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DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS

OF THE

HAZARDOUS WASTE MANAGEMENT

ADVISORY COUNCIL MEETING

HELD ON OCTOBER 22, 2009, AT 10:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

* * * * *

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MEMBERS OF THE COUNCIL

- LEE GRATER
- MICHAEL GRAVES
- BOB KENNEDY
- RAY REAVES
- WESLEY ANDERSON
- PAUL HAGAMEIER
- EARL HATLEY
- ALAN RIFFEL
- STEVEN BOGDAHN

DEQ STAFF PRESENT

- SCOTT THOMPSON
- JON ROBERTS
- MIKE EDWARDS
- JERRY SANGER
- DON HENSCH
- MYRNA BRUCE
- PAM DIZIKES, STAFF ATTORNEY
- SHERRY COMBS, SECRETARY
- AMBER BRAWDY
- CLIFF HOYLE

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MEETING

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4

MR. GRAVES: Okay. The October

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22, 2009 regularly scheduled meeting of the

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Hazardous Waste Management Advisory Council

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was call in accordance with the open

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meeting act. Notice of this meeting was

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filed with the Secretary of the State

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October 24, 2008. The agenda was duly

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posted at the DEQ, 707 North Robinson,

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Oklahoma City, Oklahoma. Only matters

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appearing on the posted agenda may be

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considered at this regular meeting. In the

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event that this meeting is continued or

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reconvened public notice of the date, time,

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and place of the continued meeting will be

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given by announcement at this meeting.

19

Only matters appearing on the agenda of the

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meeting which is continued maybe discussed

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at the continued or reconvened meeting.

22

May we have a roll call, please.

23

MS. BRUCE: Good morning. Alan

24

Riffel.

25

MR. RIFFEL: Here.

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1

MS. BRUCE: Ray Reaves.

2

MR. REAVES: Present.

3 MS. BRUCE: Earl Hatley.
4 MR. HATLEY: Here.
5 MS. BRUCE: Paul Hagameier.
6 MR. HAGAMEIER: Present.
7 MS. BRUCE: Bob Kennedy.
8 MR. KENNEDY: Here.
9 MS. BRUCE: Lee Grater.
10 MR: GRATER: Present.
11 MS. BRUCE: Steven Bogdahn.
12 MR. BOGDAHN: Present.
13 MS. BRUCE: Wes Anderson.
14 MR. ANDERSON: Present.
15 MS. BRUCE: Michael Graves.
16 MR. GRAVES: Present.
17 MS. BRUCE: And we have a full
18 quorum.

19 MR. GRAVES: Next item is the
20 Chairperson's Report which is me.

21 Most of you may or may not be aware
22 that I've been on this Council since its
23 inception and I'm the only Member left of
24 the original group and I was also the
25 original Chair, and I have been privileged

1 enough the last two years to serve as the
2 Chair again and I appreciate the Council
3 giving me that opportunity and I really

4 appreciate the opportunity to work with the
5 staff. They're a delight to work with and
6 I've always been pleased with what we do
7 and I think the rule we have today is a
8 good example of that because they're not
9 afraid to do what is right even though it
10 goes sometimes against the conventional
11 wisdom.

12 That being said, two years into my
13 term as Chair the first time, I announced
14 that I would not stand for re-election
15 because I think it's very important that
16 these Councils rotate leadership. I know
17 that's not the view of some of the various
18 Councils but I think that -- I don't think
19 it's wise to get captured by one person
20 being the head of something too long.

21 So I know we have elections later
22 today and I just wanted to thank the
23 Council for giving me the opportunity and
24 to announce that I will not stand for re-
25 election.

6

1 Let's move on to the Minutes. And I
2 know that some of you as a matter of policy
3 don't like to vote for Minutes when you
4 weren't at a meeting, but it is unseemly to

5 have three sets of meeting Minutes out
6 there that have been unapproved. And so I
7 would ask that each Member of the Council
8 to -- hopefully you've read them, I've read
9 them, I don't have any problem, I think
10 they're accurate and I'm going to ask
11 everybody to vote so we can clear that off
12 our docket.

13 So the first set of Minutes are the
14 October 16th, 2008 meeting, a year ago.

15 MR. HATLEY: Mr. Chairman, I was
16 at that meeting so I move that we approve
17 those Minutes.

18 MR. REAVES: And I'll second
19 that.

20 MR. GRAVES: Great, thank you
21 very much.

22 Does anybody have any additions or
23 corrections? Okay. Roll call vote,
24 please.

25 MS. BRUCE: Alan Riffel.

7

1 MR. RIFFEL: Yes.

2 MS. BRUCE: Ray Reaves.

3 MR. REAVES: Yes.

4 MS. BRUCE: Earl Hatley.

5 MR. HATLEY: Yes.

6 MS. BRUCE: Paul Hagameier.
7 MR. HAGAMEIER: Yes.
8 MS. BRUCE: Bob Kennedy.
9 MR. KENNEDY: Yes.
10 MS. BRUCE: Lee Grater.
11 MR. GRATER: Yes.
12 MS. BRUCE: Steven Bogdahn.
13 MR. BOGDAHN: Yes.
14 MS. BRUCE: Wes Anderson.
15 MR. ANDERSON: Yes.
16 MS. BRUCE: Michael Graves.
17 MR. GRAVES: Yes.
18 MS. BRUCE: Motion Passed.
19 MR. GRAVES: Great. The next set
20 of Minutes are those from January 29th,
21 2009. Anybody have any questions,
22 comments? Anybody from the public have any
23 questions or comments? Anybody read them?
24 MR. RIFFEL: I move to approve.
25 MR. GRAVES: Thank you.

8

1 MR. HAGAMEIER: I'll second, I
2 was present.
3 MS. BRUCE: Alan Riffel.
4 MR. RIFFEL: Yes.
5 MS. BRUCE: Ray Reaves.
6 MR. REAVES: Yes.

7 MS. BRUCE: Earl Hatley.
8 MR. HATLEY: Yes.
9 MS. BRUCE: Paul Hagameier.
10 MR. HAGAMEIER: Yes.
11 MS. BRUCE: Bob Kennedy.
12 MR. KENNEDY: Yes.
13 MS. BRUCE: Lee Grater.
14 MR: GRATER: Yes.
15 MS. BRUCE: Steven Bogdahn.
16 MR. BOGDAHN: Yes.
17 MS. BRUCE: Wes Anderson.
18 MR. ANDERSON: Yes.
19 MS. BRUCE: Michael Graves.
20 MR. GRAVES: Yes.
21 MS. BRUCE: Motion Passed.
22 MR. GRAVES: And the final set
23 are from our most recent meeting, April
24 23rd of 2009. Again anybody have any
25 additions or comments?

9

1 MR. REAVES: Well I guess you're
2 suppose to say you were at the meeting, so
3 I was at the meeting so I move for
4 approval.

5 MR. GRAVES: Do we have a second?

6 MR. HAGAMEIER: I'll second.

7 MS. BRUCE: Alan Riffel.

8 MR. RIFFEL: Yes.
9 MS. BRUCE: Ray Reaves.
10 MR. REAVES: Yes.
11 MS. BRUCE: Earl Hatley.
12 MR. HATLEY: Yes.
13 MS. BRUCE: Paul Hagameier.
14 MR. HAGAMEIER: Yes.
15 MS. BRUCE: Bob Kennedy.
16 MR. KENNEDY: Yes.
17 MS. BRUCE: Lee Grater.
18 MR. GRATER: Yes.
19 MS. BRUCE: Steven Bogdahn.
20 MR. BOGDAHN: Yes.
21 MS. BRUCE: Wes Anderson.
22 MR. ANDERSON: Yes.
23 MS. BRUCE: Michael Graves.
24 MR. GRAVES: Yes.
25 MS. BRUCE: Motion passed and

10

1 thank you.

2 MR. GRAVES: Yes, thank you very
3 much.

4 Okay. Item Number 7 is Rulemaking
5 Hearing. So I'll turn this over to Mr.
6 Roberts.

7 MR. ROBERTS: I ask you guys to
8 please spread apart unless you want to be

9 blinded by the light.

10 Hopefully, this will work. While
11 the projector is -- okay, I'll talk loud.

12 This is the event that I know
13 everybody has been waiting for, our annual
14 incorporation by reference of the Hazardous
15 Waste Regulations.

16 Before I get started, the picture on
17 the slide there, that's Lake Pukaki on the
18 south island of New Zealand. That's just a
19 picture a friend of mine who lives down
20 there had sent to me and I thought it was
21 just an absolutely beautiful picture and so
22 that's why that's on the slide there.

23 But anyway.

24 MR. KENNEDY: It's not Oklahoma.

25 MR. ROBERTS: That is not

11

1 Oklahoma, no, but I understand the color of
2 the water is pretty true color of the water
3 because of the glacial runoff that is
4 received into the lake, so very nice. I do
5 wish we had something like that here in
6 Oklahoma but unfortunately we won't, at
7 least, in our life time. There may be some
8 geological age somewhere in the future we
9 will but not that any of us are going to

10 see.

11 What I want to talk to you about
12 today is first off, what we're doing with
13 this rulemaking today. Then I'll also, you
14 know, briefly discuss the three EPA -- well
15 briefly discuss the two EPA rules that
16 we'll be incorporating with our rulemaking
17 today. The third EPA rule that we will be
18 incorporating is the Definition of Solid
19 Waste Rule, that's the one that has the
20 most contention, certainly on a National
21 level and the one that DEQ has been working
22 to try to come up with some kind of
23 compromise rules between the federal rule
24 and how to implement it here in Oklahoma.
25 So I'll spend more time talking

12

1 specifically about the DSW Rule, a brief
2 history of the time line that got us to the
3 point where we are now, a little bit about
4 where the Definition of Solid Waste Rule is
5 on the national level, our concerns with
6 the federal rule and a presentation about
7 what we are proposing to do to alleviate
8 some of the problems that we see with the
9 federal rule, and then recommendations and
10 some possible future actions that EPA could

11 take and how those might affect our
12 rulemaking today.

13 As I said, what we're doing today is
14 we're incorporating by reference the
15 Federal Hazardous Waste Regulations as of
16 July 1, 2009. This is pretty much an
17 annual event that the Council does. The
18 only concern this year is that the -- we
19 have this DSW Rule that is presenting some
20 issues, and so this is not going to be
21 necessarily just kind of an automatic
22 incorporation as we normally do. But there
23 are three federal regulations -- new
24 regulations in this version of the federal
25 rules that we will be incorporating.

13

1 The first one is the DSW Rule which
2 was effective on December 29, 2008. And
3 basically, just a very brief summary for
4 right now, what it does is it removes from
5 hazardous waste regulation certain
6 materials that are called hazardous
7 secondary materials that will sent for
8 reclamation.

9 Another rule within the federal
10 rules is the Academic Labs Rule that became
11 effective on December 30th of 2008. And

12 basically what it does is just set some
13 alternative chemical management standards
14 for academic labs. DEQ, we don't really
15 have any issues with that particular rule.

16 And the third one is Emissions
17 Comparable Fuel Rule. And it's a new rule
18 that removes certain types of hazardous
19 secondary materials from hazardous waste
20 regulations if they're going to be burned
21 for their energy content and the emissions
22 from those are comparable to fuel oil. So
23 we also don't have any real concern with
24 that federal rule. So the main emphasis of
25 my discussion is going to be on the

14

1 Definition of Solid Waste Rule, since I
2 think that's where most of the questions
3 are going to come.

4 First, let me give you a brief time
5 line of the entire DSW process and how it
6 got to where we are today. Back on October
7 30th of '08, EPA published its final rule
8 and with an effective date of December 29,
9 2008. Now it's effective on a national
10 level, but states who are -- who have EPA
11 authorized RCRA Programs such as Oklahoma
12 that rule will not be effective in those

13 states until it's actually adopted into the
14 state programs.

