

MINUTES
WATER QUALITY MANAGEMENT ADVISORY COUNCIL
September 25, 2018
Oklahoma Department of Environmental Quality
Multipurpose Room
Oklahoma City, Oklahoma

Official WQMAC
Approved at January 8, 2019 Meeting

Notice of Public Meeting – The Water Quality Management Advisory Council (WQMAC) convened for a Regular Meeting at 2:00 p.m. at the Oklahoma Department of Environmental Quality (DEQ), 707 North Robinson, Oklahoma City, Oklahoma. The meeting was held in accordance with the Open Meeting Act, with notice of the meeting given to the Secretary of State on October 18, 2017. The agenda was posted at DEQ twenty-four hours prior to the meeting. Mr. Brian Duzan, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

MEMBERS PRESENT

Robert Carr
 Brian Duzan
 Alexandria Kindrick
 Jon Nelson
 Jim Rodriguez
 Jeff Short
 Steve Sowers
 Debbie Wells
 Duane Winegardner

MEMBERS ABSENT

Mark Matheson
 Terry Wyatt

DEQ STAFF PRESENT

Shellie Chard
 Chris Armstrong
 Hillary Young
 Mark Hildebrand
 Michelle Wynn
 Travis Couch
 Traci Kelly
 Lee Dooley
 David Caldwell
 Stephen Baldrige
 Jennifer Boyle
 Betsey Streuli
 Jeff Franklin
 Saba Tahmassebi
 Quiana Fields

OTHERS PRESENT

Brenda Schmitz, Court Reporter

Approval of Minutes from the July 31, 2018 Meeting – Mr. Duzan called for a motion to approve the Minutes of the July 31, 2018 Regular Meeting. Mr. Winegardner moved to approve and Mr. Rodriguez made the second.

See transcript pages 4 – 5

Robert Carr	Yes	Steve Sowers	Yes
Alexandria Kindrick	Yes	Debbie Wells	Yes
Jon Nelson	Yes	Duane Winegardner	Yes
Jim Rodriguez	Yes	Brian Duzan	Yes
Jeff Short	Yes		

COUNCIL MEETING SCHEDULE FOR 2019 – Mr. Duzan called for a motion to approve the 2019 schedule as outlined in the agenda; January 8, April 23, July 23 and September 24. Mr. Sowers moved to approve and Mr. Short made the second.

		<i>See transcript pages 5 – 6</i>	
Robert Carr	Yes	Steve Sowers	Yes
Alexandria Kindrick	Yes	Debbie Wells	Yes
Jon Nelson	Yes	Duane Winegardner	Yes
Jim Rodriguez	Yes	Brian Duzan	Yes
Jeff Short	Yes		

PERMANENT RULEMAKING – OAC 252:606 – OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS – Mr. Mark Hildebrand, Environmental Programs Manager of the WQD, stated that the Department will be proposing an update of the progress of the publication date of the federal rules from July 1, 2016 to July 1, 2018. The most significant changes include a rule that modifies that approved testing requirements for analysis and sampling under the Clean Water Act; a rule that sets February 6, 2020 as the applicability date of the new “Waters of the United States” definition; and EPA’s effort to explain the two methods that a small MS4 system may obtain permit coverage. Hearing no questions or comments by the Council or by the public, Mr. Duzan called for a motion. Ms. Wells moved to approve and Mr. Short made the second.

		<i>See transcript pages 6 – 10</i>	
Robert Carr	Yes	Steve Sowers	Yes
Alexandria Kindrick	Yes	Debbie Wells	Yes
Jon Nelson	Yes	Duane Winegardner	Yes
Jim Rodriguez	Yes	Brian Duzan	Yes
Jeff Short	Yes		

DISCUSSION OF RULEMAKING FOR JANUARY 2019 WQMAC MEETING:

OAC 252:653 – AQUIFER STORAGE AND RECOVERY – Ms. Hillary Young, Engineering Manager of the LPD, stated that the Department is proposing to amend OAC 252:653-1-5 to update the definitions of “Aquifer Storage and Recovery” and “Area of Hydrologic Effect” for consistency with the Oklahoma Water Resources Board; OAC 252:653-1-12 to provide permit application fees and annual operating fees for ASR; OAC 252:653-5-2 and OAC 252:653-7-6 to provide for notification requirements for ASR facilities; and OAC 252:653-7-7 to provide specific language requiring bench-scale and field-scale pilot testing for evaluating the compatibility of delivered water with the receiving aquifer for the purpose of ASR. There were comments by the Council and none by the public.

See transcript pages 10 – 16

OAC 252:004 – RULES OF PRACTICE AND PROCEDURE – Ms. Shellie Chard, Division Director of the WQD, stated that the Department is proposing to amend OAC 252:004 to update the Chapter to comply with House Bill 2933 which becomes effective on November 1, 2018. There were no comments by the Council or by the public.

See transcript pages 17 – 19

DIRECTOR’S REPORT – Ms. Chard provided an update on other division activities. Mr. Chris Armstrong, Division Director of the SELS provided an update on the laboratory accreditation rules for Chapter 301, 302 and 307.

See transcript pages 19 – 40

NEW BUSINESS – None

ANNOUNCEMENTS – The next scheduled WQMAC meeting will be on January 8, 2019 at 2:00 p.m. in the Multi-Purpose Room, 1st floor, DEQ building.

ADJOURNMENT - Mr. Duzan entertained a motion to adjourn. Mr. Rodriguez moved to adjourn and Mr. Nelson made the second. The meeting was adjourned at 2:57 p.m.

Transcripts and Attendance Sheet are attached as an official part of these Minutes.

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

WATER QUALITY MANAGEMENT ADVISORY COUNCIL
REGULAR MEETING
ON SEPTEMBER 25, 2018 - 2:00 P.M.

