Notice of Public Meeting The Water Quality Advisory Council convened for a regular meeting at 1:00 p.m., August 3, 2004 in the Multipurpose Room of the Department of Environmental Quality, 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 13, 2003. The agenda was posted at the Department of Environmental Quality twenty-four hours prior to the meeting. Chairman Lowell Hobbs called the meeting to order and requested roll call. A quorum was confirmed.

MEMBERS PRESENT
Glen Brown
Cathy Canty
Robert Johnston
Jeffrey Short
Joseph Warren arrived @ 1:10
Lowell Hobbs

MEMBERS ABSENT
Mark Matheson
Michel Paque
Vacancy

DEQ STAFF PRESENT
Shellie Chard-McClary
Glen Jones
Don Maisch
Matt Caves
Rob Singletery
Karl Heinzig
Myrna Bruce

OTHERS PRESENT
The Attendance sheet is attached as an official part of these Minutes.

Approval of Minutes Chairman Hobbs called agenda item number 3, Approval of Minutes of the August 5, 2003 Regular Meeting. Mr. Short made the motion and Ms. Canty made the second.

Roll call
Jeffrey Short  Yes
Robert Johnston Yes
Cathy Canty   Yes
Glen Brown    Yes
Lowell Hobbs  Yes

Motion passed.

Council Meeting Schedule for 2005 Ms. McClary proposed January 18, May 3, August 2, October 4 for Council to meet in 2005. Mr. Hobbs called for motion to approve those suggested dates. Following discussion, Mr. Brown made that motion and Ms. Canty made the second.

Roll call
Jeffrey Short  Yes
Robert Johnston Yes
Cathy Canty   Yes
Glen Brown    Yes
Lowell Hobbs  Yes

Motion passed.

Discussion of upcoming Rulemaking Ms. McClary related to Council that the rules to be discussed at the January 18 meeting would be the tier section for Water Quality in Chapter 4 and the federal incorporation by reference requirements for Chapter 606. She advised that some changes to the total retention lagoons and land application for municipalities will become a new chapter regulated by the Environmental Complaints and Local Services Division and Chapter 621 would be modified. Ms. McClary related that Chapter 641 would be revisited in January to provide updates on information
received since last January. She added that Chapter 656 would will have some language changes and clarifications hopefully also in January or soon thereafter.

**Status of Chapter 616 Rule Review Committee** Ms. McClary stated that at the last Council meeting, staff was advised to evaluate this Chapter and form a workgroup. She provided an update on those activities and set forth options on how to address any issues. Those options were 1) to do nothing; 2) formation of a workgroup; 3) abandon the workgroup; 4) authorize a Council subcommittee to make the recommended rule changes. The floor was opened for discussion. Mr. Johnston made a motion to proceed with option number three. Mr. Short seconded. Ms. McClary confirmed that the motion was to not have a workgroup and let staff collect and evaluate any comments received and come to Council in January with a proposal with monthly meetings to discuss that proposal. Mr. Johnston stated that was the intent of his motion and Mr. Short agreed. Ms. Canty interjected that she would prefer option two. Discussion continued, then the Chair, Mr. Hobbs, called for a vote.

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Motion failed.

Mr. Warren then made a motion that Council would ask staff to set up a working group on this issue and allow whoever is interested and wants to attend subject to Open Meeting Laws. Ms. Canty seconded that motion. Mr. Hobbs called for the vote.

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Motion passed.

**Director’s Report** In Mr. Craig’s absence, Mr. Glen Jones provided a presentation about treatment of states for tribes in Oklahoma.

**New Business** None

**Announcements** Ms. McClary announced an EPA training session for Capacity Management Operation Maintenance (CMOM) rules on August 30/31 in Austin. Mr. Phil Marshall, Water Resources Board announced that comments for the treatment of states of Pawnees would be August 16.

**Adjournment** 3:00 p.m.

A copy of the hearing transcript and the sign in sheet are attached and made an official part of these Minutes.

Please note that an addition to the transcript is a reference index.

Examples of how to use this index:
The first listing is ‘93 [1] 41:24 -- the term ‘93 was used [1] one time on page 41 line 15.

Another listing is background [6] 19:4, 28:8, 70:2, 79:22, 81:8, 11 -- This term was used [6] six times: on page 19 line 4; page 28 line 8; page 70 line 2; page 79 line 22; and page 81 lines 8 and 11.
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY MANAGEMENT ADVISORY COUNCIL
STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS
OF REGULAR MEETING – ITEMS 1-7
HELD ON AUGUST 3, 2004, AT 1:30 P. M.
at 707 North Robinson
in Oklahoma City, Oklahoma

* * * * *

REPORTED BY: Christy A. Myers, CSR
COUNCIL MEMBERS

Joseph Warren
Jeffrey Short
Mark Matheson
Robert Johnston - Vice Chair
Cathy Canty
Glen Brown
Lowell Hobbs - Chairman
Michel Paque

Christy A. Myers
Certified Shorthand Reporter
PROCEEDINGS

CHAIRMAN HOBBS: It's 1:00 and we're ready to start our meeting. I'll call the meeting to order and read the protocol statement.

This regular meeting of the Water Quality Management Advisory Council was called in accordance with the Open Meeting Act.

Notice was filed with the Secretary of State on October 13, 2003. The agenda was duly posted on the doors of the DEQ building at 707 North Robinson, Oklahoma City, Oklahoma, 24 hours prior to the meeting.

Only matters appearing on the posted agenda may be considered at this regular meeting. In the event that this meeting is continued or reconvened, public notice of the date, time and place of the continued meeting will be given by announcement at this meeting. Only matters appearing on the agenda of a meeting which is continued may be discussed at the continued or reconvened meeting.

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reconvened meeting.
Roll call.

MS. BRUCE: Joseph Warren is absent. Jeffrey Short.

MR. SHORT: Here.

MS. BRUCE: Mark Matheson is absent. Robert Johnston.

MR. JOHNSTON: Here.

MS. BRUCE: Cathy Canty.

MS. CANTY: Here.

MS. BRUCE: Glen Brown.

MR. BROWN: Here.

MS. BRUCE: Lowell Hobbs.

MR. HOBBS: Here.

MS. BRUCE: Also absent is Mike Paque. And we do have a vacancy, but we do have a quorum.

MR. HOBBS: Next is the approval of Minutes from the January 13, 2004 meeting. You all were mailed copies of those Minutes; were you not? I assume you've had time to review those and make notice of any changes or corrections or questions you had regarding them for this meeting.

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them.

MS. CANTY: Second.

MR. HOBBS: Motion made and accepted -- or seconded that we accept these as presented. Roll call.

MS. BRUCE: Jeffrey Short.

MR. SHORT: Yes.

MS. BRUCE: Robert Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Cathy Canty.

MS. CANTY: Yes.

MS. BRUCE: Glen Brown.

MR. BROWN: Yes.

MS. BRUCE: Lowell Hobbs.

MR. HOBBS: Yes.

MS. BRUCE: Motion passed.

MR. HOBBS: Shellie, do you want to talk to us about dates for next year's meetings?

MS. CHARD-MCCLARY: Yes.

Traditionally, we have scheduled no more than four meetings a calendar year, unless there was some extenuating circumstance that we needed to have additional meetings.

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Okay, now. We have periodically scheduled
only two meetings or three meetings in order to accommodate either rulemaking or exceptions in the Board's schedule.

This year, I have four proposed dates. Based on our rulemaking load, I would think that three would be the most we would need. What we have done in the past was go ahead and schedule those three and as it gets closer to the later meetings, if the Chairman decides that there is not adequate business for the Council, then we would go ahead and cancel one of those two remaining meetings. We are, however, bound by state statute to have a minimum of two meetings a year.

In meeting the dates that we anticipate the Board using again, they have not officially set their schedule, they will not do that until later this year. If we typically have scheduled a January meeting and rather than the first Tuesday of the month, we'll go with either the second or third Tuesday, in order to allow for the holiday and kids being out of school and any traveling that's done at
that time.

So January 18th, May 3rd, August 2nd, and October 4th would be the proposed dates. Should the Council decide to go ahead and schedule four meetings, as I said in the beginning, three is probably what we need in order to take care of our business. And usually, the May or August meetings are the ones that have the lightest attendance because it is getting into summer and vacation at that time.