15 On December 31, DEQ received a
16 petition for emergency rulemaking from a
17 company called Itero Energy. They were
18 requesting that we adopt the rule -- the
19 federal DSW Rule as is by emergency. As a
20 result of that petition on January 29th we
21 had a Council meeting where the
22 representatives of Itero presented their
23 reasons for why they felt that the
24 emergency petition should be granted and
25 DEQ discussed at that time our concerns

15

1 with the federal rule and why we felt that
2 the federal rule needed to be enhanced
3 somewhat.

4 At that meeting, the Council
5 declined to approve the petition but did
6 ask DEQ to draft some implementing rules to
7 incorporate the Definition of Solid Waste
8 into our state rules and have those ready
9 for the April 23rd Council meeting.

10 Also on that same date, January
11 29th, the Sierra Club filed a petition with
12 EPA for a reconsideration and a request for
13 stay of the federal Definition of Solid

14 Waste Rule.

15 Basically the Sierra Club's petition
16 addressed two really broad concerns with
17 the federal rule.

18 One of which is that they felt that
19 the federal DSW Rule by deregulating these
20 hazardous secondary materials would
21 increase the threat to the public and the
22 environment without any concurrent benefit
23 and then they also had a concern that the
24 federal rule itself was unlawful largely
25 because of the heavy reliance on some

16

1 fairly vague and undefined terms that were
2 critical to how the rule was going to be
3 implemented.

4 So between that first Council
5 meeting and March 27th, DEQ worked on
6 developing these implementing rules for the
7 Definition of Solid Waste and we mailed
8 those draft rules out to the Council and
9 then the mailing list that we maintain for
10 people that are interested in rulemaking --
11 or hazardous waste rulemakings of the DEQ.

12 Then on April 23rd of this year we
13 had our Council meeting where we presented
14 our first draft of the rules, and as a

15 result of that meeting we also announced
16 that we would seek input from any
17 interested parties who were -- who wanted
18 to help us in writing these rules. And so
19 we sought names and email addresses of
20 folks who were interested and as result of
21 that we came up with an email list of about
22 eight or ten people, I think it was, who
23 were -- who had expressed an interest in
24 helping us with our rules.

25 And we also advised them at that

17

1 time that they were welcome to submit any
2 comments to us on our draft rule that we
3 would present and then any revisions we
4 would make we would present at a later
5 date.

6 Then on July 23rd we emailed to the
7 Council and those interested parties a
8 second draft of our Definition of Solid
9 Waste rules. We had not received any
10 comments from the public or from this
11 committee so-to-speak between April and
12 July. However, after reviewing the rule we
13 had found some inconsistencies and
14 ambiguities in our draft rule that we
15 identified on July 23rd and presented a

16 second set of -- or emailed a second set of
17 rules out to those interested parties and
18 the Council. And again we asked for any
19 more comments that anybody may have on our
20 DSW Rules.

21 Then finally on September 15th is
22 when we had to make the official notice of
23 our rulemaking for this Council meeting,
24 and I also want to note that between July
25 23rd and today we have received no comments

18

1 on our draft rules.

2 Okay. Now one interesting thing is
3 in the middle of all this last summer on
4 June 30th EPA held a public meeting in
5 Arlington, Virginia where they sought
6 comment from any interested parties who
7 wanted to either attend the meeting or
8 submit comments regarding the DSW Rule.
9 This was set up by EPA in response to the
10 Sierra Club petition.

11 At that meeting EPA stated that they
12 did not plan to repeal the DSW Rule but
13 they were seeking specific comment on three
14 areas.

15 One of those is this sort of nebulas
16 idea of containment being used as a storage

17 standard for hazardous secondary materials.

18 The second is the notification
19 requirements under the exclusion and then
20 they also wanted some comments on the
21 provisions of the rule that allows for
22 hazardous secondary materials to be
23 transferred from a generator to a third
24 party for reclamation.

25 EPA, I don't know how many comments

19

1 total they received, both orally and
2 written -- it was probably in the low
3 hundreds anyway from many individuals
4 across the country and from quite a few of
5 the states. And generally industry was as
6 you might expect was supportive of the DSW
7 Rule, but the states and the public
8 interest groups for the most part are
9 against the rule as it's written -- as it
10 was written by EPA.

11 And most of the public interest
12 groups were seeking repeal of the rule
13 while most of the states were either
14 seeking repeal of the rule or at least some
15 very substantial revisions to the rule.
16 And also another aspect that they felt that
17 EPA had not adequately addressed were the

18 environmental justice issues associated
19 with the rule.

20 This is a map of the -- off of EPA's
21 website of where the Definition of Solid
22 Waste Rule is currently in effect. EPA has
23 oversight over 57 states and territories.
24 The states and territories in red are all
25 of the states that do not have authorized

20

1 hazardous waste programs and so any EPA
2 rules that are passed are automatically in
3 effect in those states and they're
4 administered by EPA.

5 The two states in green, New Jersey
6 and Pennsylvania, they have either state
7 rules or state statutes that require them
8 to adopt all federal rules as is. So even
9 though they are authorized states they have
10 a state requirement that they adopt federal
11 rules as is without revisions. So those
12 states have done their whatever rulemaking
13 they needed to do, to do that and the
14 Definition of Solid Waste -- the EPA's
15 Definition of Solid Waste Rule is in effect
16 in those states.

17 There are two states that are
18 currently undergoing rulemaking related to

19 the Definition of Solid Waste; Oklahoma
20 being one which we're starting today.
21 Idaho is the other one and from what I
22 understand from my counterpart in Idaho
23 they will be adopting the Definition of
24 Solid Waste, EPA's rule, as is because they
25 also have a statutory prohibition on having

21

1 any rules that are different from the
2 federal rules. So Idaho is expecting
3 theirs to be in effect in their state
4 sometime middle of 2010.

5 And the other 48 states are for the
6 most part they want to find out what's
7 going to happen with EPA as a result of
8 this Sierra Club petition before they
9 actually move forward on doing anything
10 with the DSW Rule. So right now to my
11 knowledge the other 48 states are not doing
12 rulemaking and have no plans to do so at
13 least in the immediate future to adopt the
14 federal rule.

15 Now as I said, you know, we had some
16 major concerns with the federal rule as it
17 stood. While we certainly support
18 legitimate recycling, we felt that the
19 federal rule has three fundamental flaws

20 that we wanted to try to address.

21 And those were first, there was
22 limited oversight by the State Regulatory
23 Agencies. It's pretty much a
24 self-implementing rule that really provides
25 for very very little oversight from the

22

1 State Regulatory Agencies and how
2 facilities are complying with the rule.

3 We also -- there are also in the
4 federal rule there are really very few
5 optional standards on how these facilities
6 are suppose to operate. And the primary
7 concern really is a very heavy reliance on
8 a very vague terminology -- or reliance on
9 a vague concept of using a standard of
10 containment to prevent significant releases
11 as the management standard for hazardous
12 secondary materials. Now there really is
13 no in the federal -- in the federal rule
14 there really is no definition of what
15 constitutes adequate containment and what
16 constitutes a significant release. And so
17 we felt that without trying to address that
18 in some way the federal rule leaves the
19 gate wide open for all kinds of contentious
20 enforcement actions or whatever may happen

21 while we're trying to demonstrate to a
22 Administrative Law Judge, for instance,
23 that hazardous secondary material wasn't
24 contained and what was released is a
25 significant release that's causing some

23

1 kind of environmental problems. And we
2 felt that what should -- there needed to be
3 some kind of standard to address that so
4 everybody would have a target that they
5 could shoot at.

6 So basically what we feel on the
7 federal rule is that it's a fully
8 self-implementing rule with few guidelines
9 for either regulatory agencies or the
10 facilities themselves to evaluate their
11 compliance. And the concern is that
12 ultimately what this may result in is
13 mismanagement of hazardous secondary
14 materials which would result in
15 environmental harm and expensive cleanups
16 most likely at taxpayers expense as
17 facilities, you know, might have -- you
18 know, end up going out of business.

19 So what we did with our rule is we
20 have attempted to address each one of those
21 flaws that I mentioned before. We felt

22 that as far as the management standards go
23 the best thing to do to demonstrate
24 containment and preventing significant
25 releases was to have familiar management

24

1 standards that have been a part of RCRA for
2 years and would therefore be fairly simple
3 to implement; and then we also wanted to
4 have a provision to ensure reasonable but
5 responsible regulatory agency oversight
6 without imposing really arduous regulatory
7 requirements that the DSW Rule is intended
8 to alleviate.

9 So what we've done with our rule is
10 we have -- we have not -- we will not be
11 incorporating a provision in the federal
12 rule that authorizes land-based storage of
13 hazardous secondary materials. Under the
14 federal rule that provision is just subject
15 to the containment and preventing
16 significant releases. Well without -- we
17 don't feel that without doing some
18 significant engineering and design work and
19 maybe putting some groundwater monitoring
20 wells in or something, there's really no
21 way for a land-based unit to be constructed
22 where you can rely on containment to

23 prevent significant releases. And instead
24 of trying to come up with some construction
25 standards for containment units, we just

25

1 felt it would probably be better to not
2 authorize land-based storage at all. So we
3 will not be incorporating that portion of
4 the federal rule.

5 There are also two financial
6 assurance provisions in the federal rule
7 that we will not be incorporating but
8 that's because they're -- those are two
9 provisions that aren't applicable to
10 Oklahoma. So even if we did incorporate
11 them they wouldn't be in effect.

12 We are also proposing to require
13 prior DEQ approval of some operational
14 plans for these facilities as well as cost
15 estimates and financial assurance. Again
16 this would be done as a Tier I Plan
17 approval under our Tier Rules as opposed to
18 a full fledged permitting deal. And the
19 way the Tier I process works we have an
20 internal time line where once we receive
21 the application we try to get it turned
22 around within 30 days with either an
23 approval or at least some kind of notice of

24 deficiency for additional information. So
25 we don't feel that that Tier I approval

26

1 process is really an arduous thing for
2 facilities who want to operate under this
3 to go through.

4 We also are establishing some
5 location restrictions for flood plains,
6 surface, and underground public water
7 supplies and scenic rivers. Our idea
8 behind this is that these hazardous
9 secondary materials are essentially the
10 same as -- are the same materials that
11 today are a hazardous waste. But once this
12 rule is in effect they will all the sudden
13 not be a hazardous waste but they still
14 contain the same environmental risk. And
15 so we felt that for these facilities that
16 are going to be reclaiming these hazardous
17 secondary materials there at least should
18 be some location restriction as to provide
19 some protections for the flood plains,
20 drinking water supplies, and rivers.

21 And then also we wanted to establish
22 some day-to-day operational standards,
23 employee training, contingency plans,
24 responses to emergencies those kind of

25 things, just so that we have a comfort

27

1 level that these facilities who are
2 reclaiming the hazardous secondary
3 materials actually have some kind of plan
4 in place so that if there is some kind of
5 catastrophic release or something they will
6 be able to address it timely and
7 appropriately and then in that way minimize
8 any environmental harm that may occur as a
9 result of that and then provide for the
10 cleanup.

11 So what we are recommending for the
12 Council today is that you approve our rule
13 package as it is. You'll notice there are
14 two sets of rules that you'll be voting on
15 related to this. The first set is the --
16 are Chapters 205 Revisions which are at the
17 real meat of the Definition of Solid Waste
18 Rule and our entire corporation by
19 reference package anyway.

