

**MINUTES**  
**RADIATION MANAGEMENT ADVISORY COUNCIL**  
**December 8, 2004 Special Meeting**  
 Department of Environmental Quality  
 Tulsa Technology Center, Riverside Campus  
 801 East 91<sup>st</sup>, Tulsa, Oklahoma

Draft for March 4, 2005 EQB  
 For RMAC Approval  
 April 13, 2005 APPROVED by RMAC

**MEMBERS PRESENT**

David Gooden  
 Nadine Barton  
 Rod Beuttel  
 Karen Jennings  
 Steve Woods

**MEMBERS ABSENT**

Steve Clark  
 Monte Goucher  
 George MacDurmon  
 Vacancy

**DEQ STAFF PRESENT**

Scott Thompson, Land Protection Division  
 Catherine Sharp, Land Protection Division  
 Mike Broderick, Land Protection Division  
 Dale McHard, Land Protection Division  
 Pamela Bishop, Land Protection Division  
 Pam Dizikes, Legal Division  
 Shannon Tilley, Land Protection Division  
 Myrna Bruce, Secretary Board and Councils

**OTHERS PRESENT**

The Attendance Sheet is attached as an official part of these Minutes.

**Notice of Public Meeting** -- The Radiation Management Advisory Council convened for its regular meeting at 10:00 a.m. on December 8, 2004 in the Tulsa Technology Center, Riverside Campus, 801 East 91<sup>st</sup>, Tulsa, Oklahoma. This meeting was held in accordance with 25 O.S. Sections 301-314 with notice of the meeting given to the Secretary of State on August 16, 2004 and amended on October 11, 2004. The Agenda was mailed to interested parties and posted at the entrance doors of the meeting facility and at the Department of Environmental Quality more than twenty-four hours prior to the meeting. Dr. David Gooden called the meeting to order. Ms. Bruce called roll call and a quorum was confirmed. Mr. Dale McHard introduced DEQ staff and members of the public.

**Roll Call**

Steve Woods	Yes	Nadine Barton	Yes
Karen Jennings	Yes	David Gooden	Yes
Rod Beuttel	Yes		<b>Motion Carried</b>

**Approval of Minutes** – Ms. Barton made motion to approve the September 9, 2004 Minutes as presented. Ms. Jennings suggested one correction where she was listed as ‘Mr.’ then Mr. Woods made the second.

**Roll Call**

Steve Woods	Yes	Nadine Barton	Yes
Karen Jennings	Yes	David Gooden	Yes
Rod Beuttel	Yes		<b>Motion Carried</b>

**Rulemaking – OAC 252:410-1-7 General Provisions [AMENDED]  
OAC 252:410-10-35 Medical Use of Byproduct Material [Amended]**

Mr. Mike Broderick advised that proposal would update the incorporation by reference to Title 10 of the Code of Federal Regulations (10 CFR). He added that the changes would focus less attention on the diagnostic uses of radioactive material in medicine and would result in diminished regulatory attention to diagnostic medical procedures. Dr. Gooden lent his personal support of the proposal and called for a motion. Ms. Jennings made the motion to approve as presented and Mr. Woods made the second.

*See Transcript Pages 15 – 19*

**Roll Call**

Steve Woods	Yes	Nadine Barton	Yes
Karen Jennings	Yes	David Gooden	Yes
Rod Beuttel	Yes		<b>Motion Carried</b>

**Rulemaking – OAC 252:410-3-3 Permit application and registration [Amended]  
Appendix A. Fee schedule for radiation management [Revoked]  
Appendix A. Fee schedule for radiation machines [New]**

Mr. Broderick advised that the proposal to Subchapter 3 would increase the term for radiation machine permits to a time not to exceed ten years, would clarify permit application requirements and would also add a fee due date. He added that the amendments proposed for Appendix A substitute safety risk-based schedules for the current fee schedules; but asked Council not to recommend Appendix A for approval in order for staff to do more research and outreach regarding the fee changes. Mr. Broderick did ask for Council’s recommendation of approval of the changes to Subchapter 3-3. Staff fielded questions regarding these changes. Dr. Gooden then called for motion to approve Subchapter 3-3 as recommended by staff leaving Appendix A as is. Ms. Barton made that motion and Mr. Woods made the second.

*See Transcript Pages 19 – 79*

**Roll Call**

Steve Woods	Yes	Nadine Barton	Yes
Karen Jennings	Yes	David Gooden	Yes
Rod Beuttel	Yes		<b>Motion Carried</b>

**Rulemaking – OAC 252:410-7 Radiation management authorizations; procedures and requirements, Part 1, General provisions common to all authorizations and Part 3, Reciprocity recognition [Amended]  
OAC 252:410-10-101 Fee schedules [Amended]  
OAC 252:410-10-110 Fees for decommissioning decontamination, reclamation or site restoration activities [Amended]  
OAC 252:410-10-118 Reciprocity fees [Amended]**

Mr. Broderick advised that non-substantive changes to Subchapters 7 have been proposed that would replace the words “State Agreement” with the words “Radioactive Materials” to reflect the new title of Subchapter 10. Changes also correct citations in the new

Chapter 4. He added that substantive proposed changes to Subchapter 7 would add provisions to levy late fees under certain conditions when a required fee is not timely paid; adds an additional example of an amendment to a plan, permit, or license; and strengthens the language related to the renewal authorizations to require a complete disclosure of pertinent information with respect to the application for renewal of a license. The proposed changes to Subchapter 10 would clarify the intent to charge at full cost inspection and oversight activities at DEQ licensed facilities undergoing decommissioning. Following discussion, Dr. Gooden called for a motion. Mr. Woods moved to approve the changes as submitted. Ms. Jennings made the second.

*See Transcript Pages 79 – 89*

**Roll Call**

Steve Woods	Yes	Nadine Barton	Yes
Karen Jennings	Yes	David Gooden	Yes
Rod Beuttel	Yes		<b>Motion Carried</b>

**Rulemaking – OAC 252:410-10-111 Fees for small entities [Amended]**

Mr. Broderick advised that the proposed amendments would change the schedule of fees charged to applicants for new radioactive materials licenses by deleting the option to file as a small entity. After hearing comments, Mr. Woods made a motion to approve the changes as submitted by staff. Ms. Barton made the second.

*See Transcript Pages 89-98*

**Roll Call**

Steve Woods	Yes	Nadine Barton	Yes
Karen Jennings	Yes	David Gooden	Yes
Rod Beuttel	Yes		<b>Motion Carried</b>

**Rulemaking – 410-19 X-ray fluorescence instruments used for lead-based paint detection [Amended]**

Mr. Broderick stated that proposed amendments were brought before the Council last year but staff recommended that they not be approved to allow for further time for outreach to interested entities. He advised that amendments would revoke the exemption from regulation of those instruments regulated under the provisions of the Atomic Energy Act and the U.S. Nuclear Regulatory Commission. The amendments would lower the fee imposed annually for the permit to use these instruments as well as strengthen the requirements for training of users of these instruments. Staff addressed concerns raised before Dr. Gooden called for a motion. Mr. Woods made a motion to approve the amendments as submitted with the addition of staff’s suggestion for a more comprehensive definition of a qualified instructor to include either a recognized national certification. Ms. Jennings made the second.

**Roll Call**

Steve Woods	Yes	Nadine Barton	Yes
Karen Jennings	Yes	David Gooden	Yes
Rod Beuttel	No		<b>Motion failed</b>

Dr. Gooden dismissed himself to catch a plane and turned the meeting over to Mr. Woods. Some discussion continued regarding the proposed amendments to Subchapter 19, then Mr. Woods called for the next item on the agenda.

**Report on Radiations Management Section Activities** – Mr. Broderick advised of S2763 bill introduced to Congress last year that did not pass, but said that it is expected to come up again next session. The intent of the bill is to bring radium sealed sources and accelerator produced radioactive materials under the jurisdiction of the NRC. Mr. Broderick also mentioned that he had two new employees in his section

**Land Protection Division Director's report** – Ms. Sharp thanked Council for making the rulemaking process work.

**Report on developments related to Central Interstate LLW Compact** – Ms. Sharp announced that the Compact would meet in Oklahoma City on January 12. She also provided input regarding the settlement issues.

**Report by the Chairman** – In Dr. Gooden's absence, Mr. Woods thanked the Council and staff for the hard work and input that was put into the rule proposals just addressed.

**New Business** - None

**Discussion of two dates/locations for CY 2005 meetings** – With Mr. Dale McHard's recommendations, Council agreed upon April 13 in Oklahoma City and November 10 in Tulsa for the next meetings.

**Announcements** – Ms. Barton thanked the public for its input in the rulemaking process.

**Adjournment** – Mr. Woods adjourned the meeting at 12:30 p.m.

**A copy of the hearing transcript and the sign-in sheet are attached and made an official part of these Minutes for approval at next RMAC meeting.**

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DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF OKLAHOMA

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
RADIATION MANAGEMENT ADVISORY COUNCIL  
HELD ON DECEMBER 8, 2004, AT 10:00 A.M.  
IN TULSA, OKLAHOMA

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MEMBERS OF THE COUNCIL

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6 MR. MACDURMON - MEMBER

7 MR. WOODS - VICE-CHAIR

8 MR. CLARK - MEMBER

9 MS. JENNINGS - MEMBER

10 MR. BEUTTEL - MEMBER

11 DR. GOODEN - CHAIR

12 MS. BARTON - MEMBER

13 MR. GOUCHER - MEMBER

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STAFF MEMBERS

17 MYRNA BRUCE - SECRETARY

18 MIKE BRODERICK - DEQ

19 SCOTT THOMPSON - DIVISION DIRECTOR

20 CATHERINE SHARP - ASSISTANT DIRECTOR

21 PAMELA BISHOP - DEQ

22 PAM DIZIKES - LEGAL

23 DALE MCHARD - DEQ

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PROCEEDINGS

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MR. MCHARD: The time is 10:00

6

exactly. Are we called to order, Mr.

7

Chairman?

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DR. GOODEN: Yes, we are called

9

to order.

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MR. MCHARD: I have something I

11

am required to read or at least summarize

12

that has to do with the Tulsa Technology

13

Center. It says that the Tulsa Tech is a

14

smoke-free campus, certainly in this room

15

we certainly do not want any smoking. And

16

all conference guests must wear a guest

17

badge and I think everybody has put one on.

18

Let's see, the vending machines are located

19

in the west stairwell of the Alliance

20

building, which is where we're located.

21

And if someone's looking for a badge,

22

they're right here. Thank you, Mr.

23

Garrison, for coming and getting them. I

24

appreciate that.

25

MR. GARRISON: Shall I put them

1 on the table there?

2 MR. MCHARD: Yes, sir. Give Mr.  
3 Bartoletti one. Okay. And I think that's  
4 it for that, Mr. Chairman.

5 DR. GOODEN: Okay. Thank you.  
6 Ms. Bruce, would you help us with the roll  
7 call, please?

8 MS. BRUCE: Mr. Woods.

9 MR. WOODS: Here.

10 MS. BRUCE: Ms. Jennings.

11 MS. JENNINGS: Here.

12 MS. BRUCE: Mr. Beuttel.

13 MR. BEUTTEL: Here.

14 MS. BRUCE: Ms. Barton.

15 MS. BARTON: Here.

16 MS. BRUCE: Dr. Gooden.

17 DR. GOODEN: Here.

18 MS. BRUCE: And absent are Steve  
19 Clark, Monty Goucher and George MacDurmon.

20 DR. GOODEN: All right.

21 MS. BRUCE: We do have a quorum.

22 DR. GOODEN: Thank you. The next  
23 agenda item is Approval of the September  
24 9th, 2004 meeting. Ms. Jennings, thank you  
25 so much for chairing that. I understand

1 that neither the Chairman nor the Vice-  
2 Chairman was there to help, so thank you,  
3 so very much.

4 MS. JENNINGS: Yes, you re  
5 welcome.

6 DR. GOODEN: Do I hear a motion  
7 regarding those Minutes?

8 MS. BARTON: I make a motion that  
9 we go ahead and accept the Minutes as  
10 described by Dr. Gooden.

11 DR. GOODEN: Discussion?

12 MS. JENNINGS: I just have one  
13 correction. On the Members of the Council,  
14 it says Mr. Jennings.

15 MS. BARTON: Good correction.

16 MS. BRUCE: I'm sure that's my  
17 typo and I apologize.

18 MS. JENNINGS: I'm sure it is.  
19 I'm sure it's a typo.

20 DR. GOODEN: Second to Nadine's  
21 motion, please?

22 MR. WOODS: Second.

23 DR. GOODEN: All in favor -- I  
24 guess we have to take a voice vote, don't  
25 we?

1 MS. BRUCE: Yes. Mr. Woods.  
2 MR. WOODS: Yes.  
3 MS. BRUCE: Ms. Jennings.  
4 MS. JENNINGS: Yes.  
5 MS. BRUCE: Mr. Beuttel.  
6 MR. BEUTTEL: Yes.  
7 MS. BRUCE: Ms. Barton.  
8 MS. BARTON: Yes.  
9 MS. BRUCE: Dr. Gooden.  
10 DR. GOODEN: Yes. Agenda Item  
11 No. 4, Introduction of members of the  
12 public present. Mr. McHard, would you help  
13 us with that?  
14 MR. MCHARD: I certainly will. I  
15 have to go get the sign-in sheet. Excuse  
16 me for just a second. It's not there. I  
17 must have already picked it up. I'll try  
18 to do it from memory if I can't find it.  
19 Here it is.  
20 The first person I would like to  
21 recognize is Barbara Lucas with Next Step  
22 Technologies. She's from Stillwater. And  
23 next I'll introduce Dr. Art Lucas and he is  
24 also with Next Step Technologies at OSU.  
25 And I want to publicly, for the record,

1 congratulate Dr. Lewis --

2 MR. BRODERICK: Lucas.

3 MR. MCHARD: -- who is -- excuse  
4 me, Lucas, who was recently awarded a  
5 doctorate by the university for his many  
6 years of work there at OSU. And he tells  
7 me that in the same ceremony, Tommy Frank,  
8 General Tommy Frank was awarded -- was it a  
9 doctorate?

10 DR. LUCAS: Yes. Yes, his was in  
11 laws and mine was in physics, of course.

12 MR. MCHARD: Okay. And I  
13 understand that you and General Franks had  
14 a very nice time discussing --

15 DR. LUCAS: We walked down the  
16 aisle together. That was quite an  
17 experience.

18 MR. MCHARD: Yes, so  
19 congratulations, in any case.

20 (Applaud)

21 MR. BRODERICK: If I could, I  
22 would ask to interrupt and give Dr. Lucas a  
23 chance to brag on himself and his wife.  
24 There is something that s very familiar to  
25 many of the people here that you were

1 involved with developing. Would you tell  
2 us about it?

3 DR. LUCAS: I don't know which  
4 one you're talking about.

5 MR. BRODERICK: The most recent  
6 one that I'm aware of anyway.

7 DR. LUCAS: I've been at this  
8 since 1950 and I'm even -- I'm the oldest.  
9 We've done a number of things. Barbara, my  
10 wife, started with me in 1970 to develop  
11 the Navy's dosimetry program. Every guy  
12 who has ever ridden aboard a nuclear  
13 submarine has worn a personal dosimeter  
14 that was both created and manufactured by  
15 ourselves. We're proud of that. We  
16 retired and came to Stillwater and people  
17 were getting a little ho-hum about the way  
18 we did things in dosimetry. So in  
19 Stillwater we created a new methodology  
20 called optically stimulated luminescence  
21 with Dr. McEver's group and us working in  
22 it. And we did that using sapphire, which  
23 was grown only one place in the world, and  
24 that was in Russia. And we had to have it.  
25 So Barbara and I created the factory in

1 Stillwater to produce this material, sold  
2 it all to the Landauer Corporation. So  
3 every time you see one of these little X  
4 badges going around, the Landauer  
5 Corporation is now totally converted to the  
6 material, which is grown in Stillwater,  
7 which was created since we went there in  
8 '95 in retirement, to just rest and do  
9 nothing.

10 MS. BARTON: Wonderful. Thank  
11 you.

12 DR. GOODEN: Do you grow that in  
13 a vacuum with a potential across electrodes  
14 or how --

15 DR. LUCAS: No, we don't. We  
16 grow it -- Barbara says this is proprietary  
17 (inaudible).

18 MR. BRODERICK: Yes. Don't tell  
19 us anything.

20 DR. LUCAS: No. It's pulled --  
21 it's pulled in a rare atmosphere. You pull  
22 a rod of it out of a mold, it's similar to  
23 Jakroski Grove (phonetic spelling), but the  
24 doping is very obscure, extremely obscure.  
25 As a matter of fact, even the Russian

1 scientists themselves claim that we don't  
2 really dope it, don't do it like you say.  
3 But it's grown in a millimeter or two of  
4 pressure for rare gas.

5 DR. GOODEN: Thank you, very  
6 interesting. Yes, many of us here have  
7 used your technology, for sure.

8 MR. MCHARD: Next, I would like  
9 to introduce Eric Bartoletti with American  
10 Airlines. Mr. Bartoletti, nice to see you  
11 again.

12 MR. BARTOLETTI: Thank you, it's  
13 nice to be here.

14 MR. MCHARD: Next is James Hodges  
15 with Sonoco of Tulsa. Mr. Hodges.

16 MR. HODGES: Thank you.

17 MR. MCHARD: And George Johnson  
18 with Capitol X-Ray, Tulsa.

19 MR. JOHNSON: Thank you.

20 MR. MCHARD: And I believe, Mr.  
21 Chairman, that I have now -- wait a minute.  
22 Mr. Garrison, you didn't sign in.

23 MR. GARRISON: Okay. When I  
24 came, that wasn't there.

25 MR. MCHARD: What's your first

1 name.

2 MR. GARRISON: Emmanual or E Ray,  
3 E, period, Ray (E. Ray).

4 MR. MCHARD: And the normal  
5 spelling of Garrison?

6 MR. GARRISON: Yes.

7 MR. MCHARD: Okay. G-a-r-r-i-s-  
8 o-n.

9 MR. GARRISON: That's correct.

10 MR. MCHARD: And your  
11 affiliation, sir?

12 MR. GARRISON: Muskogee Creek  
13 Nation Indian Tribe.

14 MR. MCHARD: Okay.

15 MR. GARRISON: We're in it.

16 MR. MCHARD: Okay. And do you  
17 want to give me a phone number?

18 MR. GARRISON: The complex number  
19 is 918-756-8700.

20 MR. MCHARD: Thank you, sir.

21 MR. GARRISON: My department is  
22 8626.

23 MR. MCHARD: Okay. So I'm  
24 introducing now, officially, Ray Garrison  
25 with Muskogee Creek Nation. I believe

1 that's all of our visitors for the moment.