DEQ BUILDING
707 NORTH ROBINSON, MULTIPURPOSE ROOM
IN OKLAHOMA CITY, OKLAHOMA

REPORTED BY: BRENDA SCHMITZ, CSR, RPR

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1 ADVISORY COUNCIL:
2 BRIAN DUZAN, CHAIR
3 ROBERT CARR
4 ALEXANDRIA KINDRICK
5 JON NELSON
6 JIM RODRIGUEZ
7 JEFFREY SHORT
8 STEVE SOWERS
9 DUANE WINEGARDNER
10 DEBBIE WELLS
11 ABSENT:
12 MARK MATHESON
13 TERRY WYATT
14
15 QUIANA FIELDS, Administrative Programs Officer
16
17 SPEAKERS:
18 HILLARY YOUNG
19 MARK HILDEBRAND
20 SHELLIE CHARD
21 CHRIS ARMSTRONG
22
23
24
25

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1 MS. FIELDS: Mr. Short?
2 MR. SHORT: Here.
3 MS. FIELDS: Mr. Sowers?
4 MR. SOWERS: Here.
5 MS. FIELDS: Ms. Wells?
6 MS. WELLS: Here.
7 MS. FIELDS: Mr. Winegardner?
8 MR. WINEGARDNER: Here. Ms. Wyatt is
9 absent. Mr. Duzan?
10 MR. CHAIRMAN: Here.
11 MS. FIELDS: We have a quorum.
12 MR. CHAIRMAN: Okay. The next thing is
13 the approval of the meeting, the Minutes from the
14 meeting on July 31st, 2018, which I think everybody
15 got ahead of time.
16 Any notes or comments?
17 MR. WINEGARDNER: Move to approve.
18 MR. RODRIGUEZ: Second.
19 MR. CHAIRMAN: Vote?
20 MS. FIELDS: Mr. Carr?
21 MR. CARR: Yes.
22 MS. FIELDS: Ms. Kindrick?
23 MS. KINDRICK: Yes.
24 MS. FIELDS: Mr. Nelson?
25 MR. NELSON: Yes.

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1 PROCEEDINGS - SEPTEMBER 25, 2018
2 MR. CHAIRMAN: This regular meeting of the
3 Water Quality Management Advisory Council was called
4 in accordance with the Open Meeting Act.
5 Notice for this September 25th, 2018 was filed
6 with the Secretary of State on October 18th, 2017.
7 The agenda was duly posted at the DEQ at least 24
8 hours prior to the meeting.
9 Only matters appearing on the posted agenda may
10 be considered at this regular meeting. In the event
11 that this meeting is continued or reconvened, public
12 notice of the date, time, and place of the continued
13 meeting will be given by announcement at this
14 meeting. Only matters appearing on the agenda of a
15 meeting which is continued may be discussed at the
16 continued or reconvened meeting. Roll call?
17 MS. FIELDS: Mr. Carr?
18 MR. CARR: Here.
19 MS. FIELDS: Ms. Kindrick?
20 MS. KINDRICK: Here.
21 MS. FIELDS: Mr. Matheson is absent.
22 Mr. Nelson?
23 MR. NELSON: Here.
24 MS. FIELDS: Mr. Rodriguez?
25 MR. RODRIGUEZ: Here.

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1 MS. FIELDS: Mr. Rodriguez?
2 MR. RODRIGUEZ: Yes.
3 MS. FIELDS: Mr. Short?
4 MR. SHORT: Yes.
5 MS. FIELDS: Mr. Sowers?
6 MR. SOWERS: Yes.
7 MS. FIELDS: Ms. Wells?
8 MS. WELLS: Yes.
9 MS. FIELDS: Mr. Winegardner?
10 MR. WINEGARDNER: Yes.
11 MS. FIELDS: Mr. Duzan?
12 MR. CHAIRMAN: Yes.
13 MS. FIELDS: Motion passed.
14 MR. CHAIRMAN: Okay. Next thing is to
15 discuss and vote on the dates, times and locations
16 of the Water Quality Management Advisory Council
17 meetings for the 2019 calendar year. Staff
18 recommends meetings be held 2:00 p.m. in this
19 building, the First Floor Multipurpose Room, based
20 on the Environmental Quality Board meetings schedule
21 and expected rule-making efforts, staff recommends
22 the follow dates, which are listed.
23 MR. SOWERS: Motion to accept.
24 MR. SHORT: Second.
25 MR. CHAIRMAN: Roll vote?

