust these people and it's a great job they do, that's

excessive. I personally think a 50 percent fee increase over two years is excessive. A 30 percent in one year is excessive but that's probably just the realities of life and that's fine. You know, for the OML to say we'll accept a 30 percent fee increase, it's okay with me. I mean, you know, you look at the City of Oklahoma City that's paying these fees, you know, to raise the fees to the City of Oklahoma City by 50 percent is a lot. I think 30 percent is adequate.

You know, I think, on the question of the Valero comments, those are good questions. I think it's interesting. I think the question they are raising is we spent a lot of time on the air rules complaining about EPA creativity and we swallow it and we accept those EPA rules. I think the question that's being raised here with the Valero comments, are we applying some

EPA creativity to these rules that we complain about when we're talking about the air rules. And we don't want to become too creative if it's not needed. And I would be curious if, you know, if our OPDES program mimics the federal NPDES program -- if the federal NPDES program is as specific as the air rules are, the NPDES rules have a position on those questions. So I think looking to what NPDES says, and being careful with creativity because we complain about with the EPA, is very important here.

Thank you.

MR. CASSIDY: Mr. Chairman. I, too, am kind of curious as how this rule would reflect on our longtime standing commitment to not being anymore stringent than the federal government.

MS. CHARD-MCCLARY: Well let me -- I'm Shellie Chard-McClary. I'm the Water Quality Division Director.

Let me just focus on one key piece to that. That the monitoring of the upstream/downstream of the oxygen demanding parameters that are discharged.

While there is no specific requirement, the requirement does exist in the Clean Water Act NPDS regulations that requires if an industry wants to increase the amount of their discharge either their flow components to that; there are concentration components and then also mass loading pounds per day. In order for any facility in industry or municipality to request an increase we have to go through a waste load allocation process and sometimes a TMDL process. The information that we have to have to do that waste load allocation is a lot of that upstream/downstream/end of pipe data. If an industry that is ready to expand wants to apply for additional limits and they don't

have a waste load allocation that covers that flow rate or that pollutant load, then they will have to study that and then do all of that sampling and provide that to us before we can do a new waste load allocation which we have to have approved by EPA before we can issue a permit that has higher limits. So in many ways it -- where we have good data from the municipal side which has been required to do this for many years we already have that data. I won't say it's quick and easy, but it's quicker once we have that data. So for the industry, if this is one of those areas where if they're collecting it through a permit cycle then we're ready to do that waste load allocation and modify their permit when it comes due. We are not putting these requirements on every permit, no matter what. It's very specific requirements. We've been putting these conditions into

permits so that we can do that new waste load allocation when it's required. There was some concern, well, it's not in the rules that we have the ability or the authority to put that in permits so we were simply putting that into the permit. Is it a make or break kind of deal? In the course of things, probably not. It's not something that's going to cause EPA to revoke our authority. It does simply make it easier, not only for the DEQ staff but also for the facility staff, should they want to expand or increase their production that results in an increase in their wastewater discharge.

So that's a lot of the driving force. We can spend a lot of time talking about a lot of the details. I just don't know if anybody wants to do that. But, you know, just that's one of the biggest driving forces and that's where we really use

that information and where it's a benefit to the facility. And then when we start doing TMDLs if we have real data that has been collected we can use that. If we don't have real data, EPA requires this statistically significant sampling grid where we take so many samples and then extrapolate, but if we have the data we use the real data and that may allow for a change in the discharge limits and it may allow for the removal of certain water bodies from the 303D list which is our -- the impaired water bodies. Which is another requirement that's not under the permitting side of the Clean Water Act but is part of our requirements that we have to do and then that data, it's all interrelated. And then we work with the Water Board and the Conservation Commission with all of that data and it also goes into their programs as well, which are also under the Clean

Water Act but just in Oklahoma divvied up.

MS. CANTRELL: What is the sampling protocol that is embodied within this proposal? What is the -- what type of periodic protocol is there?

MS. CHARD-MCCLARY: Well some of it is site specific based on the particular water body, whether it's already on the 303D list or not, depending on the parameters. But typically once a month, sometimes maybe once a quarter and then the parameters are specific to the type of discharge.

MR. JOHNSTON: All right. We're actually talking about wastewater. We're not talking about fuel in the line, we're talking about wastewater, right?

MS. CHARD-MCCLARY: Right. This is the wastewater discharge in accordance with an NPDES or OPDES permit.

MR. JOHNSTON: So there wouldn't be any reason why you couldn't sample wastewater discharge?

MS. CHARD-MCCLARY: Wastewater discharge sampling is required under the Clean Water Act, the NPDS/OPDES program. Then that data is submitted monthly to -- in our case to DEQ and which goes into a federal data system.

MR. JOHNSTON: Further questions from the Board?

MR. MASON: Shellie, what I heard you saying kind of on these two sections that we've been talking about in 11.5 is it's very helpful for future TMDLs and future waste loading calculations. So maybe the assessment made is that's a great concept but maybe that concept belongs over in the TMDL rules or in the waste loading rules. And if Valero --

MS. CHARD-MCCLARY: Well, but it's part of a permit. So I

guess we're saying the TMDL rules, I assume you're talking about Chapter 690 where we do the Water Quality Standards Implementation?