2 DR. GOODEN: Thank you, Mr.  
3 McHard. Would you also help with the  
4 introduction of staff?

5 MR. MCHARD: Yes. For those of  
6 you who have never been here before, and I  
7 believe there are one or two, I will  
8 introduce the Members of the Council who  
9 are present.

10 Mr. Woods, on my extreme left, with  
11 Halliburton Company. Next to him is Karen  
12 Jennings, and she is a teacher in the El  
13 Reno Public Schools. I believe you're a  
14 teacher of science; is that correct?

15 MS. JENNINGS: Chemistry and  
16 physics.

17 MR. MCHARD: Okay. And next to  
18 her is Rod Beuttel, who is with AEA  
19 Technologies, a source company, a  
20 radioactive source company. And next to him  
21 is Nadine Barton, who represents the general  
22 public and the environmental concerns. And  
23 next to me is Dr. Gooden, who is our  
24 Chairman and he is a medical physicist, I  
25 hope I'm not misstating that.

1           And then starting at this end of the  
2 horseshoe, I'll introduce our legal advisor  
3 for this particular council, that's Pam  
4 Dizikes. And next to her is another Pam,  
5 Pam Bishop, who is with the program. Next  
6 is my boss and the section manager, Mike  
7 Broderick. And across the table there in  
8 the brown sweater is Myrna Bruce, who is the  
9 secretary to all of the councils and to the  
10 Environmental Quality Board. And our  
11 transcriptionist today, as usual, is Christy  
12 Myers. Glad you're here, Christy, so I  
13 don't have to do the Minutes. And my name  
14 is Dale McHard and I'm an old timer, I've  
15 been doing council work for quite a few  
16 years. That's it, Mr. Chairman.

17           DR. GOODEN: Thank you, so much.  
18 We have a couple of items that we need to  
19 address regarding rulemaking today and --

20           MR. MCHARD: Could I interrupt?

21           DR. GOODEN: -- sure.

22           MR. MCHARD: If you'll recognize  
23 me? This is something new, as far as I'm  
24 concerned, so I'm going to read it word for  
25 word. It's called protocol statement,

1 September 9, 2004. Actually, it should say  
2 September 8.

3 MS. BRUCE: December 8.

4 MR. MCHARD: It should say  
5 December 8, I think.

6 MS. BRUCE: That's two, Karen.

7 MR. MCHARD: December 8th, 2004.

8 This regular meeting of the Radiation  
9 Management Advisory Council was called in  
10 accordance with the Open Meeting Act.  
11 Notice for this special meeting was filed  
12 with the Secretary of State on August 16th,  
13 2004. The agenda was duly posted 24 hours  
14 prior to the meeting on the doors at the DEQ  
15 Headquarters and at this facility, Tulsa  
16 Technology Center, 801 East 91st Street,  
17 Tulsa, Oklahoma. Only matters appearing on  
18 the posted agenda may be considered at this  
19 special meeting. In the event that this  
20 meeting is continued or reconvened, public  
21 notice of the date, time and place of the  
22 continued meeting will be given by  
23 announcement at this meeting. Only matters  
24 appearing on the agenda of a meeting which  
25 is continued, may be discussed at the

1 continued or reconvened meeting.

2 DR. GOODEN: Thank you, Mr.  
3 McHard. We've got a number of things that  
4 we need to address, so we'll get right to  
5 them. Item Agenda No. 6A. Mr. Broderick,  
6 would you help us with this particular  
7 agenda item?

8 MR. BRODERICK: Okay. We have a  
9 number of rulemakings. I believe there are  
10 five, if I remember right, an unusually  
11 large number. I'll try and move through  
12 them fairly quickly.

13 The first one is two items that go  
14 together. Basically, the NRC several years  
15 ago changed their rules regulating medical  
16 use of radioactive materials. Now, we are  
17 an agreement state with the NRC. We run  
18 that program in Oklahoma and we are expected  
19 to remain compatible with that. The changes  
20 the NRC made, we have to -- we are expected,  
21 anyway, to adopt, and staff strongly  
22 encourages the Council to adopt these.  
23 These changes are an attempt by NRC to focus  
24 less attention on the diagnostic uses of  
25 radioactive material in medicine, which are

1 relatively low risk and free-up resources  
2 for more attention to the therapeutic uses,  
3 which is where most of the risk is in  
4 nuclear medicine.

5           As I understand -- my understanding  
6 and Dr. Gooden can speak to this better than  
7 I can but certainly the changes to the  
8 diagnostic rules have the support of  
9 industry, is my understanding. Therapeutic,  
10 there are some changes in the qualifications  
11 of authorized users and stuff which are a  
12 little more controversial. But the NRC  
13 expects us to maintain these, to keep up  
14 these as an item of compatibility. There  
15 are two parts here, there are two changes.  
16 And one is Section 1-7. And the only change  
17 there is it changes the date. We adopt  
18 these rules by reference and so we refer to  
19 a particular copy of the Code of a  
20 particular year and volume of the Code of  
21 Federal Regulations. And we changed the  
22 date. We've been operating off of the 2001  
23 Code of Federal Regulations. We're going to  
24 move to the 2004 Code of Federal  
25 Regulations. That's the only change in 1-7.

1           And then the second change, in 410-  
2 10-35, that has the detailed portions of  
3 this Part 35 that we are adopting that have  
4 the new nuclear medicine rules in them.  
5 Basically, unless somebody wants to discuss  
6 the changes in great detail, that's my  
7 presentation -- staff's presentation.

8           DR. GOODEN:   I think that may be  
9 sufficient.   This is an important item to  
10 move forward on and I'll lend my personal  
11 support to it.   We need to do this as an  
12 agreement state.   I'll entertain a motion  
13 that we approve this rulemaking.

14           MS. JENNINGS:   Which ones are we  
15 approving?

16           MR. BRODERICK:   This is the  
17 changes -- it's Item 6A of your agenda.  
18 It's 410-1-7, General Provisions and 410-10-  
19 35, Medical Use of Byproduct Material.

20           MS. JENNINGS:   I move that we  
21 approve the OAC 252:410-1-7 and OAC 252:410-  
22 10-35.

23           MR. WOODS:   Second.

24           DR. GOODEN:   May we have a roll  
25 call, please, Ms. Bruce.

1 MS. BRUCE: Mr. Woods.

2 MR. WOODS: Yes.

3 MS. BRUCE: Ms. Jennings.

4 MS. JENNINGS: Yes.

5 MS. BRUCE: Mr. Beuttel.

6 MR. BEUTTEL: Yes.

7 MS. BRUCE: Ms. Barton.

8 MS. BARTON: Yes.

9 MS. BRUCE: Dr. Gooden.

10 DR. GOODEN: Yes.

11 MS. BRUCE: Motion passed.

12 DR. GOODEN: Mr. Broderick, if

13 you'll just continue to go forward.

14 MR. MCHARD: Mr. Chairman, may I

15 interrupt for just a moment?

16 DR. GOODEN: Sure.

17 MR. MCHARD: For the Council

18 Members, you see the colored sheets? That

19 helps you find what we re going to discuss

20 next. It's the separator sheets. Thank

21 you.

22 MS. DIZIKES: Excuse me, Dr.

23 Gooden. Would it be possible -- I don't

24 think that we asked if there was any input

25 from the public on the particular proposed

1 rule. And I wonder if we could back up a  
2 step and ask if there is, and if so, then to  
3 take another vote.

4 DR. GOODEN: All right. Is there  
5 any discussion from the public regarding  
6 this particular item? Hearing none, we'll  
7 let the vote stand.

8 MR. BRODERICK: Okay. Then I'll  
9 move on to Item 6B. And the staff, as a  
10 result of discussions, some with industry,  
11 Council Members here, we've been making a  
12 change in our recommendation on this. What  
13 this rulemaking originally did, it did two  
14 things. One that I know is of great  
15 interest to a couple of you is the proposal  
16 to change x-ray fees. The other thing it  
17 did, it changed some things about our  
18 permitting process. First, there are some  
19 descriptions -- the traditional things that  
20 go into permits, like descriptions of  
21 shielding and so forth, which our rules  
22 previously did not require those for  
23 renewals of x-ray permits. Basically, this  
24 puts the requirements on renewals that have  
25 to be descriptions of the vaults and the

1 safety program and that kind of thing.

2           The second thing that it does, our  
3 permits now, basically, last for a year and  
4 they have to be renewed after a year. This  
5 makes it a change so you only have to go  
6 through this renewal process, in the long  
7 term, it will be every ten years. We've got  
8 a variable period of up to ten years, which  
9 we're going to have in the interim as we  
10 start off, so we can spread the permits out,  
11 so they don't all come up for renewal ten  
12 years from now and we have a big slug of  
13 them. So we'll be having differing terms  
14 for the first period but after that, it will  
15 probably be ten years.

16           The last thing that it does, we're  
17 going to have -- there's another change here  
18 where we're going to propose initiating late  
19 fees for the payment of fees. And for the  
20 last change, the very last line that's  
21 underlined, it says annual fees are due each  
22 year on the last day of the month in which  
23 the permit is issued, and that defines the  
24 due date to support that late fee.

25           We are going to make a change and

1 this is going to be of great interest to  
2 you, George and Eric, to what we recommend.  
3 We have concluded after some discussions  
4 with industry, we haven't done enough of our  
5 homework here. We have always -- the staff  
6 has always been very diligent about not  
7 surprising people with things, not sneaking  
8 things through and so forth. We have  
9 concluded, although we did some homework  
10 with some parts of industry, with George in  
11 fact, in particular, with the radiographers,  
12 we didn't do enough homework with some of  
13 the other users, as far as advising them in  
14 advance of this. And also if this were  
15 passed, it would go into effect this June,  
16 which would make it somewhat -- since we  
17 just published the fee schedule, the actual  
18 fee schedule fairly recently, that would  
19 make it difficult for some people who are on  
20 a tight budgetary process, to budget for the  
21 fee changes.

22           So what we're going to recommend,  
23 there is a part of this, actually, which I  
24 didn't cover in the beginning, but it's  
25 Appendix A, which lists out the changed

1 fees. We're going to recommend that the --  
2 we request that the Council not pass  
3 Appendix A, leave the fees as they are for  
4 this year. We are going to come back in the  
5 spring and we're going to do some homework  
6 in the interim, do some outreach to industry  
7 and make sure that everyone understands  
8 what's going on. And we'll ask the Council  
9 to vote on the fee changes at the spring  
10 meeting, whatever dates you set.

11 We do ask you to go ahead with this  
12 3-3 stuff about the permitting stuff -- it's  
13 independent of the fees -- and we ask you to  
14 go ahead and we would recommend that you  
15 pass this. But if you choose to pass it,  
16 you'll need to have an amendment that  
17 strikes the changes to Appendix A. Did I  
18 phrase that right, Pam?

19 MS. DIZIKES: Yes.

20 MR. BRODERICK: Okay. Good. I  
21 apologize if that's a little complicated.  
22 But basically what we're asking you to do is  
23 pass -- these text changes in 3-3, we  
24 recommend that the Council pass, but we  
25 recommend that you strike Appendix A and

1 give us a better chance to do some outreach  
2 and make sure all the affected parties  
3 understand what's going on.

4 MS. DIZIKES: Let's just not use  
5 the word strike.

6 MR. BRODERICK: Pardon me?

7 MS. DIZIKES: That we leave  
8 Appendix A as it is.

9 MR. BRODERICK: Strike the  
10 changes to Appendix A, but leave Appendix A  
11 unchanged.

12 DR. GOODEN: Discussion among  
13 public regarding this matter? Mr. Johnson.

14 MR. JOHNSON: George Johnson,  
15 Capitol X-Ray Service, Tulsa, Oklahoma. And  
16 today I'm speaking for a total of 16  
17 industrial x-ray machine owner permittees,  
18 most of these are also byproduct material  
19 licensees. Now, there's more than this. I  
20 would like to pass something out to the  
21 Members of the Council, if I may?

22 DR. GOODEN: Please.

23 MR. JOHNSON: I have some  
24 proposals and some questions. And I think  
25 some of the questions really need to be

1 answered because there's a lot of confusion  
2 about what constitutes registration, what  
3 kind of machines, whether they're in use,  
4 where they are stored, whether they don't  
5 work or not.

6           And I would like to go to the bottom  
7 of the sheet first, if you don't mind. The  
8 bottom questions I think are very important,  
9 because there is a lot of gray area in where  
10 we are. And again, I can only talk about  
11 industrial x-ray users, industrial x-ray  
12 machines.

13           Question number one. The number of  
14 current permittees. How many are there?

15           MR. BRODERICK: It's  
16 approximately 110 total permittees.

17           MR. JOHNSON: 110 total  
18 permittees.

19           MR. BRODERICK: Yes.

20           MR. JOHNSON: How many of these  
21 will be exempted if we go -- if you go  
22 through with this exemption process of these  
23 low -- so-called low-risk units?

24           MR. BRODERICK: For the sulphur  
25 analyzers we did, not exhaustive, but we

1 basically looked through, we found about a  
2 dozen machines that we knew for sure were  
3 sulphur analyzers. That's not necessarily a  
4 total -- a list of all the sulphur  
5 analyzers, which is the main thing that  
6 we're talking about here. And I believe it  
7 was 10 out of 12 would have been exempted  
8 from fees under this proposal.

9 MR. JOHNSON: We're talking about  
10 somewhere around 12 to 15?

11 MR. BRODERICK: We found 12.  
12 There are probably some more. I wouldn't  
13 argue with 15, but it might be higher.

14 MR. JOHNSON: Would 15 be a  
15 pretty good number?

16 MR. BRODERICK: Yeah, that would  
17 be fine. That would be my guess.

18 MR. JOHNSON: Okay. So the  
19 number of permittees that are going to be  
20 following the exemptions is going to be 95.

21 MR. BRODERICK: The fee exemption  
22 is just an exemption from fees, it doesn't  
23 regulate the radiation safety program and so  
24 forth.

25 MR. JOHNSON: Well, I understand

1 that.

2 MR. BRODERICK: Okay.

3 MR. JOHNSON: I understand that.

4 But what we're doing here is we're going to  
5 exempt from the current 110, we're going to  
6 exempt about 15 or maybe a few less or maybe  
7 a few more. So the revenues from the fees  
8 then are going to have to be increased with  
9 the remaining permittees to either make up  
10 the loss or to increase the revenue,  
11 whichever one comes first.

12 Now, what determines the risk factor.  
13 Pam, can you answer that for me? How are  
14 you determining the risk factor, because  
15 you've got industrial x-ray at a high risk,  
16 I know that. So what determines a risk  
17 factor for some of these machines that  
18 you're going to exempt?

19 MS. BISHOP: Well, we're looking  
20 -- I think mainly it's the energy of the x-  
21 ray that's produced. Because if you look on  
22 the schedule, actually industrial  
23 radiography is not the highest.

24 MR. JOHNSON: Oh, no, it's  
25 certainly not.

1                   MS. BISHOP:    So, you know, we're  
2 looking at the potential for harm, as far as  
3 what kind of damage it can do.

4                   MR. JOHNSON:    May I ask you  
5 another question?    The sulphur analyzers,  
6 what is the normal maximum KV that those  
7 units will operate at?

8                   MS. BISHOP:    Well, some of them  
9 are 10.    Some of them go up to 30.    You  
10 know, I thought a lot of them actually went  
11 up to 30, so I'm not sure they would all  
12 fall out.

13                  MR. JOHNSON:    Now, let me ask you  
14 another question.    When you or one of your  
15 inspectors comes for an audit with an  
16 industrial x-ray company.

17                  MS. BISHOP:    Uh-huh.

18                  MR. JOHNSON:    You wish for us to  
19 turn our machines up to the maximum KV and  
20 the maximum MA for you to do your dose rate  
21 measurements.    Are you doing that with the  
22 sulphur analyzer people, even though they're  
23 operating -- they tell you they're operating  
24 at five KV, have you had them run them up to  
25 30 KV to do your dose rate measures?

1 MS. BISHOP: That's the way  
2 they're supposed to be doing it. The  
3 inspectors are supposed to be doing that,  
4 you know, do the survey at the maximum KV.

5 MR. JOHNSON: You've found no  
6 problems, no dose rate problems with the  
7 operators, what have you, at the 30 KV?

8 MS. BISHOP: Now, I don't know if  
9 they have that option on some of these  
10 sulphur analyzers. I think some of them are  
11 just set, they're going to run at a certain  
12 KV and the operator can't really adjust it.  
13 Other ones they can.

14 MR. JOHNSON: If you'll remember  
15 about three years ago, you and I got into  
16 this discussion again and we asked Dr. Gray  
17 -- I asked Dr. Gray, where did ionizing  
18 radiation begin, at what KV? And he said  
19 five. So, do we really need to exempt, does  
20 the state really need to exempt these units  
21 that will go up to 30 KV? I can't answer  
22 that question. I can't, that's what I'm  
23 asking.

24 MR. BRODERICK: The way that at  
25 least I -- that at least I had envisioned,

1 and I hope we wrote the regulation this way  
2 -- if we didn't we need to change it -- was  
3 that if a machine is capable of going to 30  
4 but the operator says, I promise, I never  
5 take it past five, we regulate them as if it  
6 was 30.

7 MS. BISHOP: 30, yes.

8 MR. BRODERICK: It's not -- we're  
9 regulating them on what the machine is  
10 capable of, not based on what they say that  
11 they do. I'm trusting, but not that  
12 trusting.

13 MS. BISHOP: The 10 KV was chosen  
14 because most survey equipment, that's the  
15 lower limit of what they can really detect.

16 MR. JOHNSON: That's because --

17 MS. BISHOP: Though there is  
18 certainly equipment that will --

19 MR. JOHNSON: Can I make a  
20 statement here?

21 MS. BISHOP: -- that will detect  
22 lower than that.

23 MR. JOHNSON: That's because the  
24 DEQ had not hammered on the regulation that  
25 states that the survey instruments shall be

1 calibrated to the appropriate energy.  
2 There's too many survey instruments out  
3 there with people using 50 and 75 KV units  
4 that will not measure anything below 80 KV.