<p style="text-align: right;">Page 6</p> <p>1 MS. FIELDS: Mr. Carr? 2 MR. CARR: Yes. 3 MS. FIELDS: Ms. Kindrick? 4 MS. KINDRICK: Yes. 5 MS. FIELDS: Mr. Nelson? 6 MR. NELSON: Yes. 7 MS. FIELDS: Mr. Rodriguez? 8 MR. RODRIGUEZ: Yes. 9 MS. FIELDS: Mr. Short? 10 MR. SHORT: Yes. 11 MS. FIELDS: Mr. Sowers? 12 MR. SOWERS: Yes. 13 MS. FIELDS: Ms. Wells? 14 MS. WELLS: Yes. 15 MS. FIELDS: Mr. Winegardner? 16 MR. WINEGARDNER: Yes. 17 MS. FIELDS: Mr. Duzan? 18 MR. CHAIRMAN: Yes. 19 MS. FIELDS: Motion passed. 20 MR. CHAIRMAN: Permanent rule making for 21 the Oklahoma Pollutant Discharge Elimination 22 Standards. Mark? 23 MR. HILDEBRAND: Good afternoon, I'm Mark 24 Hildebrand and I'm Environmental Programs Manager 25 for the Water Quality Division here at DEQ. And</p>	<p style="text-align: right;">Page 8</p> <p>1 sewer systems, we call them MS4's, to ensure that 2 the discharge of pollutants is reduced to maximum 3 extent practical. 4 The first approach is pretty much what we do 5 now, where -- and they call it the comprehensive 6 general permit. And we draft a one-size-fits-all 7 permit for all the MS4 programs, we publish public 8 notice and have hearings or public meetings and 9 discuss the changes, and then -- or any comments and 10 things, and then incorporate that, if necessary, and 11 then issue the permit that everybody falls under. 12 And there's a new approach that they call the 13 two-step general permit, where there's separate 14 requirements for certain MS4's. And I really don't 15 see us using the two step approach here in Oklahoma, 16 because it would be just a whole lot of extra work 17 for everybody involved doing separate public notices 18 and things like that, just like you would an 19 individual permit, but I guess it could be an option 20 for us to use under certain circumstances. 21 And then the number 3 thing that's incorporated 22 was a change in the EPA that's set of February 6th, 23 2020 as the applicability date of the new Waters of 24 the United States definition. However, in the time 25 between the drafting of the rule-making documents</p>
<p style="text-align: right;">Page 7</p> <p>1 just a heads up ahead of time, I've given everybody 2 and replaced our text that was mailed out and put on 3 our website, as we have discovered some legal -- a 4 legal case that went on with the Waters of the 5 United States and I'll get to that later. But 6 should -- if anybody does not have a highlighted 7 version with highlights on the first page, let me 8 know and we'll get you one. 9 Okay. As discussed in the July 31st, Water 10 Quality Management Advisory Council Meeting, the 11 Department is proposing to incorporate, by 12 reference, of the publication date of federal rules 13 from July 1, 2016 to July 1, 2018. We update these 14 federal regulations as part of our delegation 15 agreement so that we can administer the OPDES 16 program, rather than EPA administering it. 17 The most significant changes include the Method 18 Update Rule, which modifies the approved analysis 19 and the testing requirements under the Clean Water 20 Act, and this will require laboratories to update 21 their method, protection -- detection procedures. 22 And then the next thing is establishing two 23 alternative procedural approaches. For us, the 24 permitting authority to issue NPDES general permits 25 for small municipal -- municipally separate storm</p>	<p style="text-align: right;">Page 9</p> <p>1 and today's council meeting, Federal Court action 2 has enjoined this rule nationwide. 3 So as you can see from the revised highlighted 4 text, we have stricken those sections from our rule 5 text. Despite this, we're going to continue to use 6 our definition of Waters of the State as we always 7 have, and EPA will continue to sort through their 8 issues with the Waters of the United States 9 definition. 10 So that's all I've got, and we would recommend 11 the adjusted changes that are highlighted in front 12 of all of you now. 13 MR. CHAIRMAN: Discussion by the council? 14 Discussion from the public? Do we have a motion to 15 accept the rules? 16 MS. WELLS: So moved. 17 MR. NELSON: Moved. 18 MR. SHORT: Second. 19 MR. CHAIRMAN: Vote? 20 MS. FIELDS: Mr. Carr? 21 MR. CARR: Yes. 22 MS. FIELDS: Ms. Kindrick? 23 MS. KINDRICK: Yes. 24 MS. FIELDS: Mr. Nelson? 25 MR. NELSON: Yes.</p>

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1 MS. FIELDS: Mr. Rodriguez?
2 MR. RODRIGUEZ: Yes.
3 MS. FIELDS: Mr. Short?
4 MR. SHORT: Yes.
5 MS. FIELDS: Mr. Sowers?
6 MR. SOWERS: Yes.
7 MS. FIELDS: Ms. Wells?
8 MS. WELLS: Yes.
9 MS. FIELDS: Mr. Winegardner?
10 MR. WINEGARDNER: Yes.
11 MS. FIELDS: Mr. Duzan?
12 MR. CHAIRMAN: Yes.
13 MS. FIELDS: Motion passed.
14 MR. HILDEBRAND: Thank you.
15 MR. CHAIRMAN: Okay. Next is information
16 on the Aquifer Storage and Recovery. Hillary Young.
17 MS. YOUNG: Hello. I'm Hillary Young,
18 Chief Engineer of Land Protection Division, and I'm
19 here to discuss amendments to Chapter 653 Aquifer
20 Storage and Recovery. This is just for discussion
21 and we'll be bringing these before you in January
22 for a vote.
23 The first change, as you know, that we -- you
24 voted on Aquifer Storage and Recovery, Chapter 653,
25 last year and approved them, they went to the board

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1 and the board approved them, and they became
2 effective September 15th. So now we have
3 amendments.
4 The first change that we'd like to make is to
5 amend the definitions of aquifer storage and
6 recovery and area of hydrologic effect. This is to
7 be more consistent with the OWRB rules. OWRB has
8 come out with Chapter 32, Aquifer Storage and
9 Recovery, and as you know, applicants will be
10 working with both agencies, and we both use these
11 terminologies, so they need to be consistent so it
12 doesn't cause confusion for the applicant.
13 The changes are pretty small, the only -- for
14 the aquifer storage and recovery, we added to the
15 end of the sentence, for purposes of this chapter,
16 ASR activity shall not include groundwater recharge
17 or augmentation through a natural connection with a
18 farm pond or other impoundment otherwise authorized
19 by law. So we added the "otherwise authorized by
20 law", it makes it more clear, and it's consistent
21 with OWRB.
22 And then under "area of hydrologic effect," we
23 just changed area to areal extent of all hydrologic
24 features, including surface and groundwater, and
25 again this is consistent with what the OWRB has in

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1 their definition in their rules.
2 The next amendment is fees. Now, the fees were
3 approved by this council last year, and they were
4 also approved by the board in November. However,
5 rules containing new fees must be approved by the
6 board while the legislature is in session.
7 So DEQ removed the fees from the rules when we
8 went to legislature because of that procedural
9 error. So now we are putting the exact same
10 language back into the rules. So we took the
11 language out, and now we're putting the exact same
12 language back in. It's the same thing that was
13 approved last year by both the council and the
14 board.
15 The next thing is notifications. The council
16 approved some notification language that we had as
17 part of the ASR rules last year. And at the board
18 meeting, some of the board members had issues with
19 that language and wanted us to actually broaden it
20 some. So the board struck the notification language
21 from the rules when they approved them. They
22 instructed DEQ to come up with the language and told
23 us what it was they wanted to see, and we worked
24 with a couple of board members and OWRB to develop
25 this language, and once the language was drafted, we

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1 presented the draft language to the board at their
2 February meeting for them to review and look at and
3 make sure they were okay with it. So you see that
4 notification used to be in the general provisions in
5 subchapter 1, so we struck that, it says reserved
6 because the board struck the language, but we moved
7 them to, one into subchapter 5, which is, ASR
8 Treatment plant construction permit application, and
9 that notification simply says that they have to
10 notify adjacent landowners to the surface facility,
11 so where they're going to build a water treatment
12 plant, they need to notify all of the adjacent
13 landowners.
14 And then there's another notification
15 requirement that's in subchapter 7, and the ASR
16 water delivery construction, and in that
17 notification it also states that they need to notify
18 adjacent landowners to any surface facility so that
19 would be for infiltration basins or recharge wells
20 or some other water delivery method that had surface
21 facilities.
22 And then they also must notify irrigation,
23 industrial, commercial and public water supply
24 permit holders in the area of hydrologic effect,
25 that was specifically requested by the board, and we