MR. MASON: Right.

MS. CHARD-MCCLARY: But we don't really have TMDL rules. The only EPA TMDL rules are that they must occur and here is kind of a process and we take that, it's included in the continuing planning process which is part of our 690 rules but Chapter 606 is the actual permitting chapter. And so that's why that language came in there because that is the chapter that talks about what will be a part of permits and what some of those processes will be as opposed to 690, which is calculation methods and analytical methods and things like that.

MR. MASON: Okay. Thank you.

MR. GRIESEL: Mr. Chair.

I'd just like to make a motion, if that's in order.

MR. JOHNSTON: Okay.

MR GRIESEL: Motion to approve Oklahoma Administrative Code 252:606 as recommended by the Council except Appendix B. Number 3 should be amended to eliminate reference to years 2013, 2014, and 2015.

MR. WUERFLEIN: I would second that.

MR. DRAKE: I'll second that.

MR. JOHNSTON: I have two seconds.

MR. DRAKE: I'd rather let him second it, I'm in enough trouble as it is.

MR. JOHNSTON: Roll call vote.

MR. WENDLING: Jerry,

MR. JOHNSTON: Yes.

MR. WENDLING: We have discussion on the motion now.

MR. JOHNSTON: Okay.

MR. WENDLING: I just want to clarify it. We're only talking about the fee portion or are we talking about the whole permit. The technical piece?

MR. JOHNSTON: It's the whole thing, isn't it?

MR. THOMPSON: I think that the -- I think that the -- I would say that the motion as presented would only amend the fee portion and pass the rest of the rule.

MR. GRIESEL: That's correct.

MR. JOHNSTON: Is that understood by the Board? Okay. Go to the roll call.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: No.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Abstain.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: No.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling

MR. WENDLING: No.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed. Just a moment. Motion passed.

MR. JOHNSTON: The Chair needs a break.

MR. THOMPSON: Ten minutes?

MR. JOHNSTON: Yeah. Ten minutes.

(Break)

MR. JOHNSTON: Okay. Are we back? Lowell, now we're going to 18, according to previous plans here.

MR. HOBBS: My name is Lowell Hobbs. This is why I was trying to build up to you a while ago, we'd just take them all at once but it didn't work.

This has to do with Chapter 631. The Oklahoma Department of Environmental Quality proposed the following changes to the Water Quality Management Advisory Council to update its rules concerning the Oklahoma Administrative Code 252 Chapter 631.

The proposed changes will update the date of the publication date from July 1, 2009 to July 1, 2010 for federal rules incorporated by reference, and it will modify the annual fees for public water supply systems.

The Department received written comments concerning the proposed changes. The majority of the comments came from the OML and the OML members who opposed the fee

increases that impact the municipalities.

Additionally, they requested an extension to the comment period which they alleged did not comply with the Administrative Procedures Act because they thought DEQ had not provided a 30 day notice.

After extensive discussion at two public hearings which were held on October 12, 2010 and January 11, 2011, the Council voted unanimously to recommend that the Board approve the changes to Chapter 631 as proposed by the Department.

MR. JOHNSTON: Comments from the Board? Comments from the Board? Comments from the audience? Comments from the audience? Back to the Board.

MS. CANTRELL: Move approval.

MR. MASON: Second.

MR. THOMPSON: We would -- we would seek -- I would --

MR. JOHNSTON: Comments from Steve.

MR. THOMPSON: I would suggest an amendment that's related to Chapter 631, which would be that no action be taken on the public water supply fee increase.

MS. CHARD-MCCLARY: And that is OAC 252:631-3-21 and we would ask that you approve the rest of the chapter but that one piece, that's the fees that we just want to leave as is and we will revisit that in the next year or two.

MR. THOMPSON: Assuming that anybody here wants to remain on this Board we will come back.

MR. JOHNSTON: We're voting on -- we're doing everything in that 631 except the fee increase.

MR. EUBANKS: Well, we'll need a new motion.

MR. DRAKE: Would that have been an amendment or would that -- can we just do it --

MR. THOMPSON: You can do it -- you can either withdraw the motion and have an amended motion or someone will have to make an amendment to the motion on the floor and --

MR. DRAKE: I'll make an amendment to the motion on the floor to withdraw --

MS. CHARD-MCCLARY: 3-21.

MR. DRAKE: -- 3-21. I'll make an amendment -- okay, 3-21. Okay. All right.

MS. CANTRELL: I accept that amendment.