20 The second one is an amendment to
21 our Chapter 4 rules which has our
22 permitting and Tier rules in it and this
23 would just put these -- the operational
24 plans for these hazardous secondary
25 materials reclamation facilities under the

1 Tier I approval process.

2 Now there's two thing that could
3 happen on the national level that would
4 affect what we're asking the Council to
5 approve today. As a result of the Sierra
6 Club petition and EPA's public meeting,
7 they may modify their rule in some way.
8 The minimum modification may be to
9 incorporate similar standards to what DEQ
10 is proposing and there are several states
11 that are -- have also commented and
12 suggested doing something similar to what
13 we are proposing. If that was the case,
14 DEQ would have to go back and modify our
15 rules to ensure that our state rules are
16 equivalent with the federal rules or at
17 least equivalent to the federal rules. But
18 assuming that the standards stay reasonably
19 close to the same, those should have little
20 impact on any facilities that already
21 decided to start taking advantage of the
22 rules here in Oklahoma.

23 At the other extreme would be where
24 either EPA repeals the rule or because it
25 went to a -- it ultimately went to a court

1 and a court decided to revoke the rule
2 altogether, and in that case then the DSW
3 Rule on a national level would not be --
4 would no longer be in place; all of that
5 hazardous secondary materials would all the
6 sudden revert back to its hazardous waste
7 status. And what DEQ would have to do in
8 that case would be to revoke our Definition
9 of Solid Waste rules again to maintain
10 equivalency with federal rules. And while
11 we think that would have little impact on
12 generators because the management standards
13 for generators under the DEQ's DSW Rule are
14 very similar to the management standards
15 that they currently have for hazardous
16 waste.

17 So the generators would simply go
18 back to managing their hazardous secondary
19 materials as hazardous waste and it should
20 have little impact on generators. But it
21 would be a significant impact on any
22 facilities the intermediate or reclamation
23 facilities that decided to start managing
24 hazardous secondary materials under DEQ's
25 rules. The problem is that now all of the

1 sudden they are going to find that they're

2 managing hazardous waste without having
3 gone through the normal permitting process
4 that the facility that is going to manage
5 hazardous waste would have to go through.
6 So what we would have to do in that case
7 would work with these facilities to some
8 how transition them out of the hazardous
9 waste -- the hazardous secondary materials
10 business if they -- if that's what they
11 chose to do or work with them to get
12 permits submitted to us so that they could
13 continue operations as a hazardous waste
14 facility.

15 And that concludes my presentation.
16 I'm certainly ready to take any questions
17 anybody may have.

18 MR. HATLEY: Well I have quite a
19 few questions that I'd like to ask about
20 this.

21 MR. ROBERTS: Okay.

22 MR. HATLEY: Because I've been
23 laboring over this for quite a while and
24 what I don't want is to see us going
25 backward because it's taken, I know in my

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1 career as a public advocate, a lot of -- a
2 couple of decades or more of getting

3 comfortable with RCRA and identifying bad
4 actors in our state and getting to a point
5 where everyone's comfortable and we're
6 really not having RCRA problems like we use
7 to.

8 MR. ROBERTS: Right.

9 MR. HATLEY: And what I don't
10 want to do is go backward where in the
11 future that could start showing up again.
12 Now -- and I don't really see a benefit for
13 industry. And if you look at the preamble
14 it really -- EPA shoots themselves in the
15 foot over that, because the cases that they
16 study most of them were exempt RCRA
17 facilities -- RCRA exempt facilities --

18 MR. ROBERTS: Right.

19 MR. HATLEY: -- we're dealing
20 with RCRA exempt waste so with that,
21 demonstrates the question of why we need
22 the rule right off the bat, the first page.

23 The other -- you know, some of the -
24 - but first I would like to commend the DEQ
25 because your staff, the DEQ staff, I think

1 did a commendable job of taking this weak
2 standard and tightening it up as best as it
3 can be tightened up. If we're going to

4 adopt this, what they did is probably as
5 good as we can do and I appreciate their
6 efforts in recognizing, you know, the holes
7 that were in the rule of -- that EPA
8 developed.

9 But I still have a lot of questions
10 about, number one, the onus on the
11 generator for deciding who can transport
12 this waste once it's deregulated and who
13 will get this waste it seems to be up to
14 the generator. And so if you can show me
15 where in the new DEQ rules, you know, that
16 changes, I would like to see that.

17 MR. ROBERTS: We don't address
18 that as precisely as you would like to see
19 it. We also recognized that -- for those
20 don't understand let me hopefully explain
21 what the provision of the federal rule that
22 Mr. Hatley is referring to.

23 Under the federal rule, generators
24 of hazardous secondary materials are
25 required, I believe it's every three years,

1 to do some kind of an audit of the
2 reclamation facilities to determine -- that
3 they are sending their stuff to -- to
4 determine whether they are actually

5 operating in compliance and are
6 appropriately reclaiming their hazardous
7 secondary materials and that's pretty much
8 the extent of it.

9 While that's a laudable goal in that
10 there's a provision of the rule that is
11 putting the onus on generators to do that,
12 it's the better thing that we're trying to
13 correct with our rules is one of the
14 hindrances of regenerators doing that.
15 Under our rules we feel that if we have
16 these -- this review process of an
17 operational plan for reclamation facilities
18 and we implement standards for their
19 operation and their compliance and we've
20 reviewed their financial assurance and
21 their cost estimates and we have standards
22 setup for how reclamation facilities are
23 suppose to store their hazardous secondary
24 materials and then there'll be the
25 inspection record of DEQ inspectors going

1 out to inspects these facilities, we
2 believe that that is a good way for the
3 generators to -- that's another tool the
4 generators will have to evaluate whether
5 they want to continue sending their

6 hazardous secondary material.

7 So there's nothing specifically for
8 that but we feel that our rule will be a
9 tool for the generators in that they will
10 be able to rely on state review of the
11 operations and state inspections as one
12 aspect of their overall evaluation.

13 MR. HATLEY: Well that becomes
14 part of my problem and that is how is the
15 state going to be able to review every
16 facility that's going to be taking a
17 delisted waste and the facilities that are
18 going to be transporting delisted waste --
19 I mean they may -- you have the provision
20 for them to tell you or actually in the EPA
21 rule it's to the administrator and I see
22 the DEQ has put themselves in that place
23 and that's good.

24 MR. ROBERTS: Correct.

25 MR. HATLEY: But once they're out

35

1 there, you know, how does DEQ manage all of
2 that and take that onus away from the
3 generator. Because the way the rule reads
4 I can -- in one instance where in that
5 three year report, in the rule the
6 generator -- in making reasonable efforts,

7 the generator may use any credible evidence
8 available including the information
9 gathered by the secondary generator,
10 provided by the reclaimer, the immediate
11 facility, or provided by a third party.
12 That hazardous secondary generator must
13 affirmatively answer all the following
14 questions.

15 You know, and this is, you know,
16 really on the generator and it's
17 self-regulated and that's what I'm trying
18 to get us out of and I don't see the DEQ
19 having the funding really to manage all of
20 this, number one.

21 Number two, how is the public going
22 to be able to trace these materials?
23 Because right now we have a very hard
24 fought for toxics release inventory that
25 the public can use to track the generated

1 waste and how they're being handled and to
2 see whether or not a facility in their area
3 is taking these wastes and how much tons of
4 whatever is being put out in their
5 community, which is very useful for them in
6 understanding the health of their
7 community. So if you in doing this, you

8 taking tons of waste off that list
9 presumably because generators are not going
10 to put that on there and then certainly the
11 transporters and the recyclers are not
12 going to be reporting, how will the public
13 be able to follow this? And I don't see
14 how the DEQ can follow it either over time.
15 I mean when you look at this rule it looks
16 reasonable today, but I'm looking at 10, 20
17 years down the road, you know, things are
18 going to relax and we're opening up the
19 door to go back to where we were before all
20 this started when we already have a
21 mechanism for deregulating recyclers that
22 are true recyclers delisting some of these
23 wastes. And I don't see definitions on
24 either rule, DEQ or EPA, for what
25 constitutes a major release of these

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1 delisted materials. And EPA admits that
2 the work that they did to identify whether
3 or not that it's going to be an impact by
4 looking at these 218 examples, 51 of the
5 examples was on the National Priorities
6 List because of what happened. And then
7 yet, they come back and say that really
8 there's no impact as a result of this rule.

9 So if we get in all these states --
10 specifically, in Oklahoma, if we get a lot
11 of small companies like Itero that are
12 taking these wastes, I don't see where
13 there's not going to be an impact sooner or
14 later. And I don't know how DEQ will catch
15 it. If it's on the generator to catch it,
16 how is the generator going to catch it?
17 You know, how are we going to know, you
18 know, whether or not they're leaking into
19 the groundwater or they're sham recycling
20 or the transporter is a fly by night group
21 because they're non-RCRA permitted
22 transporters. So I just see a lot of
23 problems in this thing. Can you help me
24 out here?

25 MR. ROBERTS: I'll try. I think

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1 that -- I certainly understand all of your
2 concerns, Mr. Hatley. And we also have
3 many of those same concerns as far as
4 trying to keep track of all of these
5 facilities that may decide that they want
6 to get into the reclamation business. You
7 know, so far we're only aware of one being
8 Itero. Now that doesn't mean that there
9 aren't others out there just waiting and

10 they haven't let us know anything yet. But
11 the only one that we know for sure of is
12 Itero. All of these -- anybody who wants
13 to get into the reclamation business, of
14 course, they do have to notify us and let
15 us know that this is what they intend to do
16 and then, you know, we'll get their
17 operational plans and, you know, cost
18 estimates, financial assurance, et cetera,
19 as part of the -- at least as part of the
20 up-front review process.

21 As far as the inspection process
22 goes, I don't know at this point what
23 inspection frequency we would put on these
24 facilities. Some of that would certainly
25 depend on how many there are and what our

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1 staffing level is to be able to monitor
2 these.

3 MR. HATLEY: That's part of my
4 problem. You --

5 MR. ROBERTS: And we won't know
6 that -- unfortunately, we won't know that
7 until it happens, which isn't necessarily
8 the best answer.

9 MR. HATLEY: You're running out
10 of funding already, now this is going to

11 make it harder.

12 MR. ROBERTS: Well, and if you
13 will recall our first version of the rules
14 we at least floated the concept of fees to
15 hopefully address some of these; to
16 possibly increase staff levels so it would
17 enable us to do more inspections for these
18 type of facilities or something.

19 But we ultimately abandoned that
20 idea because we had no idea what size the
21 universe is going to be to try to come up
22 with a justifiable fee structure. So we're
23 kind of going into this -- I guess you
24 could say we are putting the cart before
25 the horse; I don't know if that is

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1 necessarily the right -- the best analogy,
2 but --

3 MR. HATLEY: I didn't want to say
4 that but that's how it feels.

5 MR. ROBERTS: It's -- like I
6 said, all we know of right now is Itero
7 that is contemplating doing this and, you
8 know, we would certainly like I said put
9 them on some inspection frequency if we
10 have -- you know, right now we have five
11 commercial TSD facilities in the state that

12 we inspect on an annual basis. And those
13 are pretty involved inspections obviously
14 since it involves review of their permit
15 and everything too. We would be able to
16 absorb, I don't know, some number -- I
17 don't know what that number is of these
18 reclamation facilities into a more routine
19 inspection. I presume -- I don't want to
20 speak for Scott, but I presume that if we
21 got a large number of these and we needed
22 to increase staffing in order to be able to
23 have adequate oversight of these, we'd be
24 able to look at some kind of a fee
25 structure and maybe increase staffing to

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1 handle that.

