

MINUTES
SOLID WASTE MANAGEMENT ADVISORY COUNCIL
November 17, 2005 Special Meeting
Department of Environmental Quality
Multipurpose Room 707 N. Robinson
Oklahoma City Oklahoma

Approved SWMAC
~~May 18, 2006~~ September 14, 2006

Notice of Public Meeting The Solid Waste Management Advisory Council convened for its special meeting at 9:00 a.m. November 17, 2005, in accordance with the Open Meeting Act, Section 311 of Title 25 of the Oklahoma Statutes. Notice of special meeting was filed at the Office of the Secretary of State on September 19, 2005. Agendas were posted on the entrance doors at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting. Mr. Torneten called the meeting to order and a quorum was confirmed.

MEMBERS PRESENT

Donald Fletcher
Steve Landers
T. J. McCullough
Patrick Riley
Jeff Shepherd
Elzie Smith
Bill Torneten
Ralph Triplett

DEQ STAFF PRESENT

Scott Thompson
Catherine Sharp
Dee Ready
Jon Roberts
Sonny Johnson
Greg Garber
Amber Brawdy
Shirley Brown
Myrna Bruce

MEMBERS ABSENT

Jay Stout

OTHERS PRESENT

Sign-in sheet is attached as an official part of these Minutes.

Public Forum - No issues raised.

Proposed rulemaking on OAC 252:515 Mr. Torneten stated that the proposed rulemaking reflects language clarifications, corrections of legal citations and typographical errors and other changes. Ms. Dee Ready added that following Council's meeting, staff discussed whether to leave in the construction site of storm water. Mr. Torneten called for motion to accept the changes as presented. Mr. Shepherd made the motion to vote on number one and Mr. Torneten made the second. Roll call as follows with motion passing.

Ralph Triplet	Yes	T. J. McCullough	Yes
Elzie Smith	Yes	Donald Fletcher	Yes
Jeffrey Shepherd	Yes	Steve Landers	Yes
Patrick Riley	Yes	Bill Torneten	Yes

Mr. Sonny Johnson, Staff Attorney, pointed out that for clarification, the motion should have been to approve the changes not to vote on them. Mr. Shepherd changed his motion to reflect for approval and Mr. Torneten made the second. Roll call as follows with motion passing.

Ralph Triplet	Yes	T. J. McCullough	Yes
Elzie Smith	Yes	Donald Fletcher	Yes
Jeffrey Shepherd	Yes	Steve Landers	Yes
Patrick Riley	Yes	Bill Torneten	Yes

Mr. Torneten brought forth for discussion part two on the agenda which were the proposed waste tire rule changes. Ms. Ready advised there had been no discussion or comments regarding those rules. She fielded questions and comments. Mr. Torneten called for motion to approve the proposed changes to the waste tire rule. Mr. Triplett made the motion and Mr. Shepherd made the second. Roll call as follows with motion passing.

Ralph Triplet	Yes	T. J. McCullough	Yes
Elzie Smith	Yes	Donald Fletcher	Yes
Jeffrey Shepherd	Yes	Steve Landers	Yes
Patrick Riley	Yes	Bill Torneten	Yes

The third discussion on proposed rulemaking was for a five-year update required by the rules of the unit costs and worksheets in Appendices H and I related to annual estimated financial assurance costs for closure and post-closure of solid waste facilities. Mr. Greg Garber explained staff's recommendation and fielded questions and comments from Council. After extension discussion, Mr. Torneten pointed out that the Department's proposal was that Council accepts the update of the Appendices H and I based on their five-year review. Mr. Torneten then made the motion to approve the five-year update of the unit costs in the worksheets in Appendices H and I of OAC 252:515 related to annual estimated financial assurance costs for closure and post-closure of solid waste facilities. Mr. Patrick Riley made the second.

Ralph Triplet	Yes	T. J. McCullough	Yes
Elzie Smith	Yes	Donald Fletcher	Yes
Jeffrey Shepherd	Yes	Steve Landers	Yes
Patrick Riley	Yes	Bill Torneten	Yes

Further discussion was held relating to Council asking the DEQ to commission or undertake a review of real-world unit costs in the worksheet for estimating landfill closure costs and bring those to the Council at a future date. It was decided that staff would look at the costs without the need for a formal resolution and would bring any further needs for rule changes to the Council.

Public Forum Continued - No issues.

Adjournment Mr. Torneten made motion to adjourn. Mr. Shepherd made the second. Motion passed unanimously.

Transcript and Attendance Sheet are attached and made an official part of these minutes.

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
SOLID WASTE MANAGEMENT ADVISORY COUNCIL
OF SPECIAL MEETING - ITEMS 1-6
HELD ON NOVEMBER 17, 2005, AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA

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REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE
(405) 721-2882

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MEMBERS OF THE COUNCIL

T.J. MCCULLOUGH - MEMBER
DONALD FLETCHER - MEMBER
RALPH TRIPLETT - MEMBER
JEFF SHEPHERD - MEMBER
BILL TORNETEN - CHAIRMAN
STEVE LANDERS - MEMBER
ELZIE SMITH - MEMBER
PATRICK RILEY - MEMBER
JAY STOUT - VICE-CHAIR

STAFF MEMBERS

MYRNA BRUCE - SECRETARY
SCOTT THOMPSON - LPD STAFF
SHIRLEY BROWN - LPD STAFF
DEE READY - LPD STAFF
CATHERINE SHARP - LPD STAFF
GREG GARBER - LPD STAFF

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PROCEEDINGS

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MR. TORNETEN: Protocol

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Statement. This special meeting on

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November 17, 2005 of the Solid Waste

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Management Advisory Council was called in

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accordance with the Open Meeting Act.

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Notice was filed with the Secretary

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of State on November 24, 2005. The agenda

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was duly posted on the doors of the DEQ,

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707 North Robinson, Oklahoma City,

12

Oklahoma, 24 hours prior to the meeting.

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Only matters appearing on the posted

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agenda may be considered at this regular

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meeting. In the event that this meeting is

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continued or reconvened, public notice of

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the date, time and place of the continued

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meeting will be given by announcement at

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this meeting. Only matters appearing on

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the agenda of the meeting which is

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continued may be discussed at the continued

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or reconvened meeting.

23

Can we have a roll call, please.

24

MS. BRUCE: First, would everyone

25

pull their mikes down? I forgot to --

1 there you go.

2 Ralph Triplett.

3 MR. TRIPLETT: Present.

4 MS. BRUCE: Elzie Smith.

5 MR. SMITH: Here.

6 MS. BRUCE: Jeff Shepherd.

7 MR. SHEPHERD: Here.

8 MS. BRUCE: Patrick Riley.

9 MR. RILEY: Here.

10 MS. BRUCE: T.J. McCullough.

11 MR. MCCULLOUGH: Here.

12 MS. BRUCE: David Fletcher.

13 MR. FLETCHER: Here.

14 MS. BRUCE: Steve Landers.

15 MR. LANDERS: Here.

16 MS. BRUCE: Bill Torneten.

17 MR. TORNETEN: Here.

18 MS. BRUCE: And for the record,

19 absent is Jay Stout, and we do have a

20 quorum.

21 MR. TORNETEN: Okay. Great. I

22 would like to welcome Elzie Smith. I

23 believe this is your first --

24 MR. SMITH: Yes.

25 MR. TORNETEN: -- meeting. I

1 don't have a summary of your resume in

2 front of me, but I believe you're a mayor?

3 MR. SMITH: Mayor of Pawnee, yes.

4 MR. TORNETEN: Okay. Great.

5 Well, welcome to the Council.

6 MR. SMITH: Thank you. It's nice

7 to be at a meeting where there's no ties.

8 I won't do this again.

9 MR. TORNETEN: Well, you'll

10 probably come next time and we'll all have

11 ties on. See, it's kind of a secret deal

12 we've got going on.

13 MR: Just on picture day.

14 MR. TORNETEN: Yes. Okay. What

15 do we got -- next is a public forum open

16 discussion. Do we have any questions or

17 comments from the public? I guess not. We

18 don't have a lot of public today, do we?

19 Next we have a Proposed Rulemaking

20 on OAC 252:515. And it says here, which

21 reflect language clarifications,

22 corrections of legal citations and

23 typographical errors and a few other

24 changes. Does the Department have some

25 kind of presentation or summary on this?

1 MS. READY: I think the only
2 concerns with that at our last meeting,
3 Bill, were the stormwater issue, whether or
4 not you wanted to leave in the construction
5 site of stormwater.

6 MR. TORNETEN: Right.

7 MS. READY: And we discussed that
8 after the meeting and we felt like it
9 should be left in the case that if the
10 Sector L did cover that, that was fine, we
11 didn't need the construction. But in the
12 case it doesn't, then they do need it and
13 so we wanted to leave it as worded.

14 I don't think that we had any other
15 issues regarding those particular areas.

16 MR. TORNETEN: Okay. Part two
17 here is the proposed waste tire rule
18 changes in 252:515.

19 MS. READY: I don't think anyone
20 had any comments in the last meeting and I
21 think those are pretty okay and no one's
22 had a problem with those, also.

23 MR. TORNETEN: Okay. And the
24 last one is a five year update required by
25 the rules of the unit costs and worksheets

1 in Appendices H and I of 252:515 related to
2 annual estimated financial assurance costs
3 for closure and post-closure of solid waste
4 facilities. This one --

5 MS. READY: That one was a --

6 MR. TORNETEN: Yeah, that one --

7 MS. READY: -- discussion last
8 time.

9 MR. TORNETEN: It was. And let
10 me see if I can find it here. Okay. On
11 October the 13th, Steve Landers, Don
12 Fletcher, Patrick Riley and myself met with
13 Greg Garber of the Department in an
14 Executive Committee discussion on the
15 subject of primarily closure costs. And I
16 believe Don brought some information on
17 actual closure costs that he's had
18 experience with, I brought some that I had
19 had experience with and I think Greg also
20 had some information. I don't know whether
21 Greg's here today or not but, as a matter
22 of fact, I think he just walked in. I'll
23 let him chime in.

24 But basically, we looked at some of
25 the -- what we called real world and

1 example costs that we had and compared them
2 to some of the unit costs that were in the
3 guidelines and found some pretty
4 significant discrepancies in some case.
5 For the most part, they were significantly
6 less than the cost we were seeing, although
7 there were a couple of instances where some
8 costs were actually greater than what we
9 were seeing.

10 I might ask Greg if he has any
11 comment related to that meeting. I was
12 basically just summarizing what we
13 discussed, Greg.