5           Now, I would like to ask another  
6 question. We've got several of the  
7 industrial x-ray machine permittees that  
8 have 10, 20, 30 x-ray machines. But during  
9 a year's time, they may only use three or  
10 four of these.           So question number  
11 five, what machines require registration and  
12 fees. Okay, we've got that, we've really  
13 answered that. Is it the total machines  
14 owned?

15           MS. BISHOP: Huh-huh.

16           MR. JOHNSON: It's not the total  
17 machines owned?

18           MS. BISHOP: We still have the  
19 exemption in there for storage, machines in  
20 storage, I believe.

21           MR. JOHNSON: Well, is it storage  
22 or is it operable only? In other words, if  
23 I've got a machine in storage for two years  
24 but I could still hook it up and use it and  
25 I'm telling you I'm not using that machine

1 and I don't want to pay a fee for it because  
2 it's in storage.

3 MS. BISHOP: It would somehow  
4 have to be rendered inoperable while it was  
5 in storage. I mean -- and with industrial  
6 radiography tubes, I realize that's a bit of  
7 a problem.

8 MR. JOHNSON: No, they're --  
9 what's happening right now is that two of  
10 the permittees in this state are cutting off  
11 the power cords to keep from having to pay a  
12 fee and I don't think that's right, folks.  
13 I don't think it's right. Now, not too long  
14 ago this Council, the DEQ, passed a  
15 regulation requiring a utilized log --

16 MS. BISHOP: Right.

17 MR. JOHNSON: -- or x-ray  
18 equipment. You know, there was a bunch of  
19 discussion, some people didn't want it, what  
20 have you. To me, your inspectors, when they  
21 go in, can ask for the utilized logs for  
22 every x-ray machine that was used during  
23 that previous permit year. And he could  
24 still write down eight machines, so on and  
25 so forth, and then go back and find out

1 whether the eight machines were permitted or  
2 not. That's a simple check and balance  
3 there.

4 MS. BISHOP: See, all we have in  
5 the rule, it says, it's an exemption for  
6 radiation machines which are inoperable or  
7 in long-term storage and will not be used  
8 during the permitted period.

9 MR. JOHNSON: Well, what's long-  
10 term mean?

11 MS. BISHOP: Well, it would be  
12 for the year right now.

13 MR. JOHNSON: During the permit  
14 year?

15 MS. BISHOP: Yeah. If we extend  
16 the term, it will be the next 10 years. But  
17 anyway, the way we've been determining  
18 whether they were truly in storage is that  
19 somehow they were either moved away from  
20 where, you know, they were put into a  
21 storage area where they weren't readily  
22 accessible for somebody to just grab and  
23 bring out and use. Or they were somehow  
24 rendered inoperable.

25 MR. JOHNSON: I don't have 50,000

1 square feet though, so mine are sitting  
2 there where they could be used if somebody  
3 decided to. So I think that needs to be  
4 thought about just a little bit.

5 MR. BRODERICK: What you  
6 described may be a solution to that. It's  
7 something we thought about, because we have  
8 had -- relatively we have been pretty nice,  
9 you can even say naive about this. There is  
10 at least one case that I know for sure where  
11 a fellow had some -- a radiographer had some  
12 pipeline crawlers which he insisted he did  
13 not use and he didn't pay fees on them, we  
14 didn't charge fees. But when we went out  
15 and inspected him, one of his employees told  
16 us, yeah, I was using the pipeline crawlers,  
17 you know, last night. So I'm sure that that  
18 happens. Now, we have partly based on the  
19 amount of money involved, so (inaudible).

20 MR. JOHNSON: Well, sure, some  
21 people are going to lie to you.

22 MR. BRODERICK: Absolutely.

23 MR. JOHNSON: And that's as  
24 simple as that. That's just -- that's just  
25 the nature of the beast.

1                   MR. BRODERICK:    And I'm open to  
2 more -- I'm open to any smarter way to do  
3 this.    I don't want to disadvantage the  
4 people that do what they're supposed to do,  
5 you know, versus the others.    And if there's  
6 a better, you know, a smarter way to do  
7 that, I am --

8                   MR. JOHNSON:    Well, the utilized  
9 log to me is a simple check and balance.  
10 Well, yeah, they might hide one, they might  
11 hide one.

12                  Folks, about three years ago I made a  
13 statement in this Council meeting that the  
14 \$100 for the first machine was entirely too  
15 low.    That in my opinion, the cost of the  
16 first x-ray machine to any permittee should  
17 be at least what it costs the DEQ to make an  
18 audit of that permittee, whether they be in  
19 Broken Arrow, Broken Bow, Oklahoma or way  
20 out in northwestern Oklahoma.    And we stayed  
21 with the \$100 and \$90 on the machines.  
22 Well, right now the 20 -- the approximate 20  
23 nondestructive testing industrial  
24 radiography companies in the State of  
25 Oklahoma for the past two years have been

1 losing sales, approximately 40 percent per  
2 year. Refiners aren't spending any money,  
3 chemical plants aren't spending any money,  
4 nobody is spending any money on new process  
5 equipment. And there's not going to be as  
6 many permittees next year as what there is  
7 this year, I can tell you that right now,  
8 because a number of them are going to go out  
9 of business.

10 ---

11 Now, for these 16 permittees, I was  
12 asked to put together what I thought was a  
13 fair permit cost for industrial x-ray  
14 machines. I'm not -- I'm not concerned  
15 about the other ones, as long as they pay a  
16 fee. That's my only concern. As long as  
17 they -- as long as they're permitted and pay  
18 a fee and your determination of that fee  
19 should be whatever that is. And if these  
20 people want to come and raise cain, then  
21 that's fine.

22 And what I've got here is, if you'll  
23 go down to table two on that page, one to  
24 three x-ray machines. We have some  
25 permittees, industrial x-ray permittees that

1 only own one machine. We've got some that  
2 own two. We have some that own three. If  
3 setting that first machine at \$200 with the  
4 additional \$75 per machine, which is for two  
5 machines would be \$275 annual fee for three  
6 machines \$350, and that's a considerable  
7 increase over what it is right now. Someone  
8 that has four to six x-ray machines, because  
9 we do have some industrial companies that  
10 have from four to six machines. It's \$200  
11 for the first one. I'm leaving that one  
12 alone. \$75 for each additional, which as  
13 your agenda said, some are going to be  
14 raised and some are going to be lowered. So  
15 that means four machines, \$550 a year. Five  
16 machines is \$425 a year -- well, I think  
17 I've got a typo there -- it's six machines  
18 at \$575. We'll have to refigure that one.  
19 And then seven or more, and I'm one of those  
20 permittees that owns seven or more x-ray  
21 machines. American Airlines owns seven or  
22 more x-ray machines. Shaw Pipeline Services  
23 owns seven or more machines. Tulsa Gamma  
24 Ray owns seven or more machines. \$200 for  
25 that first one again, seven machines would

1 be \$650 and eight-plus would be \$725 and  
2 that is a very considerable increase over  
3 the \$100 and \$90 for each additional  
4 machine. And that's what these 16 people  
5 have asked me to come here, 17 companies,  
6 and propose. And, you know, what happens  
7 here is what happens here.

8           Now, I disagree on 10-year cycles. I  
9 completely disagree. In every third year of  
10 the use of industrial x-ray machines, you're  
11 going to lose one. Yes, sir. The tube  
12 today, a replacement tube for a 160 KV x-ray  
13 machine is \$6,000 for the tube, that's a  
14 glass tube. \$7,500 for a metal hydride  
15 tube. And then you've got -- it runs it up  
16 to about \$11,000 for the labor and what have  
17 you. So there's a lot of times when an  
18 older machine, you're not going to put  
19 \$11,000 in it and you throw it aside. And  
20 then the ten-year cycle, I could lose --  
21 I've lost three x-ray machines this year,  
22 since January the 1st, that are not, in my  
23 opinion, economically repairable. So I  
24 think the 10-year cycle, I think I would cut  
25 that just, for my opinion, I would at least

1 cut it in half. Yes, ma'am.

2 MS. BISHOP: George, we would  
3 still have the registration process where  
4 that would be updated, the number of  
5 machines.

6 MR. JOHNSON: Okay. All right.

7 MS. BISHOP: So, yeah, that would  
8 still continue.

9 MR. BRODERICK: What we're  
10 looking at for the 10-year thing is like  
11 vault design, radiation safety program, that  
12 kind of thing.

13 MS. BISHOP: And that could be  
14 amended.

15 MR. JOHNSON: Is there any --  
16 could there possibly be any discount for  
17 prepaying three years in advance?

18 MR. BRODERICK: I thought you  
19 guys didn't have any money?

20 MR. JOHNSON: We don't. My wife  
21 does. I just bought -- I just bought two x-  
22 ray machines and I didn't go to the bank,  
23 because I've got to buy some trucks, so I  
24 borrowed some money from my wife for the  
25 last two machines.

1                   MR. BRODERICK:    Let me ask you a  
2 question, if I could, George.

3                   MR. JOHNSON:     Yes.

4                   MR. BRODERICK:    We were talking  
5 on the way up here, the staff were talking,  
6 some of us said that we had seen a little  
7 bit of sign of a little bit of  
8 revitalization in the oil and gas industry,  
9 of a little bit.    And I know, although it's  
10 certainly not your only customer, oil and  
11 gas is the major customer for radiographers.  
12 Are you guys seeing any signs --

13                  MR. JOHNSON:     No.

14                  MR. BRODERICK:    -- of business  
15 improvement?

16                  MR. JOHNSON:     No.    If it was not  
17 for the military aircraft work that I do, x-  
18 ray only, I would have been out of business  
19 about 18 months ago.    It's just one of the -  
20 - one of the licensees here in Oklahoma, in  
21 Tulsa, they still have an office here but  
22 they moved to Houston and also to Kansas, to  
23 a place in Kansas, trying to come up with  
24 some work.    There's no work out there.  
25 There's just -- there's just no work.    Tulsa

1 used to be the heat exchanger capitol of the  
2 world. There were 100 and about 50  
3 different steel fabricating plants in Tulsa  
4 that was supplying the oil and gas industry  
5 and the power line industry, what have you,  
6 chemical plants with heat exchangers and  
7 sulphur analyzer -- sulphur plants, what  
8 have you. That number is down to less than  
9 80 right now. I'm not the only NDT company  
10 and I don't know about American, whether  
11 they're -- in their x-ray department,  
12 they've had to lay off people, but everyone  
13 that I deal with, all of my competitors, we  
14 have all downsized for the past two years.  
15 We're down to where it's very difficult now,  
16 if you've got 10 more film Tuesday than you  
17 did Monday, and you don't have the extra man  
18 for it because you had to lay off. It's  
19 tough out there right now. It's very tough.  
20 It does not look like -- I gave an address -  
21 - a presentation to an engineering company  
22 about two weeks ago. And I was asked, do I  
23 see the industry ever coming back like it  
24 was in the late '90s. I do not, not under  
25 any circumstances, I do not. Did you have

1 something you want to ask?

2 MS. BISHOP: Yeah. I just want  
3 another clarification. Are you suggesting  
4 then that the industrial radiography -- the  
5 x-ray industrial radiography be charged the  
6 same base fee as the other x-ray machines?

7 MR. JOHNSON: No, ma'am. I'm  
8 saying this is what we have proposed for  
9 industrial x-ray machines. The \$200 for the  
10 first machine.

11 MS. BISHOP: This is just for  
12 industrial x-ray radiography?

13 MR. JOHNSON: Well, yeah. You've  
14 got your stuff broken down in different  
15 categories.

16 MS. BISHOP: Right.

17 MR. JOHNSON: So it would be that  
18 way.

19 MS. BISHOP: But that's the same  
20 fee that we're charging for -- do you have a  
21 copy of this fee table?

22 MR. JOHNSON: Yes, I do.

23 MS. BISHOP: Okay. Good.

24 MR. JOHNSON: Yes, I do.

25 MS. BISHOP: George, did you have

1 a maximum fee in mind?

2 MR. JOHNSON: Yes, it's right  
3 here. \$725, which is from \$500, \$725, I  
4 don't have a calculator and I don't do math  
5 that good in my head.

6 MS: I have a calculator. That's  
7 for eight.

8 MR. JOHNSON: It's still a pretty  
9 good increase. Another thing, and I know I  
10 talked to Mike and I talked to Pam about it,  
11 nine of the x-ray -- of the industrial x-ray  
12 machine permittees are also byproduct  
13 material licensees. Now, I haven't had -- I  
14 had an isotope audit about a month ago. But  
15 I haven't seen anyone from the DEQ for two  
16 years on x-ray. Now, it only takes --  
17 you're going to get -- I'm going to get the  
18 same records out for an x-ray machine audit  
19 that I do for an isotope audit, except I'm  
20 going to switch x-ray for isotope, the same  
21 dose records, the same training records, et  
22 cetera, as to combine. It's only going to  
23 take 20 minutes longer. That's about all,  
24 don't you agree, Pam?

25 MS. BISHOP: It depends.

1                   MR. JOHNSON:    Maybe 20 minutes  
2 longer to do a combined audit, save the DEQ  
3 money, and it gets it over with at once, in  
4 one day, good or bad.

5                   MS. BISHOP:    For the records part  
6 but not necessarily for the site, you know,  
7 the work observation.

8                   MR. JOHNSON:    Yeah.

9                   MS. BISHOP:    Well, we'd have to  
10 look at both the materials and an x-ray.

11                  MR. JOHNSON:    Well, it's catch as  
12 catch can for you anyway to find a job site  
13 where an x-ray machine is being currently  
14 used, same way with isotopes, that's not  
15 going to matter that I can see.    But combine  
16 these audits, save a little money.    Anyone  
17 else -- that's all I know.

18                  DR. GOODEN:    May I ask --

19                  MR. JOHNSON:    But I do -- I'm  
20 going to have -- I'm going to have to tell  
21 you that these OSL's that these gentlemen  
22 have a lot to do with and his wife, he said.  
23 There's only one glitch in them, but I think  
24 it was probably Landauer's glitch, the  
25 little plastic holder that holds the actual

1 OSL, all you have to do is touch it against  
2 something and the OSL pops out of the  
3 holder. It is a problem. We have --

4 MR: Just like this.

5 MR: That's those people up in  
6 Chicago that did that, we didn't do that in  
7 Oklahoma.

8 (Inaudible)

9 DR. GOODEN: Can I ask staff  
10 about the program you plan to put in place  
11 regarding shielding and I'm thinking mostly  
12 of medical now, because that's the thing  
13 that, you know, I'm most familiar with at  
14 this particular point. The program you plan  
15 to put in place regarding shielding and  
16 safety programs, how that compares with  
17 other agreement states?

18 MR. BRODERICK: I'm going to  
19 defer to Pam on that one.

20 DR. GOODEN: Yeah.

21 MS. BISHOP: I believe not all --  
22 well, of course, x-ray is separate from  
23 materials.

24 DR. GOODEN: Right.

25 MS. BISHOP: And some agreement

1 states handle x-ray, some don't. It's --  
2 it's kind of hit and miss around the  
3 country. It's not a federal program, so  
4 from state to state it varies quite a lot.  
5 But the states that do regulate x-ray,  
6 industrial x-ray, are going to be asking for  
7 the same types of things, I believe. I  
8 mean, if you have a vault.

9 DR. GOODEN: For radiation  
10 therapists.

11 MS. BISHOP: Radiation therapy.

12 DR. GOODEN: Yeah.

13 MS. BISHOP: Now, yes, they  
14 definitely would, they definitely would be  
15 asking for shielding.

16 DR. GOODEN: Well, the thing I'm  
17 -- the thing I'm really pursuing here is,  
18 I'm wondering what you're going to do  
19 regarding shielding of radiation therapy  
20 facilities, because that's a big,  
21 complicated deal. I don't know whether you  
22 would want to report file from medical  
23 physicists or what, but you certainly don't  
24 -- you certainly don't want to get into  
25 recalculating shielding designs for

1 radiation therapy.

2 MS. BISHOP: We would -- we  
3 wouldn't do anything like that --

4 DR. GOODEN: Yes.

5 MS. BISHOP: -- unless we were  
6 suspicious --

7 DR. GOODEN: Right.

8 MS. BISHOP: -- that there was  
9 something wrong. We do have the capability  
10 of doing that.

11 DR. GOODEN: Yes.

12 MS. BISHOP: The electronic, you  
13 know.

14 DR. GOODEN: Yes. I wouldn't  
15 think you would want to get into it on a --  
16 you would probably have a computer --

17 MS. BISHOP: No, we wouldn't do  
18 it on --

19 DR. GOODEN: -- you have a  
20 computer code --

21 MS. BISHOP: Right. Yes.

22 DR. GOODEN: -- that's available  
23 to you.

24 MS. BISHOP: So -- but basically  
25 we would just kind of review what had been

1 done and see if it looks reasonable and  
2 right now it's after the fact, too.

3 DR. GOODEN: Right.

4 MS. BISHOP: So --

5 MR. BRODERICK: And that creates  
6 a potential big problem for you if we get  
7 concerned over something and you haven't  
8 done your build yet, you can work with us  
9 and we'll hopefully be reasonable. We  
10 hopefully will be reasonable and hopefully  
11 we can work something out, whereas if you  
12 pour all your concrete and everything is set  
13 up and then we have some problem, then that  
14 creates, you know, a real headache for you  
15 guys and for us.

16 DR. GOODEN: And I guess one of  
17 the other places I'm going with this is that  
18 I would -- I would guess that one of the  
19 intents of the DEQ in putting together  
20 programs like this would be to generate  
21 income from a department that would allow  
22 you to put more people in place to help you  
23 do the jobs that you're assigned to do. And  
24 my thought is, if you put that person in to  
25 help you do the job that you're assigned to

1 do, which is already a push, and then you  
2 assign 125 percent more work for -- in the  
3 way of new programs that they have to be  
4 monitored, you could get further behind  
5 rather than further in front.