MR. HOBBS: Anybody see a problem at this point with those dates? If they don't, I'll entertain a motion that we accept those dates.

MR. BROWN: Motion to accept.

MS. CANTY: Second.

MR. HOBBS: Any discussion? Roll call.

MS. BRUCE: Jeffrey Short.

MR. SHORT: Yes.

MS. BRUCE: Robert Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Cathy Canty.

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While you're there, Shellie, you might as well go on with No. 5, Discussion of Upcoming Rulemaking.

MS. CHARD-MCCLARY: At the last meeting of the calendar year, I tried to look forward to see what we would anticipate coming before the Council in the next year. That helps us to determine adequate meeting times and also to give you all a preview of what's to come.

For those of you who have been on the Council for a while, remember the days of all of the rules being rewritten generally at the same time. We're going to try not to do that. to you too much, but you will see a series of rulemaking this year.

Chapter 4, which is the Rules of Practice and Procedures for the Department, that also includes, like, previously, I guess we had two different chapters and those were

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merged into one several years ago, and it includes the function of the Council and Board, as well as procedural issues for the Department, such as Tier Rules, permitting process, that each permit has a time frame for processing at each step along the way. Also, outlines the public notice requirements that each tier has.

Those generally follow in line with federal requirements where those apply. We will be seeing that chapter in January.

There will be some changes specifically to the tier rule section for Water Quality. We have some changes that have to be made in order to comply.

Chapter 606, previously Chapter 605, that's the Oklahoma Pollutant Discharge Elimination System Standards. That's basically the NPDES regulations for the state program. That rule comes before you every January in order to update the federal incorporation by reference requirements. We do not anticipate there being any significant changes, other than changes that EPA has made that we are required to adopt.

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Our failure to adopt those changes
doesn't really effect operations too much.
EPA expects us to comply with the federal
laws anyway, but we do try to get those
before you and get them effective as soon
as we can so that the regulated community
is not confused and knows they have one set
of standards to comply with rather than
seeing what the state rules are and then
being in violation of a federal
requirement.

Chapter 616, I'm going to come back
to so we can talk a little bit more in
depth about it in Item No. 6.

Chapter 621 is the Non-Industrial
Impoundments and Land Application chapter.
That is basically in laymen's terms, the
total retention lagoons and land
application for municipalities. There will
be some changes to that chapter. Those
will be made primarily because of a change
in the way those facilities are being
handled by the DEQ as an internal decision
prioritizing workload and shifting of

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That segment of the regulated community, for those that are total retention, will be regulated by the ECLS division. Therefore, we will be coming up with a new chapter of rules that will be very close to the existing 621 but it will clearly state that it applies only to those total retention or land application facilities.

And then 621 will be modified because the Water Quality Division will continue to regulate those facilities that are lagooned but have a discharge permit or in the case of a flow equalization basin on a larger discharging facility. Most of those changes will not directly impact the regulated community, it's just a clarification to help everyone recognize, if you meet these criteria, you contact the Water Quality Division. If you meet a separate set of criteria, you contact the Environmental Complaints and Local Services Division.

And the short synopsis of that is, Christy A. Myers

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municipal facility or mobile home park that handles domestic waste only, it will be regulated by ECLS. If it is a discharging facility, it will remain with Water Quality and the industrial facilities will remain with Water Quality. We don't really see too much impact on the communities themselves. They will still -- the Water Quality Division will issue all of the construction permits, because we have that process in place and because of the learning curve and the technical abilities that are required to review those plans, even on the smaller scale, will be retained in Water Quality.

MS. CANTY: Shellie. On that, does the -- as far as enforcement, you're saying some permitting responsibilities will shift from Ed Dihrberg's group to ECLS or --

MS. CHARD-MCCLARY: The --

MS. CANTY: -- total retention basis?

MS. CHARD-MCCLARY: The total retention municipal facilities do not
currently have an operational permit issued
by Ed Dihrberg's group.

MS. CANTY: Okay.

MS. CHARD-MCCLARY: There is a
construction permit that is issued
separately. Discharging facilities must
still obtain the operational permit, a
discharge permit, from Ed Dihrberg's group.
The municipal NPDES permitting process,
these total retention municipal facilities
have operational standards in their
construction permit. And now the
Environmental Complaints and Local Services
Division will do the inspection, the
compliance, the technical assistance and
ultimately the enforcement on those
facilities.

MS. CANTY: Okay. Thank you.

MS. CHARD-MCCLARY: Chapter 641
is the Individual and Small Public On-Site
Sewage Treatment Systems. This is the
chapter that was before you in January and
received many comments, a lot of
discussion. The staff has been working on

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that chapter, meeting with the regulated
facilities, the installers, those impacted
by potential rule changes, and so they will
be bringing that before you again in
January to include some of that
information.

Chapter 656 is the Water Pollution
Control Facility Construction. These rules
are the ones that govern the construction
and design of municipal waste water
treatment facilities. This will continue
to apply to both total retention, discharge
and land application systems. The staff
has been going in, there's been an
engineering review, some additional
provisions that previously were exceptions
or variances that we now have some proven
technologies. Some language will be
changed to allow for that and some clean-up.

This chapter has undergone rewrite
two or three times and sometimes in an
effort to make things better, we've muddied
things up a bit. So those kinds of things
will be clarified and there has been a

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group working on that now for close to a
year. And that will come before you

sometime next year, hopefully January, but

I don't know for sure if they will be able
to complete it by that time.

With the exception of Chapter 616,
does anybody have any comments or questions
about that? Since everybody is just
looking at each other and not saying
anything, if it's all right with you, Mr.
Chairman, I will move on to No. 6.

MR. HOBBS: I would expect that.

MS. CHARD-MCCLARY: Okay.

Chapter 616, that is the Industrial Waste
Water Systems Operational Chapter. It does
have some construction requirements in it.

This chapter has not undergone a major
rewrite in several years. There hadn't
been any real need or concern voiced other
than issues that have come up either
through individual permits or the Council
has raised some issues. At the last
meeting, you all advised that the staff
should try and form a workgroup and do some
evaluation of that rule and be prepared to

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bring rulemaking early next year.
The staff has contacted many entities in various sectors of the industries that are governed by this chapter or regulated by this chapter. For the most part, there has been little interest in doing anything with this chapter. I say little, because there has been some. But, for example, the power plants, power facilities, the larger facilities, the refineries that do have some facilities that are regulated under this chapter, have expressed no interest in seeing changes made to this chapter.

That being said, some industry sectors, and it is primarily the concrete ready mix facilities, aggregate facilities, have expressed a desire to see some changes. It's difficult to make a lot of changes to a chapter when you don't have buy-in from all of those who are regulated by that chapter. So in looking at that, the staff sat down and came up with some options of where do we go from here so that we can address those issues that certain segments of the regulated community feel...
need to be evaluated while not changing the
rules dramatically and causing a problem
for the rest of the regulated sector, who
don't have an issue.

That being said, I'm going to kind of go through options and they run the
gamut from the extreme on both sides, because it is my duty to present you all of
those options. And so when I start out, nobody start throwing things at me, I'm not
advocating the first item. But that is, do nothing. That the Council basically
abandon the idea of a workgroup and say, it's fine as it is, there aren't that many
people interested. Let's just be done with it and move on. That is an option.

A second option would be for the workgroup formation to continue forward.
However, at this time, because of the limited interest, it would be limited to probably one Council Member, so that we would have less Council Members than the regulated community involved. And that is because this Council, the way it is set up,

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review and recommendation body. So we have
to be careful that we don't cause a legal
issue or cause anybody problems.

So based on the contacts I have had,
there are two individuals representing one
cement batch plant industries and one
representing the aggregate industry that
have expressed a sincere interest in
participating. I've had a couple of other
phone calls from people who had been
contacted by someone telling them they may
want to look into this to see if they want
to participate and those industries were
not regulated by this chapter of rules and
so therefore, their interest was lost
pretty quickly. And they were related to
the oil and gas exploration production
activities that we have clearly no
jurisdictional authority.

So in approaching it from that
standpoint, we really don't get a good
representation because you're limited into
only one Council Member. We had at least
three that expressed an interest in

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participating and I had an industry person
strongly suggest to me that Mr. Short be a part of that because of his engineering background and since that is the segment that he represents. So that would give us four Council Members, which causes us a problem in that we currently have a vacancy and we only have eight Council Members. Don explained it to me and I kind of said, okay, whatever. You know, all I cared about was that was a problem, we couldn't do it. So that's something that this -- we would have to overcome.