14 MR. GARBER: Yes, I'm Greg
15 Garber, I'm a member of the Solid Waste
16 permitting staff -- supervisor, I guess.

17 What we found was that from the cost
18 experience of the Members who attended,
19 that we had some significantly low unit
20 prices. We had some that were a little bit
21 high, but we were looking at primarily the
22 elements of the cost estimates that have
23 large quantities, that have a, shall we
24 say, significant input on the bottom line.
25 Things that weren't, you know, of low

1 influence.

2 One of the items was offsite clay,
3 importing offsite clay and compacting it
4 was -- I think we concluded it was roughly
5 about \$8 a cubic yard low. From -- that
6 is, again, from the experience of the firms
7 that were there who had been, you know,
8 purchasing this kind of work.

9 Placing onsite topsoil -- I guess to
10 summarize, you know, there were a number of
11 items. Placing onsite topsoil was low by
12 about \$2.80 a yard. Installing GCL -- it's
13 a little bit hard to talk about these
14 things in terms of dollars and cents, but
15 more in the nature of percentages, I think
16 would be -- is more significant. Because
17 when you're talking about GCL, you're
18 talking about cents per square foot. And
19 roughly, let's see, we had one, two, three,
20 four, five, six, seven items which were
21 around 30 percent low on the unit price.
22 These would be things like unreinforced
23 geosynthetic clay or reinforced
24 geosynthetic clay, actually, was only one
25 item in there. It doesn't say which it is.

1 Placing sand was high by a little bit.

2 But I would say, on the average, we
3 were about 30 percent low on things like
4 install geonet, install FML, which is the
5 plastic membrane liner. Geonet is a
6 drainage layer material that transmits
7 leachate across the bottom of the floor of
8 the cell, if it's in the floor or, in this
9 case, the cover.

10 So basically, the conclusion, I
11 think, was that -- well, I'll kind of leave
12 that to the Members, I guess. But, yes, we
13 did find that some of these large quantity
14 items were, in some cases, a little bit
15 high but more -- in more cases, probably
16 somewhat low.

17 This was something that I'm going to
18 say wasn't inherent in the way we had done
19 -- DEQ had made the cost adjustment because
20 when we made the cost adjustment this time,
21 we adjusted everything in the same
22 systematic manner. It was more the
23 underlying original number that we had been
24 using up to this point and did not result
25 from the method of the adjustment that we

1 were making, but rather from the original
2 number that we were adjusting. And I think
3 everyone was pretty much in agreement on
4 that.

5 So that is pretty much, I think,
6 where the conclusions were. You fellows
7 that were there can speak to that from your
8 personal experience. I intended to get a
9 memo together to summarize this but, I'm
10 sorry, I wasn't able to. I will go ahead
11 and do that probably as a staff memo to
12 memorialize the output of the meeting.

13 And overall, you know, my impression
14 was that the work that DEQ had done to make
15 an adjustment on a periodic basis was not
16 really the source of the discrepancy, it
17 was really the underlying numbers that we
18 were adjusting. And because what we did is
19 we took -- we took the existing number and
20 we looked at how means changed over the
21 time period for that type of unit and then
22 we adjusted the unit based on the change in
23 price for means in that unit. And we did
24 that in every unit across the -- across the
25 estimate, except for those where we didn't

1 have -- it was a services-type unit rather
2 than a material construction unit by
3 professional services-type thing.

4 So all in all, I guess my
5 recommendation would be that maybe we adopt
6 the DEQ's method of making the adjustment
7 at this time and then if some further study
8 is needed into the underlying basis of the
9 -- well, if you want to see a revision or
10 something like that to the basic costs,
11 that that be done in a following exercise
12 so that in the next year we can maybe write
13 some of these quantity omissions. The
14 kinds of things that we have determined --
15 I guess the biggest dollar amounts seemed
16 to be the -- what we didn't seem to have
17 the right number in there for purchasing
18 offsite clay, so then you have to go to an
19 offsite source and buy someone's clay. We
20 seemed to be, I think it was around 50
21 percent or actually, it was more like 100
22 percent low on that particular item. It
23 was -- we had something like \$6 in our
24 adjusted number today, which is in the
25 table and it should be up around \$12 or

1 something like that.

2 MR. TORNETEN: We discussed some
3 of this at the last meeting but, just by
4 way of background and review, it's not
5 surprising that over the course of the last
6 five years there have been a number of
7 changes in industry that impact costs. In
8 some cases, there's been the advent of new
9 materials and methods in industry. In
10 addition to that, there's been, I think,
11 which would come as no surprise to any of
12 us, there's been some significant increases
13 in oil and gas prices which translate
14 directly to increases in the costs of the
15 geosynthetic materials that go into the
16 liner systems. For the most part, the
17 geosynthetics track oil and gas prices
18 almost directly. There is a near direct
19 correlation. So we would expect to see and
20 have seen a significant increase in
21 geosynthetics.

22 Construction costs, I think most of
23 the increases we've seen in construction
24 costs are pretty much just related to
25 inflation. Although, just again recently,

1 in relation to some of the events that have
2 happened in the Gulf Coast, there has been
3 a big spike in construction costs.

4 One of the things that we would hope
5 to strive for when we look at these costs
6 would be consistency and that's some of
7 what we noticed when we reviewed the costs.
8 They weren't entirely consistent from one
9 material to another, possibly different
10 assumptions were made. And in any kind of
11 a cost estimate exercise, necessarily there
12 are a lot of assumptions that go into this
13 and it's difficult to come up with a unit
14 cost that depicts any particular closure
15 project, because they are somewhat site
16 specific.

17 So we kind of have to recognize when
18 you're developing these unit costs for
19 something which may sound relatively
20 simple, importing and placing clay, there's
21 a lot of assumptions that go into that.
22 And the best you can do is make reasonable
23 assumptions, use averages where that makes
24 sense, and then come up with what you think
25 is a best estimate unit cost.

1 Any comments from the public on this
2 subject? The direction that we're pointed
3 here is to ask the Department to undertake
4 a review or cause a review to be undertaken
5 of these unit costs in light of what's
6 going on out in industry now and what
7 they're seeing and compare them to the unit
8 costs and see where adjustments are
9 appropriate.

10 MR. SHEPHERD: Have we -- has
11 anybody taken a look at these alternative
12 earthen vinyl covers? Because there's not
13 really a component, a clay liner component
14 in those covers.

15 MR. TORNETEN: GCL's? Are you
16 talking about --

17 MR. SHEPHERD: It's not GCL,
18 either, it's just a monolithic (inaudible).

19 MR. TORNETEN: Those aren't --

20 MR. SHEPHERD: -- (inaudible).

21 MR. TORNETEN: Yes, those aren't
22 in the unit costs and there are some other
23 innovative materials and methods that
24 aren't reflected in the unit costs and
25 there's no reason why that sort of -- those

1 sort of materials shouldn't be looked at,
2 as well. And probably, to the extent that,
3 you know, it's something that's being used
4 in industry and has been demonstrated to be
5 technically a good method, it probably
6 ought to be included. It ought to be an
7 option. I think that's a good idea.

8 MR. GARBER: Well, if I could say
9 something here. From our perspective as
10 regulators, this is -- these are estimates
11 that are only to be used in the event of a
12 forced closure of a facility that's unable
13 to close itself. To date, I don't know
14 that we've actually had a reason to use the
15 money estimated in one of these financial
16 assurance estimates. Most landfills have
17 successfully closed their sites with their
18 own funds, as they're supposed to do under
19 their operating, you know, plans for their
20 use for life.

21 So I am not sure that an alternative
22 vinyl cover would ever be installed as part
23 of a Department-forced closure of a site
24 due to financial insolvency, say, of the
25 operator. We would probably put a

1 prescriptive cover in there, I guess,
2 unless it turned out that an alternative
3 vinyl cover were more financially
4 advantageous to the Department. But
5 usually what these things are intended to
6 cover is just some basic cover in the event
7 of insolvency of the operator and the site
8 had to be closed.

9 And so far, we haven't had a call on
10 that kind of a fund, the financial
11 assurance fund, to actually have to make a
12 draw against these funds. So in a way,
13 what we're talking about here is a
14 relatively unlikely event that these funds
15 would have to be used. When the Appendix H
16 and Appendix I were originated when we did
17 the 515 rule update, the purpose really
18 that was served most by that was to
19 eliminate controversies about what unit
20 prices were appropriate, so that everybody
21 was working on the same page and we didn't
22 have a lot of, I'm going to call it
23 administrative nightmare, with respect to
24 negotiating with people over what they
25 thought they should have to put in the fund

1 to close. This -- by putting these tables
2 into the rules, it was a way of getting
3 everybody to use the same sort of numbers
4 and treat everyone fairly, equally and
5 eliminate the headache of trying to deal
6 with disparate purposes and estimating
7 costs. As you can imagine, it was probably
8 -- it was quite a nightmare for staff to be
9 able to -- have to deal with each site
10 individually when there was no uniform
11 basis.

12 So the real purpose of the table has
13 been achieved, for the real purpose of
14 uniformity and the estimating for closures
15 has been achieved successfully in what we
16 have today. What we're really talking
17 about is kind of sharpening the point on a
18 pencil that we don't use very often and
19 actually I don't think we've used to date,
20 in terms of actually having to draw on the
21 closure funds to actually fund a forced
22 closure of an insolvent landfill.

23 So it's maybe not as important as,
24 for the purposes of the risk to the
25 Department, of being a little bit out of

1 whack here because the likelihood that
2 we're going to draw on this is probably, I
3 don't know, one in a hundred, maybe, over
4 the next five, six, 10 years. It's not --
5 it's not something we actually have to use.

6
7 I just wanted to shed that light on
8 it, because I think it's important, you
9 know, to keep viewing it in that way. I
10 think -- I think Appendix H and I have done
11 the job that we wanted them to very
12 successfully and it's worked for the
13 industry to keep everyone --

14 MR. SHEPHERD: But aren't --

15 MR. GARBER: -- knowing what
16 they're doing.

17 MR. SHEPHERD: But there are
18 landfills that are using that type of
19 cover. Wouldn't it be better if there were
20 unit rates in there so that the Department
21 can know that were -- that those rates were
22 applicable?