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1 talked with OWRB and they said that that was
2 something that would be easily done.
3 Next was notification of water rights owners in
4 the area of hydrologic effect as directed by DEQ,
5 that was also specifically requested by the board.
6 And it's as directed by DEQ because -- because these
7 projects could be in a rural area where there aren't
8 a lot of water rights owners, or they could be close
9 to a municipality where there are thousands. And so
10 we would determine what the best method was to do
11 this notification, and it would be done on a
12 case-by-case basis.
13 And then groundwater associations as directed
14 by DEQ, and associations that represent oil and
15 natural gas operators as directed by DEQ. And again
16 these associations, if their name changes, we don't
17 want to specify an association in the rules, we
18 don't want to have to go back and change the rules
19 again for that. And that way, this -- we wouldn't
20 have to do that.
21 And as you'll see too, in B, it says, the
22 notice has to be approved by DEQ, and then it has to
23 have at least the information required in Chapter 4,
24 which is what we require in our legal notices for
25 permit applications.

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1 So having it placed in subchapter 5 and
2 subchapter 7 allows these interested citizens to be
3 able to participate in the permitting process as it
4 begins, before it starts, and then they'll know that
5 this application has been filed, you know, and how
6 the permitting process moves along and they can
7 participate more readily that way as well.
8 And the final amendment is to aquifer testing.
9 Last year a suggestion was made by the council to
10 specify testing requirements in the rules for
11 bench-scale testing and field-scale pilot testing.
12 And while we said at the time that this is our
13 intent, that we would require this, it wasn't really
14 specifically stated in the rule, we kept it kind of
15 general, but we thought that was a good idea. So we
16 put this in the rules so everybody is clear that
17 this is a requirement.
18 So that's what this does, it just simply
19 specifies bench-scale testing followed by
20 field-scale pilot testing for their aquifer testing.
21 And that's it.
22 MR. CHAIRMAN: Okay. Questions, comments
23 from the council? Questions, comments from the
24 public?
25 MR. NELSON: Was there any discussion by

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1 the board as far as landowners that are not
2 necessarily contiguous, adjacent to the property? I
3 mean, groundwater can be affected quite a long
4 distance away from the source, the storage and --
5 MS. YOUNG: Right, and that's why, you
6 know, they wanted us to notify water rights owners,
7 because typically, if you're a property owner, then
8 you own the water rights as well, because water
9 rights are property rights, so that should take that
10 --
11 MR. NELSON: So contiguous to the border,
12 the owners that are bordered up against the property
13 where the -- what's the significance of that
14 separately from the water rights?
15 MS. YOUNG: Well, bordered up against the
16 site is because you'll have these surface facilities
17 that would be next to them so then they would be
18 aware.
19 MR. NELSON: Such as impoundment?
20 MS. YOUNG: Right, because there could be
21 surface facilities, would be like an impoundment, or
22 the surface facilities for an injection well, a
23 recharge well.
24 MR. CHAIRMAN: Any other questions? Okay.
25 Thank you.

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1 Moving along, Rules of Practice and Procedure.
2 Shellie Chard.
3 MS. CHARD: Good afternoon. I wanted just
4 to bring to your attention a rule change that will
5 be occurring in the agency's rule rules of practice.
6 This rule, if you recall, affect the entire agency
7 in the way that we do things that overlap, one
8 division to another, rather than running multiple
9 chapters of rules that talk about tiers of
10 permitting, that talk about research records, those
11 type of things, we put those in Chapter 4, that's
12 the only agency chapter of rules that does not go
13 through an advisory council, it goes directly to the
14 board.
15 So we try to keep the councils informed of
16 things that are happening in that chapter that
17 affect other programs that they are involved and
18 other rules that they say see. In this case, the
19 primary chapter of rules that would be affected by
20 what is going to be happening in Chapter 4 are the
21 Operator Certification chapter, the Chapter 710
22 rules for this council.
23 We had a rule that was -- or a statute that was
24 enacted last session, it was House Bill 2933, and
25 this is a bill that applied statewide to all

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1 occupational licenses except public health
2 professions, and this allows for a waiver of the fee
3 for one time over the course the license is held,
4 it's tied to poverty level, if a license holder
5 meets the criteria spelled out in the bill, which
6 includes receiving certain government assistance, is
7 within 140 percent of the poverty level, which, of
8 course, is calculated in a state -- on a
9 county-by-county basis or metropolitan basis, they
10 could apply to a state agency to have that fee
11 waived. It's one time per license.

12 So we have individuals that hold two, three,
13 four operator certification licenses, so they would
14 be entitled to have a waiver of each fee one time.
15 The bill goes into effect November 1st. The first
16 requirement is that agencies must enact rules in how
17 they're going to implement the provisions, because
18 it contains very specific confidential information,
19 we have to have a process in place to keep that
20 information confidential.

21 We have to have a tracking system in place to
22 be able to track for the lifetime of the program, if
23 someone requests a waiver and if it was granted. So
24 that's going to be happening.

25 I know our general counsel's office will be

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1 working on that with our finance, our chief finance
2 officer in order to make sure we meet all the
3 criteria and that we meet the requirements for the
4 legislation to get all of that in place.

5 Once they do that, that will, at the earliest
6 it could be effective, would be September of '19.
7 The operator licenses, by statute, all expire on
8 June 30th, so we issue about 12,000 licenses in a 30
9 to 60 day period, so it would actually then be the
10 following year before someone would be able to apply
11 for the waiver.

12 So for our programs, we do have a little bit of
13 time, but you will definitely, potentially be
14 hearing about all of this, and it's statewide, it's
15 not just our licenses, so that's something that will
16 be happening likely the rule making in February at
17 the board meeting. Anybody -- I don't know that I
18 can answer very many questions about it, but I'll
19 take a shot at it.