6                   MR. BRODERICK: Well, one of the  
7 potentials for these fees, by the way, the  
8 existing fees were put into place in 1993,  
9 so these are very old. You were here and I  
10 wasn't here then, but you were here when  
11 these were put into place and they're very  
12 old fees. But one of the reasons is to  
13 enable us to -- and particularly for the  
14 therapy machines right now, there is no fee,  
15 they were exempted in 1993. And it's to  
16 enable us to put on staff to do this. As it  
17 stands, at best we do, particularly the  
18 therapy, which is one of the -- it's  
19 certainly the most dangerous thing I'm aware  
20 of as x-ray, as far as hazard, there's a lot  
21 of control over it -- a lot of supervision  
22 and oversight for professionals. Those we do  
23 expect catch as catch can because we don't  
24 have staff to do those. And so there's not  
25 a great deal of oversight.

1 MS. BISHOP: Yes. And the other  
2 thing along those lines with the therapy  
3 machines is the requirement to issue a  
4 permit for medical therapy machines went  
5 into effect in something like 2000. We have  
6 not been able to implement the program  
7 because of lack of staff, time and so on.  
8 So that's what we're trying to fix.

9 DR. GOODEN: I think in our, just  
10 to give you some insights in this, the  
11 people that have radiation therapy are going  
12 to have other x-ray machines, also. And I  
13 think we've all felt like we were including  
14 those in our registration as radiation  
15 producing equipment.

16 MS. BISHOP: Well, you know, the  
17 diagnostic x-ray is regulated by the State  
18 Health Department.

19 DR. GOODEN: Yes.

20 MS. BISHOP: We regulate the  
21 therapy and --

22 DR. GOODEN: Right, okay.

23 MS. BISHOP: -- so --

24 DR. GOODEN: Okay. So even  
25 though we have probably been thinking that

1 we were doing it, including them in the  
2 number --

3 MS. BISHOP: -- right.

4 DR. GOODEN: including them in  
5 the number of x-ray machines. So there's a  
6 fee, a registration fee up until maximum  
7 number of x-ray machines. Well, almost  
8 everyone who has radiation therapy is going  
9 to exceed that maximum number. But I -- but  
10 it certainly is two different departments,  
11 so.

12 MS. BISHOP: Yes, and we've had a  
13 registration for radiation therapy machines  
14 for a long time, but it was just a, you  
15 know, just tell us you have it and give us  
16 your initial survey.

17 DR. GOODEN: Well, I'm wondering  
18 if we -- if the industries complied with  
19 that very well.

20 MS. BISHOP: I have no idea,  
21 since we're not out really inspecting on a  
22 regular basis.

23 DR. GOODEN: Do you have any  
24 knowledge of what St. Francis has?

25 MS. BISHOP: I think you do. I

1 think you have a registration.

2 DR. GOODEN: I can't remember  
3 specifically sending in two registrations,  
4 but we may very well have.

5 MS. BISHOP: Well, you may -- it  
6 may not have been updated or something. And  
7 that's the thing we need to be -- since  
8 almost all cancer therapy is now being done  
9 by linear accelerator rather than tele --

10 MR. BRODERICK: There are no  
11 active cobalt in the state anymore.

12 MS. BISHOP: Right. And there is  
13 a requirement to report misadministrations  
14 and, you know, we're not getting those  
15 reports, I know. There has got to be more  
16 than what we're getting. So I think it's  
17 just that the program isn't very well known  
18 to the medical physicists, the community and  
19 the physician community that's involved.

20 MR. BRODERICK: Which is an  
21 example of where we need to do the homework  
22 and that's part of the reason that you and I  
23 had a conversation --

24 DR. GOODEN: Right.

25 MR. BRODERICK: -- and I talked

1 to some other people, and we didn't do  
2 enough homework on this.

3 MS. JENNINGS: Dr. Gooden, I have  
4 a couple of questions for staff. When you  
5 have, like you have a company who has said  
6 that they have equipment inoperable and they  
7 don't pay a fee and then you find that they  
8 do, is there a penalty?

9 MS. BISHOP: What we've done in  
10 the past is just make them pay the back  
11 fees. We have not issued any fines.

12 MS. JENNINGS: Shouldn't we have  
13 some sort of penalty? I mean, if we're  
14 going to encourage registration and  
15 encourage honesty, you know, remember that  
16 regulation is just a way of getting people  
17 to behave the way they should behave. And  
18 people won't behave that way without the  
19 regulation. It just seems to me there's no  
20 -- why should they -- why should they  
21 register if all they're going to have to do  
22 is pay the back fee anyway, just wait until  
23 your caught.

24 MR. BRODERICK: We actually did  
25 have one case where there was radiography --

1 a company was doing radiography and had x-  
2 ray machines and they had been doing it for  
3 a number of years and where we did -- and we  
4 were convinced --

5 MS. BISHOP: Yes, they were  
6 fined.

7 MR. BRODERICK: -- they did know.

8 MS. BISHOP: But they didn't have  
9 a permit at all.

10 MR. BRODERICK: They didn't have  
11 a permit at all.

12 MS. JENNINGS: I'm just talking  
13 about somebody who just sits those over  
14 there and --

15 MR. BRODERICK: Who under  
16 reports.

17 MS. JENNINGS: -- like George  
18 said, cuts the cord and then they turn  
19 around after you walk out the door and use  
20 it and use it all year, two years.

21 MR. BRODERICK: The only case --

22 MS. JENNINGS: You know,  
23 shouldn't we be doing something? If we're  
24 going to have these regulations, we need  
25 some teeth in them.

1 MS. BISHOP: That's --

2 MR. BRODERICK: There's only one  
3 case that I know of, but Pam may know more,  
4 think of more, but I can only think of --  
5 there's one where we had one of the  
6 employees report, he had told us -- he  
7 wasn't tattling, he was making an off-hand  
8 comments and we didn't pursue it in that  
9 case.

10 MS. JENNINGS: If you're going to  
11 utilize a utilization log, now you've got  
12 something -- you're not going to have to  
13 depend on --

14 MR. BRODERICK: That's true.

15 MS. JENNINGS: -- and for every -  
16 - if you're saying you know of one case, I'm  
17 sure George knows of more than one case of  
18 people not --

19 MR. BRODERICK: Yes.

20 MS. BISHOP: Well, one thing I  
21 would like to point out, that we have --  
22 we're in the process still of developing a  
23 coherent enforcement program. I think we've  
24 made a whole lot of progress on it since we  
25 were just doing x-ray and Pam has been a big

1 help with that. And we're not levying many  
2 fines or penalties at this point, but we're  
3 working -- I mean we're not working toward  
4 that, but we're still really defining and --  
5 exactly -- now, see, now we might consider  
6 something more for that than what we did  
7 back -- that was a number of years ago,  
8 before we were an agreement state, I  
9 believe, that that happened.

10 MR. BRODERICK: The one that I  
11 was talking about? No, that was after we  
12 became an agreement state.

13 MS. BISHOP: That one -- and they  
14 did get penalized, a rather large penalty.

15 MR. BRODERICK: They had a  
16 substantial penalty.

17 MS. JENNINGS: One?

18 MR. BRODERICK: That I can think  
19 of, we charged penalties in two cases and  
20 one of them was very substantial, the other  
21 one was, I think, a couple of thousand  
22 dollars.

23 MS. JENNINGS: Two in upteen  
24 years.

25 MR. BRODERICK: Fairly small.

1                   MS. BISHOP:    Yes, and the other  
2 thing we're doing is we are proposing a late  
3 fee, which we have felt would be --

4                   MR. BRODERICK:    An incentive.

5                   MS. BISHOP:    -- an incentive for  
6 people to go ahead and pay their fees on  
7 time and keep up to date with them.

8                   MR. BRODERICK:    And that would  
9 penalize, in the case of people like that,  
10 and in most of the cases that we've  
11 uncovered this, I think is that people were  
12 -- did not know that there was a  
13 registration in the majority in a couple of  
14 them.    I have no doubt that there are some  
15 people that probably pull the wool over our  
16 eyes, but I think most of them were probably  
17 legitimate.    It may have been that they  
18 didn't do it, were diligent.    But in any  
19 case, the late fee will be a disincentive to  
20 that, because we will be able to charge  
21 that.

22                   MS. JENNINGS:    Okay.    My second  
23 question is about the exemptions.    If you're  
24 -- if you're having to inspect these places  
25 and audit these places, why should you give

1 them an exemption?

2 MS. BISHOP: Basically, we will  
3 do it very infrequently. I believe they're  
4 on a seven year schedule and there's not a  
5 whole lot to audit because they don't have a  
6 lot of requirements. So it's a very fast --

7 MS. JENNINGS: So you have no  
8 expenses?

9 MS. BISHOP: Well, yes, we've got  
10 the travel expenses but that, you know --

11 MR. BRODERICK: If we're only  
12 inspecting something every seven years,  
13 we're getting down to a fee that would be  
14 very small for those, to the point where  
15 it's just almost more trouble to collect it  
16 and do the administrative stuff, as opposed  
17 to the --

18 MS. BISHOP: See, the industrial  
19 radiography inspection, first of all, there  
20 are more requirements because of the nature  
21 of the equipment and the voltage they are  
22 operating at or the KV they are operating at  
23 and the fact that they are portable and so  
24 we figure these -- these -- these little  
25 sulphur analyzers, which that's mostly what

1 they are, they are 10 KV or less, even if  
2 they had the tube there, it probably  
3 wouldn't do a whole lot of damage and we  
4 might not even be able to detect it. We  
5 certainly can detect leakage. Yes.

6 MS. BARTON: I would like to move  
7 back to the fee and what George has talked  
8 about and I would like to get an opinion  
9 from Eric from American Airlines as to how  
10 he feels about the fee that we're going to  
11 set aside and not do anything about until  
12 next spring and the fee that George has  
13 proposed, how that would either effect you  
14 in a positive way or a negative way.

15 MR. BARTOLETTI: My name is Eric  
16 Bartoletti, I'm with American Airlines. I  
17 was kind of shocked to see a 100 percent  
18 increase. I mean, I expect to see certain  
19 increases from time to time, playing catch  
20 up all at once was a -- and it brought to my  
21 attention right now my position, we are  
22 trying to scrape and save every penny we  
23 can, so the last thing I want to do is go to  
24 my manager and say, by the way, we've got  
25 more costs. George Johnson, I'm surprised

1 he even decided to go with the \$725, to be  
2 honest with you.

3 MR. JOHNSON: I'm mellowing.

4 MR. BARTOLETTI: Yes, you must be  
5 mellowing. It's reasonable, it's still a  
6 high percentage as far as percentage of  
7 increase. I really, and I asked this  
8 question once before, would like to know  
9 what benefit the community, both business,  
10 personal and everything else is going to  
11 receive from the fees and what are we  
12 actually going to use this money to spend  
13 on? I hear certain costs, I think you want  
14 to collect a minimum cost of \$35 from one of  
15 these because it's not worth it. Where you  
16 draw the line as what's worth collecting?  
17 Personally, \$35 to me, I've got to save  
18 right now in my own budget, so it's -- there  
19 is no immaterial these days.

20 MR. BRODERICK: As far as the  
21 benefits, at least I believe and I think  
22 most people are fairly sympathetic to this  
23 viewpoint, everybody who has  
24 responsibilities that can effect other  
25 people, it's a benefit. They're more likely

1 to do their job if they have somebody  
2 watching them. I even feel that about us.  
3 We have oversight from the NRC. The NRC  
4 historically visits annually because they're  
5 trying -- visits our program annually to  
6 check us out and they do a very in-depth  
7 review. Basically, they go in and tear into  
8 everything, like, two to four years, but  
9 they are out on-site annually. They have a  
10 proposal in to reduce that too, I believe  
11 it's every three years. Basically, they  
12 come once in between the big inspection  
13 instead of every year. And I formally said,  
14 I would rather you come every year because  
15 we do a better job, you know, if we know  
16 somebody is going to be coming and, you  
17 know, asking us, well, what did you do and  
18 asking us to justify ourselves, we do a  
19 better job if we know the NRC comes every,  
20 you know, is going to come every year as  
21 opposed that it's going to be a couple of  
22 years from now. And I think that applies  
23 with -- and also we do a better job with the  
24 Council, like we didn't do our homework  
25 probably with some of the x-ray communities

1 here. And it was in the course of  
2 discussion with some Council Members and  
3 some industry people that we concluded that.  
4 You know, we were -- you guys held us  
5 accountable, you know, we're doing our job  
6 because you guys correctly called us, you  
7 know, we aren't doing it. And I think that  
8 applies to industry, too. You know, with  
9 industry if you have somebody who is going  
10 to, you know that DEQ without notice, you  
11 know, Shannon Tilly or Pam Bishop might come  
12 at your door and want to look at your  
13 records or look at your training program or  
14 observe your observations, I think you and  
15 your employees are more likely to observe  
16 the regulations and keep all your stuff up  
17 to date and do all the things that you're  
18 supposed to do. And hopefully our  
19 regulations are things that should be done.  
20 If they're -- you know, our regulations  
21 aren't perfect, it's not an exact science,  
22 but we try to make our regulations fit what  
23 should be sane operating things that balance  
24 economics and protecting the workers and the  
25 public. But -- so I think that your workers

1 benefit, you know, because they're the ones,  
2 particularly in the case of x-rays, the  
3 workers are the most likely to be  
4 overexposed, particularly like in American  
5 Airlines. Now, you do have some non-  
6 radiation workers that in theory could be  
7 overexposed, but it's not very likely. But  
8 your workers benefit, I think American  
9 Airlines benefits because it makes you a  
10 little bit less likely to have a liability  
11 or workers' comp, you know, it is definitely  
12 possible with industrial x-ray radiography  
13 to injure yourself. You know, Don Edwards,  
14 I don't know that you know him, but he was -  
15 - he used to be a member of this Council and  
16 he was very -- representing radiography and  
17 he had an x-ray burn on his hand, although  
18 it wasn't from radiography, I understand,  
19 but he was very vehement in saying x-ray  
20 radiography is not just no big deal, you can  
21 definitely injure people. So I think that  
22 your workers benefit, your company, I think,  
23 benefits some and the members of the public  
24 benefit some because it is possible for a  
25 member of the public. I admit it's not

1 likely, but it's possible.

2                   MR. BARTOLETTI:    What was the  
3 last recorded incident on an x-ray tube?

4                   MR. BRODERICK:    I'm sorry?

5                   MR. BARTOLETTI:    What was the  
6 last recorded incident?

7                   MR. BRODERICK:    That we had  
8 reported, it's probably -- I don't know the  
9 exact date, but has probably been a couple  
10 of years.   Pam, do you know?   There was one  
11 that was not at American Airlines but it  
12 involved a company that was doing aviation  
13 work and there was a fellow -- a non-  
14 radiation worker was asleep in one of the  
15 planes while they did some radiography work.

16                   MS. BISHOP:    I thought that was  
17 American Airlines.

18                   MR. BARTOLETTI:    Was that isotope  
19 or was that x-ray?

20                   MR. BRODERICK:    Pardon me?

21                   MS. BISHOP:    It was x -- it was  
22 x-ray.    It was x-ray.

23                   MR. BRODERICK:    Yes, that was x-  
24 ray.

25                   MS. BISHOP:    He didn't receive a

1 dose that lifted it to the point of an  
2 event, but --

3                   MR. BRODERICK: But we have a  
4 high degree of compliance. I would agree, I  
5 think a lot of that is because we're out  
6 there, you know, people know that we are out  
7 there. I would agree that we have a pretty  
8 good degree of compliance.

9                   MR.: (Inaudible). I have a  
10 couple of comments, just general for the DEQ  
11 staff. Does it seem that you're out doing  
12 an inspection for the x-ray equipment, you  
13 know, in looking at the fees and trying to  
14 justify the amounts that we're requesting,  
15 say if a company has three x-ray machines or  
16 15, does the typical inspection basically  
17 take about the same time that you are  
18 looking at dosimetry records or looking at  
19 utilization logs or looking at surveys that  
20 were done, so to my mind that type of  
21 inspection would be basically the same  
22 amount of time; is that not correct?

23                   MS. BISHOP: We don't know -- it  
24 can take a while to go through. And since  
25 we have a registration and one of the things

1 I hope our inspectors are doing is checking  
2 the registration against the equipment  
3 that's on hand. That's where the time  
4 difference comes in, when there's a lot of  
5 equipment or just a small amount.

6 MR: There on that same line, my  
7 thinking would be to alleviate some of Mr.  
8 Johnson's concerns about people going around  
9 snipping off power cords or how do you  
10 render equipment inoperable is to set just a  
11 flat fee for the registration for conducting  
12 the activity, such as you do in the  
13 materials area. You have a set fee to do a  
14 set service. There's no, well, I've got  
15 four sources or I have 200. If you have  
16 this type of equipment and you're doing this  
17 operation, there is one set fee and that way  
18 we do not have the issue as far as whether  
19 it's operable, inoperable, it comes then to  
20 a possession thing. You have a  
21 registration, you list your devices that you  
22 have on that registration, it doesn't matter  
23 how many you have, it's just that you list  
24 them. And the fee is then associated with  
25 the activity that's involved. To me, from

1 my point of view, that would be more -- it  
2 would be easier for the end user to adhere  
3 to and wouldn't have to worry about whether  
4 or not he's cut off the power cord to these  
5 equipment or not and if I'm doing x-ray  
6 radiography, I pay, say, \$500, that's my  
7 fee. I pay a \$500 fee if I do x-ray  
8 radiography, whether if I have one machine  
9 or 400. And the same for the others and I  
10 think that would be a little bit easier way  
11 for the licensees to manage and for the DEQ  
12 staff to manage that program.

13 MR. BRODERICK: It's funny,  
14 because we had almost passionate debate  
15 between Pam and myself over this exact  
16 issue. It ended up, basically Pam won in  
17 the proposal. I made many of the same  
18 arguments you did. Pam pointed out and it  
19 is a valid point of view, I think, well,  
20 then you're charging the big guy the same  
21 fee as the little guy and she felt it was  
22 more equitable to have it spread out. And I  
23 can see -- I don't think either case is  
24 invalid, but I'm very interested in input  
25 from the Council as a whole.

1                   MR:    The only -- the only other  
2 thing is also more materials section, there  
3 is a specific exemption for small entities,  
4 small licensees that give them a waiver to a  
5 lesser fee.

6                   MR. BRODERICK:   That's true,  
7 although frankly I'm not interested -- I'm  
8 not eager --

9                   MR:    That's another option.    I  
10 was just -- I would argue just the set fee  
11 for doing the service.

12                  MR. JOHNSON:    I'm going to have  
13 to agree with you on the set fee for  
14 industrial x-ray machines.    I totally 100  
15 percent agree.    It doesn't matter whether  
16 you have one or 25.    A set annual fee.