2 MR. THOMPSON: I'm Scott
3 Thompson. I'm the Director of the Land
4 Protection Division.

5 And I would say this. Yes, if we
6 get a lot of these, we would come back to
7 you guys and ask for a fee to support the
8 efforts that are needed to do, the
9 resources that we need to control this.

10 Just general philosophical viewpoint
11 of this whole issue is that one, we do
12 think the federal rule as written could be

13 severely abused and we would have no
14 knowledge of it. We would find out through
15 complaints, through public water supplies
16 or surface water being contaminated and
17 backtrack it to try to figure out where it
18 was coming from. That's part of the reason
19 we've instituted a lot of the things.

20 I think anybody who applied to do
21 this we would have a track record of which
22 facilities were doing this.

23 And Itero, for example, is currently
24 processing similar material now, that just
25 doesn't fall into EPA's definition of

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1 hazardous waste. I think they are
2 basically reclaiming crude oil, as I
3 understand it. So what they are doing
4 wouldn't change a whole lot from what they
5 are already doing with that particular
6 waste stream. And so the risks are already
7 there.

8 And to some extent we look at, you
9 know, historically RCRA, the Resource
10 Recovery portion of RCRA has never really
11 been addressed or dealt with very much.
12 It's written in the original law, but
13 there's been very little done with it. And

14 there was some attempts to regulate sham
15 recycling and stuff like that. But the
16 definitions of what constituted it in terms
17 of being able to prove it and enforce it,
18 forcefully, were so weak that it was very,
19 very difficult to do. And that's what --
20 how we've gotten some superfund sites
21 (inaudible) got some other enforcement
22 sites and we've done whatever we can within
23 the rules to try to prohibit that. I don't
24 think we have anywhere near the kind of
25 activity we used to have in the old days.

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1 However, there are currently ways
2 that people can essentially do this through
3 RCRA policy.

4 And some of the really confusing
5 part of trying to enforce RCRA in
6 particular is that there is so much of it
7 that is not written in the public register;
8 its policy and interpretations of policies
9 that were done years ago in some letter
10 from somebody from EPA and now everybody
11 does it that way. And we feel that this is
12 an attempt to put into rule that provides
13 some more structure to beneficial reuse of
14 some of these materials.

15 And the ideal situation in the kind
16 of thing that we would like to help make
17 happen, if it's done right, is to
18 substitute some of these things that are
19 technically hazardous waste but could be
20 reused for a legitimate business purpose
21 instead of product, so that hopefully you
22 would reduce the need for more product to
23 be generated.

24 Currently, let's say if we don't do
25 this and -- you would presume that there

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1 are many facilities that could use some of
2 these materials that would continue to use
3 pure product, solvents, whatever. And
4 things like crude oil don't worry me too
5 much. There are some waste streams that
6 I'm not overly concerned about and there
7 are some waste streams that I'd be a lot
8 more concerned about in terms of our
9 inspection frequency, I think we would
10 focus on the higher risk stuff more, and
11 the lower risk stuff less.

12 But if we want to encourage waste
13 minimization as well as, let's not make as
14 many of these products to start with. If
15 we can reuse some of the stuff that's

16 (inaudible).

17 Now, we're trying to balance putting
18 enough rules on it that we don't let
19 something happen that's bad that we can't
20 catch early, at least, and deal with and
21 maybe have some financial assurance, a bond
22 or whatever that we can cash in to try to
23 clean up the situation, correct it.

24 If we put too much onus on it or if
25 we don't pass this at all, then we're

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1 pretty much guaranteeing very little of
2 this stuff gets reused. But there is
3 currently ways that people can apply for
4 beneficial reuse exemptions and the rules
5 really aren't that clear. The process
6 really isn't that clear and it gets done
7 and it's not necessarily regulated as a
8 Tier I for anything.

9 So overall, there could be some
10 pitfalls; there could be some risk here,
11 but it doesn't necessarily mean there is
12 zero risk if we don't this. We still have
13 products being handled. I mean if they are
14 using products, we have no regulation of
15 that whatsoever, except for TRI reporting
16 and maybe some error permitting. But how

17 they store it, where they store it, and
18 where they locate, how they operate to do
19 this, that's not our regulatory authority.
20 So if you put this in place we do have some
21 handle on some of those things that
22 currently they can be handling the same
23 exact kind of material, but it's a product
24 not a waste and therefore it's not
25 (inaudible).

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1 So, you know, that's just kind of
2 our thought process here in trying to look
3 at this overall. And I think if we were to
4 go forward with this, you know, if the
5 Board were to pass it, et cetera, then if
6 there is problems we're going to come back
7 to you and say we've had this issue. We've
8 had this kind of problem creep up and we
9 need to get a handle on that. And I'm sure
10 it's possible that we may see some things.
11 But overall, so far we have not been
12 deluged with requests to get this going.
13 And we don't really expect the universe to
14 be that big in Oklahoma. We'll see. I
15 don't know. But that's just kind of where
16 we're coming from.

17 MR. HATLEY: Well, if you're

18 saying that you have some holes that you
19 think this might tighten up as far as
20 current recyclers, is this the right way to
21 do it or is there a more simplified rule
22 that would, you know, tighten up these
23 holes that you're talking about without it
24 going through all of this?

25 MR. THOMPSON: I don't -- I can't

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1 think of another way to do it. There is
2 nothing that's obvious to us or we would
3 have been trying to think of a rule
4 (inaudible).

5 MR. HATLEY: Does this really do
6 it?

7 MR. THOMPSON: I think it puts
8 more structure on what's currently possible
9 through policy and standard operating
10 methods that everybody follows under RCRA.

11

12 MR. HATLEY: So you think this
13 would actually help you enforce what you
14 are doing right now, better?

15 MR. THOMPSON: I think so. I
16 think it would put some things on our radar
17 screen that might not be on there. But,
18 you know, how much this is actually going

19 to benefit or cause reuse is really hard to
20 say at this point. At this point it
21 doesn't look like it's a whole lot. But
22 there are some companies that are setup
23 based on the reuse provisions now for
24 solvents and reuse (inaudible) and stuff
25 like that. And those are already in place.

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1 Those are happening. They are on our radar
2 screen to the point, you know, that -- the
3 kicker is that if we were to run into new
4 sham recycling angles, we might come to you
5 with more concrete, more easily
6 enforceable, so we can explain to a judge a
7 lot easier, you know, that this is really a
8 problem.

9 MR. HATLEY: So you feel
10 confident that you're going to be on top of
11 all of these transporters and recyclers
12 offsite (inaudible) this.

13 MR. THOMPSON: I think as much as
14 we would with anything, yeah.

15 MR. HATLEY: Better than what you
16 are now?

17 MR. THOMPSON: I think there is
18 some of these things that if they
19 transporting product, I know nothing about

20 it. I don't even know where they are. I
21 don't know it exists.

22 MR. HATLEY: Well can a -- the
23 next question is how can the public track
24 this? You know, if we're delisting more
25 and we're doing it through -- changes

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1 through Tier I from the generator
2 standpoint, how can the public follow the
3 waste stream?

4 MR. THOMPSON: Well, all our
5 records would be open to the public. And I
6 don't know, we could probably establish
7 some sort of tracking list or something.

8 MR. HATLEY: They don't know
9 what's going on when it lands, you know.

10 MR. THOMPSON: Right. You need
11 to know what --

12 MR. HATLEY: -- you have to watch
13 for.

14 MR. THOMPSON: Right.

15 MR. HATLEY: It's not a public
16 comment with a Tier I really, if you're
17 trying to get it done in 30 days. I mean
18 the notice will go out by somebody you
19 know, that may be interested that there is
20 going to be a Tier I change in their RCRA

21 permit but not too many people get those.

22 MR. THOMPSON: I understand. And

23 it's -- that's where we're trying to

24 balance the current federal rule is self

25 implementing. We don't even know about it

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1 for the most part. If we inspect a

2 generator we might figure out, hey, they

3 are implementing this rule and some of

4 their stuff is no longer going where it

5 was, it's going somewhere else. But that

6 could go on for a while before we really

7 understand that, if ever.

8 MR. GRAVES: Well, you also

9 provide for monthly reports once the site

10 is up and running.

11 MR. THOMPSON: Right.

12 MR. GRAVES: So you've got to

13 have a paper trail --

14 MR. THOMPSON: This --

15 MR. GRAVES: -- of what they are

16 handling and how much.

17 MR. THOMPSON: This notifies us

18 this is going on. Federal rule wouldn't

19 really give us much.

20 MR. HATLEY: Oh, yeah. The

21 federal rule is bad.

22 MR. THOMPSON: And so the -- but
23 in order not to make this so onerous that
24 discourages reuse of materials, that's
25 where we came up with the Tier I, because

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1 the federal deal is nothing. No
2 requirements. This is -- at least they
3 have to notify us they have to have -- and
4 everything has the approval. They can't
5 just start doing it without our approval.
6 So we have to know; we have to see the
7 financial assurance; we have to see the
8 contingency plans; we have to see how this
9 is going to work; what's the location of
10 the facility, et cetera.

11 Now if we go to higher tiers, then
12 it does become a more onerous process. It
13 essentially becomes a new permit.

14 MR. HATLEY: Right.

15 MR. THOMPSON: Somewhere, maybe
16 not quite as onerous as a hazardous waste
17 permit but pretty close, which probably
18 means nobody is going to reuse these
19 materials. So, I don't know. That's just
20 a balance, right there that's hard to
21 judge.

22 MR. HATLEY: So looking at the

23 possibilities in the future regarding this
24 rule on the national level with the Sierra
25 Club Petition and all of this, do you think

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1 that you've got what you have right here is
2 tight enough to accomplish everything that
3 you'd really like to do now? And, you
4 know, regardless of what ends up, this will
5 probably just change to be at least as
6 strict, is what you are proposing to adopt
7 here?

8 MR. THOMPSON: Right. I mean, I
9 provisionally expected EPA to do away with
10 the rule and maybe start over from scratch.

11

12 MR. HATLEY: Okay. Well, if they

13 --

14 MR. THOMPSON: They told us --

15 MR. HATLEY: -- do that --

16 MR. THOMPSON: -- they told us
17 they are not going to do that.

18 MR. HATLEY: Oh.

19 MR. THOMPSON: The word we've
20 gotten from them, is they're not going to
21 revoke the rule. They may modify it. So
22 our hope would be that they take our
23 example and at least do this.

24 MR. HATLEY: And you say that
25 because you see problems right now?

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1 MR. THOMPSON: With the way it's
2 written right now --

3 MR. HATLEY: No. This was --

4 MR. THOMPSON: -- if this was
5 adopted, no. I don't think Itero's case
6 concerns me much. I'd like to make sure
7 that they have enough financial assurance
8 and make sure the containment is adequate
9 and that kind of stuff. But somebody else
10 could pop-up and start essentially doing
11 sham recycling so easily they'd be under
12 the radar and it would be almost impossible
13 for us to enforce.

14 MR. HATLEY: Without this rule.

15 MR. THOMPSON: Well, if we adopt
16 the current federal rule.

17 MR. HATLEY: No. I mean if we
18 adopt the -- I'm talking about the DEQ
19 rule.

20 MR. THOMPSON: If you're saying
21 if there was no federal rule and no DEQ
22 rule.

23 MR. HATLEY: No. I'm saying --
24 forget the federal rule, let's talk about,

25 you know --

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1 MR. THOMPSON: Under this rule --

2 MR. HATLEY: -- because you're

3 saying that right now there is some holes

4 and --

5 MR. THOMPSON: Right. Well,

6 let's say -- let's say we catch somebody

7 who's doing sham recycling right now.