23 MR. GARBER: Well --

24 MR. SHEPHERD: If somebody walks
25 in with a financial assurance and says, I'm

1 going to cover my 100 acre site with an
2 alternative earthen vinyl cover and it's
3 only going to cost my a dollar a yard --

4 MR. GARBER: Yeah.

5 MR. SHEPHERD: -- you've got to
6 kind of buy that unless you know otherwise.
7 Correct?

8 MR. GARBER: Yes, I suppose if
9 that's -- if that's accepted as the final
10 cover for the site, yes. We probably don't
11 have the right units for an estimate of
12 that kind of material, because it's a
13 different group of quantities, a different
14 description of work. But if the Department
15 were forced to close it, we might not
16 install an alternative vinyl cover, we
17 might just go ahead and put in a
18 prescriptive cover with the funds that we
19 had in the financial assurance --

20 MR. SHEPHERD: But if somebody's
21 going along with the alternative earthen
22 vinyl cover collecting that amount of
23 financial assurance --

24 MR. GARBER: And it might be low.

25 MR. SHEPHERD: -- you might come

1 up short.

2 MR. GARBER: That is true.

3 MR. SHEPHERD: If you changed to
4 a prescriptive cover.

5 MR. GARBER: Because we would be
6 installing -- we would be installing what's
7 designed for the facility, so --

8 MR. TORNETEN: Well, presumably,
9 a landfill that's using or proposing to use
10 a prescriptive cover would have that
11 detailed in their closure plan and would
12 have, at that point, demonstrated it's --
13 that it's technically adequate and the
14 Department would be aware that, you know,
15 that that is the plan at this facility. I
16 don't know, I guess you guys haven't seen
17 any closure plans that are proposing to use
18 prescriptive?

19 MR. RILEY: I think there are. I
20 think there are some landfills that have
21 that.

22 MR. TORNETEN: In their closure
23 plan?

24 MR. RILEY: Yes.

25 MR. SHEPHERD: Prescriptive

1 covers?

2 MR. RILEY: No, they have -- well

3 --

4 MR. TORNETEN: Alternative

5 covers.

6 MR. RILEY: -- alternative

7 covers.

8

9 MR. SHEPHERD: There are several,
10 I modeled (inaudible).

11 MR. GARBER: Yes. There are
12 several -- there are several that have been
13 approved as alternative vinyl covers.

14 MR. SHEPHERD: There has been
15 several that have been installed.

16 MR. TORNETEN: Bob.

17 MR. RABATINE: One thing I wanted
18 to remind the Council is, and I'm assuming
19 that this will cover the issue that Jeff
20 raised. When you do your calculations, you
21 are to assume worst-case scenario, third-
22 party, you're doing an off-site earth, I
23 mean all those things are part of that.
24 And then if you -- so I thought that that
25 was already covered in the model that we

1 already have, even though you may have some
2 newer technical options, I thought that the
3 fact that we have to do it as a worst-case
4 scenario covered that contingency. And
5 then, of course, like Greg pointed out,
6 everybody's goal is to save money when you
7 go through closure, and so you are going to
8 try to do it yourself. And so that changes
9 the scenario.

10 But the purpose of the financial
11 assurance was to provide a backup for the
12 DEQ in the event of insolvency or default.
13 So again, it was projected as a worst case
14 scenario.

15 MR. RILEY: Well, that's true.
16 And it's kind of a balancing act. I mean,
17 on the one hand you don't want companies to
18 have to put up unreasonable amounts of
19 money for closure and post-closure if, in
20 fact, there are proven technologies out
21 there that are being used and are available
22 to them. On the other hand, like you said,
23 you do have to factor in this worst case
24 scenario business. So I don't know where
25 you draw that line.

1 MR. GARBER: Well, it -- there
2 really isn't a requirement for what's
3 called worst case. The money is supposed
4 to be sufficient for the Department to
5 contract with a third party.

6 MR. RILEY: Right.

7 MR. GARBER: And while it does --
8 someone has slipped a rule in front of me
9 here that says the amount of the estimate
10 shall be set by the DEQ equal to the cost
11 of closing the facility when the manner --
12 except manner of its operation would have
13 made the closure the most expensive, as
14 indicated by it's closure plan.

15 MR. SHEPHERD: By it's closure
16 plan.

17 MR. TORNETEN: Right.

18 MR. SHEPHERD: If the closure
19 plan says that it's alternative earthen
20 vinyl cover, that's the scenario that you
21 allow the money for, not a prescriptive
22 cover. If your closure plan has been
23 approved by the Department, that's what you
24 close the facility to. You shouldn't have
25 to accrue any more money for something

1 else. Correct?

2 MR. GARBER: That's the way --
3 yes, that's correct.

4 MR. SHEPHERD: So the worst case
5 scenario is whatever you have in your
6 closure plan.

7 MR. GARBER: With the third party
8 to install.

9 MR. SHEPHERD: With the third
10 party to install.

11 MR. GARBER: Right. Correct.

12 MR. LANDERS: And I guess the
13 next question is, does that then allow you
14 to use that unit cost that you -- for the
15 cover that you've identified in your
16 closure plan, does Appendix H allow you to
17 do that?

18 MR. TORNETEN: Not at this time.
19 I believe you're pretty much obligated to
20 use unit costs that are in there. I guess
21 you do have an opportunity to take issue
22 with a unit cost and make a case; do you
23 not?

24 MR. GARBER: Yes. There still is
25 that option if you want to try to establish

1 a unique unit or establish a different kind
2 of price than the table. There is a method
3 for you to do that. People seldom use it
4 though, because of the convenience of the
5 way the tables are set up. It's just --
6 it's been working quite well --

7 MR. TORNETEN: Right.

8 MR. GARBER: -- to facilitate the
9 estimates being done without a lot of
10 headache on the part of either us or
11 industry. And that, I think, we have
12 achieved what we wanted.

13 MR. RILEY: The alternative cap
14 closure plans that I've seen in cost
15 estimates when the alternative cap just
16 uses a monolithic soil cover, what sites
17 have done is just use the unit costs for
18 placing soil as their -- as the unit cost
19 to calculate the cost estimates. Whether
20 or not that's directly applicable, as far
21 as placement methods, is somewhat
22 uncertain. But that's what's been done and
23 approved, I believe. So in that sense,
24 there is a unit cost currently available on
25 that Appendix H and I for using the -- for

1 placing soil.

2 MR. LANDERS: Yes, but it may --
3 it may make your closure cost look high,
4 right? I mean, the reason you would want
5 to use an alternative cover, for the most
6 part, is to save some money. But if I'm
7 using the prescriptive unit cost, I don't
8 have that opportunity especially when I'm
9 paying premiums on financial assurance each
10 year.

11 MR. RILEY: What the alternative
12 covers don't have are plastics, the
13 synthetics, the FML and the geonets and
14 things that are used in the prescriptive
15 cap. So that's where a big cost savings
16 comes from.

17 MR. TORNETEN: They don't
18 incorporate a leachate collection layer or
19 the gas venting layer or none of that?

20 MR. RILEY: No, not usually.

21 MR. TORNETEN: I mean, from the
22 Department's standpoint, they have to be
23 comfortable that these things are
24 technically adequate and of course, I'm
25 sure that there's literature out there that

1 supports their use. If somebody's selling
2 them, you can bet -- I don't know, has EPA
3 done any kind of --

4 MR. RILEY: Yes.

5 MR. TORNETEN: They have? So
6 there's -- apparently there's some
7 information out there that would support
8 these as being able to meet the performance
9 standard.

10 MR. GARBER: I don't think that
11 the industry is going to alternative vinyl
12 covers necessarily because of cost savings.
13 I think they're going to it more because it
14 is a more practical method from a slope
15 stability standpoint of covering a landfill
16 on the side slopes without the risk of
17 slope failures. And it also has the
18 benefit of allowing vegetative cover to be
19 achieved, which is a goal of every site
20 today.

21 So I don't know that -- I haven't
22 heard anyone say that, you know,
23 alternative covers are vastly cheaper.
24 They have a requirement that they have to
25 place the material without compacting it so

1 that the root zone is able to be penetrated
2 by growing plants. And I think it becomes
3 a little more difficult to place that
4 material than an ordinary construction
5 situation.

6 I think Patrick's comments there,
7 he's probably as close to the cost
8 estimates as anyone these days and I guess
9 they have been able to adjust the -- use
10 the units that we currently have with the
11 quantities that are in the work -- scope of
12 work for an alternative cover to achieve a
13 roughly accurate cost estimate.

14 I -- you know, my recommendation
15 would be that the Council go ahead and
16 adopt Appendix H and I as proposed. And if
17 you want to fashion a resolution that asks
18 the Department to do some further study on
19 the discrepancies that were discovered in
20 some of the unit prices, that you go ahead
21 and do that. But at least at this point,
22 if we were to adjust the two appendices so
23 that beginning April of next year we had
24 closer to market conditions in our, you
25 know, the estimates we are currently using,

1 you know, that -- it's not a great risk of
2 being intensely off the mark for very long,
3 in terms of exposing the Department to
4 financial risk of closure and having to
5 draw on funds that aren't there, you know,
6 it's not going to be, you know, a big thing
7 to the Department.

8 MR. TORNETEN: So what we're
9 looking at doing today is voting on an
10 adjustment to the H and I unit costs based
11 on what is primarily an inflation
12 adjustment. And really the basis of it, as
13 I understand, means of construction cost
14 data that the Department's looked at means
15 and compared recent values in means to the
16 unit costs and made an adjustment to sort
17 of balance an up or down percentage; is
18 that correct or --

19 MR. GARBEN: Right. What we have
20 done is basically adjusted each unit
21 individually as to how the market changed
22 relative over a five year time period. If
23 some markets for clay or for landscaping
24 work were effected more or less, what we
25 have done here is instead of making a

1 uniform inflation adjustment across the
2 board and keep moving everything at the
3 same rate, we have allowed each unit to be
4 adjusted individually over the time period
5 based on what means change in that unit or
6 that type of unit would have been over that
7 same period. We're not actually using
8 means numbers, but we're using the
9 difference in means numbers.

10 And so for instance, placing
11 compacted clay might adjust 30 percent over
12 the five year period. Landscaping work,
13 which is more like labor intensive, might
14 only adjust 10 percent over the time period
15 and the cost of -- and the inflation
16 adjustment is more like nine percent over
17 the period. So the more labor intensive
18 items are going to have adjusted in the
19 cost experience means is seeing, say, nine
20 percent. Whereas fuel intensive, capital
21 intensive stuff would be adjusted more like
22 30 percent.