17                  MR. BRODERICK:   Pam pointed out  
18 and I don't know if you heard her, but she  
19 did point out, it does expand the amount of  
20 work our inspectors have to do, so our  
21 larger ones are drawing somewhat more  
22 resources.    I don't think it's necessarily  
23 like two machines is two times as much  
24 resources as one, but there is more.    So  
25 that would, you know (inaudible).

1                   MR:    That's why I was suggesting  
2 the higher fee, since it's \$500, then  
3 basically it's now up to your maximum cap  
4 whereas your new cap has been \$1,000 or  
5 whatever or George was suggesting \$725.    But  
6 basically set that fee at a level that would  
7 support the program maintenance and then,  
8 you know, be able to make it a little  
9 easier.

10                   MR. JOHNSON:    I'll give you a  
11 very good example, okay.    There's a new  
12 permittee, I guess you're a permittee, west  
13 of Tulsa that has one x-ray machine.    But  
14 that x-ray machine sets in a \$225,000  
15 computerized x-ray unit.    Only one machine,  
16 but what it sits in, the machine is probably  
17 \$27,500, but that unit that's doing that  
18 digital x-ray work is \$225,000.    So I  
19 totally agree with a set fee.

20                   MS. BARTON:    Okay.    I've got to  
21 go here.    Is the main motivation for us to  
22 even discussing this is because the NRC is  
23 going to come in and look at our records?  
24 No.    Is our main motivation because you need  
25 more money as a department in order to hire

1 people to do the inspections; is that true?

2 MS. BISHOP: Uh-huh.

3 MS. BARTON: Okay. All right.

4 So how many more people do you need? Do you  
5 need one more person?

6 MS. BISHOP: I think -- I mean,  
7 that's what this calculates out to about one  
8 FTE.

9 MS. BARTON: With the increase in  
10 the fees, is that correct? So if you do not  
11 get the increase in the fees, you do not get  
12 your person; is that correct?

13 MR. BRODERICK: Yes.

14 MS. BISHOP: Yes, I don't know if  
15 we'll get the person even if we get the  
16 increase in fees but, you know, that would  
17 be more -- but --

18 MS. JENNINGS: Even with a set  
19 rate at, say, \$500 for everybody?

20 MS. BISHOP: Well, see, we would  
21 have to calculate and see how it compares.

22 MS. BARTON: Well, the disturbing  
23 factor is here is that everybody is in a  
24 quandary. The DEQ is in a quandary because  
25 unfortunately they don't have the money to

1 perpetuate the inspections that they do do.  
2 We're in a bad economic situation for these  
3 gentlemen here, which is a crunch. So we've  
4 got to have some kind of meeting of the  
5 minds here where everybody can benefit, even  
6 though everybody is going to have to give  
7 something. Now, what is disturbing to me,  
8 which has always been an issue, is the fact  
9 that fees and fines run DEQ. And that is a  
10 poor way to run any corporation. And I know  
11 that it's pie in the sky thinking that  
12 somehow that we can have legislation that  
13 will, you know, be different. If you sit on  
14 the Solid Waste Council and listen to them  
15 whine because they pay the most, you know,  
16 they're running half of DEQ off of their  
17 fees, you know, permit and whatever. So I  
18 think that at this point we're not going to  
19 do anything today on this; is this correct?  
20 We're going to --

21 MR. BRODERICK: On the fee part.

22 MS. BARTON: -- on the fee part.

23 MR. BRODERICK: The Council  
24 could, of course, go ahead and vote it, but  
25 the staff recommends against that, I'll put

1 it that way. The staff recommends that you  
2 not, but you could. You are -- it's on the  
3 agenda and you can vote it in if you want  
4 to. I don't encourage you to do that.

5 MS. BARTON: Well, I think that  
6 we need to have some more meeting of the  
7 minds here. You know, there's too much --  
8 we're not in the middle here of our  
9 discussion where still each side is on the  
10 fence and, you know, it's obvious that, you  
11 know, that you have a problem and that they  
12 have a problem. Now, I don't think that  
13 their problem is going to get any better  
14 than yours is going to get in the next 24  
15 months, the way things are going. It will  
16 probably get worse, if anything. But you  
17 still have to have, you know, it's  
18 disturbing to me, even though you have an  
19 increase in the fee, that doesn't  
20 necessarily mean you're going to get the  
21 extra person. That's where I really have an  
22 issue here. So where is the money going to  
23 go? You know, I sound like I'm on their  
24 side, but I'm just trying to be logical here  
25 because I want to see you get the increase

1 so that you get the personnel.

2 MS. JENNINGS: So could you come  
3 back with some numbers, some numbers on --

4 MS. BISHOP: We'll run those.

5 MS. JENNINGS: -- if we had some  
6 kind of a set fee?

7 MS. BISHOP: See, I --

8 MS. JENNINGS: So that we can --

9 MS. BISHOP: -- what I can see is  
10 between the two fees we're talking about and  
11 what George is talking about, we're only  
12 talking about maybe a difference of \$100 a  
13 year. So we're pretty close.

14 MS. BARTON: You're pretty close  
15 there.

16 MS. BISHOP: And with the \$500,  
17 it's going to raise the little guys up to  
18 \$500 from \$100 or \$190. And of course, the  
19 major players aren't going to have an  
20 increase. So we can calculate it.

21 MS. BARTON: The little guys,  
22 that's really going to hurt them.

23 MR. JOHNSON: No.

24 MS. BARTON: No?

25 MR. JOHNSON: I totally disagree

1 with that.

2 MS. BARTON: Okay. Tell me.

3 MR. JOHNSON: Number one, there

4 are a large number, I'm going to say

5 somewhere between 10 and 15 aircraft --

6 (inaudible) what is it? Inspectors?

7 MR.: (Inaudible) inspectors.

8 MR. JOHNSON: Inspectors out

9 there that are working as consultants in the

10 State of Oklahoma, different airports around

11 on commercial aircraft where bulletins

12 require x-ray. I don't think one of these

13 is permitted. They every one have an x-ray

14 machine. I think a wingwalker.

15 MS. BISHOP: Yes, we have some of

16 them permitted.

17 MR. JOHNSON: You've got a few?

18 Okay. Well, there are 215 of them.

19 MS. BISHOP: Are there?

20 MR. JOHNSON: And they either do

21 -- they go to the (inaudible) to do the work

22 and most of them are not even permittees.

23 The other people that own one x-ray machine

24 is like this company that's got the one

25 \$27,000 x-ray machine and the \$225,000 unit

1 that it sits in. So it's not going --  
2 there's no such thing in this industry and  
3 NDT, the nondestructive testing, as the  
4 little guy. There are no little guys in the  
5 State of Oklahoma that own industrial x-ray  
6 machines. Nobody.

7 MS. BISHOP: That inspector isn't  
8 a little guy?

9 MR. JOHNSON: Who?

10 MS. BISHOP: The inspector you're  
11 talking about. By the way, can we get a  
12 list of these?

13 MR. JOHNSON: No, ma'am, I'm not  
14 in that business.

15 MS. BARTON: Well, then how do  
16 you have the information?

17 MR. JOHNSON: Because I know.

18 You can get a court order and I can give you  
19 the names, but that's the only way I'd do  
20 it. That's the whole problem, folks, with  
21 this entire industry. We only see the NRC  
22 or the state maybe once every two years.  
23 And anyone can gumdeck, this is a navy term,  
24 gumdeck records. Anybody can do that. Now,  
25 a few of them get caught at it on an annual

1 basis by the NRC, but nobody worries about  
2 the state or the NRC coming to see them  
3 except once a year, once every two years and  
4 if it's after 5:00 in the afternoon, you  
5 don't worry about them anyway because they  
6 don't work nights. Yeah, there's a lot of -  
7 - there is a lot of shenanigans pulled. All  
8 you have to do is go to the government page  
9 and look at the ones that the NRC catches.  
10 And that's about 18 to 20 a year nationwide  
11 in industrial radiography. It doesn't have  
12 to do with x-ray machines. The question was  
13 asked about what incident with x-ray  
14 machines. I have been trying to find this  
15 out with different agreements states now for  
16 over five years so I can use it in my  
17 training program, (inaudible) we don't know  
18 what you're talking about.

19 MR. BRODERICK: There was one out  
20 in California recently I know, and I bet you  
21 heard about it out in California at a  
22 federal facility.

23 MR. JOHNSON: But nowhere like it  
24 is with isotopes.

25 MS. BISHOP: No.

1                   MR. JOHNSON:    Isotope x-ray --  
2 isotope x-ray technicians that wants to use  
3 the isotopes for radiography receive an  
4 annual dose on an average -- my memory of  
5 average is about three REM annually.    The  
6 people that use x-ray machines, less than  
7 one REM annually and we've got x-ray  
8 machines up to 300 KV.    And we're using them  
9 in some of the most terrible industrial  
10 places that you can imagine, we try to do x-  
11 ray on railcars, stuff like that.    So the  
12 risk to me, as long as people are trained  
13 properly, the use of x-ray machine is much  
14 lower than it is in isotope, much, much  
15 lower.    But I don't think there's any so-  
16 called small, small groups, we're going to  
17 hurt these small guys when it comes, so,  
18 like I say, I totally agree with you.

19                   DR. GOODEN:    I don't want to cut  
20 discussion off here, but if there is any  
21 more important discussion, let's go forward  
22 with it, but let me put to the Council what  
23 I consider the three options that we have  
24 before us regarding this particular issue.  
25 We can vote up for the entire issue,

1 including Appendix A. We can vote up for  
2 the issue excluding Appendix A, leaving it  
3 like it is, or we could vote down on the  
4 issue and put it on the agenda for spring.  
5 So that's the three options that I see.  
6 I'll entertain the pleasure of the Council.

7 MS. JENNINGS: Would you ask the  
8 staff recommendation one more time?

9 DR. GOODEN: I think the staff  
10 recommendation is the middle one of those,  
11 vote up on the issue leaving Appendix A as  
12 it is.

13 MS. BARTON: Okay. I'll make a  
14 motion if nobody will move forward on this.  
15 I move that we go ahead and accept -- how  
16 can I say this. That we accept everything  
17 but the fee schedule that is on the Appendix  
18 A and take the staff recommendation to  
19 revisit this Appendix A fee schedule next  
20 spring.

21 MR. WOODS: Second.

22 DR. GOODEN: Does everyone  
23 understand what we're voting on? We're  
24 essentially voting up on the issue and  
25 leaving Appendix A in place as it presently

1 exists and we will revisit the Appendix A  
2 issue at our spring meeting. Roll call, Ms.  
3 Bruce, or is there discussion among the  
4 Council? Roll call, Ms. Bruce.  
5 MS. BRUCE: Mr. Woods.  
6 MR. WOODS: Yes.  
7 MS. BRUCE: Ms. Jennings.  
8 MS. JENNINGS: Yes.  
9 MS. BRUCE: Mr. Beuttel.  
10 MR. BEUTTEL: Yes.  
11 MS. BRUCE: Ms. Barton.  
12 MS. BARTON: Yes.  
13 MS. BRUCE: Dr. Gooden.  
14 DR. GOODEN: Am I needed for a  
15 quorum?  
16 MS. BRUCE: Yes, sir.  
17 DR. GOODEN: Yes.  
18 MS. BRUCE: Motion did pass.  
19 DR. GOODEN: Mr. Broderick.  
20 MR. BRODERICK: Okay. Moving on  
21 to the next --  
22 DR. GOODEN: Let's hold on one  
23 second.  
24 (Break)  
25 DR. GOODEN: Council meeting of a

1 different type. I'm on an advisory council  
2 for Lou Gehrig's disease, some research, a  
3 foundation that's -- that's doing research  
4 or providing money to do research in Lou  
5 Gehrig's disease. So I'm going to have to  
6 excuse myself about noon. I've visited with  
7 Mr. Woods and he will take over at that  
8 point if we can't get finished. But let's  
9 go forward and see how far we get.

10 MR. BRODERICK: I would request  
11 we try to finish by then, because we need  
12 your vote, frankly, for a quorum.

13 (Talking over each other)

14 MR. BRODERICK: Subchapter -- the  
15 next rulemaking is Item 6C, that has several  
16 items in Subchapter 7. That does several  
17 things. One, it corrects a reference to  
18 some other DEQ rules, the rules that  
19 describe our permitting process. An example  
20 of that is in 7-2, where there's a reference  
21 to 252:2, is struck out. And 252:4 is  
22 substituted. That's -- I would call it  
23 nonsubstantive. It corrects -- points to  
24 the correct current rules. It also --  
25 probably the most important thing it does is

1 in 7-3, it adds late fees, which will be an  
2 incentive, Karen, for people to pay their  
3 fees on time. The way that that is written  
4 is mostly prescribed by statute. I would  
5 ask you not to -- not to fiddle with the  
6 numbers and stuff there, because it's pretty  
7 much prescribed by statute how we do that.

8           The last thing that it does, it  
9 changes -- we changed our radioactive  
10 materials program from calling it the  
11 agreement state program to the radioactive  
12 materials program when we added radium and  
13 accelerator produced materials to it last  
14 year. And this updates some references to  
15 that. The last thing it does, it -- this is  
16 in effect -- it's been in effect anyway but  
17 it makes it formal, but 7-3(D)(2) basically  
18 for a major amendment for defining a major  
19 amendment, it add -- it adds one item to  
20 there, add one or more sources of radiation  
21 for therapeutic use. That's been the  
22 default, with the way things have been done,  
23 anyway. It makes it official. That's  
24 basically what 7 does.

25           In 10-101, that changes the fee

1 schedules. It basically omits the reference  
2 to annual fees and license fees that's  
3 there.

4 MS. JENNINGS: What page is that  
5 on?

6 MR. BRODERICK: Well, it's a new  
7 -- it's after Subchapter 7. That has eight  
8 pages. The next page in my handout is  
9 Subchapter 10.

10 MS. JENNINGS: Okay.

11 MR. BRODERICK: It says  
12 Subchapter 10, radioactive materials at the  
13 top. 10-110, I spoke to you at the last  
14 meeting about. It clarifies that basically  
15 for, like, inspections of decommissioning  
16 sites that we would charge an hourly fee.  
17 Now, this is for very large decommissioning  
18 sites. This is not just shutting down a  
19 nuclear medicine lab or something like that.  
20 This is basically for places where there's a  
21 mess has been left in the ground.

22 MS. BARTON: An example would be?

23 MR. BRODERICK: If we regulated  
24 Sequoyah Fuels, we do not, but if we  
25 regulated them, that would be an example of

1 that. There are a couple of places in the  
2 state where there is some much smaller  
3 clean-ups going on that we regulate that  
4 this would apply to.

5 MS. BARTON: I was going to ask  
6 you a question about that anyway, because it  
7 really didn't distinguish between medical or  
8 a little mess as to a large facility. And I  
9 just thought maybe that ought to be  
10 clarified a little. I don't know how you  
11 would do that.

12 MR. BRODERICK: I don't know.

13 MS. BARTON: Does it cover all of  
14 it, your hourly fee would be the same for a  
15 little area in some storage?

16 MR. BRODERICK: We would have  
17 more hours for a little area, for a small  
18 area. The main place that we envision this  
19 applying, and there are two facilities in  
20 the state which basically disposed of  
21 radioactive materials under an old program  
22 in the 1960's and '70s that was legal at  
23 that time. The NRC is requiring people who  
24 did that to go back and determine if that  
25 was adequate or not. And there are two

1 places.

2 MS. BARTON: The clean-up, you  
3 mean?

4 MR. BRODERICK: Whether what was  
5 done in 1960's and '70s, but it was legal at  
6 the time --

7 MS. BARTON: That's -- yes, I get  
8 it.

9 MR. BRODERICK: -- and that's  
10 what this is really intended to refer to.

11 MS. BARTON: So is that enough  
12 money?

13 MR. BRODERICK: Yes. In 10-118,  
14 we basically have -- we've -- there's a typo  
15 there. We had an extra word category, which  
16 we've omitted. And I believe that's all.  
17 Yes, it is. That's all of the items in this  
18 proposal.

19 DR. GOODEN: Thank you, Mike.  
20 I'll entertain discussion, if there is any.

21 MS. BARTON: I have some.

22 DR. GOODEN: Okay. Nadine.

23 MS. BARTON: Let's see, I had a  
24 little -- on page two of that one that we're  
25 discussing about the fees.

1 MR. BRODERICK: The late fees?

2 MS. BARTON: OAC 410-7, radiation  
3 management authorizations, procedures and  
4 requirement, Part 1, general provisions.  
5 And on 10-110, it does say fees for  
6 decommissioning, decontamination,  
7 reclamation or site restoration activities.  
8 And that's where I thought that maybe we  
9 should have something that is more decisive  
10 in the definition to include all sites,  
11 whether for medical use or for past burial  
12 of radioactive material.

13 MR. BRODERICK: I believe that we  
14 took this language -- and Pam Dizikes, help  
15 me out here. Didn't we take this from the  
16 way the NRC phrases the same fee?

17 MS. DIZIKES: Yes, it is. I  
18 think the way it has been interpreted all  
19 along is that it extends to any site that is  
20 under --

21 MS. BARTON: Not.

22 MS. DIZIKES: -- that is under  
23 the --

24 MS. BARTON: Not.

25 MS. DIZIKES: -- requirements of

1 Subchapter 10.

2 MS. BARTON: Yes, but it is not  
3 under the jurisdiction of the NRC; is that  
4 correct?

5 MS. DIZIKES: That's correct.

6 MR. BRODERICK: If the NRC had  
7 jurisdiction, we wouldn't charge this.

8 MS. BARTON: But they have an  
9 oversight, but the NRC does have an  
10 oversight as to your participation in a non-  
11 NRC regulatory decommissioning situation.

12 MS. DIZIKES: In fact -- in fact,  
13 the agency does have an advisory role in  
14 almost all of those sites. But if --

15 MS. BARTON: Is that within this?

16 MS. DIZIKES: -- no, it is not.

17 It is not --

18 MR. BRODERICK: It does not  
19 affect Sequoyah Fuels or Kerr McGee or  
20 Kaiser or any of those facilities in any way  
21 whatsoever.

22 MS. DIZIKES: What it means is,  
23 if there is going to be an opportunity for  
24 us to be reimbursed, it would probably have  
25 to be in the form of an agreement that will

1 be negotiated with the party.