MR. JOHNSTON: Okay. And that's a motion and a second. And we're voting on the amendment. Myrna, please.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. JOHNSTON: Now we're voting on the rule as amended. Questions from the Board? Questions from the audience? Back to the Board. Okay, audience.
MR. GRAHAM: Mr. Chairman and the Board, my name is Ted Graham. I'm the City Manager for

the City of Guymon. For those of us that want to make sure we're clear could you clarify what you're exactly doing on this fee amendment so I understand clearly.
MR. THOMPSON: We're eliminating any increase in the public water supply fees.
MR. GRAHAM: And the other portion being?
UNIDENTIFIED: Incorporation by reference.
MR. GRAHAM: Okay. That's what I want to make sure of.
MR. JOHNSTON: Is that clear?
MR. GRAHAM: Yes, sir.
MR. JOHNSTON: Thank you. We need --
MR. THOMPSON: We have a motion on the floor, we just need a roll call vote.
MR. JOHNSTON: Roll call vote.
MR. THOMPSON: We have a

motion as amended. There was an original motion to accept. We voted on the amendment; now we are going to vote on the original motion as amended.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Yes.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. JOHNSTON: Now we're going back to 11.
MR. HOBBS: Still the same guy. This has to do with Chapter 611. The proposed changes to 611 will establish application fees for reviewing and issuing certifications that DEQ is required to issue by Section 401 of the Clean Water Act. It will update the date of the publication date from July 1, 2009 to July 1, 2010 for federal rules incorporated by reference, and it will add an automatic fee increase based on the Consumer Price Index.
We received several comments, written comments, the majority coming from the OML who opposed the fee increases. And they requested an extension to the comment period, which they alleged did not comply with the Administrative Procedures

Act because they thought DEQ had not provided the 30 day notice.

After discussion at two public hearings, the Council voted unanimously to recommend that the Board approve the changes to Chapter 611 as proposed by the Department.

MR. JOHNSTON: Questions from the Board? Questions from the audience? Back to the Board.

MR. CASSIDY: We're voting on Number 19 only?

MR. HOBBS: Number 11.

MR. JOHNSTON: Number 11.

MR. THOMPSON: We had to go back, Mike.

MR. JOHNSTON: We're on Number 11. Questions?

MR. WUERFLEIN: Is this a new fee application that we're doing a $100.00 fee or is the revised?

MR. JOHNSTON: The lady is going to tell us.

MS. CHARD-MCCLARY: This is a new fee. We have not historically

charged for the Water Quality certifications. We only do, oh, I don't know, 50 to 100 a year. And previously we had just used federal funding or general revenue to cover the cost. The fees are required for permits that are issued by the Corp of Engineers so we basically for the first time are going to be charging entities who apply for certification. They are getting permits from the Corp of Engineers for stream -- in-stream work, dredge and fill-type operations. And because Oklahoma DEQ is delegated under the Clean Water Act we issue all those permits that are under our jurisdiction, but this program is one that was carved out in the Clean Water Act and specifically given to the Corp of Engineers. So we are required to certify that permits that they draft comply with Oklahoma's Water Quality Standards. And we basically -- we've been funding it with other funding

sources but thought it was unfair that those entities were getting a free ride and not having to pay for the work that we were doing to issue those certifications. The permits issued by the Corp, they do not pay a regulatory fee. So this is just a fee that they will pay to us.

MR. JOHNSTON: Anymore questions? Where am I? We're back to a motion?

MR. WENDLING: Motion to approve.

MS. SAVAGE: Second.

MR. JOHNSTON: Roll call, Myrna.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: No.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Nay.

MS. BRUCE: Mr. Mason.

MR. MASON: No.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.

MR. WENDLING: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

MR. JOHNSTON: Number 12.

MR. HOBBS: This has to do with Chapter 616. Proposed changes will establish permit application fees for industrial tank systems, surface impoundments, and land application systems. It will increase annual fees for industrial tank systems, surface impoundments, and land application systems. It will add an automatic fee increase

based on the Consumer Price Index.
At the October 12, 2010 Council meeting, suggested changes were discussed by members of the public and Council Members. Where possible the those changes were incorporated into the final rulemaking January 11, 2011.
We received written comments concerning the proposed changes. The majority of the comments came from OML and OML members who opposed the fee increases that impact municipalities.
Additionally, they requested an extension to the comment period, which they alleged did not comply with the Administrative Procedures Act because they thought DEQ had not provided a 30 day notice. This rule chapter does not apply to municipal facilities.
After discussion at two public hearings, which were held October 12, 2010 and January 11, 2011, the

Council voted unanimously to recommend that the Board approve the changes to Chapter 616 as proposed.
MR. JOHNSTON: Comments from the Board? Comments from the audience? Back to the Board. I need a motion.
MR. DRAKE: Move to approve.
MR. GRIESEL: Second.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: No.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: No.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. JOHNSTON: Go to Number 13. Lowell Hobbs.
MR. HOBBS: This has to do with Chapter 619. Operation and Maintenance of Non-Industrial Lagoon Systems and Land Application.
The proposed changes will increase the annual fees for non-industrial total retention lagoon systems and land application sites. It will also add an automatic fee increase based on the Consumer Price Index.
The Department did not receive any comments from the public. The Council voted unanimously to recommend that the Board approve the changes to Chapter 619 as proposed.

MR. JOHNSTON: Questions from the Board?
MR. CASSIDY: Just out of curiosity these CPI automatic increases, do they decrease with the CPI as well when it goes down?
MS. TURNER-BURGESS: No.
MR. HOBBS: No, they do not.
MR. THOMPSON: Well -- yes. I mean if the CPI was three in one year that applies. If the CPI is two in the next year, that applies.
MR. CASSIDY: Okay.
MR. THOMPSON: It's the annual CPI.
MR. CASSIDY: That's what I thought. Yeah.
MR. HOBBS: Yeah. But it doesn't go down below what it was.
MR. THOMPSON: No. It doesn't -- I mean, it never goes below zero, but it doesn't -- it fluctuates if they go up and down.
MR. CASSIDY: Okay.