23 And that's where the adjustment
24 here, as I would call it market adjustment,
25 but it isn't simply generating a new base

1 unit of cost. We did not use means
2 information for that purpose. We looked at
3 the difference in means for that type of
4 work over the time period. And that's --
5 it was a systematic, I'm going to call it
6 an objective basis for making an adjustment
7 without having to go into the organic
8 underlying units and say, you know, we're
9 inventing a new number. We were
10 purposefully trying to stay away from doing
11 that.

12 So to explain, you know, I think
13 that basically capsulizes the adjustment
14 that we've made. Instead of adjusting
15 everything uniformly, we've adjusted each
16 unit individually based on the way that
17 kind of work changed in means database over
18 the five year period. And that's why I
19 would suggest that we make, in effect, a
20 market adjustment here. But the base
21 numbers are the ones we have today from the
22 original work that was done for the state.

23 MR. RILEY: I think it's
24 important to point out, too, that the
25 original study called for this adjustment.

1 That's why we're going through this effort
2 now, because we have adjusted each year
3 according to inflation and then after five
4 years, we make this more comprehensive
5 adjustment according to the study that was
6 approved. So it's not a reworking of the
7 original study, but just the adjustment
8 that was called for in the original.

9 MR. GARBER: Yes, that's correct.

10 MR. TORNETEN: Do you have kind
11 of a feel, Greg, for what kind of a
12 percentage increase this might translate to
13 in the bottom line on closure costs, you
14 know, a range, five to 10 percent, 10 to 15
15 percent?

16 MR. TRIPLETT: We did a little
17 study (inaudible) it ranged from seven
18 percent to as much as eight percent on
19 different landfills (inaudible).

20 MR. TORNETEN: So this adjustment
21 in the H and I is going to reflect a seven
22 to eight percent increase -- that's kind of
23 a yardstick.

24 MR. GARBER: I would say the
25 adjustment that is being proposed would be

1 far less severe than if we were to be
2 dealing with the corrections that we found
3 in terms of the organic units.

4 MR. TORNETEN: Right.

5 MR. GARBER: That was one of the
6 concerns expressed at our workgroup meeting
7 was that some of these adjustments could
8 result in substantially higher increases.

9 MR. TORNETEN: Right.

10 MR. GARBER: To answer the
11 question directly, I would say probably in
12 the order of 10 to maybe 15 percent. Some
13 of the units were less than -- the
14 adjustment was less than inflation, about
15 three of them. About, I think it's 12 of
16 them, are a little bit more than inflation.
17 But primarily -- one of the primary
18 differences, when it's a small quantity,
19 was in the underground work, the gas probes
20 and the vertical drilling work, those were
21 out of whack or moved in a cost experience
22 of the Agency. We did not use means there.
23 We used the cost experience in the Agency
24 because we actually let contracts for that
25 type of work and our cost experience over

1 the five year period was something on the
2 order of 25 to 35 percent.

3 So those numbers are going to go up
4 and it's going to go up for a small
5 quantity, just the gas probes through the
6 mile cover. And that's going to be a big
7 adjustment in those, but it's going to be a
8 relatively small component of the overall
9 estimate.

10 So, no, I -- to answer your question
11 directly, I did not do a comparison, say,
12 with a typical today versus as adjusted and
13 just compare.

14 MR. TORNETEN: When would these
15 go into effect? Would these be --

16 MR. JOHNSON: June.

17 MR. TORNETEN: June. So they
18 wouldn't be in effect for this year's
19 estimates, it would be next year's?

20 MR. GARBER: It will probably be
21 April 9th of 2007, because cost estimates
22 are done on an April 9th to April 9th
23 basis. So the rules would go into effect
24 in June and then the table or the Appendix
25 H and I would be effective for the

1 following year, which will be April of
2 2007. Is that -- am I correct in that?

3 MR. RILEY: What if you redid
4 your closure costs in the middle of the
5 year due to a modification at the landfill?
6 Would the --

7 MR. GARBER: If they weren't part
8 of the rules, then you would be following
9 the existing rules. And then they --

10 MR. RILEY: So after June, once
11 they were effective, then you would follow
12 the new ones?

13 MR. GARBER: Right.

14 MR. TORNETEN: Does the public
15 have a concern or issue with what we're
16 proposing to do here?

17 MR. LANDERS: I guess I have one
18 question. Greg, is the Department
19 suggesting that we do this overall
20 reevaluation of the base cost?

21 MR. TORNETEN: We're going to do
22 that. We're going to make that
23 recommendation, that's separate from voting
24 on this.

25 MR. LANDERS: I understand.

1 MR. TORNETEN: Okay.

2 MR. LANDERS: But I guess I'm
3 trying to understand what the driving force
4 for that is. I understand the costs have
5 gone up, some of the real world costs, but
6 the people that stand to lose is the DEQ.
7 And if they're not driving that, what
8 exactly is, other than --

9 MR. GARBER: I guess I would say
10 the Department's position is, with what we
11 have done, we felt this was an appropriate
12 adjustment for the five year adjustment.
13 And that would be our position that we, at
14 this time, we probably wouldn't recommend
15 further unit price -- I'm going to call it
16 an organic review of the unit price
17 structure, because my sense of what my
18 management, where they want to go with it,
19 is that they would be content to make this
20 adjustment and then live with it for five
21 years until the next incremental adjustment
22 comes up and -- because that makes sense.
23 I mean, we're okay with the way things are
24 going right now and it is -- one of the --
25 one of my concerns going into the workgroup

1 meeting was that we -- we're all sort of
2 impacted, if you will, psychologically or
3 otherwise, by the rapid rise in energy
4 costs and how it's impacted our daily
5 lives. And I don't think it's necessarily
6 that's what I would call a spot price, a
7 spot effect that I think is risky to
8 incorporate momentary peaks in prices into
9 the rules. So I was hesitant, you know,
10 taking long term averages of these things
11 makes more sense because this is a long
12 term problem that we all have to -- the
13 industry has to cope with. And if, you
14 know, in the next increment of five years,
15 you know, prices continue to stay high
16 then, you know, then further adjustments
17 are probably going to be required in the
18 organic cost information.

19 So I think we have time, if we go
20 ahead and adopt the proposal as it is and
21 if the Council in the next year or so
22 decides that, hey, we do need to make this
23 adjustment, then they can pass a resolution
24 and ask the Department to do that. But my
25 sense of it is that the Department's

1 recommendation is to do as we have done and
2 that that's what they think is the best for
3 the industry as this time.

4 MR. LANDERS: I tend to agree
5 with that.

6 MR. TORNETEN: Well --

7 MR. LANDERS: I mean, if I had
8 the choice of a seven or 15 percent
9 increase, I'm going to take the seven. And
10 the DEQ is -- they're the ones that stand
11 to lose here if they have to call upon
12 financial assurance, hire a third party and
13 those costs are too low, but they're okay
14 with that.

15 MR. TORNETEN: I understand what
16 you're saying. But one of our roles as a
17 Council is to be mindful of the public's
18 interest. And really, DEQ is also a
19 representative of the public. And what we
20 had discussed is we had genuine concerns
21 that, you know, the purpose of these
22 financial assurance costs is to make sure
23 money is in place in an adequate amount to
24 effect a closure should it have to be done
25 and it wouldn't require going back to the

1 public and spending their money, additional
2 monies, to do a closure properly.

3 With that in mind, you know, I feel
4 like we need to at least be comfortable
5 that these costs would provide an adequate
6 amount of money to effect a closure. And
7 if we feel like, you know, we really have
8 some concerns that they're way low on some
9 of the key drivers for actual costs, then I
10 think it's appropriate for the Council to
11 request that the Department look at that.
12 That was -- you know, that was our
13 motivation.

14 MR. FLETCHER: I think it would
15 behoove us to really go look at this thing,
16 because if we approve these things and wait
17 another five years and they have -- are
18 even more out of whack than they are right
19 now, I don't think that we would be meeting
20 our responsibility to make sure that
21 everybody has a financial assurance in
22 place.

23 And the way I look at it, it's not
24 really a money issue, it's to make sure
25 that everybody's covered on their financial

1 assurance. When you go into this business,
2 you know that you're going to have cost
3 adjustments either way. If this is one of
4 those things that do it to cover the state,
5 that's part of your responsibility to make
6 sure that that adjustment is made. And in
7 five years, you may be right, it may go
8 back down which everybody will be -- just
9 love the DEQ and all of us at that time,
10 you know, if they readjust it. But right
11 now, we really see those costs going up.
12 And I don't see there's a potential for a
13 lot of these costs to go back down.

14 MR. TORNETEN: Yes, I don't have
15 a crystal ball, either. But my suspicion
16 is there may be some reduction in oil and
17 gas prices, but I think that the dollar a
18 gallon days are come and gone. I just
19 don't see it happening again. But we're
20 not in that business, either. I think we
21 have to look at, you know, the market as it
22 is today and make our best judgment call
23 based on that. We don't have to get into
24 the prediction business, it's not really
25 called for.

1 I think the first order of business
2 here is to go ahead and vote on whether to
3 implement the Department's recommended
4 adjustment to the H and -- Appendices H and
5 I unit costs.

6 MR. SHEPHERD: Just what -- I
7 mean, I'm confused. So are they -- they
8 are recommending that we vote on an
9 adjustment of how much of a percent.

10 MR. TORNETEN: Well --

11 MR. SHEPHERD: These numbers in
12 here?

13 MR. TORNETEN: Yes. And we tried
14 to kind of hone in on what they represented
15 and Ralph thought it was in the order of
16 seven to eight percent. Greg thought it
17 was possibly a little bit higher than that
18 overall. I mean, each unit is adjusted.

19 MR. SHEPHERD: Right. And then I
20 guess, Don, you think that we should be
21 higher?

22 MR. TORNETEN: Well, no, he's
23 saying -- in a separate issue, we're
24 prepared to make a resolution, a
25 recommendation that the Department then

1 undertake a review of costs, you know, a
2 real world investigation, a more
3 comprehensive review and then we would hear
4 the results of that later on.

5 MR. SHEPHERD: Okay.

6 MR. TORNETEN: That's a separate
7 issue.

8 MR. SHEPHERD: Okay.

9 MR. TORNETEN: And we can talk
10 more about that one after we've decided to,
11 I guess, approve these H and I adjustments.

12 MR. FLETCHER: One more
13 clarification. If we -- on these
14 adjustments, they will take place on the
15 financial assurance table, correct?