The next option, which has certain appeals to it, and that is that the workgroup as an entity, for lack of a better term, be abandoned, but the work begin and move forward. And what that would be, would be a scenario where anyone who had an interest in seeing changes made to the rules to submit to me a list of concerns and possible solutions, if there are any at this point. I know there are issues, I don't know if we have solutions. Submit those to me in the next couple of weeks, for example, a short
period of time, have the staff spend a
couple of weeks reviewing those issues and
then meeting with individuals on areas
where we cannot either make the change
that's recommended or there needs to be
more information or further discussions of
why this is of interest or why it is of
benefit.

It does not allow interaction among
a larger group of people, but it does allow
each person, whether it be a Council Member
or interested regulated community,
environmental groups, to voice their
concerns, request changes, and the staff to
work on those and then meet individually
with -- Ms. Canty had expressed an interest
in having some changes, so that the staff
would meet with her. Then perhaps a week
later with Mr. Brown, who had expressed an
interest and with the concrete ready mix
association at a separate meeting, to
address all of the issues that each group
had.

If that is the road that is chosen,

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what would happen is all of that would take
place. Then in January, any issues that could be resolved or even be taken further down the road, would be put into the formal rulemaking, sent out for public comment, and be discussed at the January meeting in the form of formal rulemaking, so that at least some of the changes could be in effect as early as July of 2000 -- what's that, 2005?

MR. HOBBs: Right.

MS. CHARD-MCCLARY: That sounds like so long, so far away. And then what would happen at that point, we would make those changes that we could make, get those in place, and then at that point, since there would have been a formal rulemaking, that's likely to solicit more input and more interest, at that point then there could be another attempt made at a workgroup that would go through the entire process that we made an attempt to get started during this calendar year.

The upside to that is we do get some progress, some changes and get that done in

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a relatively short period of time. The
The downside is, it's a little bit cumbersome on the staff in meeting individually. It doesn't get everything done right away, but it is some progress.

The other option, which also has some pretty strong merits but also has some pretty serious drawbacks that we would have to overcome should the Council choose to go this route -- and Don, if I mess this up, you may have to fill in some of the blanks -- and that is rather than having a workgroup, that the Council authorize a subcommittee, which would be made up of no more than three Council Members. And that group of Council Members would be given a specific task to meet, to make recommendations, basically to write the set of rules.

Should we go that route, members of the public could attend but would not have direct involvement. Also, there would be the issue of, since it would be a subcommittee, that there would have to be notice filed with the Secretary of State's office, and all of the publication.
requirements, there would be formal
Minutes. There would be all the other
requirements. Did I miss any of them?

MR. MAISCH: Just all the
requirements that are necessary to meet the
Open Meetings Act. The subcommittees are
under the Open Meetings Act and must
comply with all those requirements just
like this meeting.

MS. CHARD-MCCLARY: So the up
side to that is, it is more formalized and
there are clear records of everything that
happens to a point of every word that is
uttered is recorded. The downside is, it
is more cumbersome, there are more
constraints, and it is costly from the
standpoint of all the publication and court
reporter and all of those functions.

Those are really the options. To
tell you what I would foresee coming, as
far as rulemaking, it's really going to
depend on what the Council chooses or
thinks the best option is to proceed at
this point. With the exception of do

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sides and down sides. And I guess, do
absolutely nothing, the up side is, it’s
not any work for anybody, but I don't think
that really accomplishes the intent at all.

MR. HOBBS: My question is, if we
accept to do nothing, the staff still does
their part in rewriting this and it comes
before us in January in the way of new
rules and corrected rules?

MS. CHARD-MCCLARY: If we choose
to do nothing, the staff will take a look
at any comments that they have received
through permit issuance process and would
make recommendations for rulemaking to the
Council at that point.

MR. SHORT: Isn't that
essentially your third proposal, that you
would just take solicitation for public
comments and incorporate them into
something to bring forward?

MS. CHARD-MCCLARY: It's very
similar.

MR. SHORT: Okay.

MS. CHARD-MCCLARY: Except, you
know, the do nothing is basically the
Council would say, forget it. We're not going to direct the staff to do anything, whenever they bring us rules, they bring us rules on this subject and we're going on. The reality is, the staff is constantly reviewing the rules whenever an issue comes up and would seek to address some of those that have come up through comments during permitting procedures.

The other option that's close -- that's similar to that is that the Council directs the staff to solicit comments from those that have expressed an interest, to go beyond the permitting process to get those comments, just in asking, for example, the Council submit any issues you have and suggestions and we would make a concerted effort to contact those that had requested to have input and participate in a workgroup to get all of their input, as well.

MR.: Shellie, if you don't mind, just refresh my memory on how we got here. Were we doing something on this rule that someone said, let's set it aside until we
MS. CHARD-MCCLARY: Well, through a couple of issues that -- primarily Ms. Canty raised some issues that she would like to see revised. Another gentleman representing an industry spoke at the previous Council Meeting in January, representing Martin Marietta, which is an aggregates company, and he expressed some concerns. His concerns were a little bit more difficult to address in that his concerns seem to be -- what I took from his comments that he would like to see our rules more closely mirror what Texas has in place, which is similar to our now Chapter 605 rules, which does not put very much focus or permitting enforcement priorities on the surface impoundments, which we can't go that far.

We have state statutes that require us to regulate those surface impoundments. But there were some concerns that he would like to see addressed specifically. I think, if I remember correctly, some of the

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distance requirements, both surface
distances and distance to groundwater
issues. There are some variance language
sections in the chapter, but I believe it
was Ms. Canty, (inaudible) outside of the
Council meeting, that thought that perhaps
we should look at that to consider, do we
really want that to be a variance or is
there a way to write some language in where
under certain circumstances, it is a
variance, but under other circumstances, a
variance isn't needed and here's why. And
that it's just simply an allowable
activity.

MS. CANTY: I believe that when
we were doing some rulemaking, I said I
didn't have a problem going ahead and
passing rules as long as we set up the
workgroup. And Shellie planned on setting
that up. She expressed some concern at the
time about multiple Council Members being
on that. I believe you commented that if
any Council Member wanted to be on it,
excluding violating the Open Meetings Act,

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they ought to be able to be on it.
And as far as I knew, we would meet before this meeting and go through 616. And we've not done that. I'm not aware of any rule that a court -- like option two, that would limit two or three. And certainly, I'm very comfortable with Jeffrey's background. I would be happy to rotate out or Glen would, I'm sure, to where we limited that to three Council Members. I'm not sure why we can't do number two and have three Council Members on that. I'm not aware of a rule that eliminates -- at least, last time you mentioned that there was no rule.

MS. CHARD-MCCLARY: Well, at that point, we were anticipating that there would be more than one or two of the regulated community that would express an interest because historically we would have a minimum of ten to fifteen people participate and there had been cases in the past where we would have twenty to thirty people from the regulated community environmental groups expressing an interest to be a part of those groups. So it was
never an issue to have the Council, as many
as wanted to participate, up to an issue
with the Open Records and quorum and all of
that.

It becomes more of a perception
problem that we got into several years ago.
And Don, I don't remember if you were the
attorney working on that or if it was Craig
Kennamer, where we had tried to get a group
together and was looking at some financial
assurance, financial surety or something
along those lines. There was much more of
an interest by the Council than the
regulated community. There was an issue
of, well, the Council is now becoming a
rule writing body as opposed to reviewing,
taking recommendations and acting on what
the regulated community or general public
environmental groups brought to them.
And since then, that was a rather
unpleasant experience that we have tried to
make sure that we did have at least an
equal number if not more Council Members
involved -- regulated public or

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Council Members.

MS. CANTY: I think it's a little bit misleading, because Martin Marietta, who spoke last time, owned about thirteen to fifteen facilities in this state. Bruce Evans told me he had called you and he owns about fifteen facilities in this state -- the aggregate association, who represents hundreds of facilities in this state, and he'll be here at 2:00. Mr. Bob James is with the ORMCA, and he represents lots of facilities. I think we're talking about hundreds of facilities, not one or two.