2 MS. BARTON: Even from 1962 and  
3 they're gone?

4 MS. DIZIKES: What I'm saying is,  
5 we need a specific authorization in order to  
6 be charging fees, so it would either have to  
7 be a statutory authorization or it would  
8 have to be a negotiated one.

9 MS. BARTON: Is that statutory  
10 authorization not included in the language  
11 of this particular section?

12 MS. DIZIKES: Well, this  
13 particular section is within Subchapter 10.  
14 And Subchapter 10 involves the specific  
15 areas of jurisdiction which are the NRC  
16 programs and now in this last year we've  
17 expanded it to include the accelerator  
18 produced material programs. But any other  
19 programs that do not fall within this  
20 (inaudible), this could not -- this would  
21 not be a source for us to be able to turn to  
22 to get funding.

23 MS. BARTON: This is not good.

24 MS. DIZIKES: I appreciate your  
25 concern.

1 MS. BARTON: Well, I am because,  
2 you know, my background realizes the immense  
3 amount of funds that it takes and with  
4 somebody who has declared bankruptcy and who  
5 has disappeared, then who gets stuck with  
6 the fees. You and me, right?

7 MS. DIZIKES: Right. And I will  
8 take this time at least to mention that we  
9 have discussed the possibility of seeking  
10 legislation to expand the funding sources  
11 for our clean-up activities. And it would  
12 not be just for radiation sites, but within  
13 the --

14 MS. BARTON: All hazardous?

15 MS. DIZIKES: -- within the land  
16 protection group, yes.

17 MS. BARTON: Well, there's no use  
18 to go over this horse again because  
19 obviously it takes more than us here today  
20 to expand the money that we need --

21 MS. DIZIKES: Right.

22 MS. BARTON: -- for those that  
23 have gone to South America.

24 MS. DIZIKES: And this will not -  
25 - this will not be on the table during this

1 legislative session, but next year when we  
2 go for that legislative session, we will be  
3 sure to let you know because we really will  
4 appreciate support for gaining that kind of  
5 reimbursement.

6 DR. GOODEN: If there is no  
7 additional discussion, I will entertain the  
8 pleasure of the Council.

9 MR. WOODS: I make a motion to  
10 approve the changes as submitted by the  
11 staff, OAC 252:410, Subchapter 7 and OAC  
12 252:410, Subchapter 10.

13 MS. JENNINGS: Second.

14 DR. GOODEN: We've got a motion  
15 and a second. Any further discussion? Ms.  
16 Bruce, would you take the roll, please.

17 MS. BRUCE: Mr. Woods.

18 MR. WOODS: Yes.

19 MS. BRUCE: Ms. Jennings.

20 MS. JENNINGS: Yes.

21 MS. BRUCE: Mr. Beuttel.

22 MR. BEUTTEL: Yes.

23 MS. BRUCE: Ms. Barton.

24 MS. BARTON: Yes.

25 MS. BRUCE: Dr. Gooden.

1 DR. GOODEN: Yes.

2 MS. BRUCE: Motion passed.

3 DR. GOODEN: Mr. Broderick, next  
4 item.

5 MR. BRODERICK: The next item is  
6 6D, fees for small entities. I have spoken  
7 to you about this twice. Basically, when  
8 this affects people who are applying for a  
9 new license, it does not affect people who  
10 already hold a license. But for people who  
11 have a new license, there's kind of a quirk  
12 in the small entity fee rule that Steve  
13 mentioned earlier. If you're establishing a  
14 new company or a new business, even though  
15 it may be a very large and well funded  
16 business, you have no income. And under the  
17 way a small entity is defined in our rules,  
18 which is taken from the NRC rules, if you  
19 have no income, you're a mom and pop small  
20 entity. We have had a couple of cases  
21 where, like, in one case, a hospital, a very  
22 large multi-million dollar hospital with a  
23 very extensive radioactive materials program  
24 and a very thick application, but it was a  
25 new hospital. And so they paid, I believe

1 it was \$250 to have their application  
2 processed, which I don't think is right.  
3 The other thing that has happened is because  
4 this fee is so small, we have had some  
5 entrepreneurs trying to set up programs and  
6 they often have very vague -- I would like  
7 to go into this business. And we're in  
8 favor of people, entrepreneurs, but that  
9 ends up usually with a lot of changes. In  
10 one case we went ahead and issued somebody a  
11 license when he finally got funding and so  
12 forth, but it ended up that when we went to  
13 the location that was on his license, they  
14 didn't -- they literally didn't know who he  
15 was. He had talked to a -- it was a  
16 physician that he had said he was going to  
17 get involved with, but his funding had  
18 changed and so forth and he had had like two  
19 intermediate steps and we require a lot of  
20 work to track down, basically, to follow all  
21 the footsteps. But the \$250 fee makes this  
22 attractive and these things often involve a  
23 lot of work with us, with untangling the  
24 details, because they're often changing  
25 their funding. And even if they're keeping

1 up with their license, which they don't  
2 always do, they're submitting an amendment  
3 to their renewal every couple of -- very  
4 frequently as their funding and so forth  
5 changes. But having them pay the full fee  
6 instead of \$250 would at least make them pay  
7 a fairer proportion of their costs. We  
8 process about a dozen new licenses a year,  
9 not all of these by any means are small  
10 entities. You know, some of them -- so it  
11 affects a very small number. But it's just  
12 something I feel is, maybe outrageous is too  
13 strong, but I don't think it's fair. I  
14 think that the people should bear -- pay  
15 their share of their legitimate costs and so  
16 basically this would make new applications  
17 pay the full fee, pay full annual fee for  
18 that first year. And then if they were a  
19 small entity, in succeeding years they would  
20 pay the small entity fee. It would not have  
21 any effect on any existing license. That's  
22 -- basically that's our presentation.

23 MS. BARTON: I have one question.  
24 And on this number four, small government --  
25 governmental jurisdiction includes

1 publicly-supported educational  
2 institutions. Government and city township,  
3 all that, school districts, yeah, okay.

4 What about Indian tribes?

5 MR. BRODERICK: I am going to  
6 defer to our attorney about Indian tribes.  
7 There is at least one Indian tribe that does  
8 have a license with us.

9 MS. BARTON: Should they be  
10 included in this or does their sovereignty  
11 protect them from this?

12 MS. DIZIKES: Yes.

13 MS. BARTON: Even if they are  
14 approved by EPA for handling their own  
15 environmental projects and programs.

16 MS. DIZIKES: Well, and again,  
17 these are NRC programs, not EPA programs.

18 MS. BARTON: Okay.

19 MS. DIZIKES: But the situation  
20 is similar that the sovereignty of Indian  
21 nations is recognized but just because there  
22 is work being done at a reservation doesn't  
23 mean that we will immediately drop our  
24 oversight, because we don't want to have any  
25 lapse in oversight within the state. So

1 there are occasions where we will be  
2 exercising oversight at -- within an indian  
3 nation and if NRC were to step in in lieu of  
4 us, but I'm sure at that point we would have  
5 a different decision. But we have  
6 traditionally taken the position that -- not  
7 to have regulatory gaps. But we do not have  
8 a specific jurisdiction over work that is  
9 within tribal boundaries.

10 MS. BARTON: Okay. I just want  
11 to clarify my position on that statement was  
12 that since I do represent the public's  
13 interest in this, this was purely from the  
14 standpoint of a health related question so  
15 that the general public within the tribal  
16 community is not duly exposed to any kind of  
17 negative output of radioactive material that  
18 the tribe may be involved with. That  
19 sounded pretty good.

20 MS. BISHOP: I think someone was  
21 going to speak.

22 DR. GOODEN: I'm sorry. Did I  
23 miss it? I'm so sorry.

24 MR. GARRISON: Did you mean  
25 discussion from us?

1 DR. GOODEN: Absolutely,  
2 absolutely.

3 MR. GARRISON: Well, I may be  
4 that one Indian -- or part of that one  
5 Indian tribe that registers, since I did  
6 register, not recently. I work for Muskogee  
7 Creek Nation, which our offices are in  
8 Okmulgee. I got a letter yesterday at 5:00  
9 talking about this meeting with my name and  
10 addressed to me, so I'm here.

11 DR. GOODEN: Good.

12 MR. GARRISON: I talked to my  
13 boss this morning, Mr. Glen Moore, who is  
14 our environmental administrator and he said,  
15 yeah, we need to attend that meeting. Now,  
16 I couldn't hear the conversation and your  
17 reply, but that's -- maybe I don't need to.  
18 We have one x-ray fluorescence instrument  
19 that has a source that's sourced with Cd109  
20 and the maximum when it was brand new was 40  
21 MCI, it is now down to 4. We can continue  
22 to use it, I understand, but it gets a  
23 little slower all the time, that's what  
24 happens. But it still does an excellent  
25 job. So because of that little whatever it

1 is, I think it's contained in metal, it's  
2 inside of this device and it's totally  
3 shielded except when the shutter is open.  
4 We have had a lot of training, I've had a  
5 lot of -- I've been to outstanding member  
6 presentations in Las Vegas twice already and  
7 we covered some of the same information and  
8 also some new stuff. They're the ones that  
9 told me I should register or let you all  
10 know, the DEQ of Oklahoma, let you all know  
11 that we have possession of this device.  
12 We've had it about three years, maybe four  
13 and so I had the form here. Let me get it.  
14 Okay. That was October the 29th is when we  
15 got this thing processed. When I first  
16 contacted the DEQ, I pulled up on their  
17 website the wrong form. It told me I ought  
18 to send it in, so they promptly told me I  
19 owed them \$500. So I told someone that  
20 we're not paying no \$500 or any other fee.  
21 We went back and forth with this for a while  
22 until I finally called the manufacturer,  
23 Niton Corporation and Mr. Jim Blute, who is  
24 their RSO, gave me some help and talked  
25 directly to the DEQ on this. And so he came

1 back to me and said, there is a form on the  
2 internet that you can use and he told me how  
3 to -- well, I knew how to get to it, but he  
4 told me which one it was. So that's this  
5 one I have here. It doesn't say anywhere on  
6 it what the number on the form is and it  
7 doesn't say no fee. However, the lady that  
8 I talked to, her name was mentioned once but  
9 I don't --

10 MR. BRODERICK: It was Shannon  
11 Tilly, she is a new employee that you were  
12 speaking to.

13 MR. GARRISON: She told me that I  
14 should fill this out and circle a,  
15 accelerator produced, and whether this is  
16 actually a license or not to possess or  
17 whether it's just an application, I have no  
18 idea. But I am understanding now that we  
19 don't owe any fee on this. Maybe you all  
20 can explain to more about that.

21 DR. GOODEN: Go ahead.

22 MR. GARRISON: Thank you.

23 DR. GOODEN: Okay. Thank you,  
24 sir. And we are going to talk a little bit  
25 more about that particular type of issue

1 here in a moment.

2 MR. GARRISON: Yeah, I saw that on

3 --

4 DR. GOODEN: But at the end of

5 the meeting, if you're not fully satisfied,

6 this section of the table here is the ones

7 you want to address. Don't let them get

8 away without visiting. Okay. I'll

9 entertain thoughts regarding --

10 MR. WOODS: I'll make a motion to

11 approve OAC 252:410-10-111, the changes

12 submitted by staff to Subchapter 10.

13 MS. BARTON: I second the motion.

14 DR. GOODEN: If there is no

15 further discussion, Ms. Bruce, would you --

16 MR. JOHNSON: One question.

17 DR. GOODEN: -- yes, sir.

18 MR. JOHNSON: This will not do

19 away with the annual small entity fees, will

20 it?

21 DR. GOODEN: No.

22 MR. JOHNSON: Only original

23 license fees.

24 DR. GOODEN: That's correct.

25 MR. JOHNSON: We're doing away

1 with the small entity status for small  
2 original license fees.

3 DR. GOODEN: That's correct.

4 MR. JOHNSON: Thank you.

5 DR. GOODEN: Any other

6 discussion? Ms. Bruce.

7 MS. BRUCE: Mr. Woods.

8 MR. WOODS: Yes.

9 MS. BRUCE: Ms. Jennings.

10 MS. JENNINGS: Yes.

11 MS. BRUCE: Mr. Beuttel.

12 MR. BEUTTEL: Yes.

13 MS. BRUCE: Ms. Barton.

14 MS. BARTON: Yes.

15 MS. BRUCE: Dr. Gooden.

16 DR. GOODEN: Yes.

17 MS. BRUCE: Motion passed.

18 DR. GOODEN: Mr. Broderick.

19 MR. MCHARD: Mr. Chairman, if I

20 may before we begin Subchapter 19

21 discussion.

22 DR. GOODEN: Okay.

23 MR. MCHARD: I would like to

24 introduce -- I hope I have the name right.

25 Is it Mark Leonard?

1 MR. LONGBERRY: Mark Longberry.

2 MR. MCHARD: I'm sorry. I can't  
3 read your handwriting. He's with Grand  
4 Gateway EDA and he does want to make  
5 comments on Subchapter 19.

6 DR. GOODEN: Okay. Mr.  
7 Broderick, will you lead us in discussion  
8 regarding 19.

9 MR. BRODERICK: Subchapter 19 is  
10 our final rulemaking here, so hopefully we  
11 can wrap this up and can move forward with  
12 this. We have discussed this a number of  
13 times. The Council passed this last year,  
14 actually -- yeah, last year. Now, we had  
15 sent notice to some of the people who owned  
16 -- the people who had owned these things who  
17 had filled out the form that the gentleman  
18 was talking about, the ones that we knew  
19 about. But they found out that they did not  
20 know of the rulemaking and they asked us,  
21 after you passed it but before it went to  
22 the Board, to hold off and give them a  
23 chance to comment. We agreed to do that,  
24 because we do, I believe, bend over  
25 backwards to try to be fair to people and

1 give people a chance to comment and not put  
2 anything over on you. We're very serious  
3 about it. So we asked the Board to not pass  
4 it and the Board didn't pass it last year.

5           Anyway, since that time we've had  
6 some meetings. We had one meeting where Dr.  
7 Gooden was there, George MacDurmon was there  
8 and Nadine was there and several of the  
9 affected fee people from the XRF or lead-  
10 based paint industry were there. And there  
11 was considerable discussion of that, there.  
12 We had this on the agenda for the last  
13 meeting last summer and again we sent out  
14 notice and there weren't any people from the  
15 XRF community here at that meeting. I'm  
16 glad there are some here today, I appreciate  
17 that.

18           Basically, this rule -- this rule  
19 does several things. We've had this in  
20 effect for one category of XRF, the ones  
21 that aren't under NRC jurisdiction. We've  
22 had it in effect since 1996 or something  
23 like that, since the mid-1990's, it was  
24 passed by the Council and has been in effect  
25 for a number of years. At that time, we

1 didn't have a -- we were not an agreement  
2 state, so we didn't have jurisdiction, so it  
3 excluded ones that were under NRC  
4 jurisdiction. But at that time, the  
5 majority of the market for these instruments  
6 -- and I'll talk a little bit about them,  
7 and what they're used for in a moment -- was  
8 dominated by non-NRC radioactive materials.  
9 Since that time, there -- the technology  
10 changed and the ones regulated by NRC now  
11 pretty much dominate the market. But as a  
12 result, we have about three machines in the  
13 state, I believe it's three, that are not  
14 NRC and pay a -- it was a \$500 fee and were  
15 under this rule. And then we have a whole  
16 broad category that are under NRC  
17 jurisdiction that have what's called a  
18 general license and are not under this rule,  
19 not under any regulation. We felt when this  
20 rule was passed and we still stick with  
21 that, these instruments are different in  
22 many ways than most radioactive -- most  
23 radioactive materials, as far as how they're  
24 used. They're used for lead-based paint  
25 detection. Most of the people who use them

1 are not either technical people nor highly  
2 trained people, as far as radiation. Some  
3 have construction backgrounds, some are just  
4 individual entrepreneurs. We had a fellow I  
5 spent considerable time educating on it, who  
6 I don't think he followed through, but he  
7 was retired from being a mail carrier for  
8 the post office and wanted to get one of  
9 these and go into the business of doing  
10 lead-based paint detection. But they are  
11 taken into people's homes, which we think is  
12 an important distinction by these people,  
13 and they emit a fair amount of radiation  
14 when they are in use. We have measured on  
15 the other side of a wall, these are  
16 basically taken up to a wall and placed up  
17 against a wall to measure the presence or  
18 absence of lead-based paint. And with one  
19 of these, the manufacturer brought one out  
20 for us to look at and we tested it and it  
21 was -- I believe it was about four millirems  
22 an hour on the other side of the wall,  
23 fairly substantial. And the rule for --  
24 you're not supposed to allow the general  
25 public into an area with more than two

1 millirems an hour.

2           Also, since they are sent out into  
3 homes with an individual, there is a fairly  
4 high potential for these to be lost. They  
5 are stolen. They do have some good points  
6 from a radiation safety perspective. The  
7 designs are pretty good now, as far as  
8 safety features and the isotope -- the  
9 radioactive material in them is not terribly  
10 long-lived. You may be able to help me but  
11 --

12           MR. GARRISON: (Inaudible) it's  
13 600 and some days.

14           MR. BRODERICK: It's about a two-  
15 year half life roughly or a little less than  
16 two-year half life.

17           MR. GARRISON: 15 months.

18           MR. BRODERICK: 15 month half  
19 life, okay. Anyway, we felt -- we didn't  
20 feel it was fair to have three under one  
21 rule and a bunch, effectively, under no  
22 oversight. The industry felt that the fee  
23 we had been charging, \$550, was too high.  
24 To make a long story short, we have changed  
25 the rule. We are recommending that the fee

1 be set at \$330 instead of \$550. There are  
2 some other -- there are some other things.  
3 We've defined really what an instructor is,  
4 in there. The manufacturer is not aware of  
5 making instructions -- with instructions  
6 that meets this qualification for free. So  
7 I don't think that's a real -- that's an  
8 issue. That's not going to create a  
9 hardship for anybody.

10 MR. GARRISON: That's just the  
11 beginning of the instruction. You take a  
12 lot more than that.

13 MR. BRODERICK: Pardon me.

14 MR. GARRISON: In order to pass  
15 DEQ certain -- am I supposed to talk now?

16 MR. MCHARD: Mr. Garrison, if  
17 you're going to speak, could you stand up  
18 and get closer to our transcriptionist,  
19 please?