16 MR. GARBER: No. Because the
17 rule wouldn't take effect until next June
18 31st or --

19 MR. JOHNSON: Or early June.

20 MR. GARBER: So actually, they
21 wouldn't go into effect until the April
22 2007.

23 MR.: 2007.

24 MR. GARBER: But they'll probably
25 be adjusted for inflation one increment by

1 that time, I would think because --

2 MR. FLETCHER: And by then we
3 could have the study back and see the real
4 world numbers, so I'm confused of why we
5 would go ahead and approve them and then
6 come back and look at another one. Then it
7 would take another vote to disapprove what
8 we just did and then vote in another one?

9 MR. TORNETEN: No, I don't think
10 we need to disapprove it. I think we would
11 -- the rule would then be faced with, well,
12 we now have this study that says, you know,
13 that has these recommendations. We would
14 get a study back that would say, you know,
15 here's what we're seeing. Based on that
16 study, I think the Department would then
17 propose a whole new set of revisions to the
18 unit costs based on the study that they had
19 done and we would review those.

20 MR. FLETCHER: So it looks to me
21 like we got until June to vote on this,
22 really.

23 MR. JOHNSON: No. If you don't
24 vote on it until next June, then they won't
25 go -- they couldn't go into effect at the

1 earliest until the following June. When
2 you approve rules, then they have to go to
3 the Board and the Board has to approve
4 them. And when the Board approves them,
5 then they have to have an opportunity for
6 the Legislature and the Governor to approve
7 or disapprove. So it's got to go through a
8 legislative session. That's the reason for
9 the big delay.

10 MR. TORNETEN: So this is sort of
11 an interim measure. I don't know how long
12 these H and I adjustments will be in place
13 if the Department commissions a study and
14 it's done and we get results back, you
15 know, there will be a timeframe where we'll
16 have to do additional rulemaking to
17 incorporate those. So for some period of
18 time, these H and I adjustments will be in
19 effect until this new study takes effect.
20 I don't know what that will be, it depends
21 on how long it takes for the study and this
22 and that. So I would agree that if, you
23 know, if a study is done and we're going to
24 implement the results of that study, then
25 these adjustments won't be out there for a

1 very long period of time. But, you know,
2 for some period of time they will be in
3 effect and our decision is, is it worth
4 doing, do we go along with the rationale
5 for making these adjustments now? And then
6 after that vote, we'll talk about the
7 Council making a recommendation to the
8 Department to do a study.

9 MR. GARBER: If you decided not
10 to adopt Appendix H and I, we would just
11 make another inflationary adjustment as
12 scheduled, you know, on an annual basis for
13 2006 and then 2007 until we did do
14 something different with the tables. So
15 we're covered either way. I mean, it will
16 be -- we have, you know, the existing
17 tables will just be ordinarily adjusted if
18 you decide not to adopt.

19 MR. TORNETEN: Well, in effect,
20 they've done the five year review that they
21 were mandated to do. The results of that
22 five year review are the recommendations to
23 the adjustments that Greg's described. You
24 know, we've got to decide are we in favor
25 of those, are we prepared to recommend

1 those be approved. And then in addition,
2 are we going to recommend that a study be
3 done for a more comprehensive review.
4 That's kind of where we are here. And I
5 guess we can vote on it unless, you know,
6 there's more discussion. Is everybody kind
7 of clear on what we would be voting on
8 here? It's getting a little confusing,
9 isn't it?

10 MR. SHEPHERD: So we're just
11 voting on accepting the update now?

12 MR. TORNETEN: Correct. That the
13 Department's recommended based on their
14 five year review.

15 MR. SHEPHERD: Then are we going
16 to have a separate vote on the --

17 MR. TORNETEN: Resolution, yes.
18 I've got a draft resolution here and we can
19 talk about how we want to word that and
20 then we can vote on whether we want to
21 recommend that.

22 MR. SHEPHERD: I have one quick
23 question on the tire rules.

24 MR. TORNETEN: Okay.

25 MR. SHEPHERD: What is -- how

1 many tires does it take to be considered a
2 tire storage facility? Does anybody know?

3 MS. READY: Well, most facilities
4 are permitted and under their permit, it
5 talks about how many they can store. They
6 can store 250,000 on site or lesser amount
7 by the permit. But anyone that is going --
8 and it depends on -- your question depends
9 on their processing and trying to get
10 compensation from the Tax Commission, so
11 that question needs to be a little more
12 specific as to what you're wanting to know.

13 MR. SHEPHERD: If a gas station
14 collects 500 tires, is he considered a tire
15 storage facility?

16 MS. READY: If a car comes in and
17 he just changes his tire, he's more of a
18 dealer that needs to get in touch with
19 someone to pick up those tires. If he's
20 changing the tires, he is not a processor
21 and he's not --

22 MR. JOHNSON: A dealer is allowed
23 up to 2,500 tires on site.

24 MS. READY: Yes.

25 MR. JOHNSON: Waste tires.

1 MR. TORNETEN: That's the
2 threshold, yes. So if he goes beyond that,
3 he has to get a permit.

4 MR. JOHNSON: An individual is
5 allowed 50.

6 MR. SHEPHERD: Huh?

7 MR. JOHNSON: An individual is
8 allowed 50.

9 MR. SHEPHERD: 50 on their
10 property? So a dealer can hold 2,500 used
11 tires before he's considered a --

12 MS. READY: A used tire dealer.
13 If these tires can't be used then, no, he
14 can't store that. And usually when --

15 MR. SHEPHERD: What's the
16 definition of a used -- I mean, if he's
17 pulling them off and throwing them over in
18 the corner not worrying about disposal.

19 MS. READY: Well, they're the
20 ones that show that they have a market for
21 tires, that they sell the used tires and
22 make a profit off of them. But most
23 facilities usually, once they have 300,
24 then they can call a processor to pick them
25 up and work within the realm of the DEQ to

1 assist them if they're not being picked up.

2 MR. SHEPHERD: Do you all inspect
3 these used tire dealers?

4 MS. READY: No. That's under the
5 new rule that passed. The Tax Commission
6 has that requirement that they do it. We
7 did it in the past until the new rule
8 passed in July and became effective.

9 MR. SHEPHERD: So the Tax
10 Commission goes by and counts tires?

11 MS. READY: They are required to
12 inspect them.

13 MR. SHEPHERD: Okay.

14 MR. TORNETEN: I guess we're
15 ready to vote on adopting the
16 recommendation by the Department for the
17 adjustment of the Appendices H and I unit
18 costs in 252:515.

19 MR. RILEY: Are we going to vote
20 separately on the language clarifications
21 and the waste tire rule and the H and I or
22 are we going to include those?

23 MR. TORNETEN: No, we need to
24 vote on each of those separately, I
25 believe; do we not?

1 MS. READY: Yes.

2 MR. TORNETEN: Yes. I guess we
3 ought to start with number one. That makes
4 sense. We do need, I guess, a vote on the
5 language clarifications, corrections. So
6 why don't we vote on number one here first
7 and --

8 MR. SHEPHERD: I make a motion we
9 vote on number one, language
10 clarifications.

11 MR. TORNETEN: I'll second.

12 MS. BRUCE: Ralph Triplett.

13 MR. TRIPLETT: Yes.

14 MS. BRUCE: Elzie Smith.

15 MR. SMITH: Yes.

16 MS. BRUCE: Jeff Shepherd.

17 MR. SHEPHERD: Yes.

18 MS. BRUCE: Patrick Riley.

19 MR. RILEY: Yes.

20 MS. BRUCE: T.J. McCullough.

21 MR. MCCULLOUGH: Yes.

22 MS. BRUCE: David Fletcher --
23 Donald Fletcher, sorry.

24 MR. FLETCHER: Yes.

25 MS. BRUCE: Steve Landers.

1 MR. LANDERS: Yes.

2 MS. BRUCE: Bill Torneten.

3 MR. TORNETEN: Yes.

4 MS. BRUCE: Motion passed.

5 MR. TORNETEN: Do we have a
6 motion to vote on the proposed waste --

7 MR. JOHNSON: If I may make a
8 clarification. Jeff's comment was, I make
9 a motion that we vote on the modifications.

10 MR. TORNETEN: Rather than
11 approve?

12 MR. JOHNSON: Right. So you
13 voted to have a vote on number one. So
14 unless you want to modify your motion and
15 modify your second to cover that, then you
16 need another vote to (inaudible).

17 MR. SHEPHERD: I should say we
18 should vote to approve?

19 MR. JOHNSON: If that's what you
20 want.

21 MR. SHEPHERD: I make that
22 change, vote to approve.

23 MR. JOHNSON: And then the second
24 has to agree.

25 MR. TORNETEN: Okay. I second

1 that we approve.

2 MR. JOHNSON: Sorry.

3 MS. BRUCE: Do we have to have

4 another roll call?

5 MR. TORNETEN: I think so.

6 MS. BRUCE: Ralph Triplett.

7 MR. TRIPLETT: Yes.

8 MS. BRUCE: Elzie Smith.

9 MR. SMITH: Yes.

10 MS. BRUCE: Jeff Shepherd.

11 MR. SHEPHERD: Yes.

12 MS. BRUCE: Patrick Riley.

13 MR. RILEY: Yes.

14 MS. BRUCE: T.J. McCullough.

15 MR. MCCULLOUGH: Yes.

16 MS. BRUCE: Donald Fletcher.

17 MR. FLETCHER: Yes.

18 MS. BRUCE: Steve Landers.

19 MR. LANDERS: Yes.

20 MS. BRUCE: Bill Torneten.

21 MR. TORNETEN: Yes.

22 MS. BRUCE: That one passed, too.

23 MR. TORNETEN: We're having a

24 language problem with the language

25 clarifications.

1 Okay. Do we have a motion to
2 approve the proposed waste tire rule
3 changes?

4 MR. TRIPLETT: I would move that
5 we approve the proposed rule changes as
6 designed by DEQ under 252:515.

7 MR. TORNETEN: Second?

8 MR. SHEPHERD: Second.

9 MS. BRUCE: Ralph Triplett.

10 MR. TRIPLETT: Yes.

11 MS. BRUCE: Elzie Smith.

12 MR. SMITH: Yes.

13 MS. BRUCE: Jeff Shepherd.

14 MR. SHEPHERD: Yes.

15 MS. BRUCE: Patrick Riley.

16 MR. RILEY: Yes.

17 MS. BRUCE: T.J. McCullough.

18 MR. MCCULLOUGH: Yes.

19 MS. BRUCE: Donald Fletcher.

20 MR. FLETCHER: Yes.

21 MS. BRUCE: Steve Landers.

22 MR. LANDERS: Yes.

23 MS. BRUCE: Bill Torneten.

24 MR. TORNETEN: Yes.

25 MS. BRUCE: Motion passed.

1 MR. TORNETEN: The third one, I
2 make a motion that we approve the five year
3 update of the unit costs in the worksheets
4 in Appendices H and I of OAC 252:515
5 related to annual estimated financial
6 assurance costs for closure and post-
7 closure of solid waste facilities. Do we
8 have a second?