So I think that is a little bit misleading to say that there are one or two. And with all due respect, there is no rule against -- am I correct that there is no rule limiting Council Members, it's simply a personal preference on behalf of the staff because you're concerned about the perception of other potential groups that might come after us; is that it?

MS. CHARD-MCCLARY: It's not a personal preference, it is the opinion that

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was given to me by the attorney who was
responsible for rulemaking, who is now the
Deputy Executive Director, that that was
not something that should happen because of
when we have tried to do that in the past,
it has led to some issues with, well, the
Council is trying to overstep their bounds.

And those kinds of claims do not
ordinarily come from a regulated facility,
they may come in a political setting where
someone is unhappy and has gone to a
legislator, to the Secretary of
Environment, to some other body that can
exert some, if not direct impact on us, but
help us to take a more statewide approach
to issues.

And I don't recall saying that it
was only one or two facilities. I said one
or two sectors of the regulated community.

MS. CANTY: Okay.

MS. CHARD-MCCLARY: Car washes, I
don't know how many of those there are in
the state, but a lot. They are covered
under this chapter. In the past when we

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have had one or two of those facilities represented because they felt that that was appropriate.

So there are others. I did not intend to make it seem like there were two facilities. But there are two sectors of facilities that are regulated by this chapter. And --

MR. HOBBS: The Open Meeting Act would limit how many people could be there from the Council; would it not?

MS. CHARD-MCCLARY: At this point, no. The Open Meetings Act -- Don, do you want to come up here and --

MR. MAISCH: I think that the rule that we're looking at is the state statute on the Open Meetings Act. And what it basically says is, if you're going to have a majority of the Council present at any one gathering, that meeting then must meet the Open Meetings Act.

Some people have taken that a step further to be on the safe side and said, if you look at quorum for any body, and at

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majority that could pass something, then if you get that voting majority there, then that needs to quite possibly meet the Open Meetings Act. That's where you get the difference in -- for a body like this, where you have nine members, quorum is five.

So it is clear that if you have five Council Members on any committee whatsoever, you must meet the requirements of the Open Meetings Act. Every meeting that that body holds has to go through Open Meeting Act requirements. Part of what we were looking at doing here was trying to avoid those necessary requirements under the Open Meetings Act, to be able to hold meetings, whenever the group felt like it wanted to hold meetings as opposed to saying we need to have meetings, set them up, have them published, go through the Secretary of State's Office and go through all those steps.

The second part of what I just said was, there is a view out there. No law on this, nothing really written, but there is
a view that says, not only do you look at
the quorum, but you also look at a voting
majority for that quorum. And to be on the
safe side, since a voting majority of a
quorum of this group, a quorum being five,
a voting majority is three, once you hit
that voting majority, to be on the safe
side, you need to go on ahead and comply
with the Open Meetings Act. So if you keep
it under three, then it's not a problem.
That's where all of that comes from.
And it's not so much a rule that says you
can't do it, it's a rule that says whether
you need to comply with the Open Meetings
Act or not.

MS. CANTY: So we could go with
two, you're saying, not just one?

MR. MAISCH: Easily.

MS. CANTY: Two would not be a
problem?

MR. MAISCH: Easily. Two would
not be a problem.

MS. CANTY: And if we want to
rotate out, we can do that. If we want to

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have different expertise, then we could
rotate out Council Members.

MR. MAISCH: However the Council chooses to do it.

MS. CANTY: Okay.

MS. CHARD-MCCLARY: Since we do have members of the public, although we did not specifically list that as an item for the Council to act on, I don't know if any of them have a particular interest in this chapter or not. But it may be worthwhile if they have any input.

MR. HOBBS: I was fixing to ask that, even though it wasn't on the agenda.

MS. CANTY: You might refresh the memory of what chapter. I think a couple of people want to know.

MS. CHARD-MCCLARY: It is Chapter 616, the Industrial Waste Water Treatment.

MR. HOBBS: Did anybody come to particularly address that issue? Have a heartburn about it or something you want to say? We would --

MS. CHARD-MCCLARY: If anybody is going to say -- if you would come up to a microphone so the court reporter can get

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all of the information.

MR. HOBBS: We would allow you some time on there. We may call time if it gets to be quite laborious. You'll need to say your name and who you represent clearly enough so that she can get it down.

MR. JAMES: I'm Bob James, Executive Director of the Oklahoma Ready Mix Concrete Association. I didn't really come prepared to comment. However, I probably would comment concerning, I think, the options that were there. I think the interest of our industry, the option one, is probably not a good option. We would like to see something considered there.

Either option two or three probably would be of most interest to us. However, with option two with two Council Members being on there, I would have concern, I think, about continuity and affectivity of that group with rotating in and out. It would be my recommendation or interest that those persons be there with continuity, the whole group. But either of those items

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our group.

Mr. Bruce Evans, that was mentioned earlier, would be representing our group or he was the one that we have recommended to Shellie that would represent our association, as well as his own facilities.
And so I think that may have been one of the two, Shellie. One of the two that were mentioned there and he would be able to take over those. That would be our interest there.

MR. HOBBS: Okay. Thank you. Is there other?
MR. BAKER: I just came to listen up on 616 to see what was being discussed at the time. I don't have any specific comments on it right now. My name is Dan Baker with Dolese Brothers Company.

MR. HOBBS: Are there others from the public? Seeing none, Council.
MR. WARREN: I'll comment again.
I don't -- this is not a rule that I'm particularly concerned with. But I mean, just as far as sitting back and listening

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that are interested in making some
suggestions on things that they've seen in
this rule, we've got two separate
industries at least that are interested in
addressing some of the issues.

I don't see where it's a problem to
let those people, as long as we don't
violate the Open Meetings Act. And it
sounds like you -- there's really no issue
there until you get four, at least four
Council Members present at a meeting, I
don't think that's a problem.

You know, the people that are on
this Council, a lot of them represent, you
know, deal with these rules, have a level
of expertise, obviously have a level of
interest in them that goes beyond a lot of
the people in the general public. And I
don't know that, you know, by giving those
Members of the Council an opportunity to
express to the staff, areas that they've
seen that they feel like ought to be
addressed, I don't think that gets into the
area of the Council trying to get into the

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rule writing process.
I think it's giving the Members a chance to meet informally with staff and whatever members of the regulated community that want to be involved and kind of just throw issues on the table that they would like to see the staff take a look at.

And you know, I don't -- from where I'm sitting, I don't know why you don't kind of set up a group and let whoever wants to come, come, as long as we don't get into Open Meeting violations. I just don't see where that's a problem. You know, from a perception, I don't know how anybody in the regulated community could object from a perception standpoint when they didn't participate and had the opportunity to do so.

So it seems to me you would just set up a little group and let whoever wants to come, come, and throw out what they wanted to see looked at.

MS. CANTY: Well, these are not complicated changes. We are not talking about major things. We're talking about

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changes -- most of the changes that we have discussed are changes that were actually in effect in '99. So it's not even heavy-duty, your children are going to get into these dangerous chemical impoundments now. I think it's a pretty simple deal, too.

I think that two or three Council Members want to attend a workgroup, certainly if they were doing something to effect municipalities, I would think that, you know -- or oil and gas, you would be very interested. And as the industry rep, I know of lots of facilities that have been impacted by 616 and they are minor changes but they can cost lots of money. And so we do have an interest in it, or I do, per se. And I think it's a real simple deal. I don't know why it's getting so complicated.

But nevertheless, I would be interested in a workgroup, too, with two or three Council Members. I think three doesn't necessarily violate the Open Meetings Act. I know of at least five to seven people that would like to attend and I can have them call Shellie direct, which would keep us out of, you know, as far as

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how many people are going to attend.  But I
don't understand the complication either.
I would be interested in doing number two.
But I'll let the other Council Members
speak.

MR. HOBBS:  I didn't know at this
point that it was too complicated.  We're
talking a lot about it, just trying to
figure out a way to do it since the first
idea we had apparently didn't work very
successfully.  Now we're looking at some
other options to make it work.

MS. CANTY:  But I -- I don't
understand why it didn't work.  I mean, it
didn't work on our part, it was just
something that DEQ was not able, because of
their concerns of the perceptions to have
multiple groups attend.