8 MR. HATLEY: Yeah. Okay.

9 MR. THOMPSON: We pass this rule

10 and we catch somebody doing sham recycling.

11 MR. HATLEY: Yeah.

12 MR. THOMPSON: We've got

13 standards to enforce.

14 MR. HATLEY: And you think this

15 would be easier to catch sham recycling?

16 MR. THOMPSON: I think I could

17 nail them because they didn't submit a Tier

18 I Report.

19 MR. HATLEY: And you can't do

20 that now?

21 MR. THOMPSON: No. I mean it's

22 iffy right now. It's harder to prove

23 because there is no clear cut standards of

24 how they have to be managing this waste.

25 MR. HATLEY: And so in the future

1 on one alone you're still going to be
2 collecting information on who's doing what
3 right now.

4 MR. THOMPSON: I'll tell you
5 something --

6 MR. HATLEY: It's going to be up
7 to the public to really try to stay on top
8 of this --

9 MR. THOMPSON: The critical part
10 of trying to enforce the sham recycling
11 situation now is being able to prove that
12 what they are managing is actually
13 hazardous waste.

14 MR. HATLEY: Yeah.

15 MR. THOMPSON: And so I think if
16 you have legitimate outlets that are
17 regulated under this rule, that there is
18 less opportunity for a sham recycler to get
19 in there and convince some generator that
20 they are okay and what they are doing is
21 fine --

22 MR. HATLEY: Yeah.

23 MR. THOMPSON: -- and divert some
24 of that waste stream.

25 MR. HATLEY: So you really need

1 the DEQ rule now, as I understand it.

2 MR. THOMPSON: I think overall
3 it's --

4 MR. HATLEY: Could we make it
5 better for the Land Management Division in
6 tracking what's going on now?

7 MR. THOMPSON: I think it could,
8 yeah. I think it would -- overall, it's
9 probably helpful and a step in the right
10 direction.

11 MR. HATLEY: May it need to be
12 tweaked down the road?

13 MR. THOMPSON: Could be.

14 MR. HATLEY: Yeah. So then how
15 would you suggest the public, you know,
16 when there's going to be delisting of tons
17 of RCRA --

18 MR. THOMPSON: Right.

19 MR. HATLEY: -- waste be able to
20 follow this process without -- I mean most
21 people are not like me.

22 MR. THOMPSON: Right.

23 MR. HATLEY: So how does somebody
24 in their community, you know, understand
25 there is something new going on here --

1 MR. THOMPSON: Right.

2 MR. HATLEY: -- and I go back to
3 DEQ and take a look at the record and see
4 what's going on and whether or not these
5 people are acting right. Because from my
6 experience and even yesterday with the Air
7 Quality Division, you have something going
8 on that DEQ has several violations that
9 they found but what is really going to
10 happen? You know, so citizens really have
11 to be diligent and that's where I'm coming
12 from on this, you know, how can we make
13 this in a way where they know that DEQ is
14 on top of what's going to go on -- it's in
15 the record and they can help kind of push
16 this along. Because a lot of times that's
17 what they have to do.

18 MR. THOMPSON: Right. Obviously
19 if you become aware of something -- a
20 facility that was doing this, the record is
21 going to be there.

22 (Inaudible multiple conversations)

23 MR. HATLEY: Public -- public
24 (inaudible).

25 MR. THOMPSON: But as far as what

1 you're -- what you are asking about is how
2 do you know if anybody applies.

3 MR. HATLEY: Yeah. Because they
4 are out of the RCRA universe so we're not
5 seeing any of them anymore.

6 MR. THOMPSON: Right.

7 MR. HATLEY: Without -- I rely on
8 TRI.

9 MR. THOMPSON: Is there a notice
10 requirement or publication that we do or
11 could do?

12 MR. ROBERTS: Well, under the
13 Tier I rule, itself, it doesn't provide
14 for, like a public notice-type thing. You
15 know, we do get the -- we will be requiring
16 monthly reports from facilities that
17 reclaim hazardous secondary materials --

18 MR. HATLEY: Yes.

19 MR. ROBERTS: -- of course, then
20 you need -- to know to ask for the monthly
21 reports you'd have to know the facility was
22 doing something. I guess we -- we would be
23 able to if -- for these types of approvals,
24 once we've given them an approval, we would
25 be able to (inaudible).

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1 MR. THOMPSON: I'm sure that once
2 we give the approval we could do that.

3 MR. HATLEY: Is there some kind

4 of notification process that could be
5 worded into this?

6 MR. THOMPSON: Pam, is there any
7 prohibition from us putting a notice on our
8 web page or something about applications
9 being received?

10 MS. DIZIKES: I don't think there
11 is any prohibition about -- I don't think
12 there is any prohibition on publicizing,
13 but the actual notice by itself as a
14 requirement would have to be tied like to a
15 Tier II activity.

16 MR. THOMPSON: Right.

17 MS. DIZIKES: But there is not
18 much we couldn't put on our website that
19 was legitimate (inaudible).

20 MR. THOMPSON: The Tier II's a
21 requirement of the applicant and (in) to
22 publish notice.

23 MS. DIZIKES: Right.

24 MR. THOMPSON: We could choose to
25 publish notice ourselves on our webpage or

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1 something like that.

2 MR. HATLEY: Well, you could put
3 Tier I -- do you have Tier I on your
4 webpage now? So could we put Tier I up and

5 then, you know, on that a recyclers list of
6 where it's going under this new Tier I?

7 MS. DIZIKES: I think we're only
8 --

9 MR. HATLEY: For different
10 communities?

11 MS. DIZIKES: We're only talking
12 about these reclaimers -- the DSW
13 reclaimers.

14 MR. HATLEY: Yeah. Yeah.

15 MS. DIZIKES: And there would
16 certainly not be anything that would stop
17 us from giving notice of applications --

18 MR. HATLEY: Right.

19 MS. DIZIKES: -- received for the
20 subchapter.

21 MR. HATLEY: And then would there
22 be a way that I could get on the website
23 then and look at all of the Tier I's -- you
24 can put -- you have something about DSW and
25 Tier I and the process and where, you know,

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1 recyclers -- a recycler list or something
2 that people could find?

3 MR. THOMPSON: Well, a --

4 MS. DIZIKES: I think this would
5 qualify as educational outreach to the

6 public. It certainly is something that
7 could be put on to our website.

8 MR. THOMPSON: It could -- it
9 could be written into the rule --

10 MS. DIZIKES: It could be in the
11 --

12 MR. THOMPSON: -- that we shall
13 publish these applications on DEQ's webpage
14 or the Land Division's webpage or something
15 like that.

16 MS. DIZIKES: If the Council
17 wants to recommend that we further amend
18 this proposal, we can.

19 MR. HATLEY: Okay. I think that
20 would be real important. I could feel more
21 comfortable about this if we could do
22 something like that.

23 And then not to take up -- I know
24 I'm taking up too much time, but I think
25 this is real important. So we really need

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1 to dig in.

2 Why did you change the one mile
3 restriction for the well-head?

4 MR. THOMPSON: What did we change
5 it to? I don't remember.

6 MR. HATLEY: It said within a

7 mile they would give notice -- notification
8 rather than not be located within a mile.
9 That was changed from your original
10 version.

11 MR. ROBERTS: Right. The reason
12 we changed that -- if you'll flip back I
13 think two slides.

14 (Discussions about slides)

15 MR. ROBERTS: Okay. Our original
16 -- the original rule that we had said that,
17 if I remember correctly, it was outright
18 prohibition on having these reclamation
19 facilities within one mile of an
20 underground source -- public underground
21 source of drinking water. But then I
22 thought I probably ought to look at what
23 the impact of that is going to be and this
24 is a map of all of the public water supply
25 wells in the state of Oklahoma. And as you

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1 can see we have a lot of them. And so
2 certainly like, for instance, around the
3 Oklahoma City area there's, you know, it
4 would be -- it would be a very onerous
5 thing to try to eliminate everybody that's
6 within one mile of a public water supply,
7 because there is just so many of them. So

8 in consultation with our ECLS Division who
9 are the people that actually look at the --
10 oh, I can't remember what the name is, what
11 they call them -- but like the contingency
12 plan type things for public water supply
13 wells. They have to have some kind of a
14 contingency plan type thing and they were
15 comfortable with amending our requirement
16 to say that if you're within --

17 MR. GRAVES: A half mile.

18 MR. ROBERTS: Was it a half mile?

19 Okay. Within a half mile of a public water
20 supply well, you would have to provide a
21 notice to the public water supply well
22 operator, that your facility is there so
23 they can then evaluate their contingency
24 plans and see if they need to revise
25 anything, you know, to protect their water

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1 supply well. So --

2 MR. HATLEY: I thought it was
3 within in a mile. Is it a half mile?

4 MR. GRAVES: Half mile.

5 MR. HATLEY: Okay.

6 MR. GRAVES: It also says the
7 facility also has to give public supply
8 their contingency plans.

9 MR. ROBERTS: Right.

10 MR. GRAVES: Hopefully, they'll
11 put it together to make sure they wouldn't
12 have a problem.

13 MR. THOMPSON: Again, I think
14 that --

15 MR. HATLEY: So this is where the
16 facility that is going to do the recycling
17 because generally you don't (inaudible)
18 probably not going to be within a half mile
19 of (inaudible), right?

20 MR. THOMPSON: Wasn't any
21 restrictions on generators.

22 MR. ROBERTS: Yeah.

23 MR. THOMPSON: There is currently
24 under federal law, state law rules, but
25 there is not a location restriction for the

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1 generator, it's a location restriction for
2 disposal facilities to (inaudible).

3 MR. HATLEY: Yeah.

4 MR. THOMPSON: And it's also --
5 there's not a location restriction for the
6 use of products that we wouldn't regulate.

7 That's part of the balancing act to
8 reach the objective. But you don't want to
9 make it impossible to do this because what

10 if they are using a benzene solvent or
11 Trichloroethylene or something like that
12 that as a solvent as product. How much
13 different is that and they currently do it
14 with no location restrictions whatsoever.
15 How much more risk is there to use the same
16 thing that is a little dirtier as far as
17 other types of things but basically it's
18 the same risk contaminate. So that's part
19 of the balancing act that we do.

20 MR. HATLEY: At least you took
21 the land base out of this. So that's a
22 little more comfortable. That helps.
23 That's all of my questions. I appreciate
24 everybody's patience. I just thought this
25 was an important step and we needed -- I

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1 needed to ask all of these questions.

2 MR. REAVES: If I could just make
3 one comment about Mr. Hatley. He and I
4 have been discussing this since 1984, when
5 we started the cleanup of Tinker Air Force
6 Base. We didn't like what he was asking
7 then and some people probably don't like
8 what he's asking now, but he's usually on
9 the mark. And I would say, Earl, that when
10 we started we didn't have anything written,

11 if you remember right.

12 MR. HATLEY: Yeah.

13 MR. REAVES: So we've come along
14 way and these folks have projected
15 something that is down the way in
16 progression and we'll get there.

17 MR. HATLEY: Well, I have a lot
18 of confidence in Scott Thompson,
19 especially, because he and I have been
20 working together almost as long and so I
21 trust his evaluation on these things. So I
22 thank you for your comments.

23 MR. REAVES: It' takes a lot and
24 I appreciate.

25 MR. GRAVES: Well, I appreciate

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1 it too. And I think your idea of -- what
2 I'd like to do is vote on this, and
3 hopefully adopt these rules, and then
4 direct the staff to go back and look at
5 making an amendment on our next -- find for
6 some kind of notice. I think that's
7 probably a good idea.