9 MR. RILEY: I'll second.

10 MS. BRUCE: Ralph Triplett.

11 MR. TRIPLETT: Yes.

12 MS. BRUCE: Elzie Smith.

13 MR. SMITH: Yes.

14 MS. BRUCE: Jeff Shepherd.

15 MR. SHEPHERD: Yes.

16 MS. BRUCE: Patrick Riley.

17 MR. RILEY: Yes.

18 MS. BRUCE: T.J. McCullough.

19 MR. MCCULLOUGH: Yes.

20 MS. BRUCE: Donald Fletcher.

21 MR. FLETCHER: Yes.

22 MR. TORNETEN: That was a
23 reluctant yes.

24 MS. BRUCE: Steve Landers.

25 MR. LANDERS: Yes.

1 MS. BRUCE: Bill Torneten.

2 MR. TORNETEN: Yes.

3 MS. BRUCE: Motion passed.

4 MR. TORNETEN: Okay. I think at
5 this point I had prepared a request to the
6 Department to undertake a review of these
7 costs and I've got some language here that
8 we can talk about and then we can decide
9 whether or not we even want to make this
10 request.

11 The language that I have -- and
12 please, somebody in the Department tell me
13 if something's missing here or if I've said
14 something that doesn't go along with the
15 rules.

16 In light of recent increases in
17 construction costs and the cost of
18 geosynthetics, the Council hereby
19 recommends that the Land Protection
20 Division of DEQ commission a review of the
21 unit costs in the Department's worksheet
22 for estimating landfill closure costs.

23 Sonny, you hear anything in there
24 that --

25 MR. JOHNSON: No.

1 MR. TORNETEN: -- causes you
2 offense or grief?

3 MS. SHARP: Can I -- I just have
4 some clarifying questions.

5 MR. TORNETEN: Sure.

6 MS. SHARP: What exactly are you
7 imagining this study to be, to put a little
8 more meat on the (inaudible).

9 MR. TORNETEN: What I would
10 imagine is that the Department, similar to
11 what they did on the initial contract to
12 come up with unit costs, would issue a
13 request or proposal for a company to take a
14 look and -- what I'm proposing is really
15 the closure costs. I don't think the post-
16 closure costs are really that significantly
17 different than real world numbers. But,
18 you know, I'm proposing that they look at
19 the closure costs in light of current
20 industry standards, current industry costs
21 and take that information and just compare
22 it and see are we out of line or are we
23 close and kind of go from there with it.

24 What we did at the study session or
25 the Executive Committee meeting, whatever

1 you want to call it, is Don has a pretty
2 good handle on what his company is paying
3 for earthwork costs and for geosynthetics.
4 I also have a pretty good handle on it. We
5 issue requests for bid and do closures,
6 also, so I had at my disposal costs from
7 recent real world projects that we could
8 look at.

9 And in looking at those numbers
10 compared to the unit costs, we were seeing
11 some pretty significant differences that
12 caused us concern. And so what I would
13 hope is that they could commission -- the
14 Department could commission that a study be
15 done and, you know, exactly how it would be
16 worded in the RFP, I'm not sure, but it
17 could be focused just on the key costs.
18 You could specifically tailor the RFP to
19 earthwork construction costs and cost for
20 materials, you know, whatever the work
21 scope, I think you could narrow it down.
22 And this doesn't need to be a huge
23 undertaking.

24 MS. SHARP: Well, I guess what
25 I'm wondering, you know, our contracting

1 processes being what they are, I think --
2 I'm in complete agreement with you that we
3 need to get the information and get real
4 information and update it. I'm trying to
5 figure out if there's a way to get the
6 information and make it be valid without
7 going through the RFP process.

8 And we have staff that -- while we
9 don't have an abundance of staff at the
10 time right now, we do have students
11 sometimes who work for us that are temps
12 that want to do environmental work, we task
13 them on special projects. I guess what I
14 was wondering is, could we -- is there
15 enough flexibility in what you need to let
16 us determine -- and we could work with you
17 all on this as the months unfold, but to
18 see if we could get the information maybe
19 without contracting it or maybe within the
20 -- I don't know what exists in our state
21 contract right now with people who can do a
22 study for us, it's just a little easier --

23 MR. TORNETEN: Sure.

24 MS. SHARP: -- of a process to
25 get -- I mean, what we're trying to do is

1 get information that exists today, it's out
2 there. There's a bunch of people who think
3 they know what acts cost, because they're
4 paying for it. The last time we did this,
5 what we had to do was set a bar for what
6 validated a cost. In other words, if
7 somebody said, well, I paid this much, it
8 was kind of like, we kind of need to prove
9 that. We had to take a lot of factors into
10 consideration, geographical and so forth.

11 MR. TORNETEN: No, I --

12 MS. SHARP: If we have the
13 flexibility to --

14 MR. TORNETEN: That would be
15 great.

16 MS. SHARP: -- take a stab at it
17 without contracting it maybe, and if we
18 feel like there is no good way to get
19 reliable information that way, we can
20 contract it. It just makes the work a
21 little easier, is all I'm thinking of. I'm
22 not sure we can pull that off, but we might
23 explore it.

24 MR. TORNETEN: Sure, we'd be --
25 you know, I would be perfectly acceptable

1 with giving you that option. We talked
2 about that, does the Department have the
3 resources to do this in-house and there
4 wasn't really a consensus that they did.
5 But certainly these numbers, particularly
6 the material costs, are quite readily
7 available. You can call vendors -- well,
8 we can call vendors. And I would think the
9 Department can call vendors and get quotes
10 quite easily, I mean --

11 MS. SHARP: I'm not saying it's
12 an easy piece of work, but what we did last
13 time, the first step was we had somebody
14 canvass every other solid waste program in
15 the country because we just got rid of
16 those files, just like about a month ago.
17 Every state responded, you know, here's how
18 we sort it, here's how we divide it up,
19 here's how we make, you know, the permittee
20 sort it out and quantify it. We went
21 through all of that -- I don't know if you
22 remember that --

23 MR. TORNETEN: Yes.

24 MS. SHARP: -- that was done
25 first. And then we went on and did a

1 study. I'm not sure if we need to repeat
2 that --

3 MR. TORNETEN: No, I don't think
4 we do.

5 MS. SHARP: -- study because
6 that's how -- here's how we (inaudible)
7 things. Well, that's done.

8 MR. TORNETEN: Yes. You
9 established what are the units.

10 MS. SHARP: Right.

11 MR. TORNETEN: You know, they're
12 there. We're just talking about looking at
13 the unit costs and comparing them to, you
14 know, real world numbers to see if they're
15 in line or whether there are some major
16 adjustments that are appropriate. That's
17 what we're talking about here. No, I don't
18 see any reason, if the Department feels
19 like they've got the resources to do it, to
20 do it in-house, it makes perfectly good
21 sense, as well.

22 MS. SHARP: And so maybe there is
23 a -- I don't know how, Dee, you want this
24 to work, but maybe there's a subset or we
25 can just work with the Chair and he can

1 keep the other people informed or you could
2 have a subgroup of the Council where we
3 could talk with you and see if we -- after
4 we decide what resources we can put into
5 it, if you're comfortable that we have
6 enough, then we'd go ahead. But if you're
7 not, please be frank about it and then we
8 draw up some kind of an RFP and try to get
9 somebody else to do it on contract.

10 MR. TORNETEN: How about if in
11 this resolution here instead of where we
12 say, we're recommending that DEQ commission
13 a review, would you want to say commission
14 or undertake?

15 MS. SHARP: Yes. Just perform a
16 review --

17 MR. TORNETEN: Commission or
18 perform?

19 MS. SHARP: Yes.

20 MR. TORNETEN: And just give you
21 the option. Yes, I think that covers both
22 bases and -- absolutely.

23 MR. FLETCHER: You know, actually
24 we've already went over the numbers that we
25 were concerned with, with Greg already.

1 MS. SHARP: Right. And so that's
2 what I was thinking, it's really much more
3 focused than last time.

4 MR. FLETCHER: Yes.

5 MS. SHARP: We have certain areas
6 that we want to look at and other areas
7 maybe that we don't need to examine.

8 MR. TORNETEN: Absolutely. I
9 think --

10 MS. SHARP: But I'm going to
11 leave that up to you. I don't know.

12 MR. TORNETEN: Well, when you
13 look at the numbers, there are really just
14 a few key costs that drive the bottom line,
15 you know, a few big ticket earthwork items
16 and then the cost of your geosynthetics are
17 really by and large determining the bottom
18 lines.

19 MS. SHARP: Okay.

20 MR. TORNETEN: There isn't a
21 great deal of benefit to looking at some of
22 the smaller numbers, even if they're a
23 little bit off, it's not going to have a
24 big impact on your total closure costs.
25 So, you know, we're not proposing that you

1 look at every unit cost, but rather a few
2 of the key earthwork numbers and in
3 particular, the geosynthetics.

4 MS. SHARP: And you guys know
5 what those are from the meetings you've had
6 and the dialogue you've had so --

7 MR. TORNETEN: We do.

8 MS. READY: And you might make
9 that specific in your proposal on just to
10 which ones you are wanting to be reviewed
11 exclusive of others, so that we can focus
12 on what you're proposing.

13 MS. SHARP: Well, I would want to
14 limit -- by the same token, I wouldn't want
15 to limit it too much because as other
16 people might want to weigh in on something
17 and they would say, I think this is askew,
18 you know, you should to look at that, we
19 would be totally willing to do the research
20 on that, too. So I wouldn't want to
21 artificially constrain it.

22 MR. FLETCHER: So what you're
23 proposing, this could be a very short
24 process?

25 MS. SHARP: I don't want to

1 promise. It's certainly much shorter than
2 before, because before when we did it,
3 there's a big front end of developing the
4 RFP. We work with a completely separate
5 agency to let contracts. We had to
6 convince them to understand what we were
7 doing, then it goes out for bid, you've got
8 to make sure everybody's covered, it might
9 be -- if you have -- you know, it's the
10 bidding process, it's like contracting for
11 a job. So that took a lot of time before.
12 So this is smaller for two reasons. We are
13 going to maybe try to avoid that step if we
14 can still do it. And then we have a lot
15 fewer things to look at, you know, we've
16 done it before, a few of the steps, so
17 (inaudible).