20 MR. CHAIRMAN: Any questions? Questions
21 from the public? Okay. I guess we'll move on to
22 the director's report.

23 MS. CHARD: Okay. Just a few things I
24 wanted to touch on with you on some of it, it's just
25 an update, some of it may be new. Produced water,

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1 that's something that we've been talking about quite
2 a bit through the comprehensive water plan, and
3 legislation giving DEQ the authority to seek
4 delegation of that program.

5 In working with Region 6, it is our hope that
6 we will submit the documents by the end of the
7 calendar year in order to get that authority so that
8 DEQ, rather than EPA Region 6 would be issuing
9 discharge permits for produced water.

10 We've been contacted by several companies that
11 they want to pursue that as a possible option once
12 we do have the authority to issue those permits.
13 Along with that that's going on right now, EPA is
14 wrapping up its oil and gas guidelines study, they
15 have had produced water meetings across the country
16 and a final public meeting will be October 9th, at
17 EPA headquarters.

18 At that time, they will take additional
19 comments from the public, an industry related to
20 the -- I started to say nine, it's either nine or
21 eleven different implementation guidelines that
22 apply to the oil and gas industry and many of those
23 apply directly to produced water.

24 EPA is looking at, since those are technology
25 based, what kinds of changes in technology that

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1 would impact some of the decisions they've made in
2 the past, probably the biggest that affects Oklahoma
3 is the 98th Meridian issue. There was a decision
4 made, and different people have different memories
5 of how that came about.

6 I'm not sure which makes the most sense to add
7 any credibility to the theories, but essentially
8 there was an effluent limitation guideline developed
9 which normally is a number. In this case the term
10 used was used beneficially, produced water could be
11 discharged if it is used beneficially west of the
12 98th Meridian, and there's a prohibition east of the
13 98th. So that basically means you draw a line, El
14 Reno'ish, and that's the dividing line in the
15 country.

16 So part of Oklahoma can discharge produced
17 water, part of Oklahoma cannot. So that's been of
18 interest. There's several states, Pennsylvania in
19 particular, that's looking at really pushing for EPA
20 to revisit that standard, since beneficial use isn't
21 defined except that it be for agriculture. Okay.
22 So that's an interesting thing that happened years
23 and years ago.

24 So the EPA has said they will wrap up and have
25 a white paper issued by the end of the calendar year

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1 that will provide information on what -- how they
2 plan to move forward, if they will revise all of the
3 ELG's, if they will provide some of them. I don't
4 think the answer's going to be do nothing, there's
5 too much push for some of the ELG's to change. So
6 that's kind of a to be determined what's going to
7 happen on that.

8 But if you have particular interest, let me
9 know, and I can get you connected with the people
10 that have been really involved with that, and that's
11 coming out of the Office of Science and Technology
12 at headquarters.

13 The final produced water item, the Groundwater
14 Protection Council has been heavily involved, and
15 that study is down the home stretch at this point.
16 The timeline is that the report will be completed by
17 February to March. Excuse me. Be completed by late
18 February, early March, it will be approved, voted on
19 by the Groundwater Protection Council Board in
20 April, with the thought that it would be ready for
21 publication in the summer.

22 This report is different from a lot of the
23 reports that have been done in that it focused on
24 the legal policy regulatory framework for dealing
25 with produced water today, what things might need to

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1 change in order to do more produced water reuse in
2 the future. There's a chapter that focuses on what
3 is happening today in the oil and gas world, where
4 is water reused, why is that water reused, what are
5 some impediments to doing so more frequently or
6 greater volumes.

7 And then the third piece of it is looking at
8 what are some potential other uses outside of oil
9 and gas, and what kind of technology is important,
10 and what is the chemical constituency, what kind of
11 research is needed to push this forward, are there
12 regulatory problems that additional research would
13 solve.

14 So the idea is this final piece of the report,
15 basically sets out opportunities and areas that
16 researchers could take on whether they be industry
17 researchers, universities, whoever it is. I've kind
18 of described it as, you know, how do you eat an
19 elephant? One bite at a time. This is kind of one
20 of those approaches, that hopefully it will all be
21 laid out and we can just kind of break it up in
22 small enough pieces that it become much more
23 manageable and we make progress and move that on.
24 Anybody have any questions on produced water before
25 I go onto other things? I know that was a lot.

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1 Okay.

2 The PFAS compounds, the Per and Polyfluoralkyl
3 substances research and analysis that have been done
4 in the New England area, Department of Energy and
5 Department of Defense have been really looking at
6 the contamination from these compounds and basically
7 it's in everything.

8 If you have furniture or carpet that is stain
9 resistant or water resistant, any of those have the
10 PFAS compounds, food containers that repel grease,
11 so your carryout pizza boxes and your microwave
12 popcorn, pretty much anything and everything has
13 some PFAS in it.

14 There's a lot of discussion nationally looking
15 at possibly setting drinking water standards for at
16 least two or three of the compounds, recognizing
17 they think there are about 3,000 that can be
18 identified right now. How do you deal with it?
19 There's a few tests that can identify some of the
20 compounds, there's not a lot of information on
21 analytical methods for other compounds, laboratory
22 capacity becomes an issue, the groundwater
23 remediation becomes an issue, what kind of treatment
24 do you use, the reason the department of defense is
25 so invested in this, the fire fighting foam at the

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1 military bases is a huge source. But there are a
2 lot of pathways, we have done a little bit of
3 sampling in Oklahoma.

4 Our sample results don't look like it looks on
5 the east coast. Is that because we haven't looked
6 at hard or at as many sites? Is it because it's
7 just different? We don't know those things, but
8 this is an issue we're going to hear about, we're
9 pushing that it makes sense to look at this more
10 from a preventive, from getting into water bodies as
11 opposed to regulating from a drinking water
12 standpoint and trying to figure out how to treat it
13 out of the water after it's already in. So that's
14 definitely going to be more to come.

15 There are multiple national groups looking at
16 this. DEQ Executive Director Scott Thompson is
17 working on the EPA and national group, and we have
18 several staff that are supporting him working on
19 that. We had what's known as the WINN bill,
20 W-I-N-N, I forget, water, infrastructure something.
21 One of the key components is a loan and grant
22 program, one of the grant categories is specific for
23 state or local agencies that can apply in order to
24 receive funding to do some targeted lead testing in
25 schools and daycares.