8 Anybody else from the Council
9 have any comments?

10 MR. HAGAMEIER: I do have one
11 quick question. Sorry, I do have one quick

12 question. Could the Agency take a look at
13 the possibility of materials crossing state
14 borders?

15 (Comments)

16 MR. HAGAMEIER: Just a quick
17 question. Have you done an evaluation as
18 to whether these rules would allow or
19 encourage materials from coming out of
20 state, in state?

21 MR. ROBERTS: AS we understand
22 it, we are essentially adopting the federal
23 rule with modifications. And as we
24 understand the federal rule, no hazardous
25 secondary material reclamation facility

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1 will be -- can accept manifested hazardous
2 waste. So waste that is coming from a
3 state that has not adopted the DSW rule is
4 still hazardous waste and that won't change
5 once it comes across the border into
6 Oklahoma. So, no, they would not be able
7 accept the out of state hazardous waste.

8 MR. HAGAMEIER: Thank you.

9 MR. GRAVES: Any other comments
10 or questions from Council?

11 MR. GRATER: Jon, has DEQ given a
12 fair amount of thought to inventory control

13 of what comes in and what goes out; and do
14 you have a hard and fast definition of a --
15 for the time line for sham recycling?

16 MR. ROBERTS: I'm not quite sure
17 I fully understand your question. But
18 let's --

19 MR. GRATER: My question is have
20 you given thought to monitoring the volume
21 of material that comes in and how they are
22 being able to document; how long it's been
23 in storage or accumulation; and do you have
24 any hard and fast rules for what
25 constitutes speculative accumulation?

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1 MR. ROBERTS: We adopt the
2 federal definition of speculative
3 accumulation in our -- which, you know,
4 we've had on the books forever. And, you
5 know, there's one aspect of the federal
6 rule is that they just say, thou shalt not
7 speculatively accumulate. But then the
8 federal rule doesn't provide for any kind
9 of documentation or inventory control to
10 demonstrate that you are not speculatively
11 accumulating.

12 So in our rules we did include some
13 provisions for containers to have some type

14 of accumulation start date on them. And
15 for tanks, for instance, for facilities to
16 maintain like flow through data or
17 something to show that they are not -- that
18 they are not speculatively accumulating.

19 Similar things to what the hazardous
20 waste facilities have to do now to show
21 that they are not speculatively
22 accumulating.

23 MR. HATLEY: So basically it's
24 the same rule, right?

25 MR. ROBERTS: Essentially, yes.

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1 MR. GRATER: My question was
2 based more on what I've seen them do with a
3 couple of tire recycling plants. Which you
4 can accumulate an enormous amount of
5 material that is basically solid and it's
6 not going to soak the groundwater, it's not
7 going to flow away, but even then they have
8 a huge amount of material that you can't do
9 anything with.

10 MR. ROBERTS: Right. But
11 hopefully our rule is designed to alleviate
12 that. So --

13 MR. GRAVES: Any other Council
14 Member? Okay. How about any questions or

15 discussion by the public?

16 MR. HENCHIS: Thank you. My name
17 is Harlan Henchis. I am the Executive
18 Director of the Center for Energy Matters
19 and I'm an attorney in private practice.
20 I'd like to thank the Council for the
21 opportunity to address you today on this
22 topic and I appreciate certainly the
23 staff's excellent work on the presentation
24 and the description of this rule has made
25 it very easy to -- it's going to make it

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1 easy to participate in discussion and I
2 appreciate that.

3 In my private practice I'm primarily
4 a private property rights attorney and I
5 primarily represent farmers and ranchers
6 and other people in rural areas. So you
7 might say that Mr. Hatley's people and my
8 people live in basically the same area
9 which is outside of all those blue spaces
10 up there. And sometimes I represent people
11 because of intrusions by the government on
12 their private property rights and sometimes
13 I represent them against intrusions on
14 private property rights by polluters --
15 mainly trespass and nuisance. And in that

16 regard I may have a little bit different
17 perception of environmental rules than even
18 Mr. Hatley has because I perceive
19 environmental rules as a permit to
20 (inaudible) trespass and nuisance.

21 So whenever I'm trying to protect
22 somebody against trespass and nuisance an
23 environmental permit that lets that happen
24 is an obstacle to protecting those rights.

25 And it's that interest that brings

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1 me here today to speak against the adoption
2 of this rule. And particularly inherent in
3 the rule itself is the recognition that
4 it's not good enough. It's not good enough
5 for within a mile of a scenic river; it's
6 not good enough for within a mile of a
7 public water supply on the surface and it's
8 partially not good enough for within a half
9 mile of a public water supply. And if it's
10 not good enough for those areas, then why
11 is it good enough for the people who have
12 farm ponds, and streams, and private water
13 supply wells, people who actually produce
14 food on the rest of that area there. And I
15 would also say that that division may also
16 account somewhat for the lack of comment on

17 your rules. Because the people who -- or
18 the places where it's most populist, the
19 people who are most -- have the most
20 resources to participate in civic
21 opportunities like this, they all live in
22 those blue areas. So I would urge you not
23 to receive the lack of comment as any
24 recognition of the legitimacy or of the
25 beneficial impact of these rules.

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1 I would also like to point out that
2 -- the first point is these rules aren't
3 good enough.

4 The second point is I would like you
5 to take into consideration what's going to
6 happen in the future. And Mr. Hatley
7 mentioned his experience at the Air Quality
8 Council yesterday. The Center for Energy
9 Matters is three for three this quarter.
10 We've attended every one of the Council
11 meetings.

12 The reception that we received at
13 the Water Quality and Air Quality, was
14 this: it was that we recognize the problem,
15 we've investigated the problem, and the Air
16 Quality Council "we found multiple
17 violations in the seven years of

18 operation."

19 In the Water Quality we heard "there
20 is nothing we do. We're just a rulemaking
21 body, there is nothing we can do."

22 And the Air Quality they said "we
23 really don't have anything to respond to
24 you about what we're doing about the
25 violations. We've done what we're going to

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1 do."

2 Both of those were very
3 unsatisfactory answers. But the legitimate
4 thing that was said though is that we're a
5 rulemaking body. Well, you are a
6 rulemaking body and if you adopt this rule
7 I can certainly foresee the day when
8 hazardous waste is going to be coming from
9 some place -- right now it's from Arkansas.
10 It's oilfield waste, it's some things of
11 that nature that are coming across the
12 border, getting lots of attention right
13 now. And you have the opportunity today to
14 do something or rather to not do something
15 that's not going to put you in the position
16 of saying, there is nothing we can do.

17 And that is -- and that's -- what I
18 would recommend is that you leave these

19 rules alone at least for now. They're the
20 subject of a lawsuit. There is no reason
21 to loosen any restrictions at this point
22 and -- and don't invite the pollution into
23 Oklahoma.

24 Too many times I see the argument
25 made that it's important to loosen the

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1 regulations so that -- for economic
2 development.

3 And my favorite example of that is
4 cock fighting. We were the last state --
5 one of the last states to outlaw something
6 that's obviously an undesirable thing. And
7 what happened is we ended up with all of it
8 in our state. So it had become an economic
9 thing that we relied on even though it was
10 undesirable and eventually we decided it
11 was undesirable.

12 So let's just let this country come
13 to a little bit more of a consensus on
14 this. If we're not going to be a leader in
15 tightening the restrictions, let's not be a
16 leader in loosening the restrictions.

17 Let's exercise the same type of
18 restraint, whenever the rules are being
19 tightened, we wait to see what this country

20 is going to do. Let's do the same thing
21 when we're seeing the rules are being
22 loosened. Let's wait to see what the
23 country is going to do and just put this
24 off for a while until the obvious changes
25 that need to be made, until the concerns of

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1 staff and the people that are going to have
2 to implement these things, until the
3 industry develops a little bit before you
4 -- before you go ahead and do this and take
5 the lead in loosening the restrictions.

6 And, again, I thank you very much
7 for the opportunity to speak to you and I
8 thank you very much for your work on the
9 Council.

10 MR. GRAVES: Thank you. Anybody
11 else? Yes, ma'am.

12 MS. GEM: My name is Rebecca Gem
13 and I am the Executive Director for LEAD
14 Agency, and it's the Local Environmental
15 Action Demand working on the Tar Creek
16 Superfund Site in the northeast Oklahoma
17 area.

18 My real concern is, it's not as a
19 scientist, it's just as a regular person.
20 And I would like to let you know that I

21 want to know what's hazardous, and I want
22 it to be called that. And by doing this,
23 you're going to de-list things that we know
24 are hurtful, harmful, hazardous, and deadly
25 in many cases. And it risks really -- I

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1 don't want to do that and I know that you
2 want to allow changes to happen and I think
3 I'm like Harlan, I hate for us to be the
4 leader at this time when you have that
5 whole wonderful map earlier and no state
6 has adopted these rules. But we don't have
7 to be first to do this. And I appreciate
8 the DEQ's work in trying to make bad rules
9 better. But maybe we could wait just a bit
10 longer and make sure.

11 I also worry that if we de-list
12 these just like the concern could be that
13 they -- those -- our states around us could
14 go ahead and do that too and then we would
15 be a facility since we were first and we
16 had things operating already that more
17 materials could come here and harm others.

18

19 You know, there is no reason to
20 create more places for people to fear
21 living. Thank you.

22 MR. GRAVES: Thank you. Anybody
23 else? Come back to the Council. Does
24 anybody on the Council have anything else?

25 MR. HATLEY: I think Harlan

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1 raised an interesting question about what's
2 coming over from Arkansas. I'd like to
3 know more about that. Is that going to
4 create issues for us, because we have one
5 example Vero, for example -- or Itero that
6 that's exactly what they want to do. So
7 are they like the groups sitting out in
8 front getting this rule and then all of a
9 sudden a whole bunch of them will come up
10 because there is a waste stream coming
11 across. Now I hadn't heard that before so
12 that raises some new issues for me. And
13 that's what I was worried about before I
14 started out.

15 MR. ROBERTS: Well, and I am not
16 familiar with the stuff that's coming over
17 from Arkansas, so I can't speak
18 specifically about that particular waste.
19 If it -- you know, again if it's a
20 hazardous waste -- if it's still regulated
21 as a hazardous waste in the state of origin
22 it would not be able to come into Oklahoma

23 to Itero or any other facility that would
24 be reclaiming hazardous secondary
25 materials. If it's oilfield waste, you

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1 know, stuff that is exempt from hazardous
2 waste regulation under the exploration and
3 production exemption of RCRA, then that
4 would not -- we don't have any jurisdiction
5 over that material anyway. And I don't
6 know if out of state type of stuff that
7 would come in. I don't know if the
8 Corporation Commission has any, you know,
9 prohibitions on out of state stuff coming
10 in.

11 MR. THOMPSON: Maybe I need to
12 clarify on that a little bit. Scott
13 Thompson, again. I think you're referring
14 to the Bokoshe site; is that correct?

15 eh: Yes.

16 st: And my understanding of what
17 is coming out of Arkansas is salt water.

18 MR. HENCHIS: The application
19 from the Corporation Commission is to amend
20 the permit to include (inaudible) water
21 which I understand to be frac.

22 MR. THOMPSON: Okay. What's
23 going on there is there is a power plant

24 that sends their fly ash and I don't know
25 if bottom ash as well, but it's basically a

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1 disposal site for fly ash.