MS. CHARD-MCCLARY:  Well, we have
the experience over the course of the
Agency's existence.  And to be honest, I
have worked with this Council since late
'93, early '94.  We have had double digit
workgroups.  I can't tell you the exact

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going at once. So it -- that period of
time stays very fresh in my mind. And we
have never had such a low interest
expressed.

And that is what caused the staff
some concern and sought to make sure that
we did the things we needed to do so that
in good conscience, when rule changes are
presented to the Council and to the DEQ
Board, and someone stands up and says, why
did you do this, we didn't know about it.
Then we are in a much better position to
say, well, but you should have because we
went through these steps. To stand before
the Board and say well, you should have
because there was a public notice and it
went through the Water Quality Management
Advisory Council, they do not look
favorably upon that answer. They look much
more favorably upon an answer that says, it
was discussed in this meeting and that
meeting before it was ever rulemaking.

There was an attempt made through
phone calls, letters, we contacted the

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small business regulatory assistance
committee at the Department of Commerce, multiple times, as we are required by law to do when there is a potential impact to those facilities. And we received no response. Then we come back before the Council and the Council gives additional directive to take some action to continue forward, to adjust strategy a bit to ensure that we do not ignore potential concerns and get those items addressed.

The staff does not have a problem or an issue with having meetings, reviewing rules, trying to come up with some good solutions that work for everyone. It is, again, up to the Council. That's why the Council gets options to make some decisions. But the Council also should make informed decisions. We don't want the Council to decide something and then say, well, you didn't tell us that we could do something else, as well. So that's why we present it to you now.

Had things gone as anticipated, in a process that followed what has happened in all the other workgroups that this Council

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has directed the staff to form, we would have had a minimum of double-digits represented from the general public. Not total number of facilities, but in numbers of industries, types of industries, and we would have been very comfortable in moving forward under that scenario. We were not comfortable in kind of jumping off into a workgroup that had a very limited representation.

Now that there has been additional opportunity for the public to know this was public noticed, we did send out some mailing lists and those interested parties could have been here today, had they had an expressed interest. But that did not happen. So based on the direction that the Council gives the staff, the process starts from here. We have a much more defensible stance that we can take when questioned, either by an unhappy regulated facility before the DEQ Board or the Legislature or the Governor or EPA or anyone else, and it is, those of you who have gone through this

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diligently to dot our "i's" and cross our
"t's" and not get in any trouble.

As far as what happens from here,
the Council will direct the staff and the
options that were presented are not all
inclusive and if there are variations of
the options, that's certainly -- that's why
we're here, is to talk about that, and for
the Council to make that decision and then
we move forward.

MR. WARREN: Shellie, if you do
have a meeting or two and the staff comes
to a conclusion that, you know, there's not
sufficient interest or the concerns being
expressed are so specific to a couple of
industries that they don't warrant rocking
the boat for the rest of the regulated
community, I mean, that could certainly
result in a recommendation to the Council
that no action be taken.

MS. CHARD-MCCLARY: That is true.

MR. WARREN: Is that correct? I
mean --

MS. CHARD-MCCLARY: That is

possible. I can't think of a time where

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that was actually the outcome. There may be and my memory just isn't recalling it, and that's primarily because we do try and look at, if there are any number of issues that are presented, even if nine out of ten are not possible for whatever reason, whether it's not technically sound or it requires additional study or that change has negative impacts on too many other industries, you know, we would still move forward in making the one change that we could.

MR. BROWN: I would just like to ask a question. Your rules have -- obviously this seems to be a concrete and aggregate matter and it seems like you refer to them as sectors. It seems like you have multiple sectors of things that are controlled by the same statutes, and I guess my first question is, is it possible within these statutes to make a change if it is warranted, I have no idea of the merits of the issues, but is it possible to make rule changes that divide out concrete

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and aggregate as a separate business so
that it doesn't influence other groups,
other sectors? That's one question.

MS. CHARD-MCCLARY: That becomes
a little bit difficult in that should the
Council make a decision that we are going
to do that, the staff will make an attempt
to do that.

The problem, once you start doing
that, is well, then we have a rule chapter
or a subchapter that only applies to the
concrete industry, the aggregate industry,
well, now, car washes want this other piece
changed and then you end up with a separate
set of requirements for a car wash and then
for -- the deep water iodines plant up in
Woodward, I don't know if it's still in
operation or not, but you know they are an
industry all of themselves. But you start
running into that once you set the
precedent that it's hard to justify not
making those same type changes for other
industries.

We did go down this road a little
bit back in the mid-90's. It's when the

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Council was still meeting over at the
Department of Agriculture in their board room. There was a proposal made to make some changes and to exempt out Class 3 waste water from certain requirements. And it was, as I recall, tied to dust suppression at a rock quarry. We discussed the issue, made some recommendations to the Council, and the Council repeatedly asked why are you exempting out all Class 3 waste water, you never know, some other industry may come in, there may be some other issue, but although it meets Class 3 waste water, it is not as benign. You know, we don't want to start going in and making categorical exemptions or exempting out activities at specific facilities.

Now, that was approaching ten years ago. Now that doesn't mean the Council can't change its mind, but this body did specifically tell us to stop doing that or trying to do that. So that is legally possible, but it becomes problematic.

MR. BROWN: I can certainly -- certainly see the, you know, the problem

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factor, be it the iodine facility or whatever. But for something that's, you
know, unique and a very large sector of industry, the flexibility of dealing with
directly with their own sets of issues seems like a logical thing to at least consider.

But the second point or question I would like to ask is, of this particular industry group, the concrete and aggregate,
Ms. Canty said that there were perhaps hundreds of facilities. I'm trying to figure out in my mind how many facilities are there. Someone that represents this industry, are there a thousand or is there a significant percentage of that industry that wants this change? And because -- and is there a way, you know, for us to find that out?

MS. CHARD-MCCLARY: Well, why don't we ask Mr. James, who represents the Ready Mix Association, also, and that he clearly would be someone who could speak to that.

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MR. JAMES: When you say this change, I mean, you're talking about all aspects of 616 that effect our industry or are we talking about a few things that we mentioned before, as far as whether it be offsets or?

MR. BROWN: Well, I'm not sure I know all the changes that are being discussed. I can't really answer that question. I just know that there's been interest in -- I've heard about distance to groundwater separation requirements, and I think slopage of the impoundments are the three that I've heard kicked around.

Again, I don't know how I would stand on them, I just think to be responsive to an industry, if there's rules that are excessive, then perhaps they should be considered to be changed. And I'm just wondering if there's consensus in your industry, does everybody want these changed or is it a small percentage, if it's possible to ask that.

MR. JAMES: And again, I can't speak -- I appreciate that. I certainly can't speak for the aggregates, but I
anticipate that we would probably feel the
same, but I would let others speak to that.

There are some areas of 616 that
effect us, that I think probably as an
industry we're not intended to be effected.
It's more things that involve other nasties
other than just what comes off of concrete
and aggregates.

And so I would say generally our
industry would be interested in looking at
those things. Certainly, the items that
are being talked about can be helped or can
be handled under individual permits,
whereas now, to get them changed, they
cannot be handled under the general
permits. And so there is a -- there is a
staff burden for the DEQ, there is a
monetary burden, financial burden on the
industry whenever you have to go to an
individual permit for those.

So generally, on those things that
we talked about, I would say yes, we would
have interest in looking at that further to
see if there's a way that that could be

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handled and possibly even be some interest
on separate rules for the industry and that
would possibly isolate us from -- and
isolate those that regulate us on having to
consider us with the Dow chemicals.

MS. CANTY: Bob, how many
facilities do you represent? I think Glen
wanted to know that, too, if you've got a
ballpark number?

MR. JAMES: We represent about
137. That changes from time-to-time.
Industry is still dynamic. About 137
plants across the state of Oklahoma, which
represents -- that is about 94 percent.
That's pretty dynamic, too, coming and
going. But probably 94-plus percent of all
ready mix producers in the state of
Oklahoma.

MS. CANTY: And didn't you do a
poll last year of your members and you got
just a phenomenal kickback that people were
interested in revising 616? I don't
remember the numbers, but it was real high.

MR. JAMES: There was a poll. It
was not -- I mean, it was not singularly

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was about our total permit. So it wouldn't be fair to say --

MS. CANTY: Right. Right.
MR. JAMES: -- we had an overwhelming response to that, yes. It was much broader than just looking at 616. But naturally there were some things in 616 that effect us in working on our general permit that we're involved in, certainly.