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1 DEQ is going to be working toward making
2 application that would involve the water division,
3 the state environmental lab, and the environmental
4 complaints and local services and that will be just
5 a program within our drinking water program that
6 would do some of that testing that is recommended
7 but not required of water districts or school
8 districts. So that's something we're going to be
9 working on.

10 We've talked a little bit about Waters of the
11 United States today, hydraulic connectivity is the
12 companion that goes with that. There have been no
13 less than six cases decided in the last couple of
14 months, there are dozens of them out there, either
15 recently decided or still under consideration by the
16 court.

17 This is an issue of when is groundwater and
18 surface water connected enough to be subject to the
19 Clean Water Act NPDES or state equivalent permitting
20 programs.

21 The two issues that have gotten the most
22 attention was a case out of Maui. The city of Maui
23 was using UIC wells to inject to dispose of their
24 wastewater treatment plant effluent, turns out the
25 wells were not constructed properly and they weren't

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1 being operated the way they were permitted in the
2 case of a couple of them that were permitted, but
3 rather than address that aspect, it was -- a lawsuit
4 was filed by a citizens group alleging that it was
5 improperly permitted in that it should have been a
6 Clean Water Act permit all along and not a UIC
7 permit.

8 And the court, federal district court and our
9 circuit court ruled that, in fact, it should have
10 been permitted within NPDES discharge to ground
11 water because it was hydraulically connected to
12 surface water.

13 At the same time there were multiple cases that
14 were filed that were surface impoundments at
15 industrial facilities, coal ash ponds, primarily,
16 and the environmental activists groups and citizens
17 groups that had filed the lawsuits alleged that
18 those coal ash ponds should have been permitted as a
19 discharge to groundwater, because they were leaking.

20 The states of Tennessee and Kentucky had argued
21 that they should not have been permitted because
22 it's an illicit discharge, it's not a sanctioned
23 discharge, and they would not be able to obtain a
24 permit for that discharge into groundwater,
25 therefore it wasn't a permitting issue at all.

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1 Well, not surprisingly, the court agreed, on
2 some of those cases. There was a third set of cases
3 that were leaking pipelines crossing water bodies
4 should have had discharge permits, and again, the
5 argument was they are illicit discharges, even if
6 they are discharged directly to the surface water,
7 it's not a discharge, it's just a leak that needs to
8 be fixed.

9 If it's leaking in the ground, it's not a
10 discharge to the groundwater, it's a leak or a spill
11 that needs to be corrected. So both sides have
12 argued all of those, and by the time you get to the
13 end of the day, it's split about 50-50, about half
14 the federal courts say yes, this is a discharge
15 subject to Clean Water Act, about half of them say
16 it may have impacted a water that would be subject
17 to the Clean Water Act permitting, but it should
18 have been regulated somewhere else under another
19 federal statute.

20 Not surprisingly, the states are split about
21 what they think is the right answer. So I have no
22 idea what we're going to end up with by the time it
23 gets litigated, if it's going to be a Supreme Court
24 decision, or a congressional act.

25 There have been a couple of hearings before the

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1 Senate Public Works and Environment Committee,
2 they've done nothing other than take those
3 testimonies and written statements under review.

4 In Oklahoma, we kind of have looked at it based
5 on our state definition, we have authority to issue
6 permits to protect groundwater, we have a good,
7 properly operated UIC program, so we don't feel the
8 need to double regulate.

9 We work closely with the Corporation
10 Commission, the Water Board, and the other state
11 agencies and we're kind of of the opinion of, well,
12 if it's a leaking pipeline, let's fix the pipeline,
13 not change the rules. So, I don't know where this
14 is going to go, but if you follow environmental
15 legislation or court cases, you're definitely going
16 to be hearing about it.

17 One last item that may be of interest to you,
18 EPA has resurrected what in the '90's was the wet
19 weather rule. Would have been the early 2000's to
20 about 2009 or so was the blending rule, the blending
21 policies. It's now the peak flow management
22 approach. This is looking at municipal wastewater
23 systems, the collection systems, pump stations and
24 the treatment plants under the combined sewer
25 overflow rules.

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1 There is an allowance for a discharge of
2 partially or no treatment of sanitary waste that is
3 blended with other water to be discharged without
4 treatment or without meeting water quality standards
5 or secondary treatment.
6 In Oklahoma, that doesn't work quite as well
7 just based on our statutory language that has
8 existed that predates the agency, even. We don't
9 have combined sewers, but we have had discussions
10 with some of the larger cities looking at -- at some
11 point, does it become more practical to have small
12 treatment systems that only operate during times of
13 peak flow and that some treatment is better than no
14 treatment?
15 The overflows at those locations there have
16 also been discussions of, well, if we can do primary
17 treatment for 10 percent and advanced treatment for
18 90 percent of the wastewater, blend it before we
19 discharge during times of peak flows, that's better
20 than 30 percent or 40 percent receiving no
21 treatment.
22 So there are a series of discussions going on
23 with that. EPA is having three public meetings in
24 the month of October, they have limited space
25 available, and they've announced, for the most part,

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1 that it's full, that the states and some of the
2 associations are trying to play let's make a deal
3 and see if the meetings can be moved to bigger
4 spaces or do something so that more people have an
5 opportunity to weigh in on a the issue.
6 I've been on the waiting list, and it looks
7 like I am going to be at the meeting in Washington
8 D.C., because the waiting list to go to Kansas is
9 about 50 people or something. So I will be sitting
10 in on that first round of meetings, hopefully I will
11 have a better idea of what they're looking at doing.
12 So, with that --
13 MR. NELSON: Shellie, I have a question
14 about that. It may be a bit of a tangent, but how
15 do overflows from wet weather storage facilities
16 that hold highly diluted raw wastewater fall into
17 that, or do they even fall into that category if you
18 were going to take that overflow back from a
19 collection system. Is that --
20 MS. CHARD: So, the -- the way, if you
21 look at the way the rules in Oklahoma are currently
22 written, that would need to go through treatment
23 enough to meet discharge limits and have a discharge
24 permit for the location where the discharge is
25 happening.