MR. THOMPSON: I'm sorry. I thought that's what you were asking.

MR. GRIESEL: Do we have an average cost impact on this proposal?

MR. HOBBS: Average cost impact?

MS. TURNER-BURGESS: On 619?

MR. GRIESEL: Yes.

MR. COLLINS: It would probably bring in about another $100,000.00.

MR. GRIESEL: On an individual basis, do you have any idea how much of an average cost impact it will be to a permit holder?

MR. COLLINS: It depends on the size. The larger permit holders will see a larger increase, and the very small communities will see very little increase. I think the small ones, their fees are currently $210.00, that would be like $215.00.

MR. GRIESEL: Okay. That's

answers my question.

MR. JOHNSTON: I don't think we've asked the audience for questions, have we? Point of order. Are there any questions from the audience? Okay. Now back to the Board.

MR. GRIESEL: Okay. Motion to approve.

MS. ROSE: Second.

MR. JOHNSTON: Have you got those ladies? Roll call, Myrna.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: No.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: No.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.

MR. WENDLING: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: No.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

MR. JOHNSTON: Number 14, Lowell.

MR. HOBBS: This has to do with Chapter 621. The changes that we're proposing will reduce the maximum slope on a wastewater land application site from 10 percent to no more than five percent. It would implement the provision of Senate Bill 1695; which effectively eliminated one of three current scenarios for ownership such as the Homeowners Association of individual and small public sewage treatment systems. It will make grammatical

changes to the existing Annual Permit Fees section in this chapter. However, there were no changes to the fees being charged for non-industrial discharging and public water supply lagoons. This rule already contained an annual automatic fee increase based on the Consumer Price Index. And it will remove all references to total retention lagoons because they are now covered in OAC 252:619. Again, we had written comments. Most of them came from OML and OML members usual objections were noted and we did have two public hearings which were held October 12, 2010 and January 11, 2011. And the Council voted unanimously to recommend that the Board approve the changes to Chapter 621 as we have proposed.

MR. JOHNSTON: Questions from the Board? Questions from the Board? Questions from the audience? Back to the Board.

MS. ROSE: Move for

approval.
MR. MASON: Second.
MR. JOHNSTON: Roll call.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Yes.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.
MR. JOHNSTON: Number 15.
MR. HOBBS: This is Chapter 623. Pretreatment for Central Treatment Trusts. The proposed changes will establish fee for the review and issuance of permits to industries that discharge to a Central Treatment Trust, which is the Oklahoma Ordnance Works Authority. It will add an automatic annual fee increase based on the CPI and it will update the publication date from July 1, 2009 to July 1, 2010 for federal rules incorporated by reference.

Again we received written comments concerning the proposed changes. Most of them came from OML and they requested extension to the comment period because they didn't think we complied with the Administrative Procedures Act and because these rules involved only industries that discharged in the

Central Treatment Trust they do not apply to municipal facilities. After discussion at two public hearings held October 12, 2010 and January 11, 2011, the Council voted unanimously to recommend that the Board approve the changes to Chapter 623 as we are proposing.

MR. JOHNSTON: Questions from the Board? Questions from the Board? Questions from the audience? Back to the Board.
DR. GALVIN: I move we approve.
MS. SAVAGE: Second.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: No.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.

MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. JOHNSTON: Number 16.
MR. HOBBS: Chapter 624. The Department proposes to establish an initial authorization fee and an annual operation fee for minor public water supply systems. Previously the Department administered this program at no cost to the regulated community. Additionally, the Department proposes to have fees automatically increase every year thereafter in accordance with

increases in the Consumer Price Index.

The Department did not receive any comments from the public.

We voted unanimously to recommend that the Board approve the changes to Chapter 624 as proposed by the Department.

MR. JOHNSTON: Questions from the Board? Questions from the audience?

MR. CASSIDY: Mr. Chairman?

MR. JOHNSTON: Sorry about that.

MR. CASSIDY: Are you saying there is not a fee increase or there is? I thought I heard you say there was not.

MR. HOBBS: It's to establish that initial authorization fee and an annual operation fee for minor public water supply systems.

MR. CASSIDY: Okay. I see.

MR. HOBBS: Previously we didn't charge for those fees. Now

then we're going to.

MR. THOMPSON: We used to support this with general revenue money. I will tell you, and I know this is painful, all these rule increases, but I will tell you that the Department now -- well, I know you want to hurry but let me just say this. The Department now, or actually the cuts that we get during this session, we're going to have about seven million bucks in general revenue money. And 50 percent of that money will go to complaint response and 50 percent of it will go to support of municipal water -- municipal wastewater and drinking water programs. That will be it. So if we're going to operate these programs and we continue to get cuts, I don't know how I can cut the complaints program when we're getting 5,000 people calling us every year wanting us to come and look at their (inaudible). So the only alternative

left on general revenue money is going to be cuts in municipal drinking water and wastewater issues. That's all the money we've got left.