MS. CANTY: Okay.
MR. HOBBS: Would anyone else from the public like to comment?
MR. RODRIGUEZ: Thank you, Mr. Chairman. My name is Jim Rodriguez. I'm the Executive Director of the Oklahoma Aggregates Association. I apologize for being late to the meeting, I just arrived about ten minutes ago. We were having a Board of Director's meeting. There are 21 producer members in the Oklahoma Aggregates Association. And I believe there are two, maybe three member companies present here. We represent the companies who produce the aggregate and sand for the state of Oklahoma, plus we ship a bunch of it down.
in Texas, as well.

Our members very much are in favor
of taking a hard look at 616. I am new to
my position. I can't speak technically to
616, but I have been told by my members
that something along the order of three or
four years ago there were significant
changes made in their permit that if they
have to go back and meet all these new
standards, that it's going to be quite
expensive on the Class 3 water holding
facilities. They are basically sediment
ponds in quarries and at sand locations,
that -- some of the restrictions on the
slope, it used to be one to two -- I mean,
it used to be one to three, now it's one to
two. They would like to see it go back to
one to two. They don't feel that the
fencing is a justifiable requirement in
this particular industry.

As far as the number of facilities,
of our 21 member companies, I would
estimate that there are probably 100 quarry
and sand pit sites. There are additional,

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you know, three or four hundred quarry and
sand pit sites that aren't members of the
association, most of those are smaller
operations. But I can't -- I don't know of
a single member who would oppose revisiting
this. And I was asked to be here today to
speak on behalf of taking another look at
it.

MR. HOBBS: I don't think there's
been any effort made to say that we're not
going to take a look at it, so that's not
mundane.

MR. RODRIGUEZ: Well, I'm here
because we want to, you know, be of help
and we want to provide information that
helps the Council understand our industry
and why we feel that these Class 3 holding
areas don't need to be quite as restrictive
as they are for our particular operations.

MR. HOBBS: Okay. We appreciate
your comments and we welcome your input to
anything that comes up on that rule. How
we're going to get that done yet is what
we're talking about, trying to decide how
we're going to accomplish that. But thank

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MR. RODRIGUEZ: Thank you.

MR. HOBBS: Thanks for coming.

MR. JOHNSTON: Mr. Chairman.

MR. HOBBS: Yes, sir.

MR. JOHNSTON: A few comments, perhaps a motion when I get done. Based upon my experience on this Council and working with several different workgroups, one of which was a very long standing and we went a long, long time and I think we met in about every room in this building, Phil, and saw about everything, and it was very worthwhile. It doesn't give me any special knowledge but I've got a little bit of experience on it.

But based upon that, what I recollect of why we set up those workgroups and why we persevered through that effort, based upon having read the Minutes and transcript over several times and what I've heard and haven't heard today at this open time, I would offer a motion at this time that we proceed with option number three.

MR. SHORT: Second.
motion and a second. Are there further
discussion on option three?

MR. SHORT: Now, is that not
having a workgroup and letting everybody
sit down?

MR. HOBBS: Just the less formal,
submit it, fax it in, mail it in
(inaudible).

MS. CANTY: I'm going to be
interested in number two. We can vote.

MS. CHARD-MCCLARY: Let me
explain, just to refresh everybody's memory
and make sure you're making a motion to do
what you think you're making a motion to do
and that you're seconding what you think
you're seconding. That is to do a more
informal process so that we get more
progress -- ready for rulemaking in
January. That would be anyone who has an
issue or an interest to email or fax in
information to me, staff would meet,
evaluate, make changes where it's clear
that there is a problem, there is
justifiable reason to make the change and

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it's easy -- easy is not the right word --
but it can be done in the time frame to
have rulemaking in January on issues where
it is not quite so clear cut that there
would be meetings with those who offered
that comment or presented that issue. Then
discussions take place on that issue one on
one or if there are two people who make
that issue known to me, and then come back
with rulemaking in January and then
immediately following the January meeting,
try to put together a wider group and start
meetings on a monthly basis or whatever is
deemed necessary to address any remaining
issues. That's what that option was.

MR. JOHNSTON: That's what I
intended.

MS. CHARD-MCCLARY: Okay.

MR. HOBBS: You still all right
with your second?

MR. SHORT: Yes.

MR. HOBBS: Any further
discussion from the Council?

MS. CANTY: I just wanted to go
on record to say we tried to work with the

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Council -- or with the DEQ staff last year on 616. We were not successful, hence my appointment by the President Pro Tempore and I am not -- I think that I have great concerns about option number three because I haven't had success in working with that Department specifically on 616. It was a very hot political issue last year and we didn't get our changes. So I'm just going to go on record to say that and I would be interested in option number two and we can vote on that.

MS. CHARD-MCCLARY: Before we continue on, let me address some of those issues real quick. And again, I'm going to ask Mr. James if he is interested. I know his organization was heavily involved. There were some issues that were raised. Those issues were raised with the Legislature and later brought to the staff.

There was a process that was outlined where the general permit for the concrete industry was revised and took into account concerns of a concrete industry. There was a series of outreach meetings held with the industry. I believe we sent
out invitations in the neighborhood of a
hundred and fifty facilities. It seems
like we had around 120 to 130 participate.
We did work with the Ready Mix Association
and arrived at where we were. My memory of
that, although I was a little more removed
since that was handled by our section
managers, was that that was, in fact, at
least moderately successful. Please
correct me if I have misstated that.

MR. JAMES: (Inaudible).

MR. SHORT: Does that make any
difference to this discussion?

MS. CHARD-MCCLARY: Well, I just
want to make sure -- because the statement
that was made would indicate that the staff
has been unwilling to work with the
regulated facilities --

MS. CANTY: I did not work with
Shellie. That's not where we're going.

(Talking over each other)

MR. HOBBS: Let's have one at a
time. I read the things over later and it
says we couldn't hear for the mumbled

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discussion, so let's speak one at a time so
everybody gets the same words, if you don't mind.

MS. CHARD-MCCLARY: Well, and what would be the difference in the situation of contacting a section manager working on a rule is that when it's coming as a directive from the Council, I'm the person that oversees that, not a section manager, not a staff level person. And that does make a difference. I know enough to know when I don't know I need to go ask somebody. But I also know what we are charged with and what we are expected to do in the process.

MR. WARREN: Can I make my comment or on the discussion?

MR. HOBBS: Yes.

MR. WARREN: I mean, I don't have a dog in this hunt. But I'm sitting here listening. We've got two or three members of this Council that have -- all they were asking is that they have an opportunity to sit down in a meeting with staff and with, you know, interested industry people and

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with these rules.

Now, why in the world we would not -
- we would want to vote to deny them the
opportunity to do that, I cannot imagine.
I'm not going to be there. I don't care if
I meet with them, but we've got at least
two or three members of this Council that
want to sit down in that meeting. And as a
result, you know, I'm not going to vote to
deny them that opportunity.

I think it's a reasonable request.
It's not a mandate to make any changes to
the rules. It's just for an opportunity
for interested parties to sit down and talk
to the staff about it and we ought to show
them that courtesy of giving them that
opportunity.

MR. JOHNSTON: Do we have any
authority to prevent them?

MR. WARREN: I don't know. But I
mean, we're basically apparently voting on
whether the staff is going to, you know,
have some kind of meeting.

MR. JOHNSTON: My intention is

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not that. Based upon what I've heard, it
would be very easy to make a motion to do
option number one, very easy with a clear
conscious and look everybody in the eye and
not be angry or upset. I'm kind of like
you. I'm kind of like, they want to talk
about this, talk about it, but here it is
August the 3rd and as of -- from January we
haven't got there without blaming anybody
or giving anybody credit or whatever
happened. But I don't see anything wrong
in going forward with option three. It
preempts the right as a citizen, the right
as an interested person to talk to the
staff.

MR. WARREN: Well, it denies the
two or three Council Members that want to
do it, the chance to sit down --

MR. JOHNSTON: What's preventing

them?

MR. WARREN: -- in a meeting with
the interested industry people, with the
staff all together, and toss these ideas
around.