20 DR. GOODEN: Let's do this.  
21 Let's let Mike finish and then we'll  
22 entertain discussion.

23 MR. BRODERICK: Anyway, it  
24 defines the qualified instructor. We also,  
25 similar to what we have with x-rays, we said

1 the permit term, we made it instead of one  
2 year, a 10 year. There is one other change.  
3 And Pam Bishop, please help me out. There's  
4 something else we changed in here that I've  
5 overlooked, I think. We require, I believe,  
6 that the owner mark the instrument. I  
7 believe that's in here some place, isn't it?

8 MS. BISHOP: It is.

9 MR. BRODERICK: We basically  
10 require that the owner put their name and  
11 address and contact information on the case  
12 for the instrument. So anyway, that's what  
13 the staff recommends we have made. I think  
14 we have gone above and beyond in trying to  
15 work with the industry involved. We've, you  
16 know, delayed this a year and we've met with  
17 them. We invited them to last summer's  
18 meeting. I think we've gone above and  
19 beyond and this is what the Council or,  
20 pardon me, what the staff recommends that  
21 the Council adopt.

22 DR. GOODEN: Discussion?

23 MR. JOHNSON: Mike, does this  
24 have anything to do with the fees for the x-  
25 ray fluorescence systems that have -- use

1 cobalt 57 or americium 241?

2 MR. BRODERICK: Okay. It would  
3 regulate any x-ray fluorescence unit that is  
4 used for a lead based paint detection.

5 MR. JOHNSON: Strictly for lead-  
6 based paint?

7 MR. BRODERICK: Yes, it's even in  
8 the title, x-ray fluorescence instruments  
9 used for lead-based paint detection. It's  
10 not used for alloy analyzers or for the ones  
11 that are taken out like to superfund sites.

12 MR. JOHNSON: However, I was -- I  
13 was notified by the state of Kansas this  
14 week that beginning January the 1st that the  
15 NRC is requiring them to register, to begin  
16 registering all generally licensed devices  
17 regardless of whether it is reactor produced  
18 materials or accelerator produced materials.  
19 Have you seen this?

20 MR. BRODERICK: Now, as I  
21 understand it, there is a rule the NRC  
22 promulgated a couple of years ago that  
23 listed several isotopes and it passed the  
24 Council a couple of years ago, it listed  
25 americium as one of them.

1                   MR. JOHNSON: I know what you're  
2 talking about. This is a very recent thing  
3 that came down both from NRC and Homeland  
4 Security.

5                   MR. BRODERICK: I don't know of  
6 that and I respect the Kansas program and so  
7 forth, but I would be surprised if that was  
8 true because the NRC doesn't have  
9 jurisdiction over accelerator produced.

10                  MR. JOHNSON: Well, that's what  
11 Kansas is saying any way because they're  
12 putting a fee on registration of all x-ray  
13 fluorescence units.

14                  MR. BRODERICK: Okay. There is  
15 an important issue on that which I need to  
16 actually, in this and I almost omitted.  
17 It s very important, actually. It's covered  
18 in your written stuff.

19                  Basically, there is a squabble, to be  
20 blunt, going on in the states and the NRC  
21 right now. The NRC has taken -- they have  
22 what's called compatibility requirements.  
23 They have what's called compatibility  
24 requirements with different regulations that  
25 they have, that indicate how much a state

1 can vary from a regulation.

2           In Oklahoma, we've adopted theirs by  
3 reference, because that's what the  
4 Environmental Quality Board and the  
5 Legislature is most comfortable. So we have  
6 generally adopted theirs by reference. But  
7 we do, in theory, have the ability to vary.  
8 They have been extending that requirement --  
9 they've basically been tightening up their  
10 compatibility requirements. Normally,  
11 they're supposed to require a very close  
12 compatibility only in things that would  
13 really have serious interstate implications  
14 or things that have an important health and  
15 safety implication. So, like, Oklahoma, we  
16 are not allowed -- we might decide that it's  
17 okay to have radiation workers exposed to  
18 six REMs. We can't do that, a year. It's  
19 five and that's what they feel is safe.  
20 Similarly, we can't do things that would  
21 make it difficult for people to go from  
22 state to state. We couldn't decide that we  
23 wanted to change the definition of a  
24 (inaudible) for instance, because that would  
25 cause enormous confusion. The NRC has been

1 required -- has given a fair amount of  
2 laxitude, otherwise to things that don't  
3 have those kind of (inaudible).

4           But lately they have been tightening  
5 up on regulations and requiring very close  
6 compliance with their regs, even on things  
7 that don't have safety or interstate  
8 implications. And one of those has come out  
9 recently. On this generally licensed  
10 devices, they have -- the NRC has taken the  
11 position that states must charge the same  
12 fees that NRC charges for generally licensed  
13 devices that are under NRC jurisdiction, but  
14 they cannot charge more or less. The states  
15 are of the opinion that it doesn't have a  
16 substantial interstate implication. It has  
17 no health and safety implications at all and  
18 we think the NRC is wrong. We're in the  
19 process of challenging -- we're going  
20 through the process to legally challenge the  
21 NRC on this particularly. This is important  
22 to us.

23           But anyway, this would impose a fee  
24 on generally licensed devices under NRC  
25 jurisdiction, you know, which the NRC argues

1 that we can't do. We are asking you to go  
2 ahead and support us in this. Basically,  
3 the states are challenging this and we think  
4 this is important in making sure, basically  
5 indicating to the NRC that we're sticking by  
6 our guns and that we want to move ahead with  
7 this.

8 MS. BARTON: Gee, are we going to  
9 be a rebel in this?

10 MR. BRODERICK: Yes, basically,  
11 we are. Hopefully, a rebel with a cause,  
12 but anyway --

13 MR. JOHNSON: Mike, legally could  
14 you charge a registration fee, not a use fee  
15 but a registration fee?

16 MR. BRODERICK: As I understand  
17 it, for things that the NRC regulates,  
18 basically they say you can't charge a fee  
19 for generally licensed devices, other than  
20 the ones that they charge.

21 MR. JOHNSON: I'm glad about  
22 that.

23 MR. BRODERICK: So --

24 MR. JOHNSON: Very good.

25 MR. BRODERICK: -- anyway, we as

1 states feel like -- in some cases, some  
2 states have wanted to keep closer track of  
3 certain categories of generally licensed  
4 devices and this was an example of that.  
5 And we think that prerogative -- we disagree  
6 with you, George. We think that prerogative  
7 is an important one. And also, we want to  
8 discourage NRC from doing this in other  
9 things. They've done this on other things  
10 where they haven't been challenged, but  
11 where there wasn't a health and safety. And  
12 we don't want the states to just become  
13 basically the administrative arm of the NRC,  
14 where we're working and being paid for by  
15 the state, but jumping when NRC says. You  
16 know, we feel that we have some independence  
17 and we want to maintain it and support it.  
18 So it's very important that you understand  
19 that. So this is in, theoretically, at  
20 least, in violation of what the NRC says we  
21 can do. I do not expect any substantial  
22 adverse consequences because of that. It  
23 doesn't have any health and safety  
24 implications, it doesn't have any interstate  
25 implications. But anyway, that's important

1 that you need to be aware of.

2 DR. GOODEN: Yes, sir.

3 MR. LONGBERRY: I've just got a  
4 couple of quick comments. I'm Mark  
5 Longberry, I'm with Grand Gateway and we  
6 work up in the Tar Creek superfund. We have  
7 Nitons, 10 microCurie. It just seems like  
8 it's a lot of duplication. We're already  
9 under DEQ for -- I've got DEQ inspector risk  
10 assessor certification. I've got an EPA  
11 Region 6 federal inspector risk assessor  
12 certification. And it talks in here about  
13 somebody using one of these and I don't know  
14 why in the world anybody would go give  
15 \$20,000 for one of these instruments when it  
16 would be illegal for them to go do a lead-  
17 based paint inspection if they're not DEQ  
18 certified.

19 MS. BISHOP: They do it.

20 MR. BRODERICK: Well, the lead-  
21 based paint -- do you use yours for lead-  
22 based paint or --

23 MR. LONGBERRY: Yes.

24 MR. BRODERICK: -- or do you just  
25 use it at the superfund site?

1                   MR. LONGBERRY:    No, lead-based  
2 paint.

3                   MR. BRODERICK:    Okay.    You do --  
4 the lead-based paint program is a completely  
5 different program with us and is under, as  
6 you probably know, is under DEQ in the Air  
7 Quality Division.

8                   MR. LONGBERRY:    Well, that's --  
9 that's what I'm saying.

10                  MR. BRODERICK:    That's for the  
11 lead-based paint.

12                  MR. LONGBERRY:    It seems like a  
13 huge amount of duplication.

14                  MR. BRODERICK:    They don't --  
15 there's no duplication because they don't do  
16 radiation safety or have expertise in  
17 radiation safety, nor do we -- you know,  
18 there's nothing in here about how you do  
19 lead-based paint testing, because we don't  
20 have expertise nor jurisdiction.

21                  MR. LONGBERRY:    Well, yeah, but  
22 as far as the recordkeeping that if the  
23 lead-based paint people, like the log of the  
24 instruments used and all that, they get our  
25 quarterly reports, every one of those

1 reports, they've already got that  
2 information.

3 MR. BRODERICK: Well, that's  
4 great. In that case, you've already got --  
5 so you're already doing this, is what you're  
6 saying, so don't add anything extra.

7 MR. LONGBERRY: I mean, I have to  
8 say our former program manager was attending  
9 a couple of these meetings before me, so I  
10 just got kind of a first look at it but,  
11 yeah, it's a tremendous amount of  
12 duplication.

13 MR. BRODERICK: We don't require  
14 that you send us usage logs, we just require  
15 that you have them available for us to --  
16 for our inspectors to look at.

17 MR. LONGBERRY: But we do have to  
18 send them to DEQ already. They get them on  
19 a quarterly basis.

20 MR. BRODERICK: That's -- yeah.  
21 You send them to the Air Quality Division,  
22 but they're a completely different group of  
23 people than we are. We're the radiation  
24 section of DEQ. Lead-based paint, this is a  
25 peculiar assignment, but it's under the Air

1 Quality Division of DEQ.

2 MR. LONGBERRY: Yeah.

3 MR. BRODERICK: You aren't  
4 required to send any reports to us as far as  
5 the usage logs under this. Our inspectors,  
6 we could come out and ask to look at them,  
7 but you aren't asked to send us additional  
8 reports. What you're saying, as I  
9 understand it, is you're already doing this  
10 and if you have the report, then you'll have  
11 them.

12 MR. LONGBERRY: Yeah, our leak  
13 test, I mean, you're -- this is proposing  
14 every six months, but three months on the  
15 shutter test. Well (inaudible) --

16 MR. BRODERICK: And the  
17 manufacturer recommends that, at least as  
18 far as I'm aware.

19 MR. LONGBERRY: -- annually it's  
20 already tested. I don't know, it just seems  
21 like a lot we're already doing, and it costs  
22 us more money to do the same thing.

23 MR. BRODERICK: If you're already  
24 doing it, how does it cost you more money?

25 MR. LONGBERRY: Well, because

1 it's -- if -- number one, you're going to  
2 have the machine down while -- because we've  
3 got to send ours to Massachusetts to get it  
4 tested. And it costs a pretty fair amount  
5 to ship the thing. And to do that every six  
6 months and -- or every three months is --

7 MR. BRODERICK: Well, at least  
8 the manufacturers that -- the only  
9 manufacturer that I'm aware of that makes  
10 these has told us this is consistent with  
11 what they recommend the users of their  
12 machines.

13 MR. LONGBERRY: As far as  
14 annually, Niton, once a year.

15 MS. BISHOP: The shutter test is  
16 something that you automatically --

17 MR. BRODERICK: Do yourself.

18 MS. BISHOP: -- do each time, I  
19 believe, the one we're -- what we're talking  
20 about.

21 MR. BRODERICK: If you have a  
22 current Niton, it automatically does the  
23 shutter test. You don't have to do anything  
24 for the shutter test, because it  
25 electronically does it and keeps a record of

1 it.

2 MR. LONGBERRY: No, I wasn't  
3 aware of that.

4 MR. BRODERICK: A shutter test is  
5 not the same as a leak test. A leak test is  
6 checking to see if the radioactive source is  
7 leaking.

8 MR. LONGBERRY: Anything other  
9 than Niton.

10 MR. BRODERICK: A shutter test  
11 makes sure that the --

12 MR. LONGBERRY: Do you all do  
13 that, I mean --

14 MS. BISHOP: It shouldn't have to  
15 go to the manufacturer for a shutter test.

16 MR. BRODERICK: For shutter  
17 testing, it shouldn't have to, no. That's  
18 something -- like I said, the current Nitons  
19 do it automatically. There are a few old  
20 machines, most of the ones are already  
21 covered that don't do it, but they've been  
22 doing it for several years.

23 MR. LONGBERRY: Okay. Thank you.

24 DR. GOODEN: Other discussion?

25 MR. WOODS: Can we propose any

1 other changes to this?

2 MR. BRODERICK: To my knowledge,  
3 we can.

4 MR. WOODS: My only thing would  
5 be, under qualified instructor. You talk  
6 about -- well, what's stated there currently  
7 means a person who has completed basic  
8 radiation safety training as described in  
9 OAC, and it lists some numbers. The  
10 manufacturer's training for the device, if  
11 available, and has at least one year  
12 experience with the use of the device.

13 I would suggest that we add or  
14 commensurate experience to the end of that.  
15 As that states now, someone with Dr.  
16 Gooden's qualifications, since he hasn't  
17 been using one of these things for a year,  
18 could not instruct someone on how to use it.  
19 So I think that's very limiting on that  
20 particular aspect, so I think we should put  
21 commensurate experience.

22 MR. BRODERICK: I sympathize with  
23 your goal, but I'm nervous about  
24 implementing it because we'll come up with  
25 somebody, I'm afraid, that says, well, I

1 used one of these for six months, that's  
2 close enough to a year, but I don't have any  
3 other special radiation background, but  
4 that's good enough, that's close enough.  
5 I'm nervous about, you know, where -- you  
6 know, where you draw the line, the bright  
7 line.

8 MR. WOODS: Just a suggestion.

9 MR. BRODERICK: If there's a way,  
10 and I'm not against it, but I'm nervous  
11 about it, I'll put it that way. I don't  
12 know, if the other members of the Council  
13 want to make that -- if you guys vote to  
14 make a change, I won't -- I'm not going to  
15 cry too hard.

16 UNIDENTIFIED: Could you say  
17 something, and this is sort of loose, but I  
18 think it sort of exists within the state,  
19 are recognized -- are radiation safety  
20 expert recognized by the Department of DEQ.  
21 Because although you don't have a formal  
22 deal, you do have a number of people within  
23 the state that you do sort of recognize.

24 MR. BRODERICK: Certifying  
25 consultants is a hot issue within the

1 agency, as well. But there is one way we  
2 may be able to do that, is say, or is  
3 credited in radiation protection by a  
4 national body. That would allow a certified  
5 health or medical physicist to do it. I  
6 suppose a physician who was a radiologist,  
7 we would be able to accept that.

8 UNIDENTIFIED: Yes.

9 MR. BRODERICK: Do you see any  
10 problems with that, either of you?

11 MS. DIZIKES: I don't, if that is  
12 acceptable to Mr. Woods, we could certainly  
13 take an amendment along those lines. I  
14 would ask that when you move on the  
15 recommendation, that you give us a little  
16 flexibility to fine-tune the exact wording  
17 before it goes to the Board. But if what  
18 you're interested in is commensurate  
19 experience, meaning over a year but in the  
20 field and recognized by some accredited  
21 body, we can certainly get that concept into  
22 this before the rule would move on for  
23 approval by the Environmental Quality Board.  
24 Does that not meet your need?

25 MR. WOODS: Yeah, I was just

1 basically think it was kind of being, you  
2 know, the way I interpret that from direct  
3 black and white is that if you did not  
4 utilize or use a specific type of x-ray  
5 fluorescence analyzer for one year, that  
6 even though you may have had 20 years  
7 experience using other radioactive  
8 materials, that you were not qualified to  
9 instruct someone on how to operate that  
10 particular device.

11                   MR. BRODERICK:    And I agree with  
12 you.    I'm pretty competent Dr. Gooden, with  
13 a little bit of study, could conduct a very  
14 acceptable class in the use of these  
15 devices.    I would agree with you.    I'm  
16 nervous about the implementation, but the  
17 thing about the nationally accredited body,  
18 that gives me something very definite to  
19 hang my hat on so I don't get -- and that's  
20 what I -- if that's --

21                   MR. LONGBERRY:    There are also  
22 requirements in the lead-based paint act on  
23 training that incorporates (inaudible).    You  
24 get five days training, actually three for  
25 the inspector and then two for the risk

1 assessor to be certified through DEQ to do  
2 lead-based paint inspections any how, and it  
3 covers the XRFs.

4 MS. BISHOP: Does it cover  
5 radiation safety?

6 MR. LONGBERRY: We did ours, we  
7 did a one-day training course through Niton  
8 on radiation safety.

9 MS. BISHOP: But that would be  
10 separate.

11 MR. LONGBERRY: Yes, that was  
12 separate.

13 MS. BARTON: See, there's a  
14 difference between the person who is  
15 actually using it and the person who is  
16 instructing the use of it. And the person  
17 that's instructing the use of it should  
18 really have more experience, because if  
19 they're instructing people that have never  
20 used it before --

21 MR. LONGBERRY: Well, that would  
22 be -- like I say, we had instruction on it  
23 through the DEQ certification process on  
24 that and that instructor is certified  
25 through DEQ to give training.

1 DR. GOODEN: Mr. Woods, would you  
2 like to try to formulate a motion?

3 MR. WOODS: Okay. I would like  
4 to make a motion to approve OAC 252:410-19,  
5 Subchapter 19, as submitted by the staff,  
6 with the addition of a more comprehensive  
7 definition of a qualified instructor to  
8 include either a recognized national  
9 certification, as suggested by staff.