MR. MASON: Steve, can I ask a follow-up question. We keep reading the sentiments from the comments we're getting from these towns, we hear from OML, overall they are cutting budgets. They are letting people go. What's your overall budget today versus a while ago? Have we shrunk?

MR. THOMPSON: No. I don't think -- well, as far as budgeted -- there is a difference between budget and expenditures. Okay? We're down, as I think we said, 19 people in Water Quality. And, you know, you can -- a lot of those are pretty technical positions and some of them are supervisory positions. So let's just guess that when you take a person, an average person, and you include the benefits -- the fringe

benefits that we pay for and you include the ever escalating cost to the Agency for those benefits. We have to pay more money every year for retirement and for insurance. You may be talking about $100,000.00 per employee per year. So if you consider that we're down 19 folks, we're somewhere down 1.5 to 2 million dollars in the support of the people necessary to operate the programs. Now have we been -- when you're down 19 people I don't know what you do about the efficiency issue, quite frankly.

What we've done that also has caused some problems, I think from the public perception but I think from the efficiency standpoint it was a good thing to do. We used to get 6,000 complaints. Now we're down to four which is still a big number. So as that number has gone down, Gary in ECLS has taken on more and more responsibility in stormwater.

And so we have tried to provide full-time employment for both of those people. But one of the issues that we're facing is that we don't have people adequate to take on new federal programs anyway. We've got to backfill those positions. That's the first thing.

The second thing is we understand the cities are struggling. That's what makes this so difficult. I believe in my heart of hearts that they are going to struggle more under EPA enforcement than they are under DEQ. I mean I just believe that's the case. I always will and I always have.

Now, to say to a municipality that's struggling I'm your friend, give me your money. I understand. I understand how difficult that is. It is a philosophical position that -- that like Bob talked about at Lone Grove and we -- I don't like to talk about individual cities but

cities like that we probably went too far and we probably go too far in the assistance fees, but we're not going to go -- given the reductions in staff and those type of things we're not going to be able to go nearly as far as we have in the past.

I guess -- does that answer your question?

MR. MASON: How many employees actually working today do you have versus a while ago?

MR. THOMPSON: Across the Agency somewhere around -- I don't know exactly -- I think the number is 25 less human beings than we did in July 1 of 2009. And a great portion of those -- significant portion is in the Water Quality Division. I'd say 80 percent of them are in Water Quality. And I -- look, we came to you guys, the Board, three years ago with a fee increase. And what we did was just

take a percentage increase and we probably were wrong the last time that we did it. That proved inadequate to sustain the staff given the number of responsibilities that keep piling up on us. So that's a part of this problem is that we got behind and we got significantly behind. And we're trying to make it up and we're trying to make it up in one year and that's probably -- tactically and politically probably was the wrong thing to do. Nevertheless, we're down about 25 or 26 or 27 people and I'm talking about this -- there is no shell game here with FTEs. I'm talking about human beings that are walking around. We have in the Air Program -- when we talked about the area source MACT, that's a program that's here now. That's not something that's coming to us. It's sitting here right now that we have to make a decision on implementation or not implementation.

It's not something that we're planning for.

And Eddie, because of shortfalls hasn't been able -- hasn't lost, I don't think, a lot of people but he hasn't been able to fill positions on federal requirements that are here now. So that's the answer. I guess that's my answer.

MR. MASON: And I suppose you would also suggest that a decrease of 25 people, compared to other parts of government doesn't sound like much, actually it's a huge cut, because if we calculated how many more people we need to deal with all the EPA programs --

MR. THOMPSON: Well --

MR. MASON: -- it might be 50 or 100 people that we really need beyond the Air MACT.

MR. THOMPSON: I'd suspect that that's right. I mean, I don't know the number but it is some number probably more -- at some point

if we get enough money we will fill our -- we will -- given the number of things coming at us, we have a cap on the number of people we can hire. It's at 582, I believe. Five --

MS. CHARD-MCCLARY: 572.

MR. THOMPSON: That's what I said, 572. (Laughter). And at some point the number of requirements if they continue, assuming they continue, will overburden even that number.

MR. MASON: Thank you.

MR. JOHNSTON: Questions from the Board? Questions from the Board? Questions from the audience? Back to the Board.

MR. DRAKE: Move approval.

MR. MASON: Second.

MR. JOHNSTON: Roll call, Myrna.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: No.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.

MR. WENDLING: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

MR. JOHNSTON: Number 17. 626.

MR. HOBBS: I might say that those of you that fear facing your political allies, the Council is

upon it three by the Speaker, three by the President of the Senate, and three by the Governor. So those guys have to answer for what we're doing or we're representing them so you've got a pretty good come back to them to say, hey, you put them on there. And I truthfully can tell you the Council's whole focus is to make the best better. Not to take away from any industry or any municipalities, or any person, it's to make the best we've got even better. That's been our focus.

That being said, we'll talk about Chapter 626. Public Water Supply Construction Standards.

The proposed changes will increase the permitting fees for public water supply construction permits, make the requirements for variances from construction standards in Chapter 626 consistent with Chapter 656 and provide additional options for obtaining variances. And

it will add an automatic fee increase based on the Consumer Price Index.