2 Many, many years ago the Legislature
3 took the responsibility for some of those -
4 - for the disposal of solid waste away from
5 the DEQ and the Health Department at the
6 time and gave it to the Department of Mines
7 to use for reclamation. And at some point
8 they began to modify their practices to
9 receive petroleum generated essentially
10 salt water, I think there's some question
11 under OCC's rules about how -- what the
12 level is before they call it salt water,
13 but that's what it is. And they're mixing
14 it in with the fly ash. And the idea of
15 reclaiming some of these old mines sounds
16 like a good idea. I did see some pictures
17 recently of the Bokoshe site, and I can see
18 why people are ticked off. Because it's no
19 longer filling up off of a void in the
20 ground that they have some site issues or
21 problems that might actually ever be
22 useable in any way shape or form again.
23 They've gone about 30 feet in the air or so
24 and they have plans to go for another six

25 years.

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1 And I've just kind of been curious
2 about what the authorizing language is in
3 the statute said about reclamation, but I
4 haven't actually looked it up.

5 So right now the jurisdiction for
6 that site and for the (inaudible) coming in
7 from Arkansas, lies with the Department of
8 Mines primarily and the Corporation
9 Commission. And what abilities that we
10 have to deal with the site on water and
11 air, I'm not personally familiar with. For
12 the main interest of it, we're pretty
13 limited on. And whether we pass this rule
14 or not, I don't think that would change
15 what's going on there. That's the nature
16 of that particular location.

17 MR. GRAVES: Thank you, Scott.

18 MR. KENNEDY: I've got a
19 question, Jon. I see these rules sort of
20 in a situation where you have a federal
21 standard, and then a state that can be more
22 stringent than a federal standard.

23 MR. ROBERTS: Correct.

24 MR. KENNEDY: And so I see that
25 as a good thing. If these were not

1 approved today, we're saying that a company
2 could operate under this new federal rule
3 and it's just a vague one but --

4 MR. ROBERTS: No, that's not
5 correct. It depends on exactly what the
6 Council chose to do. If you chose to take
7 no action on our rule today, then the
8 federal DSW Rule, the Emissions Comparable
9 Fuel Rule and the alternative standards for
10 academic labs, out of those three would be
11 incorporated into DEQ's hazardous waste
12 program. And since all three of those are
13 not required portions of an authorized RCRA
14 program, it wouldn't effect our state
15 authorization.

16 If the Council chose to pull out,
17 so-to-speak, the DSW portion, they could do
18 so and then approve the other two portions,
19 if you wanted to do that. But until the
20 Council does some kind of action either to
21 approve these rules as they are or to at
22 least approve the rules as far as those two
23 provisions go, but not the DSW portion,
24 then there will be no DSW rule in Oklahoma.
25 So nobody would be able to operate under

1 the federal rule.

2 MR. HATLEY: That's because we
3 would -- if we didn't adopt anything today,
4 we would be more strict than these federal
5 rules.

6 MR. ROBERTS: Yes, that's
7 correct.

8 MR. HAGAMEIER: If I understand,
9 we're the only state actually considering
10 this, there are three that asked, those
11 three states are required to pass federal -
12 -

13 MR. ROBERTS: Right. The three
14 states -- the two states that have it and
15 the one that is going through rulemaking
16 now, they all have either state rules or
17 state statutes that prohibit them from
18 being more stringent than the federal
19 rules. So they are adopting the DSW Rule
20 as is.

21 Oklahoma, we're fortunate because we
22 do have the option if we need -- if we wish
23 to, to be more stringent than the federal
24 rules. And so we would be -- we will be
25 more stringent than the federal rule.

1 MR. HAGAMEIER: Based on research

2 that I've done over the last two or three
3 weeks, I've found statements by 28 states,
4 stating that they specifically will not
5 adopt this federal rule, not just amend it,
6 but will not adopt it. It seems to be an
7 awful lot against this. If there is an
8 active lawsuit going on and there's some
9 consideration I don't see any reason for us
10 to jump into this for simply (inaudible).

11 Has there been any other requests
12 for such activity?

13 MR. ROBERTS: We have not gotten
14 any specific requests other than the one
15 from Itero. I believe we have gotten just
16 a handful of just kind of general inquiries
17 from facilities of, you know, what are we
18 proposing to do. But nobody that I'm aware
19 of that has expressed any specific interest
20 in actually starting to operate under this
21 rule.

22 MR. HAGEMEIER: Okay.

23 MR. GRAVES: Let's try this
24 first. I will entertain a motion to adopt
25 the proposal as proposed, which would be

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1 actually three parts; adoption by reference
2 and the DSW Rule and see if we have anybody

3 that wants to propose that.

4 MR. REAVES: If we could just
5 before we -- before we do the vote that we
6 differentiate what we really feel. I
7 thought I knew what was -- what we were
8 voting on there a little bit but I need you
9 to clarify it in my own mind.

10 MR. GRAVES: What is proposed is
11 the -- it's in your packet, let's see.
12 Actually the second -- what I've got is the
13 second is Title 252, Chapter 205 and it
14 includes the -- 205-1-2 definitions and
15 incorporation by reference in Subchapter 3;
16 and then the new Subchapter 19. Those are
17 what are in front of us at this point and
18 from the staff's perspective they propose
19 those as a package. So what I was saying
20 was to see if there was anyone on the
21 Council who wanted to propose adopting --
22 in essence these three parts which is what
23 the staff recommended. And if not, we'll
24 try to break them out. But we can deal
25 with the staff's recommendation as a whole

1 first.

2 MR. REAVES: It would seem that
3 we -- in my mind that we break them up.

4 But I can understand that we need to go
5 with the vote first and then the fact you
6 proposed that, yes.

7 MR. GRAVES: And so far no one
8 has made that motion.

9 MR. HATLEY: Well, I have a
10 question. Why would we break out the DSW
11 Rule and then still adopt the other two?

12 MR. GRAVES: Council can do an --

13 MR. HATLEY: I don't know what
14 the advantage would be for that.

15 MR. GRAVES: Well so far nobody
16 has been (inaudible) to do that because
17 nobody has moved --

18 MR. HATLEY: Well I would like to
19 make a motion that we table these rules for
20 now and wait and see what happens with
21 other states on the federal level.

22 MR. GRAVES: Do we have a second?

23 MR. GRATER: What about the --
24 are we dealing with the possibility of
25 breaking out the academic laboratory rules

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1 and then the third listing that you had --

2 REPORTER: Lee, could you speak
3 up.

4 MR. GRAVES: Right now you've got

5 a motion. Does anybody want to second the
6 motion?

7 Then the motion dies from lack of a
8 second.

9 MR. GRATER: I would propose that
10 to move things forward that we break the
11 academic laboratory rules and the emissions
12 comparable fuel rule out and deal with
13 those and come back to the hazardous
14 secondary materials rules later.

15 MR. ROBERTS: You mean later as
16 in --

17 MR. GRATER: Later in this
18 meeting after we vote on whether or not to
19 adopt the -- or not to adopt the laboratory
20 rules as incorporation by reference.

21 MR. GRAVES: Incorporation by
22 reference..

23 MR. GRATER: Yes, incorporate by
24 reference those two rules.

25 I would make that motion.

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1 (Comments)

2 MR. GRAVES: Is there a second?

3 MR. KENNEDY: The original
4 bringing them altogether is because they
5 fall within incorporation by reference, in

6 July 1, 2009.

7 MR. ROBERTS: That's correct.

8 Now we did anticipate that there may be
9 some concerns with the DSW Rule and so we
10 have prepared, if the Council was to chose
11 to go ahead and maintain the Emissions
12 Comparable Fuel Rule and the Academic Labs
13 Rule but wanted to either not approve DSW
14 at this time or maybe do what other states
15 are doing and waiting until the national
16 level effort has been exhausted before we
17 review it. We do have proposed language
18 that would do just that, that would bring
19 in the other two aspects but would not
20 bring in the DSW Rule. And so we can
21 certainly do that, if that's what the
22 Council would like to do. So it's out
23 there just as an option.

24 MR. REAVES: Is that your motion?

25 MR. GRATER: That is my motion.

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1 MR. REAVES: I'll second that
2 motion.

3 MR. GRAVES: Can somebody restate
4 what that motion is?

5 MR. ROBERTS: My understanding of
6 the motion is to do the incorporation by

7 reference that adopts the Emissions
8 Comparable Fuel and Academic Labs portion
9 but does not bring in the federal
10 Definition of Solid Waste Rule.

11 MR. GRATER: Very well said, Jon.
12 Thank you.

13 MR. ROBERTS: Before you vote on
14 it, would you like to see the language of
15 the way the rule would read?

16 MR. GRAVES: That would be
17 useful.

18 (The reporter asks for a break)

19 (Break)

20 (Back for Break)

21 MR. GRAVES: The language on the
22 screen behind me is the subject of the
23 motion in front of the Council. Is that
24 accurate?

25 Does anybody have any additional

1 comments or questions?

2 MR. HATLEY: Yes. Would you
3 explain that? It doesn't look like what
4 I'm reading.

5 MR. ROBERTS: Okay. What this
6 language does is it incorporates 40 CFR as
7 of July 1, 2009 except for that particular

8 Federal Register Notice that is the final
9 rule for the Definition of Solid Waste
10 Rule.

11 MR. GRAVES: That would be a
12 substitute for what is in front of us.

13 MR. ROBERTS: That's correct.

14 MR. HATLEY: So you're talking
15 about the DEQ's rule -- DEQ's DSW Rule, is
16 what you're talking about; right?

17 MR. ROBERTS: Yes.

18 MR. HATLEY: Because I thought
19 the motion on the floor was to vote on the
20 last two instead of the DSW Rule.

21 MR. ROBERTS: And that's what
22 this does.

23 MR. HAGAMEIER: It allows us to
24 incorporate the two -- the lab rule and the
25 fuel rule.

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1 MR. HATLEY: Okay. Explain the
2 fuel rule again.

3 MR. ROBERTS: The Emissions
4 Comparable Fuel Rule?

5 MR. HATLEY: Yes.

6 MR. ROBERTS: Don, would you mind
7 explaining this. Don is a lot more
8 familiar with it than I am. So let me let

9 the expert explain it.

10 MR. HENSCH: Good morning. I'm
11 Don Hensch. I work for Jon in permitting
12 and corrective actions.

13 But the Emissions Comparable Fuels
14 Rule was designed to allow the control
15 burning of certain hazardous waste with
16 some restrictions that they were loaded in
17 the content of certain contaminants that
18 might give off emissions out of the stack
19 with whatever was burning. And because of
20 those limits, EPA felt it was safe to go
21 ahead and let them be burned like in
22 industrial boilers without them being
23 called hazardous waste combusters. Because
24 under the Air Rules there is a very strict
25 set of rules on what applies to hazardous

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1 waste combusters. And this will ease the
2 restrictions if it's burned in -- if I read
3 the rule right it's only in like utility
4 boilers and industrial furnaces. They are
5 very restrictive. And it can only make up
6 50 percent of the fuel. The rest of the
7 fuel charge has to be fuel oil or coal or
8 something else like that.

9 There are very strict analytical

10 requirements, only the generator can use
11 knowledge of process in determining what's
12 in the waste. There's no blending or
13 mixing or diluting to meet the standard,
14 you have to meet it as generated. And it's
15 still -- the limits on burning are -- they
16 do fall under Air. There are very strict
17 rules on continue emission monitors.

18 We felt, number one, it's not
19 required to be adopted. I can tell you
20 that. It's a function of RCRA, so we don't
21 have to adopt it. But we don't see any
22 potential conflicts with existing rules.
23 We don't see nearly potential -- really any
24 potential for abuse like in the DSW that we
25 were concerned about.