18 MR. TORNETEN: Surely is a
19 relative term.

20 MS. SHARP: (Inaudible).

21 MR. FLETCHER: With what we've
22 already gone over with Greg, if we passed
23 that out amongst the Members and everybody
24 agreed then -- and if anybody wanted to
25 bring up something different. I mean, I

1 think we pretty well covered a lot of the
2 costs. I know Jeff wasn't there and he's
3 got a lot of experience in this stuff, too,
4 then maybe we could look at that. I don't
5 know -- I don't think Greg really gave us
6 an opinion one way or another if he thought
7 they were good or bad, but I'm not sure if
8 he could at that point, either, but look at
9 those and just see what they think. And
10 then what's this going to call for, another
11 meeting later on, then?

12 MR. TORNETEN: Well, yes, I mean,
13 basically we're not asking the Department
14 to take our numbers that we presented for
15 the discussion and go with them. We're
16 really asking them to undertake a review.
17 Now, they could certainly look at those
18 numbers as a starting point, but I would
19 hope that beyond that they're going to talk
20 directly with some vendors and some
21 companies out there that are in the
22 business and, you know, and get some
23 support -- if they're undertaking the
24 review, to get some additional comments
25 beyond what numbers we've given them, not

1 that there is anything wrong with those
2 numbers but --

3 MS. SHARP: Well, what we did
4 before, and I'm trying to remember how
5 widely we threw the net, you know, it was
6 vendors, it was other consultants, it was a
7 variety of companies that were -- it was a
8 pretty wide outreach of people who could
9 say, I believe this is a valid cost --

10 MR. TORNETEN: Right.

11 MS. SHARP: -- for what you find
12 here and here's why. You know, here's my
13 evidence as to why. We would just try to
14 do the same thing, maybe not throwing the
15 net quite as wide because we've got fewer
16 things to look at and, frankly, fewer
17 resources if the DEQ does it itself. And
18 if at any time you all feel like we're too
19 limited and we can't do adequate research,
20 then we would consider commissioning
21 somebody else to do it full blown.

22 MR. TORNETEN: In my experience
23 of doing cost estimates, unfortunately I've
24 done a bunch of them, probably the greatest
25 uncertainty -- when you start out doing a

1 cost estimate with published unit cost
2 data, means is a good example, means of
3 construction cost data, that's kind of --
4 we call it a first order estimate. And
5 there's necessarily a lot of uncertainty in
6 there. There are methods beyond that that
7 really take into account, you know,
8 regional considerations, even local
9 considerations, you know, what's going on
10 in your area. And when you've got
11 contractors that are bidding on the work
12 and actually doing the work, those are
13 probably the best numbers that are out
14 there. I mean, they're not going to be
15 site specific, we can't be site specific
16 but at least, you know, you've got numbers,
17 well, they did that, they put down two feet
18 of clay and it cost this much. They bid on
19 it and did it. What do you think, Jeff? I
20 mean, I feel like those are better numbers
21 than unit cost numbers that you're going to
22 get out of the literature or --

23 MR. SHEPHERD: Yes.

24 MR. TORNETEN: I mean, you call
25 up a vendor, there aren't that many in the

1 geosynthetic business now, we're down to a
2 handful of vendors, you know. In a matter
3 of a day, you could contact all of the
4 major vendors and get quotes on the same
5 material. It would be a good starting
6 point. Now, those are always going to
7 change. And I mean, sometimes there's
8 changes from the time when you get a quote
9 to when you actually do the work, but
10 generally you're going to be close, you're
11 going to be fairly close within pennies.
12 We didn't maybe have the benefit of all of
13 the closures and when we did this -- this
14 would have been six years ago, last time
15 around?

16 MR: 2000.

17 MR. TORNETEN: We've got a lot
18 more information I think now than we had
19 back then. I think it can be a much more
20 focused effort.

21 MR. RILEY: Well, I think
22 whatever we do, you know, we need to be --
23 we need to be able to justify the
24 replacement of the original cost with the
25 one that we propose. I think the original

1 study was very deliberate in its method of
2 defining the costs. And if we choose to
3 throw one of those out and replace it with
4 something else, you know, I think we need
5 to have some validity to our method of
6 coming up with that.

7 MR. TORNETEN: I agree. And that
8 is going to be the difficulty in getting
9 these unit costs is you're going to have to
10 very specifically define the cost that you
11 want.

12 For example, if you are requesting a
13 cost for geosynthetic clay liner, well, you
14 know, that's a fairly generic term. You've
15 got to be specific. Is this geosynthetic
16 clay liner textured, is it reinforced, is
17 it going to be put on a slope, is it going
18 to be put on a flat area. And those kinds
19 of decisions will have a significant impact
20 on the cost numbers that you get. So you
21 need to know before you ask the question,
22 you know, what do I really need here. What
23 do we need to be getting a cost for.

24 I mean, similarly with earthwork
25 numbers, in order to get a good quote for

1 an earthwork task, you've got to define it.
2 You don't necessarily need to limit it to a
3 particular piece of equipment, but you need
4 to have a pretty good description of the
5 task.

6 And I think some of that, you know,
7 that's some of the struggle we had the last
8 go around in terms of getting unit costs
9 was, you know, to some extent you have to
10 define methods before you can get a cost
11 and that's a challenge. I kid you not.
12 Sometimes there's disagreement. I mean,
13 you go to a contractor and get a quote for
14 moving dirt, well, you may get a quote from
15 this guy using this equipment because
16 that's what he's got. Well, you might go
17 to another guy and he's got different
18 equipment and you get a different quote
19 from him.

20 So, you know, there's some
21 variability here and you have to be aware
22 of that and you have to kind of factor that
23 in when you're getting quotes for some of
24 these tasks.

25 (Inaudible) probably people in the

1 Department that have a pretty good feel for
2 this, that understand closure and
3 construction to the extent that -- at least
4 I hope that's true, that can narrow these
5 down. I mean, enough of these landfills
6 have been closed now that the methods are
7 fairly well documented. I know you guys
8 sure have a lot of closure reports in-house
9 on how a cell is closed or constructed and
10 methods that were used, all the QAQC, the
11 whole thing. What do you think? You've
12 done this.

13 MR. SHEPHERD: I guess we can
14 just put a resolution together and make a
15 motion.

16 MR. LANDERS: Can I say one more
17 thing? And I'm sorry, Bill, because I
18 guess I had the --

19 MR. TORNETEN: You're a special
20 case.

21 MR. LANDERS: -- I must have had
22 the wrong impression at our Executive
23 meeting. I thought there was another
24 driver here, specifically DEQ being
25 concerned over the costs. I guess my --

1 while I want to do the right thing, also,
2 when you get down to the nuts and bolts of
3 the thing, our costs are going to go up.

4 MR. TORNETEN: Yes.

5 MR. LANDERS: And they will go
6 up. And I'm concerned that they're going
7 to go up over the spike in energy, if for
8 nothing else right now. And energy may
9 stay up, it may not, we've talked about
10 that. But the nuts and bolts of the thing
11 is that our costs are going to go up, yet
12 there is no history of ever having to use
13 this. You know, if we were doing this a
14 couple, three times a year, I would imagine
15 the DEQ would be very concerned over
16 disparity in unit costs.

17 So I guess I have a general
18 question. Is there no one else, the
19 public, what public is here, is there no
20 other concern over costs going up without
21 someone really driving -- driving a concern
22 to look at these costs, other than me?

23 MR. TORNETEN: No, I understand
24 your position. And I think, you know, from
25 an industry viewpoint, yes, I can

1 understand your concern with these costs.
2 And based on what we talked about at our
3 study session, we're seeing some pretty
4 significant increases in some of these
5 numbers.

6 As to whether or not these monies
7 will ever have to be used is anybody's
8 guess. In Oklahoma, I don't know, I don't
9 have, you know, experience whether they
10 have or haven't. I know in other states
11 they have to a large extent. I mean, there
12 have been a number of landfill closures
13 done under Superfund, some huge projects
14 and the public has absorbed some pretty big
15 outlays for money to close some of these
16 landfills.

17 Now, there are -- I don't foresee
18 most of the landfill companies that are
19 operating in Oklahoma right now going belly
20 up and -- but you never know. I mean,
21 anything can happen. And there still are a
22 good number of landfills operated in
23 Oklahoma by smaller companies that, you
24 know, may not have the same assurance that
25 they're going to be here 10 years from now.

1 Some of the smaller companies might argue
2 they're more stable than the waste
3 managements and some of the majors and they
4 may be right. I don't know. But, you
5 know, there's just no way of knowing. I
6 mean, the whole idea if you're going to
7 have a financial assurance program and
8 you're going to do this unit cost business,
9 I think you need to do it right
10 irrespective of what are the probabilities
11 of you having to use these monies.

12 MR. LANDERS: But I'll say again,
13 the DEQ has indicated that they're okay
14 with those costs.

15 MR. TORNETEN: Bob.

16 MR. RABATINE: I would add to
17 Steve's comments. Greg talked a little bit
18 earlier about the history of the program.
19 And I mean, you know, I'll repeat that
20 there was chaos at one point and the
21 Department was quite stressed over trying
22 to figure out how to treat everyone fairly.
23 And this effort was to correct that in a
24 uniform baseline so that all landfills
25 could be compared. It was recognized up

1 front as an estimate. They approached it
2 very scientifically and very thoroughly,
3 but it was only intended to be an estimate.

4 And so with fluctuations over prices
5 over time, we've adjusted for inflation on
6 an annual basis and it seems to have been
7 working. I think the Department is quite
8 comfortable with the -- with the
9 performance of the program because they
10 have eliminated the controversy, the idea
11 that landfill A says, this only costs me
12 \$35 to close this landfill and the other
13 guy says it's going to cost more and there
14 was no basis for comparison. So I think
15 that's been resolved. I think the debate
16 over unit costs and very specific things
17 when it was originally designed to be an
18 estimate simply to provide this blanket
19 uniform program, it seems to me to be a
20 little misplaced.

21 MR. TORNETEN: Well, it's going
22 to be an estimate. I mean, there's no
23 getting around that because it's not site
24 specific. And anytime you're coming up
25 with across the board general estimates,

1 that's the best you can do. Adjusting it
2 for inflation, although it is a good idea,
3 we're talking about a general inflation
4 factor that's not specific to this
5 industry. So it has some benefit, but I'm
6 not sure it really does the job in terms of
7 being reflective of what's going on in the
8 construction industry.