Again, the majority of the comments came from OML and they requested an extension to the comment period because they thought we hadn't provided them with a 30 day notice. There were a few technical comments that were primarily from engineers questioning the requirements for obtaining a variance. Both DEQ and the engineers agreed to the final language that was presented to the Council and is now being recommended to the Board.

After extensive discussions at two public hearings which were held October 12, 2010 and January 11, 2011 the Council voted unanimously to recommend that the Board approve the changes to Chapter 626 as proposed at this time.

MR. JOHNSTON: Questions from the Board? Questions from the audience? Back to the Board.

MS. ROSE: Move for approval.
MS. SAVAGE: Second.
MR. JOHNSTON: Myrna.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: No.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. JOHNSTON: Number 19, 641. Lowell Hobbs.
MR. HOBBS: Chapter 641 has to do with Individual and Small Public On-Site Sewage Treatment Systems. The proposed changes will implement two laws that were passed during the past legislative session, Senate Bill 1765 and Senate Bill 1695.
Senate Bill 1765, effective April 22, 2010, requires that the person contracting for the installation of an on-site sewage treatment system certify in writing the actual wastewater flow from the residence or business that the proposed system will serve.
Senate Bill 1695, effective April 19, 2010, effectively eliminated one of the three current options for ownership of an individual or small public sewage

treatment system which is the homeowners associations.
The Department did not receive any comments from the public.
And the Council voted unanimously to recommend that the Board approve the changes to Chapter 641.
MR. JOHNSTON: Questions from the Board on Chapter 641?
MR. THOMPSON: No fee here, right, Lowell?
MR. HOBBS: That's true. That's the way I understand it.
MR. JOHNSTON: Questions from the audience? Back to the Board.
MS. ROSE: Move for approval.
MS. SAVAGE: Second.
MR. JOHNSTON: Myrna.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: Yes.

MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Mason.
MR. MASON: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
MR. JOHNSTON: Mr. Mason is leaving us so he can watch his daughter play basketball down in Mississippi. Holler for us.
Number 20, Chapter 656.
MR. HOBBS: This has to do

with the Water Pollution Control Facility Construction Standards.

The proposed changes 656 will increase municipal wastewater construction permit application fees. It will limit who is eligible to obtain a wastewater construction permit in accordance with Senate Bill 1695, which as I said a while ago was enacted in April of 2010. It will have the information contained in an engineering report match what the Funding Agency Coordinating Teams requires to aid the regulated community in obtaining funding. It will move Operation and Maintenance Manual development requirements into its own section.

It will make the requirements for variances from construction standards in Chapter 656 consistent with Chapter 626 and provide additional options for obtaining variances.

It will restrict land

application sites to those sites with slopes of five percent or less; create Appendix E which contains a County Rainfall Table that has been revised to include data from the Oklahoma Geological Survey. Miscellaneous technical changes and other minor language modifications and reserve a new subchapter for wastewater use.

The Department received written comments concerning the proposed changes, the majority of them came from OML to oppose the fee increases that impact municipalities. Additionally, they requested an extension to the comment period which they alleged did not comply with the Administrative Procedures Act because they thought DEQ had not provided a 30 day notice.

There were a few technical comments that were primarily from engineers questioning the requirements for obtaining a

variance. Both DEQ and the engineers agreed to the final language that was presented to the Council and is now being recommended to the Board.

After the two extensive discussions at two public hearings which were held on October 12, 2010 and January 11, 2011, the Council voted unanimously to recommend that the Board approve the changes to Chapter 656 as proposed.

MR. JOHNSTON: Questions from the Board?

MS. CANTRELL: Mr. Hobbs, how does this proposal dovetail with the Scenic Rivers Standards?

MR. HOBBS: Let me call on somebody that knows more than I do. You might repeat the question.

MS. CHARD-MCCLARY: Which particular standards are you asking?

MS. CANTRELL: Well, in the proposal -- I guess, I'm wondering aren't there particular receiving stream standards for the scenic

rivers that are different from the other receiving streams of the state?

MS. CHARD-MCCLARY: There are different Water Quality Standards for the scenic rivers. We address that through really what is in Chapter 606, the permitting requirements. So that we use the Water Quality Standards as promulgated by the Water Resources Board and apply them to the scenic rivers when we're doing discharge permits. When we're dealing with biosolids from the sewage treatment plants there are some requirements. But again, most of those are found in 606 where we limit where those biosolids can be applied. And that is based on a negotiated language that we had with Scenic Rivers Commission and other interested environmental groups.

MR. THOMPASON: From a --

MS. CHARD-MCCLARY: Am I missing the question?