MR. JOHNSTON: I agree. I just

don't see anything to prevent them, Joe.
MR. WARREN: Well, we're getting ready to vote to not have or establish a working group that would give them an opportunity to have that forum. Why would we want to do that when two or three of our Council Members desire to?

MR. SHORT: But what I understood option three to say was that the staff was to make a concerted effort to gather the information. Now how -- that should not preclude a meeting, should it?

MS. CHARD-MCCLARY: The intent would be to look at those issues. If it is -- of course, you know, I can't think of anything right off the top of my head, but if it -- if we get a comment that says the -- there should be no side slope requirements for surface impoundment, period. Well, then that's real easy to say, technically, legally, that's a problem. We can't do it, there's no need to have a workgroup to talk about that. Moving on to the next item. What item three basically would do would be get the information, work out individually or

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some things may not even require a meeting, it's like, you're right, the rule is wrong, it needs to be changed and just do it and not take up that time. But then for a meeting scenario to occur starting -- following the January Council meeting where there would be all of those issues that were not easily addressed, to go through those. And the intent would be, if we would be able to make some decisions, make some changes and bring those before the Council in January, then hopefully some of these issues that have been raised could then be addressed and be in place sooner rather than later. It is possible, if we wait and say we're going to do all of this as a meeting format from the beginning, it may take it a little bit longer to actually bring rulemaking it may not be able to come in January. Because in order to meet a January Council meeting date, Secretary of State requirement, publication requirements, submittal and acceptance requirements, means having some proposal in place ready to be sent to the Secretary of State.

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State for publication by mid-October, at
the latest.

MR. HOBBS: Part of the way I understood option three was you had a
couple of weeks to submit your concerns to
the Water Quality. They would spend some
time reviewing that. And then if they
didn't get it resolved the way that the
respondent wanted it, then they had the
meeting individually with them.
Personally, I would rather meet
individually with them than I would in a
meeting, in a group, but whatever. But the
motion on the floor is option three.

MS. CANTY: Wait, I would like to
make a-- I'm sorry, go ahead, Glen.

MR. BROWN: I'm just -- haven't
been involved in this very long, but it
seems like in option three, it would be
hard, from what I've heard here today, it
would be hard to think that these concerns
and solutions haven't already effectively
been submitted. I mean, there's been some
discussion about, geez, this thing's been
around for a long time, this is not getting

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any action. Is that a fair statement?

MS. CHARD-MCCLARY: No. There has not been anything submitted in writing requesting rule changes. There have been some discussions with consultants and with individual facilities, with permitting staff and permitting supervisors or in some cases, with our enforcement staff, saying, we don't like it, it should be changed. We think this is inappropriate, it should be changed. But it's never been actually submitted so that we can compile a list of what those issues are.

MR. BROWN: Would you say that your staff has reviewed some of these issues?

MS. CHARD-MCCLARY: I know that at least some of the staff level have looked at some of those issues. It has not gone as far as having senior managers look at it. It has not gone to our attorneys to evaluate legality of the changes which they are required to do. It has not gone to our Chief Engineer to determine technically is it appropriate. So it has -- I know for
sure that has not happened. I cannot say that individual staff or individual section managers may have reviewed at that level, as you all know, there are personal opinions and biases that sometimes enter in and when you go to senior managers and chief engineer level, sometimes there's a little bit more, bigger picture-type issues that are evaluated.

MS. CANTY: Shellie, I want to comment. I want to comment to the staff that I have never had a negative experience with Shellie or with Mr. Maisch. My interaction with Shellie has been very positive, so I want the Council to know that. I did submit a technical report on those issues last year. And I provided the specific regulation, the proposed regulation, and the rationale. And I'm sorry you didn't get a copy of that.

MS. CHARD-MCCLARY: Submitted to who?

MS. CANTY: To Afsaneh Jabbar.

MS. CHARD-MCCLARY: Okay.

MS. CANTY: And so I understand
that, you know, things may have mishapped.

There was a report, I apologize that you
didn't get a copy of it. What I'm saying
is that if there is a concern that one of
you has that effects your industry, I want
you to be on that workgroup. If for
whatever reason you have not had a good
experience and not with Shellie per se but
with other staff members, you ought to be
afforded that opportunity.

Number three does not do that.
Number two would allow myself and Glen, who
are both in Norman or Michael Paque or
Jeffrey to be on that meeting. There's --
we'll limit it to two, I think that was the
number Don was comfortable with. We'll
meet whenever they're available. I don't
understand the difference in two Council
Members attending those and two Council
Members not attending those, because I just
don't understand that. I would say that
option two really doesn't limit us.
Anytime they want to meet, I know that Glen
has said he will make himself available.

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So will I. Glen has a technical
background, as do I.

So I'm not sure why we can't go with option number two. I think Shellie and I, the little bit we have worked together, have had a good working experience. I look for it to be a real positive meeting, because I think her and Don are going to be excellent to work with and I was kind of excited about the workgroup. I don't see this as a negative at all. I hope you'll consider withdrawing your motion and going with number two and placing two Council Members on that. And I don't know that that will limit -- Shellie, would you have heartburn with number two with just two Council Members?

MS. CHARD-MCCLARY: The only issue I have, I guess, with -- again, when you start limiting to the two Council Members, well, it was important in some of the discussion that that be -- opportunity be afforded to other Council Members and again, I have -- I had a specific request, sorry Jeff, that you participate. That was

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not done by any of the staff, it was from
an industry who has participated with the
Council. So that does weigh in.

MS. CANTY: Shellie, was that one
of the two that called you or is that a
third person that called about interested
rules in 616?

MS. CHARD-MCCLARY: It was a
person who is not --

MR. JAMES: It was myself.

MS. CANTY: Okay. So it was one
of the two. Okay. That's fine.

MR. JAMES: The basis for that
I'll explain, is just that any
recommendations or anything that's looked
at is looked at from an engineering
standpoint. And I think that's going to
protect the Council, it will protect the
DEQ, as well as our industry. Good
ingineering data is the basis for any
changes that are there.

MS. CANTY: Bruce had called me,
too, Bob. Bruce Evans, who's going to
represent you, had called and asked if I
was going to be on that Council. Do I need

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need to call Shellie direct for me to be on that committee?

MR. JAMES: About?

MS. CANTY: Bruce had asked that I be on the workgroup.

MS. CHARD-MCCLARY: Bruce is?

MS. CANTY: Bruce Evans.

MS. CHARD-MCCLARY: He is on the list to be on that group.

MR. JAMES: Bruce Evans would be on that representing us.

MS. CANTY: Right. Bruce asked if I was going to be on it and I said I thought I was. So I would assume that's why he didn't mention that to you, but that's fine.

MR. SHORT: Lowell, can I ask a question.

MR. HOBBS: Sure.

MR. SHORT: Mr. James, you said that you would support option two or three. After everything you heard here -- and that's the reason why I seconded option three, was that's what the regulated community said that's one of the things you
could support. Do you still favor the support of three?

MR. JAMES: I still favor the support of three.

MR. SHORT: Okay.

MR. JAMES: I can see from staff standpoint that that very likely is a smoother process. Again, I come back to the engineering data.

MR. SHORT: Right.

MR. JAMES: I would say to the staff and to this Council, if we go through step three and there's not good hard engineering data, regardless which way it's gone, it's not probably in the best interest for our association and our industry. But I don't feel, with the experience that I've had with staff, that they're going to move forward without good hard engineering data. I just felt like it was important that there be an engineer in that workgroup in some way, the Council or another member, that can advise from an engineering standpoint what's available there. Again, I'm still in favor of either
one, but I think it can be accomplished
with either one, for the protection, I
guess, of what we're interested in.

MR. WARREN: Well, Mr. Chairman.

MR. HOBBS: Yes.

MR. WARREN: If I may, I don't
think this issue is going to go away. It's
important to some of our Council Members.

We've got two or three that want a
workgroup, you know, why do we delay it. I
think we ought to defeat this motion and
move to a motion regarding establishment of
a workgroup.

MR. HOBBS: I've got a motion on
the floor and I'm ready to call for -- roll
call vote on the motion that's on the
floor, which is to accept option three.

MR. WARREN: Let me -- can I ask
a question before to clarify that?
Obviously, if you vote down on option three
and then you go -- let's just say that
happens.

MR. HOBBS: We're going to
adjourn right after that vote.