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1 Under one of the approaches that the EPA has
2 talked about, a situation like you described could
3 possibly be permitted for X number of discharges in
4 a calendar year that has to meet Y conditions.
5 It would be different than what you would have
6 to meet at advanced wastewater treatment plant, so
7 it may mean where it can go through a bar screen and
8 disinfection and be okay.
9 Right now, you basically -- you have to permit
10 it and meet all of the water quality requirements
11 and technology standards. If you look at a handful
12 of states that are not a CSO, a combined sewer
13 community which the storm water and sanitary water
14 flow through the same pipes, if you look at the
15 states that have separate systems, Texas issued one
16 permit similar to what you've described years ago
17 for Houston.
18 It was painful. You're shaking your head like
19 oh, I know that one. Yeah. That's the only one
20 that's been issued in Region 6. Iowa has several.
21 The way they approached it, I mean, they issued
22 individual permits for those locations, and just
23 said, well, we don't have high flow water quality
24 standards, so we're not going to worry about it.
25 That was not well received.

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1 So, you know, the state examples are kind of
2 all over the board as far as what they would really
3 and truly look like. I hope by the end of the year
4 we have an idea of what EPA's new approach would
5 really look like, and then at that point we have to
6 figure out how does that fit with all of our state
7 requirements where it's a rule change, we have a lot
8 more flexibility than if it's something that would
9 require statutory change just because that's outside
10 the control of the agency council to board.
11 MR. NELSON: So that's really not a topic
12 directly tied to the blending issue, or is it?
13 MS. CHARD: It is, I think it is. It
14 depends on who you talk to, which is why we really
15 want to get some actual real information. There are
16 the rumors and old reports and previous theories of
17 how it should work. The diehard purists say it's
18 got to go to the treatment plant, period.
19 It can be, you know, bypass some of the
20 treatment and it's blending to take that bypass,
21 plus the fully treated wastewater and then
22 discharge, so that's blending, and that's the only
23 thing that's blending. And then you have those who
24 say, it's in a same stream segment and we're going
25 to run it through a bar screen and just let it go,

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1 because we can't fill overflow basins to hold that
2 kind of water. Then for some people, that's
3 blending.
4 And so that's why they've gone away from the
5 term blending, and it's now a peak flow management
6 issue, because it sounds better, and hopefully
7 people don't bring the preconceived idea of what
8 blending was. It's kind of like the whole WOTUS
9 thing, people were opposed to WOTUS, so it was
10 renamed the Clean Water Rule, and who can be against
11 clean water, so that was kind of how to get over
12 that hurdle. I think that's kind of what we're
13 seeing on the peak flows discussion, that it's a
14 way -- okay, we've got to stop in terms of the old
15 blending and figure out how to make it work just
16 from an economic standpoint.
17 We've done a pretty good job here over the
18 years as far as our flow equalization basis and how
19 we utilize them. But when you look at our largest
20 plants, our barely medium-sized, maybe, really big
21 small plants, you start looking at what New York and
22 California -- and San Francisco and Los Angeles and
23 some of those systems, the size of them.
24 MR. NELSON: It's really not just an
25 economic issue, although it has parts to it --

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1 MS. CHARD: Right.
2 MR. NELSON: -- it's also a practical
3 matter, there's a practical limit to how large you
4 can make those basins. This has been a big issue in
5 my wheelhouse for a long, long time, so I'm glad
6 you're involved in that and can pursue that part of
7 it a little bit.
8 MS. CHARD: I have to tell you, I started
9 working on this in 1996. It's all things old are
10 new again, so we're going to take another shot at
11 it.
12 That's all I have, but I know Chris --
13 MR. RODRIGUEZ: Shellie, when you were
14 discussing the stain resistant chemicals, you were
15 using a term called was it PFABS?
16 MS. CHARD: PFAS, P-F-A-S.
17 MR. RODRIGUEZ: P-S-A-S, PSAS?
18 MS. CHARD: No, P-F. So it's Per and
19 Poly, that's your P, fluoralkyl substances. But if
20 you Google PFAS or you go to EPA or EDF websites,
21 you type that in, you will get inundated with
22 information.
23 MR. RODRIGUEZ: Thank you.
24 MS. CHARD: You're welcome. Chris
25 Armstrong has some things he wanted to discuss with

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1 you as well.
2 MR. ARMSTRONG: I can't help but smile at
3 the nomenclature that goes on with PFAS because
4 you're going to find out all sorts of facts sheets
5 about nomenclature as well. I'm going to change
6 pace, as usual.
7 In our last meeting, I spoke about proposed
8 laboratory accreditation rules for Chapter 301, 302,
9 307, changes to permanent rule language, the
10 incorporation of new references and onsite
11 assessment fee, and medical marijuana accreditation
12 and testing.
13 The most significant lines change that you will
14 see later on in conjunction with our rules is the
15 addition of a definition for a critical finding or a
16 nonconformity.
17 A finding, just a plain finding is a
18 noncompliance found during the assessment that would
19 require corrective action, with a timeline for a
20 plan to eliminate that noncompliance.
21 We're going to be introducing a new term that's
22 called a critical finding, and with a critical
23 finding, that would require an immediate corrective
24 action at the time that it was disclosed, or an
25 immediate stop to testing.

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1 And examples of that would be something like
2 you've got no QA for what you're actually doing.
3 You don't have any standards for the testing that
4 you're doing. You've got a bigtime instrument
5 failure, you don't have a demonstration of
6 proficiency, you didn't show that you actually do
7 the tests you plan to be doing, or you're not even
8 accredited to do the type of testing that you're
9 doing. Those for us are critical findings.
10 I just wanted you to be aware of that, because
11 this is going to be come back at you later on, it
12 will be a big hit.
13 The most significant federal update is the 2017
14 method update, Mark spoke to you again, I've spoke
15 to you folks about this several times, and the --
16 the implementation of that rule should truly travel
17 in tandem with Water Quality Divisions Chapter 606,
18 the Oklahoma Pollution Discharge Elimination System
19 that you've just voted on.
20 And I presented an onsite assessment fee that
21 the program lacks, and that nearly every state
22 accreditation or certification program in the
23 country has already implemented. These rules are
24 still in development, shock. I'd hope that I would
25 have these rules to you folks by now.