10 MS. JENNINGS: I second.

11 DR. GOODEN: Further discussion?  
12 Ms. Bruce.

13 MS. BRUCE: Mr. Woods.

14 MR. WOODS: Yes.

15 MS. BRUCE: Ms. Jennings.

16 MS. JENNINGS: Yes.

17 MS. BRUCE: Mr. Beuttel.

18 MR. BEUTTEL: No.

19 MS. BRUCE: Ms. Barton.

20 MS. BARTON: Yes.

21 MS. BRUCE: Dr. Gooden.

22 DR. GOODEN: Yes.

23 MS. BRUCE: Motion did not pass.

24 MS. BISHOP: Was that the

25 amendment, don't you vote on the amendment

1 first?

2 DR. GOODEN: We could vote on the  
3 amendment first, if you think that would  
4 change things.

5 MS. BISHOP: What was your issue?

6 MR. BEUTTEL: My issue with this  
7 thing is -- the fact that it's a low  
8 radiation device and it's already covered by  
9 DEQ anyway, so users have enough expense  
10 without having double jeopardy in that. So  
11 that's my problem with it.

12 MS. BARTON: Moving on.

13 DR. GOODEN: I think that's all  
14 the issues that we require a quorum for, so  
15 with your permission I'm going to try to go  
16 catch my plane. Mr. Woods will take care of  
17 the rest of it.

18 MR. WOODS: Thank you, Dr.  
19 Gooden. Moving on, we're now at Agenda Item  
20 No. 7. Report of Radiation Management  
21 Section activities by Mr. Broderick.

22 MR. BRODERICK: I'll try and move  
23 this along.

24 MR. JOHNSON: Mike.

25 MR. BRODERICK: Yes, sir.

1                   MR. JOHNSON:    Can I make a few  
2 comments about this last deal, just a few?

3                   MR. WOODS:     Yes, sir.

4                   MR. BRODERICK:   Steve Woods is in  
5 charge.

6                   MR. JOHNSON:    At some point in  
7 time, and I totally agree with Mr. Beuttel's  
8 vote, at some point in time, folks, either  
9 the feds or someone is going to require the  
10 registration licensing or a fee structure in  
11 all agreement states for all of these x-ray  
12 fluorescence units, every one of them,  
13 regardless of what they're used for.  
14 Whether it's used for lead-based paint,  
15 metal analysis, doing liquid samples, what  
16 have you.   And in the state of Oklahoma at  
17 the present time, I don't know how many  
18 lead-based paint units there are, but x-ray  
19 fluorescence units doing metallic analysis,  
20 there's probably 150 of these units in the  
21 state.   I own four of them.   These units  
22 contain cadmium 109, iron 55, and some of  
23 them now, some of the newer ones, contain  
24 americium 241.

25                   At some point in time here, at some

1 point in time, they're all going to be  
2 registered. I'm not -- I'm not -- you know,  
3 I may be retired by then, I'm going to  
4 retire next year, so they're going to be  
5 registered and there's going to be fees  
6 paid. But we're getting into a situation  
7 here, most of your x-ray fluorescence  
8 analyzers, there are no training programs.  
9 You get three VCR tapes when you buy the  
10 unit and at the end of the third VCR tape,  
11 you take an examination, send it back into  
12 the factory, the manufacturer, and they send  
13 you a certificate telling you that you have  
14 had instruction, therefore passed the  
15 examination and you're certified by them to  
16 use their unit. To get into a little  
17 situation here with one type of x-ray  
18 fluorescent unit requiring a big national  
19 certified instructor, I think is very  
20 dangerous. I think it's very, very  
21 dangerous at this point.

22 MR. WOODS: Thank you. Moving on  
23 to Agenda Item No. 7, Report of Radiation  
24 Management Section activities. Mr.  
25 Broderick.

1                   MR. BRODERICK:   Okay.   There is  
2 something that I think some of the Council  
3 Members will be interested in.   There was a  
4 bill introduced in the last session of  
5 Congress.   It died, it did not pass, but it  
6 will be reintroduced in the next session.  
7 It's S2763.   Basically, it was intended to  
8 do what we've already done here in Oklahoma  
9 and every agreement state has done.   At the  
10 national level the NRC does not regulate  
11 radium or accelerator-produced materials.  
12 And so S2763 was intended to bring discreet  
13 naturally occurring sources and that's  
14 basically radium sealed sources and  
15 accelerator produced radioactive materials  
16 under the jurisdiction of the NRC.   The main  
17 motivation for that is security.   Radium is  
18 of considerable -- is potentially of  
19 considerable interest to terrorists, that's  
20 the main interest in that.

21                   MS. BARTON:   It failed to pass?

22                   MR. BRODERICK:   It did not pass.  
23 It wasn't in the sense that it came up -- it  
24 didn't come to a -- or it came up to a vote  
25 and it was voted down, it just, as you know

1 probably --

2 MS. BARTON: It didn't go to  
3 committee, I mean, it didn't come out --

4 MR. BRODERICK: -- it never went  
5 through the committee process and was  
6 brought to the floor. Most of the states  
7 support this, not all of the states support  
8 this, but most of the states support this.  
9 DEQ thinks it's a good idea and it will  
10 probably come up in the next session.

11 MS. BARTON: Will that interfere  
12 with what we've just passed here?

13 MR. BRODERICK: No.

14 MS. BARTON: For sealed sources  
15 and accelerator stuff? No?

16 MR. BRODERICK: No. The only  
17 change that it would make in our program, in  
18 effect, we would have to become an agreement  
19 state. We would have to get those added to  
20 our agreement status, but that wouldn't  
21 require any -- or at least it shouldn't  
22 require any rule changes. I expect that  
23 basically to be a paperwork exercise and I  
24 don't expect it to be a very hard paperwork  
25 exercise, it would be between us and the

1 NRC. The chances are likely, we haven't  
2 worked out the details with NRC yet, because  
3 the law hasn't passed, of course, but I  
4 suspect it is likely that the NRC would  
5 accept the current agreement states. They  
6 would just say, fine, we're going to add  
7 this to your agreement. That's the only  
8 effect that it would have. But anyway, it's  
9 out there. If that is a subject of interest  
10 to you, you may want to try and follow it  
11 during the next congressional session.

12 Other than that, we're continuing to  
13 work on security issues. Basically, we have  
14 a couple of new employees. We did not bring  
15 them up here for this meeting, but Shannon  
16 Tilly, you met at the last meeting. And Mark  
17 Conley, some of you may have known, he has  
18 resigned and we hired Ralph Johnson to  
19 replace him and an old vacancy -- that's  
20 actually not correct. We hired Kelly Pham  
21 to replace him. We had an old vacancy,  
22 Dutchie Young left some time ago and we  
23 hired Ralph Johnson to replace her. So  
24 we've got a couple of new employees.  
25 They'll be at the next meeting. We didn't

1 want to make them come up here to introduce  
2 them, but they'll be at the next meeting.

3 Other than that --

4 MR. JOHNSON: Is that Ralph  
5 Johnson from Tulsa?

6 MR. BRODERICK: He's been in  
7 Oklahoma City for at least 10 years.

8 MR. JOHNSON: Oh, okay.

9 MR. BRODERICK: That's all I  
10 have.

11 MR. WOODS: Thank you, Mr.  
12 Broderick. The next item we have on the  
13 agenda is the Land Protection Division  
14 Director's report. Ms. Sharp.

15 MS. SHARP: I don't think I have  
16 anything particularly newsworthy. I would  
17 be happy to answer any questions anybody has  
18 and I think I may do this at every meeting,  
19 but I just want to thank everybody for  
20 attending the meeting. As you can see,  
21 everybody's really busy and we barely had a  
22 quorum today and everybody's comments. We  
23 do welcome everybody coming and having an  
24 input and making our rulemaking process  
25 work. And even if it stops a rule and we

1 have to go back to the drawing board, that's  
2 how it's supposed to work. So thank you for  
3 your input.

4 MR. WOODS: You're also Agenda  
5 Item No. 9, Interstate Compact Report.

6 MS. SHARP: Yes. There's not an  
7 abundance of news there. I think at the  
8 last meeting, believe it or not, for that  
9 whole messy project, it's not bad news  
10 anymore, since we more or less settled -- we  
11 settled the lawsuit that requires Nebraska  
12 to pay quite a bit of money to the Compact.  
13 The payments don't start -- the first  
14 payment is the summer of '05 and I think, as  
15 I mentioned last time, very little, if any,  
16 of that money comes directly to the DEQ.  
17 But what it -- and I'll tell you about that  
18 in a second. But what it will do is enable  
19 the Compact to do what it's doing now. And  
20 for anybody who generates waste that is  
21 exported through the Compact, right now the  
22 Compact is negotiating with EnviroCare to  
23 see if maybe the Compact couldn't sign a  
24 long-term agreement for disposal of waste.  
25 And I've been in on some of the meetings and

1 EnviroCare is being very accommodating,  
2 they're trying to get the best price  
3 possible. Obviously it impacts -- the other  
4 four states in the Compact, they have major  
5 generators and manage a lot more waste. But  
6 nonetheless, I feel like the generators in  
7 Oklahoma are important, too. Volume-wise  
8 they tend to be smaller, obviously.

9           So anyway, those negotiations are  
10 ongoing. The first or second week in  
11 January there is -- actually the Compact, it  
12 rotates its meetings around the states. It  
13 will be in Oklahoma City at the Renaissance  
14 Hotel downtown and we will have -- our legal  
15 staff is doing most of the negotiations, but  
16 two of us states go to most of those  
17 meetings, Oklahoma and Louisiana. So  
18 they'll have an up to the minute kind of  
19 whatever the latest is on those  
20 negotiations, if anybody wants to know about  
21 that.

22           MS. JENNINGS: When is that?

23           MS. SHARP: You know, the date is  
24 -- I'll look it up on my blackberry here in  
25 a minute, but it's the first or second week

1 in January and I'll get that to you in a  
2 minute. And the reason I said very little  
3 of the money goes back to the DEQ, I've got  
4 to look out for the DEQ's needs, too.  
5 There's a small amount of money, we're  
6 talking about a 151 million dollar  
7 settlement, a small amount of money could be  
8 several thousand dollars. There is money  
9 that was paid by the states into a fund, it  
10 was actually to support -- it was to support  
11 the people who were suing the -- oddly, the  
12 way government works -- to sue the Compact.  
13 In other words, it was community development  
14 funds. Some people in the community didn't  
15 want the site, who were the recipient of  
16 that money. It's like what EPA does in  
17 terms of technical assistance to people who  
18 want to fight what EPA is doing. It's kind  
19 of how -- it's a good thing, overall, how it  
20 works. But anyway, I'm not sure the status  
21 of that money, but Oklahoma paid that a long  
22 time ago and I'm going to try and stay  
23 involved in the negotiations and hopefully  
24 ensure that a little bit of that money comes  
25 back to the DEQ, just to defray costs

1 hopefully of the radiation program and  
2 things like that. It's so speculative that  
3 we haven't talked -- you don't talk about  
4 what you're going to do with the money until  
5 you're sure you have it. But anyway, so  
6 that's kind of what's going on with the  
7 Compact right now. They meet twice a year.  
8 We're glad all that litigation is over. I  
9 did, you know -- the Governor of Nebraska  
10 was pivotal in all of this and I did read, I  
11 think in the paper a week ago, Governor Joe  
12 Hands took a position in Bush's new cabinet,  
13 so now he's settled this and incurred a 141  
14 million dollars in debt on behalf of the  
15 state and now he won't be the governor there  
16 to oversee that, so his successor hopefully  
17 will honor the agreement. We did a lot of  
18 work to make sure that the government in  
19 Nebraska, both the Legislature and the  
20 Governor's office -- that's who we worked  
21 with, the Governor's office and the Attorney  
22 General -- had a desire -- that they were  
23 earnest. They signed everything, it's a  
24 court order now, but we had the commitment  
25 to pay this out because it's going to be a

1 four-year payment. So obviously we hope  
2 that the succeeding governor is just as  
3 dedicated to paying that large debt, so.

4 MS. BARTON: I have one question.  
5 And that is, is there any updated  
6 information about the Sequoyah Fuel  
7 situation in the Attorney General's office  
8 and what we're doing?

9 MS. SHARP: Not that I can  
10 discuss. And really, I'm not up on the  
11 details. The last I heard on it, it was  
12 progressing and that's been a few weeks. So  
13 I don't have any details, unless you all do.

14 MR. BRODERICK: As far as that we  
15 are -- that the Attorney General will let us  
16 discuss, the only thing that I would say is  
17 that there is discussion about a settlement.

18 MS. BARTON: Okay. Okay, well,  
19 all right. Do we have an ETA on this?

20 MR. BRODERICK: I don't know of  
21 one.

22 MS. SHARP: I do not. But I  
23 think -- I don't think it's bad news that  
24 they -- I mean, I think they're -- everybody  
25 is still speaking, you know, when you have

1 really touchy negotiations and some lawyers,  
2 I don't think this lawyer's in the room, but  
3 the lawyers, they're not getting along and  
4 the fact that everybody is still doing the  
5 good faith negotiations and working it out -  
6 -

7 MS. BARTON: That's something,  
8 right?

9 MS. SHARP: -- that's very  
10 important. Because, you know, there were  
11 some groups that were dug -- there were some  
12 sides that were dug in at certain times, so  
13 I think that's as good as that probably can  
14 be at this point.

15 MS. BARTON: Do you know if  
16 they're going to have any other public  
17 meetings?

18 MS. SHARP: I would bet they  
19 would, but it might be a while off.

20 MR. BRODERICK: You can bank on  
21 there will be more public meetings, but to  
22 my knowledge there aren't any scheduled at  
23 this time.

24 MS. JENNINGS: Will they let  
25 anybody know that there are public meetings?

1                   MS. BARTON:    That's the good  
2 question.

3                   MR. WOODS:    Okay.    Thank you, Ms.  
4 Sharp.    Going down to Chairman's Report for  
5 Dr. Gooden.    Since he's not there, I'll do  
6 the Vice-Chairman's report.    I would like to  
7 thank the staff for the hard work they put  
8 into the rules that we've just seen.    I  
9 appreciate the public's input and the Board  
10 Members input or the Council Members input  
11 on the rules that we've passed and went over  
12 today.

13                   Going to the next item of the agenda,  
14 New Business.    Does any Council Member or  
15 any member of the staff have any -- knows of  
16 anything that needs to be brought before the  
17 Committee at this time?

18                   MR. BRODERICK:    Do we need to  
19 talk about dates?

20                   MR. MCHARD:    There are none that  
21 I'm aware of, Mr. Chairman.    I think we can  
22 go on.

23                   MR. WOODS:    Going on to Agenda  
24 Item 12, discussion of the dates and  
25 locations of the 2005 meetings.

1                   MR. MCHARD:    May I be recognized,  
2 please?

3                   MR. WOODS:     Yes.

4                   MR. MCHARD:    First of all, Ms.  
5 Sharp has advised me that the Compact  
6 meeting is on January the 12th in Oklahoma  
7 City.    Second, all the Council Members have  
8 a short memorandum from me suggesting four  
9 days to meet.    And you can read that, but  
10 basically we're saying that April 13th or  
11 April 14th, which is a Wednesday or a  
12 Thursday, will be for the spring 2005  
13 meeting.    And then for the fall 2005  
14 meeting, we're suggesting November 9, a  
15 Wednesday, or November 10th, a Thursday.    I  
16 have researched the entire 365 days of the  
17 calendar very thoroughly and this doesn't  
18 conflict with any holidays, any religious  
19 holy days, with my birthday, with my  
20 granddaughter's birthday, which is today, by  
21 the way, in Carrolton, Texas, or anything  
22 else that I'm aware of.    So these are four  
23 nice, clean dates.

24                   MR. BRODERICK:    Didn't Mr.  
25 MacDurmon have some input?

1                   MR. MCHARD:    Yes.    Mr. MacDurmon  
2 did have input and he requested that we not  
3 schedule the Council meetings on Wednesday  
4 or Friday in the fall, and notice that there  
5 is a Wednesday there, so we could have the -  
6 -

7                   MS. JENNINGS:    Did Dr. Gooden  
8 express any preference?

9                   MR. MCHARD:    Dr. Gooden is more  
10 difficult to pin down unfortunately.    His  
11 work schedule pops up at the last moment.  
12 For example, he had been to a session this  
13 morning before he came here and did notify  
14 us, so there's no way to anticipate, Ms.  
15 Jennings.

16                   MR. WOODS:    Do we need to, at  
17 this time, specifically identify those two  
18 days?

19                   MR. MCHARD:    Yes, because of a  
20 legal requirement, I have to or Ms. Bruce  
21 has to notify the Secretary of State by  
22 December 15th of the two days we've  
23 selected.    They can be straw dates.    We can  
24 change them and we can schedule other  
25 meetings besides the two that we select

1 here. We have to jump through some loops in  
2 order to do so, but we can change the dates.

3 MR. WOODS: Does this need to be  
4 in the form of a motion or can this be --

5 MR. MCHARD: You're the Vice-  
6 President or Vice-Chairman, just pick two  
7 dates. That's all I care about.

8 MR. WOODS: April 13th and  
9 November 10th.

10 MR. MCHARD: Very good. And then  
11 ask if there is any objection.

12 MR. WOODS: Any objections? The  
13 two dates for the meetings next year will be  
14 April 13th and November 10th. The location  
15 for the April 13th meeting will be in  
16 Oklahoma City at the Multipurpose room at  
17 the DEQ Headquarters. The fall meeting on  
18 November 10th will be held in Tulsa at a  
19 location to be determined at a later date,  
20 possibly here, but we do not know at this  
21 time.

22 MR. BRODERICK: My impression has  
23 been the Council is happy with this as a  
24 meeting place. Is that still correct?

25 MR. MCHARD: You know, as far as

1 I'm concerned with my work, if the Council  
2 wants to meet at a different city than  
3 Oklahoma City and Tulsa, that's okay. You  
4 just have to tell me in advance that that's  
5 what you want to do and help me find a spot  
6 to meet. You know, for example, like to use  
7 you, Mr. Woods, as an example. If you  
8 wanted us to meet in Duncan, I would say,  
9 fine. But you've got to work with me to try  
10 and find a meeting place. Okay?

11 MR. WOODS: Okay. Item 13,  
12 Announcements.

13 MS. BARTON: I have one. I just  
14 want to thank, personally being the public  
15 representative for all the input, because  
16 without it, I don't have to tell you the  
17 alternative. And outside of that, wish  
18 everybody happy holidays and a safe one.

19 MR. WOODS: Thank you. No  
20 further comments. This meeting is  
21 adjourned.

22 (END OF PROCEEDINGS)

23

24

25