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(Laughter)
MR. WARREN: I just wonder, then you go to option two, which some other people like and then say that fails, can you go back and approve three? Because three would be -- I mean I -- do you see what I'm saying? You don't want to wind up with --

(Talking over each other)

MS. CHARD-MCCLARY: You can make another motion. There are five of you.

Surely --

(Talking over each other)

MR. HOBBS: Okay. Roll call vote.

MS. BRUCE: Joseph Warren.

MR. WARREN: No.

MS. BRUCE: Jeffrey Short.

MR. SHORT: Yes.

MS. BRUCE: Robert Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Cathy Canty.

MS. CANTY: No.

MS. BRUCE: Glen Brown.

MR. BROWN: No.

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MR. HOBBS: Well, I'm voting yes.

But that makes a tie, doesn't it? And I'm not parliamentarian enough to know what that does.

MR. MAISCH: You have to obtain a majority to win, therefore a tie fails.

MR. HOBBS: That's right. The Chairman does normally vote on those issues unless there is a tie and then he can break the tie; is that correct? We never have done that here but we never --

MR. MAISCH: The Council, there is no designation of that, so the Chair get to vote (inaudible).

MR. HOBBS: We never have had a tie anyway, so.

MR. WARREN: I would like to make a motion. I would move we ask the staff to set up a working group on this issue and allow whoever is interested and wants to attend, to attend, you know, subject to not violating, obviously, the Open Meeting laws and that the Council Members not be restricted in numbers, as long as we don't violate those laws.
MS. CANTY: I second.

MR. HOBBES: All right. Anybody not understand? Let's don't talk this one to death like we did the last one. I think we've talked enough, we ought to know how we're going to vote on it.

MR. JOHNSTON: Just a question.

Is that not what we voted to do in January?

MR. HOBBES: Yes.

MR. WARREN: We're just voting to do it again.

MS. CHARD-MCCRARY: The difference was that in January, the intent was that we have a full representation of the industries effected by this chapter and we received comments back that they were not interested in seeing changes to this chapter and we received no response from some of our contacts through letters that we sent. So we take that to mean, they don't have an interest in participating. We don't know if they have an interest in making the rule change or not. At that point, we were trying to come up with a wide range group that everyone effected by
this rule chapter had the opportunity to participate.

At this point, since we did not get that, you are basically saying, set up the meeting, whoever shows up, shows up and that's just it. And at this point, unless something changes, it will be in limited representation. So it is somewhat different, just as far --

MR. WARREN: Basically, we're voting, I believe --

MS. CHARD-MCCLARY: --

expectations.

MR. WARREN: On the same thing that we voted on last January, only we're saying, yeah, okay, we're limited in people that have expressed an interest, let's go ahead and do it with the ones that are interested.

MR. HOBBS: And if two people show up, it obviously won't take long to have the meeting.

MR. WARREN: That's right. It will be a short one.

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MS. CHARD-MCCLARY: Hopefully they won't talk it to death like we have done.

MR. HOBBS: As far as those polls being concerned about 616, if you polled all the people that pay ad valorem tax, they would like to do away with that, too.

So, you know, you've got a specialized group responding to that, then the changes are fast and furious that they would like to change. So you've got to have some level of neutrality in that.

MR. WARREN: I'm sure the staff will serve that role.

MS. CHARD-MCCLARY: Well, we -- you know, we will have clear ditches that we will have to stay between, so to speak, state law doesn't allow us to do certain things that individuals may want. And Mr. Short's engineering background and education isn't going to let us get in to technical trouble and everything would go, of course, through our chief engineer also.

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1 to help prevent those kinds of issues. But
there is the distinct possibility that the rules could be changed in a way that would have an impact that we don't really foresee at this point because we don't have that input from those other groups. But --

MR. SHORT: You need to share that with the folks then in the public services and the --

MS. CANTY: Shellie, I want to go on the record. I have a degree in environmental science from the civil engineering department and I worked in this industry with these specific rules for about ten years. So I want to make it clear I've had a lot of engineering classes. My degree is from civil engineering department at OU. So, you know that Jeffrey is not the only one with engineering experience in this Council.

MS. CHARD-MCCLARY: Well, the term engineer when we use it in that term, refers to a licensed professional engineer in the state of Oklahoma. He is a P.E., has an engineering degree and that is his field of expertise. Although OU and other

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schools have their environmental science programs are sometimes located in either a civil engineering school or environmental engineering school as part of a college of engineering, the most people sitting around this table have some kind of technical background, that's why you're here. But as the term engineer, licensed professional engineer, a P.E., that is his education and background and that's kind of where that recommendation came from. So clearly if it is an engineering issue, legally he could sign it and declare it legal -- or technically correct.

MR. WARREN: They'll have a great work group.

MR. HOBBS: We do have a motion on the floor. Is there further discussion concerning the motion that we have? If not, roll call vote.

MS. BRUCE: Joseph Warren.

MR. WARREN: Yes.

MS. BRUCE: Jeffrey Short.

JEFFREY SHORT: Yes.

MS. BRUCE: Robert Johnston.
MR. JOHNSTON: Yes.

MS. BRUCE: Cathy Canty.

MS. CANTY: Yes.

MS. BRUCE: Glen Brown.

MR. BROWN: Yes.

MS. BRUCE: Lowell Hobbs.

MR. HOBBS: Yes.

MS. BRUCE: Motion passed.

MR. HOBBS: And we are aware of your degree, Cathy, we knew that before you told us, but thank you.

And those of you who have come from public, we appreciate your comments anytime. Bob James and Jim Rodriguez, thank you guys for coming and expressing your thoughts.

MS. CHARD-MCCLARY: Just as a point of interest, especially Lowell and Robert, you all may want to move to one of the tables so you're not sitting, having to turn around. The rest of the Council, you may also want to move but you are in a position that you won't be blinded or you should be able to see.

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MR. HOBBS: Next is Glen Jones.
MR. JONES: Good afternoon. Jon had a conflict in his schedule he couldn't avoid, so he's out of state and he asked me to come and share some information with you. Some of you may have seen some of this before, this is actually a shortened version of a presentation that our Executive Director, Steven Thompson, has put together. It was presented at a number of occasions.

This is on a topic that's very interesting to us. We think it's going to be very interesting to you in certain aspects. This is about treatment of states for tribes in Oklahoma. As you can imagine with our history as a state that covers a lot of ground. There is a lot of people that that might be impacted by what's going on right now.

(Presentation given by Glen Jones)

MR. HOBBS: Further discussion about anything? The agenda calls for new business. Do we have any new business that you want to present, Shellie?

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MR. HOBBS: You have an announcement. We're not quite to that yet, now we are.

MS. CHARD-MCCLARY: I just wanted to take the opportunity to let the Council know and anyone present about some changes in regulations we've talked about before, the Capacity Management Operation Maintenance, or CMOM, rules. EPA is having the first wide scale training in Region 6 the end of August. It's August 30th and 31st in Austin. Any municipality or consultants for municipalities or pretreatment facilities, industries that discharge into a city publicly owned treatment works, may want to get that information and if -- I know Robert is planning to attend that, but if any of the rest of you have an interest in that, definitely see me after so I can get you the information because that may be the only training in Region 6 for quite some time, at least that's what they're talking about at this point. And those of you who
are wanting to participate in the
rulemaking workgroup, obviously the
Council, I have all of your contact
information. If there is anybody in here
who is wanting to participate who I don't
have contact information on, be sure and
leave that with me today before you go.

MR. HOBBS: Anything further?

Yes, sir.

MR. MARSHALL: I'm Phil Marshall
with the Water Resources Board. You
mentioned -- Glen mentioned the comments
regarding treatment of states of Pawnees.
The comment deadline on that, that's August
16th. Send those comments to the Water
Resources Board in care of Derek Smithee,
he'll forward them on to EPA and
(inaudible). So I just wanted to make you
all aware of that deadline, that's August
16th.

MR. HOBBS: Thank you. Anything
further? If not, we're adjourned.

END OF PROCEEDINGS

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Certified Shorthand Reporter
CERTIFICATE

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

I, CHRISTY A. MYERS, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the above proceedings is the truth, the whole truth, and nothing but the truth; that the foregoing proceedings were tape recorded by me and thereafter transcribed under my direction; that said proceedings were taken on the 3rd day of August, 2004, 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 14th day of September, 2004.

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