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1 And what happened was, the complexity of what
 2 we were juggling dramatically slowed the rule
 3 process for us. You will not have an opportunity to
 4 vote on these rules until the January 8th, 2019
 5 meeting, which is putting it off a ways. These rule
 6 changes should be available for your review within
 7 the next 30 to 45 days, and we've absolutely got to
 8 have a Notice of Rule Intent out by October 25th,
 9 2018.

10 At our last meeting I provided a memo for the
 11 proposed onsite assessment fee. At that time, I
 12 called it an at-cost fee and it also included a
 13 medical marijuana accreditation fee. The at-cost
 14 assessment fees are now termed reimbursable
 15 expenses, and that's at the suggestion of our
 16 finance department.

17 You will shortly receive an e-mail, okay, with
 18 an additional documentation that will detail how
 19 these reimbursement fees might be calculated. We
 20 would have hoped to have it for you today, but for
 21 some reason we moved to office 365 starting at 6:00
 22 last night, which kind of locked everything up.

23 This document with fee examples will be
 24 distributed to you all and as well as to the labs
 25 that we actually accredit so they can start to look

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1 at it as well.

2 If you've got questions, I encourage you to
 3 contact either David Caldwell or myself and David's
 4 our lab accreditation officer. Also at our last
 5 meeting, I presented the Chapter 307 proposed rules,
 6 medical marijuana and testing accreditation within
 7 those rules. This was a result of the Oklahoma
 8 State Department of Health's draft testing rules,
 9 requiring an ANSI approved or ISO 17025 based
 10 accreditation for the testing of medical marijuana.

11 A concern was expressed at that time about our
 12 authority for doing this type of accreditation. And
 13 I believe it was the day after my presentation that
 14 the testing rules were deleted with an Attorney
 15 General's opinion that testing is beyond the scope
 16 of State Question 788, therefore the DEQ is
 17 withdrawing the proposal to accredit medical
 18 marijuana testing labs at this time. Another little
 19 confounder in the rule making.

20 The newly formed OSDH Medical Marijuana and
 21 Food Safety Committee and the legislative committee
 22 continue to meet and develop the path forward with
 23 medical marijuana as well as medical marijuana
 24 testing. The legislative committee continues to
 25 review input from the Unity Bill which is the

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1 Oklahoma Medical Marijuana Patient Protection Act
 2 and the OSDH's draft rules, which continue to be
 3 discussed in part for the potential inclusion into
 4 the new legislation.

5 The national experts that testified to the
 6 legislature believe that OSDH's lab test rules still
 7 should be considered the best place to start with
 8 testing, it will be up to the legislature to convey
 9 what the DEQ's role may be in the accrediting as
 10 well as the testing of medical marijuana.

11 Therefore, we continue to provide input into
 12 the bill language through our committee member, but
 13 it's truly anybody's guess as to what is actually
 14 going to happen with the testing and accreditation
 15 of medical marijuana at this time.

16 And tomorrow, I get to go back over for another
 17 legislative committee meeting that I found out about
 18 yesterday where they are going to continue to
 19 discuss testing. I have no idea what that actual
 20 agenda looks like at this point in time. And with
 21 that, that's your update from me.

22 If you have any questions I'll be happy to
 23 entertain them.

24 MR. CHAIRMAN: Questions from the council?
 25 Questions from the public? Okay.

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1 New business, only those matters not known
 2 about and which could not have been reasonably
 3 foreseen at the time of the posting of this agenda
 4 shall be discussed at this time.

5 I don't believe there's any new business.


6 The next scheduled meeting shall be January
 7 8th, 2019, 2:00, Multipurpose Room, First Floor, DEQ
 8 Building, 707 North Robinson, Oklahoma City,
 9 Oklahoma, which is this room here. Do we have a
 10 motion for adjournment?

11 MR. RODRIGUEZ: So moved.
 12 MR. NELSON: Second.
 13 MR. DUZAN: Vote?
 14 MS. FIELDS: Mr. Carr?
 15 MR. CARR: Yes.
 16 MS. FIELDS: Ms. Kindrick?
 17 MS. KINDRICK: Yes.
 18 MS. FIELDS: Mr. Nelson?
 19 MR. NELSON: Yes.
 20 MS. FIELDS: Mr. Rodriguez?
 21 MR. RODRIGUEZ: Yes.
 22 MS. FIELDS: Mr. Short?
 23 MR. SHORT: Yes.
 24 MS. FIELDS: Mr. Sowers?
 25 MR. SOWERS: Yes.

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1 MS. FIELDS: Ms. Wells?
2 MS. WELLS: Yes.
3 MS. FIELDS: Mr. Winegardner?
4 MR. WINEGARDNER: Yes.
5 MS. FIELDS: Mr. Duzan?
6 MR. CHAIRMAN: Yes.
7 MS. FIELDS: Motion passed.
8 MR. CHAIRMAN: We are adjourned.
9 (Hearing concluded at 2:57 p.m.)
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1 CERTIFICATE
2 STATE OF OKLAHOMA)
3) SS:
4 OKLAHOMA COUNTY)
5 I, Brenda Schmitz, Certified Shorthand Reporter
6 within and for the State of Oklahoma, do hereby
7 certify that the above ADVISORY COUNCIL MEETING was
8 by me taken in shorthand and thereafter transcribed;
9 that the same is true and correct; and that it was
10 taken on SEPTEMBER 25, 2018 at the time of 2:00 p.m.
11 in the City of Oklahoma City, County of Oklahoma,
12 State of Oklahoma.
13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and official seal this 9th day of October, 2018.
15 
16 BRENDA SCHMITZ, CSR, RPR
17 Oklahoma Certified Shorthand Reporter
18 Certificate No. 00823
19 Expires: December 31, 2018
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WATER QUALITY MANAGEMENT ADVISORY COUNCIL

Attendance Record

September 25, 2018

Department of Environmental Quality
Oklahoma City, Oklahoma

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Joe Miller	Stilwell Utilities
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Mark Hildebrand	DEQ - WQD
Bad Ground	EFO
Quiana Fields	DEQ
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**WATER QUALITY MANAGEMENT
ADVISORY COUNCIL**

**Attendance Record
September 25, 2018
Department of Environmental Quality
Oklahoma City, Oklahoma**

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