MS. CANTRELL: No.
MR. THOMPSON: From a practical -- from a practical standpoint in outstanding resource waters, which is what the Illinois River is, facilities must be constructed -- if you're going to construct a facility you must construct it in such a way that they do not discharge either industrial processed water or stormwater. Is that right?
MS. CHARD-MCCLARY: There are no new discharges allowed in those areas --
MR. THOMPSON: That's right.
MS. CHARD-MCCLARY: -- so if they already exist they can continue to operate but they do have more restrictions placed on them.
MR. THOMPSON: But it remains the fact that if you are a -- we do not allow a new discharge to the Illinois River. Now there are facilities that have gone in that

have had to contain both stormwater and industrial process water discharges so that it doesn't flow into the river.
MS. CANTRELL: Okay.
MS. CHARD-MCCLARY: And we coordinate when -- we don't issue a construction permit to build something if a discharge permit is going to be required without all of that going through the same process looking at it so that we know that this entity -- this city plans to build a new treatment plant, it's in a scenic river, you know, we're not going to issue that construction permit knowing we can never issue them a discharge permit. So there is that coordination within the division.
MS. CANTRELL: Okay. Thank you.
MR. JOHNSTON: Anymore questions from the Board on 656? Questions from the audience? Back to

the Board.
MR. DRAKE: Move approval.
MS. ROSE: Second.
MR. JOHNSTON: Myrna.
MS. BRUCE: Ms. Cantrell.
MS. CANTRELL: Yes.
MS. BRUCE: Mr. Cassidy.
MR. CASSIDY: No.
MS. BRUCE: Mr. Drake.
MR. DRAKE: Yes.
MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Mr. Mason. Mr. Mason is out. Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.
MR. JOHNSTON: 252:690. Mr. Hobbs.
MR. HOBBS: Ready. This has to do with Water Quality Standards Implementation. The changes we're proposing will update the date of the publication date from July 1, 2009 to July 1, 2010 for federal rules incorporation by reference. It will establish a minimum quantification level and it will establish secondary body contact recreational parameters upon regulated entities when necessary. It will require industries that discharge oxygen demanding substances to conduct process control tests. It will require municipalities and industries to report control tests in accordance with federal regulations and will clarify miscellaneous technical requirements including those required by the EPA and other minor language modifications.

We received written comments concerning the proposed changes and the majority of them came from OML to oppose the fee increases that impact municipalities. Additionally, they requested an extension to the comment period which they alleged did not comply with the Administrative Procedures Act because they thought the DEQ had not provided a 30 day notice. There are no fees included in this rule chapter.

The Department received several written comments about technical changes to this rule during the public comment period. DEQ made some changes to the rule in response to these comments; however, some of the changes were mandated by the EPA.

After extensive discussions at two public hearings which were held October 12, 2010 and January 11, 2011, the Council voted unanimously to recommend that the Board approve the changes to Chapter 690 as

proposed by the Department.

MR. JOHNSTON: Questions from the Board? Questions from the audience? Back to the Board.

MR. GRIESEL: I make a motion to approve.

MS. ROSE: I second.

MR. JOHNSTON: Myrna, we're about through.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.

DR. GALVIN: Yes.

MS. BRUCE: Mr. Griesel.

MR. GRIESEL: Yes.

MS. BRUCE: Ms. Rose.

MS. ROSE: Yes.

MS. BRUCE: Ms. Savage.

MS. SAVAGE: Yes.

MS. BRUCE: Mr. Wendling.

MR. WENDLING: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Motion passed.

MR. HOBBS: Mr. Chairman, before I leave I'd like to thank the Board for considering our recommendations and the support you've given us. I would like to invite those of you who had some issues with some of our decisions to attend our Council meetings. Obviously, I'm only going to make one more so you can come after and then you won't have to face me. But thank you very much for your consideration and for your honoring us with what we did and thinking we did it right. Thank you very much.

MR. JOHNSTON: Thank you for your service, Lowell.

MR. HOBBS: Thank you.

MR. DRAKE: Mr. Chair, I have a point of information or a

point of order, either way. I noticed that in everything that Lowell pretty well gave us, the Municipal League had a problem with the 30 day notice. Now it shouldn't take but a moment but I'm pretty sure -- I can't imagine in all the issues that we had and the problems that we knew we were going to face that the staff would have failed to have had that there on time. And I'm wondering what happened, just quickly. Because it's in every one of them.

MR. THOMPSON: Well, let's see.

MR. DRAKE: Now our attorney is already shaking his head like everything was just fine. I've already seen that.

MR. THOMPSON: Everything was just fine. Everything was just fine.

MR. DRAKE: All right. That's good.

MR. THOMPSON: Everything was just fine.

MR. EUBANKS: I would say, I just went back and checked after talking with Martha Penniston, General Counsel for ODEQ, because I saw the same comments saying that people didn't -- either didn't receive a package through notice or saying that the time wasn't long -- or they didn't give enough or the full 30 days wasn't given, but there were two full notice periods given. They were both published. I have no problem or concerns with the notice for comments periods that were given.

MR. DRAKE: I just wanted -- I wanted to put that on the record.

MR. THOMPSON: Let me just say this. There was a misunderstanding. We've had discussions with OML staff and I think we're beyond those misunderstandings. Okay. Fair

enough?

MR. DRAKE: Okay. Good.

MR. JOHNSTON: Okay. Executive Director's Report. Quickly.

MR. THOMPSON: Yes, sir. In the interest of that -- as the Chairman said, in the interest of time I will take a couple of minutes.