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1 We really think it effected a very
2 limited number of generators at facilities
3 right now. So it would be a very small
4 universe to worry about, and they are still
5 reporting notification requirements, we
6 would know about these people and would
7 have a better handle for what was going on
8 with them.

9 And overall, we didn't see any real
10 possibility of adverse effects for the

11 options rule. So.

12 MR. HATLEY: But aren't we in
13 effect, if I may, adopting a part of the
14 EPA's DSW Rule which was in the front part
15 of this, about doing this?

16 MR. HENSCH: The DSW Rules
17 specifically excludes waste that are
18 burned, for energy recovery. So under DSW
19 we have to recover the material for a
20 product to reduce. Under the ECF Rule is
21 where the burning would come in and again
22 there's fuels that are fuel-like, there's
23 not large quantities of chlorinated
24 solvents or pesticides or anything, all of
25 that is restricted. So it basically looks

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1 like a fuel oil. There is -- I don't have
2 a copy of this but there is -- a six-page
3 list of chemical constituents that have to
4 be tested for with specified detection
5 limits in order to call it an Emissions
6 Comparable Fuel. We didn't see that it was
7 any real risk for that.

8 MR. GRAVES: I would just like to
9 say that I appreciate all of the work that
10 the staff did on the DSW Rule. I
11 personally am disappointed that we have

12 this motion on our floor, because I think
13 that trying to get out a head of some of
14 these rules is the better way to go, not
15 always trying to lag behind, but that's
16 where we are. So if there are no more
17 comments, then I'll ask for a roll call
18 vote.

19 MS. BRUCE: Alan Riffel.

20 MR. RIFFEL: Yes.

21 MS. BRUCE: Ray Reaves.

22 MR. REAVES: Yes.

23 MS. BRUCE: Earl Hatley.

24 MR. HATLEY: No.

25 MS. BRUCE: Paul Hagateier.

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1 MR. HAGAMEIER: Yes.

2 MS. BRUCE: Bob Kennedy.

3 MR. KENNEDY: Yes.

4 MS. BRUCE: Lee Grater.

5 MR: GRATER: Yes.

6 MS. BRUCE: Steven Bogdahn.

7 MR. BOGDahn: Yes.

8 MS. BRUCE: Wes Anderson.

9 MR. ANDERSON: Yes.

10 MS. BRUCE: Michael Graves.

11 MR. GRAVES: No.

12 MS. BRUCE: Motion did pass.

13 MR. GRAVES: Thank you. That
14 renders -- my reading of it, renders Item
15 8, moot.

16 MR. ROBERTS: That's correct.

17 MR. GRAVES: So we'll move to
18 Item 9, which is a discussion item.

19 MR. RIFFEL: Mr. Chairman, I'm
20 leaving.

21 MR. GRAVES: Thank you, Mr.
22 Riffel, appreciate it.

23 MS. KOTTKE: My name is Rita
24 Kottke, I'm the Brownfield Programs Manager
25 here at the DEQ. And the reason that I'm

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1 here today is to tell you in advance that
2 we will be sending you new draft rules for
3 the Brownfield Program. And I'm going to
4 explain why those are necessary and
5 desired.

6 So this past Legislative Session,
7 the Legislature passed or amended our
8 Brownfield law. And the main thing that
9 they did was that they redefined Brownfield
10 and the Brownfield Certificate as not being
11 a permit under the Uniform Permitting Act.

12 What that does is most of the
13 administrator requirements in our program

14 are based on the rules and regulations for
15 that program or that law.

16 So it also gave us authority over
17 the site characterization. And in the
18 past, the Brownfield Program statutorily
19 started at the clean up. So it now gives
20 us authority over the site
21 characterization.

22 It also gives us the ability to
23 require financial assurance for
24 institutional and engineering controls that
25 people put on property to maintain their

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1 remedy over time and also provides a means
2 for DEQ to audit sites that have been
3 through the program.

4 What the rules do is basically
5 creates a new system or process for going
6 through the program. We hope that it's
7 less cumbersome to (inaudible) this
8 process. It will still be substantively
9 the same. The clean up will be the same,
10 the protection of the environment will be
11 the same, it's the paperwork that's
12 required that is changing.

13 It also will continue to require
14 public participation in the decision-making

15 process.

16 The other thing that the rules are -
17 - that we want these rules to do is to
18 maintain our memorandum agreement with EPA,
19 so we want to make sure that we don't
20 change anything that EPA would not find
21 acceptable. Because what our program does
22 currently is that we have a memorandum
23 agreement with EPA that allows sites that
24 come through our program to then also have
25 a bar of superfund enforcement actions. We

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1 want to maintain that so we will continue
2 to make EPA happy in our rulemaking
3 process, hopefully, as long as you agree
4 with this.

5 In general, their requirements are
6 to ensure that the public has comment and
7 those types of issues.

8 The other thing that we're doing is
9 that we have a revolving loan fund. And
10 this revolving loan fund was created out of
11 old superfund money that was diverted or
12 made into a pilot program for Brownfields
13 in the early days of Brownfields.

14 What we did recently was transition
15 that to -- the obligation or re-obligation

16 of the funding, the federal funding, so
17 that it now qualifies under the new
18 Brownfield law which opens up the types of
19 sites that it can be, funded through that
20 program. And it also allows us to continue
21 to get money each year from EPA, it's
22 called supplemental funding, under that
23 program.

24 We recently received American
25 Recovery and Reinvestment Act funds due to

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1 that transition.

2 What it will change in the rules is
3 basically terminology. The program remains
4 very similar because it really just
5 clarifies the cross-cutting federal
6 requirements, like (inaudible) and those
7 type of things. It doesn't really change
8 the way we function. It just opens up the
9 eligibility and it also defines eligibility
10 under the federal program.

11 So what you'll see in the rules is
12 there is a definition of Brownfields that
13 is a state definition, and then in the
14 Revolving Loan Fund, there's a definition
15 for Brownfields that's a federal
16 definition. Because it's federal money,

17 therefore, we have to follow their
18 definition.

19 Other than that, it doesn't really
20 change much. It's just a terminology
21 change for the Revolving Loan Fund.

22 We will be sending these rules to
23 you. They are currently in the final
24 stages of peer review. They will be --
25 probably in the next two weeks you'll

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1 receive that, we will put it up on the web
2 page. I will be asking you to consider
3 these rules at your next Council meeting.

4 Are there any questions?

5 Okay. Thank you for your time.

6 MR. GRAVES: Thank you. Okay.

7 We'll move to Item 10 on our Agenda which
8 is the Election of Officers for 2010.

9 We have two officers; a Chair and a
10 Vice-Chair. So at this point I will
11 entertain nominations for Chair.

12 MR. KENNEDY: I'd like to
13 nominate Mr. Lee Grater for that Chair
14 position if he would be so willing to
15 serve.

16 MR. ANDERSON: I'll second that
17 motion.

18 MR. GRAVES: Are there any other
19 nominations?

20 Hearing none, we'll move to a vote,
21 Myrna.

22 MS. BRUCE: Ray Reaves.

23 MR. REAVES: Yes.

24 MS. BRUCE: Earl Hatley.

25 MR. HATLEY: Yes.

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1 MS. BRUCE: Paul Hagameier.

2 MR. HAGAMEIER: Yes.

3 MS. BRUCE: Bob Kennedy.

4 MR. KENNEDY: Yes.

5 MS. BRUCE: Lee Grater.

6 MR. GRATER: Abstain.

7 MS. BRUCE: Steven Bogdahn.

8 MR. BOGDahn: Yes.

9 MS. BRUCE: Wes Anderson.

10 MR. ANDERSON: Yes.

11 MS. BRUCE: Michael Graves.

12 MR. GRAVES: Yes.

13 MS. BRUCE: Motion Passed.

14 MR. GRAVES: I'll entertain
15 nominations for Vice-Chair.

16 MR. KENNEDY: I'd like to
17 nominate for Vice-Chair, Mr. Wesley
18 Anderson, if he would be willing.

19 MR. BOGDahn: I'll second that
20 motion.

21 MR. GRAVES: Mr. Anderson has
22 been nominated. Are there any other
23 nominations? Hearing none, we'll go to a
24 vote.

25 MS. BRUCE: Ray Reaves.

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1 MR. REAVES: Yes.

2 MS. BRUCE: Earl Hatley.

3 MR. HATLEY: Yes.

4 MS. BRUCE: Paul Hagameier.

5 MR. HAGAMEIER: Yes.

6 MS. BRUCE: Bob Kennedy.

7 MR. KENNEDY: Yes.

8 MS. BRUCE: Lee Grater.

9 MR. GRATER: Yes.

10 MS. BRUCE: Steven Bogdahn.

11 MR. BOGDahn: Yes.

12 MS. BRUCE: Wes Anderson.

13 MR. ANDERSON: Abstain.

14 MS. BRUCE: Michael Graves.

15 MR. GRAVES: Yes.

16 MS. BRUCE: Motion Passed.

17 MR. GRATER: I think we've been

18 very fortunate to have Mike here. He's

19 done a great job. One of the reasons I

20 really thought about whether or not I
21 wanted to do this was because following in
22 his footsteps is not that easy.

23 MR. GRAVES: Thank you. I
24 appreciate that.

25 Okay. I guess we're supposed to set

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1 meeting dates and times.

2 Does the staff have recommendations.

3 MR. HAGAMEIER: Mr. Chairman, I'm
4 going to have to leave. I apologize.

5 MR. GRAVES: Thank you very much.
6 We appreciate your time.

7 (Comments and discussion about the
8 dates and places of the 2010 meetings)

9 (Dates for the 2010 meetings are:
10 January 28, 2010, in Oklahoma City; April
11 22, 2010, in Oklahoma City; July 22, 2010,
12 in Oklahoma City; and October 28, 2010, in
13 Tulsa, Oklahoma)

14 MR. GRAVES: Okay. New Business.
15 I don't know anything that was not
16 foreseen. Does anybody have any new
17 business?

18 Okay. I'll entertain a motion to
19 adjourn.

20 MR. BOGDHORN: So moved.

21 MR. REAVES: Second.
22 MS. BRUCE: Ray Reaves.
23 MR. REAVES: Yes.
24 MS. BRUCE: Earl Hatley.
25 MR. HATLEY: Yes.

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1 MS. BRUCE: Bob Kennedy.
2 MR. KENNEDY: Yes.
3 MS. BRUCE: Lee Grater.
4 MR. GRATER: Yes.
5 MS. BRUCE: Steven Bogdahn.
6 MR. BOGDAHN: Yes.
7 MS. BRUCE: Wes Anderson.
8 MR. ANDERSON: Yes.
9 MS. BRUCE: Michael Graves.
10 MR. GRAVES: Yes.
11 MS. BRUCE: Motion Passed.

12 (Meeting Concluded)

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C E R T I F I C A T E

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STATE OF OKLAHOMA)

) ss:

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COUNTY OF OKLAHOMA)

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I, CHRISTY A. MYERS, Certified

7

Shorthand Reporter in and for the State of

8

Oklahoma, do hereby certify that the above

9

meeting is the truth, the whole truth, and

10

nothing but the truth; that the foregoing

11

meeting was taken down in shorthand by me

12

and thereafter transcribed under my

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direction; that said meeting was taken on

14

the 22nd day of October, 2009, at Oklahoma

15

City, Oklahoma; and that I am neither

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attorney for, nor relative of any of said

17

parties, nor otherwise interested in said

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action.

19

IN WITNESS WHEREOF, I have hereunto

20

set my hand and official seal on this, the

21

25th day of October, 2009.

22

23

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

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