As you all may be aware the President in his State of the Union Address addressed the issue of rules. And that there were -- that people needed to take -- that agencies needed to take a look at rules that were impediments to jobs. As a result of that the ECOS, the Environmental Council of States, which is the National Association of State Environmental Commissioners, in a moment of temporary insanity, has asked me to lead the effort to address rules that we believe may have that impact. So I'm now

referred to by my peers as the goofy rule guy. We're working not only with the staff, the staff of other states, and we'll be coordinating and I suppose I will be taking those ideas that we have on burdensome rules to both the Environmental Protection Agency and probably on to the Office of Management and Budget at some point, when we get that developed and when EPA gets -- when the federal government gets this process. So I wanted to let you know that we were involved in that.

Second thing is on your -- in front of you, you have our key bills list. I won't take the time to go through each one of them but if there are questions now or if you look this over and you have questions about it, please give me a call. Be happy to answer questions about them.

MR. JOHNSTON: I think you need to specify that you're not the goofy rule guy, you're the guy in

charge of goofy rules.

MR. THOMPSON: It's a matter of opinion, Mr. Chairman. Anyway, I'm going to be working on that. With that Mr. Chairman, unless there are questions, that ends my report.

MR. JOHNSTON: Seeing no questions, any New Business? This mean any matter not known about and which could not have been reasonably foreseen prior to the time of posting the Agenda.

Our next meeting will be June 14, 2011 in Enid Oklahoma.

We need a motion to adjourn from this meeting.

MR. DRAKE: Move to adjourn.

MR. GRIESEL: Second.

MR. JOHNSTON: Quickly.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Dr. Galvin.
DR. GALVIN: Yes.
MS. BRUCE: Mr. Griesel.
MR. GRIESEL: Yes.
MS. BRUCE: Ms. Rose.
MS. ROSE: Yes.
MS. BRUCE: Ms. Savage.
MS. SAVAGE: Yes.
MS. BRUCE: Mr. Wendling.
MR. WENDLING: Yes.
MS. BRUCE: Mr. Wuerflein.
MR. WUERFLEIN: Yes.
MS. BRUCE: Mr. Johnston.
MR. JOHNSTON: Yes.
MS. BRUCE: Motion passed.
(Meeting Concluded)

C E R T I F I C A T E

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, CHRISTY A. MYERS, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the above meeting is the truth, the whole truth, and nothing but the truth; that the foregoing meeting was taken down in shorthand and thereafter transcribed by me; that said meeting was taken on the 28th day of February, 2011, at Oklahoma City, Oklahoma; and that I am neither attorney for, nor relative of any of said parties, nor otherwise interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this, the 16th day of April, 2011.

CHRISTY A. MYERS, CSR
Certificate No. 00310

OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL QUALITY BOARD

Attendance Record

February 25, 2011

Oklahoma City, Oklahoma

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Myrna Bruce		X7177
Jerry Johnston		Bromor
Mista J Burgess		x 7189
Jennifer Wright		x 7163
Shellie Chard McClary		8157
David Branecky	AQAC	—
Brian Duzan	Lab Counc:	918-828-9977
David Dyke	OGE	
Bud Ground	PSO	
TERRI SAVAGE		
Steve Woods		
Ted Graham	City of Guymon	580-338-0137
Jeanette Nance	DEQ	x7119
Skylar McEy	DEQ	7167
Cheryl Bradley	DEQ	x 4218
DAWSON LASSETER	DEQ	x 4185
Sandra Bose	Board	—
Karen Jayne	DEQ	x 7174
Richard Wuerflein	Board	
Jennifer Galvin	Board	918 914 0904
Martha Penisten	DEQ	x7184
John Wendling	Board	—
KEN WILLIAMS	HALL ESTILL	320 S. Boston Ste 200 Tulsa 918-594-0519
Robert B Johnston	City of Frederick	—
Robert Huber	DEQ	x 6169
Mike Cassidy	OEQ Bd.	

OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY

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Attendance Record

February 25, 2011

Oklahoma City, Oklahoma

NAME and/or AFFILIATION	Address and/or Phone and/or E-Mail
[illegible]	DEQ
DAVID Caldwell	DEQ
Bruce Vandeluue	DEQ
Jon Roberts	DEQ
BOB RABATINE	CARDINAL Engineering 842-1066 br@cardinalengineering.com
Carolyn Stager	Oklahoma Municipal League
Chris Armstrong	DEQ
Rob Singlebary	DEQ
Richard McDuff	DEQ
[illegible]	DEQ
Beverly Botchlet-Smith	DEQ
Kelly Danner	OML Kellycoml.org
Mark Gal[illegible]	B.Ville, OK
Clayton Eubanks	AG's office clayton.eubanks@oag.ok.gov
Brad Fleming	DEQ
Austin Hawkins	DEQ
Camas Frey	DEQ
Bert Cat	DEQ
Kelly Dixon	DEQ
Pam Dyke	DEQ
[illegible]	~~DEQ~~ OGC
Lundy Riggs	AES
Scott Thompson	DEQ
Dol Hall	Hall Estill
Steve Mason	
Karen Riffee	Seeling

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Attendance Record

February 25, 2011

Oklahoma City, Oklahoma

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Alan Rojas	City of Woodward 580-216-0926
Judy Copeland	203 9030
Garry Keete Hall Estill	918-594-0553 gkeete@hallestill.com