9 MR. SHEPHERD: But it's the
10 generally accepted inflation increase that
11 --

12 MR. TORNETEN: Yes.

13 MR. SHEPHERD: -- people use,
14 that contractors use, that waste companies
15 use to get more --

16 MR. TORNETEN: Yes.

17 MR. SHEPHERD: -- money on
18 contracts from cities. I mean, everything
19 is going up uniformly.

20 MR. TORNETEN: Right.

21 MR. SHEPHERD: So --

22 MR. TORNETEN: And I think in the
23 absence --

24 MR. KYLER: That's what my point
25 is. That's what inflation is for, is to

1 adjust prices. I mean, you're arbitrarily
2 talking about raising estimates seven to
3 eight percent on top of inflation; is that
4 not correct?

5 MR. TORNETEN: We already
6 approved that one.

7 MR. SHEPHERD: We already did
8 that.

9 MR. KYLER: (Inaudible).

10 MR. TORNETEN: Yes. Well, I
11 don't know that that's on top of inflation.
12 I think those numbers actually reflect
13 inflation to a large extent.

14 MR. GARBER: If I could clarify
15 something. The adjustments we made to
16 Appendix H and I were in lieu of the
17 cumulative inflation adjustment over the
18 five year period. So it's actually --
19 we're substituting these numbers for the
20 inflation adjusted numbers in the two
21 (inaudible).

22 MR. SHEPHERD: And then these
23 numbers will be adjusted by inflation as we
24 move forward --

25 MR. GARBER: That's correct.

1 MR. SHEPHERD: -- on a yearly
2 basis.

3 MR. RABATINE: Is it fair to say,
4 Greg, that you moved the baseline? Is that
5 what the effort is, is that you moved the
6 baseline?

7 MR. GARBER: Yes. We moved the
8 baseline and generated a new baseline
9 number to be inflated beginning in the next
10 increment.

11 MR. RABATINE: The only other
12 comment I would make is to remind everyone
13 that the way the law is drawn, your payment
14 is over a length or period of time. So
15 once again, unless a landfill has been
16 paying in for 10, 12, 15, 20 years, there
17 is very -- a small increment of the cash
18 that's estimated for this effort is
19 actually in the trust and available to the
20 Department at any one time. So you're
21 talking about an incremental adjustment but
22 then they are only going to pay in for two
23 or three years, there is no way to protect
24 the Department and that's the way the law
25 is structured.

1 MR. TORNETEN: That only relates
2 to one of the financial mechanisms. There
3 are other -- and I don't know how many of
4 them use the trust fund and how many of
5 them use bonds, I don't know.

6 MR. FLETCHER: I have a question.
7 What -- how much of a factor does it make
8 to the DEQ if a landfill is under funded on
9 post-closure or closure as to whether you
10 actually go out and close up a bad actor or
11 not?

12 MR. JOHNSON: That has no
13 bearing, I don't think -- the funding is
14 set by statute as to all of these pay ins.
15 Theoretically, the only people that can be
16 underfunded are those who have a trust
17 account or an escrow account, which the
18 statute allows a 15 year pay in period.

19 MR. FLETCHER: So that makes no
20 determination on if you had to close
21 someone up?

22 MR. JOHNSON: I think not in
23 terms of a bad actor, no.

24 MR. TORNETEN: I don't know for
25 sure, I mean, this study may be done, this

1 review may be done and they may come back
2 with some numbers that aren't that
3 dramatically different. I think in some
4 cases, we've got some values in here and we
5 talked about some of them that are
6 unrealistically high. Sand was one in here
7 and you compared the cost for importing and
8 placing sand to the cost for importing and
9 placing unclassified material and they are
10 way out of whack. I think that kind of
11 thing needs to be addressed. I mean,
12 there's some other stuff in here I think
13 that's worth looking at beyond just cost
14 increases. I'm not sure exactly -- I mean,
15 we looked a little bit at how the costs for
16 importing and placing sand was derived and
17 we really couldn't quite hone in on how it
18 got to be such a big number, but it was --
19 it was at least 50 percent, I forget
20 exactly, but it was way high compared to
21 the numbers for importing just regular
22 unclassified material, for example. So I
23 think there are some other things in here
24 that are worth looking at beyond just the
25 potential increases in cost.

1 MR. GARBER: I think the
2 information that we came up with in the
3 meeting was about \$4 per cubic yard high.

4 MR. TORNETEN: For sand?

5 MR. GARBER: Yes, for sand, for
6 placing sand. Industry had \$14 to \$15 and
7 we have about \$19 per cubic yard.

8 MR. FLETCHER: The DEQ, through
9 their experience, has already changed some
10 of the numbers on real world -- I mean,
11 costs that they saw.

12 MR. TORNETEN: No, I don't
13 believe they have.

14 MR. FLETCHER: Didn't you say
15 that you did change the cost, other than
16 the adjustment, on probes or gas wells or
17 something like that?

18 MR. GARBER: That was
19 incorporated into Appendix A, H and I, the
20 changes that we proposed, it was based on
21 our experience for what we pay under
22 contract for that kind of work, yes.

23 MR. FLETCHER: So you've already
24 made that adjustment?

25 MR. GARBER: No, we did not make

1 that adjustment without your approval.

2 That was what was included in --

3 MR. FLETCHER: That's right.

4 MR. GARBER: -- in Appendix H.

5 It was a non --

6 MR. FLETCHER: But that -- you
7 mean --

8 MR. GARBER: -- means type of --

9 MR. FLETCHER: That was in the --
10 that was in what was just approved, right?

11 MR. GARBER: Yes. That's
12 correct.

13 MR. FLETCHER: So they've already
14 done that.

15 MR. GARBER: And in some cases,
16 those were as high as 30 to 40 percent
17 increases, but it's only in the lineal
18 footage for vertical probes. And so,
19 again, that's where it's different than the
20 inflationary adjustment. That's one unit
21 that was -- we found was out of whack,
22 based on our own experience, where we had
23 the data. See, the difficult with, as you
24 probably all well know, with costs versus
25 prices is we don't actually have cost

1 history information that is required to be
2 reported to us. You folks have that on
3 your balance sheets, your expenses for
4 operating your facilities. But DEQ doesn't
5 normally collect that kind of data and
6 wouldn't have access to it. It's
7 proprietary, it's everybody's business and
8 we don't regulate financial matters in the
9 industry, so we don't know.

10 MR. FLETCHER: If you closed up a
11 landfill this last year and you had real
12 cost numbers, would you have also
13 incorporated those into these?

14 MR. GARBER: If we didn't have a
15 range of data, I don't know that we would
16 have. We might have given it
17 consideration, but we didn't have an event
18 like that. So, no, we didn't incorporate
19 it, that's for sure. All we did was as I
20 described. There were -- there was simply
21 some numbers that just had to be inflated
22 because there was no other way to do it,
23 which was -- I think they were marked in
24 the information. There was a column with
25 numbers one, two and three in it, there was

1 the means based adjustment, which I
2 described, and then there was actual cost
3 experience of the Department.

4 MR. FLETCHER: But if you would
5 have closed a landfill up this last year
6 and they weren't the same numbers that are
7 in your cost estimates now, it would have
8 given you pause?

9 MR. TORNETEN: Well, it would
10 have given the public pause if they had to
11 go out and get the extra money somewhere.

12 MR. GARBER: Sure, you know, but
13 -- you know, I think the Department
14 recognizes, you know, that this whole
15 financial assurance across the industry in
16 the hazardous waste business is
17 speculative, as well. We have had a
18 closure in the hazardous business. Again,
19 it's estimates and it's not a perfect
20 world, that's for sure. The way that EPA
21 modeled this thing to begin with is
22 different than industry would do it, it's
23 structuring an estimate alone, you know.

24 So again, the regulatory purpose of
25 assuring some uniform treatment across the

1 industry for everybody who has to post a
2 financial assurance has been achieved,
3 which was the immediate need. This one,
4 again, I think because the Department's
5 risk is relatively small in terms of having
6 to do a closure, has been a less concern on
7 the Department's part. But yes, it could
8 turn out to be significant in the
9 individual case because of the variation in
10 actuals versus pricing. I mean, that's
11 just the way it is.

12 MR. TORNETEN: I mean, the DEQ
13 doesn't have a pool of money set aside
14 somewhere to pay for a closure outside of
15 financial assurance?

16 MS. SHARP: No.

17 MR. GARBER: I can't speak to
18 that one.

19 MR. SHEPHERD: Not illegal trust
20 funds.

21 MR. TORNETEN: Right. So I mean,
22 to the extent that a closure needs to be
23 done, they're going to have to do it
24 through, I guess, Superfund or public
25 monies, in essence, to make this happen.

1 MS. SHARP: Right. I mean,
2 Superfund is not a very good gamble these
3 days. So yes, our assumption first is that
4 we would hope there are closure cost monies
5 available --

6 MR. TORNETEN: Right.

7 MS. SHARP: -- before they use
8 the trust or whatever, whatever fund is
9 there. And sometimes it's difficult to get
10 that, depending on the mechanism, but
11 that's what we always presumed.

12 MR. TORNETEN: Right.

13 MR. JOHNSON: And actually, the
14 Legislature did approve -- passed a bill
15 some years ago to set up a closure trust
16 fund but it's never -- so it's set up in
17 the Legislature but it's never been funded.

18 MR. TORNETEN: It's never been
19 funded. There's a mechanism, but no money.

20 MS. READY: Christy, do you feel
21 like we need to take a break at this point?

22 THE REPORTER: I'm out of paper,
23 so I really do. I thought I could wait it
24 out, but I'm writing to the disc. So, yes,
25 it would be nice to have some paper.

1 MR. TORNETEN: Okay. We'll take
2 a short break and --

3 MR: I propose we take a 10
4 minute break.

5 MR. TORNETEN: Okay. Do we need
6 a vote on that?

7 (OFF THE RECORD)

8 (BACK ON THE RECORD)

9 MR. TORNETEN: We're ready to
10 reconvene and wrap this up for the day. I
11 guess where we're at, at this point, is as
12 a Council, we need to decide if we want to
13 make a recommendation to the Department to
14 review these unit costs or not. And it's
15 basically just an informal recommendation
16 on our part. It's not something we're
17 going to have a formal vote on or anything,
18 but I know we've got some difference of
19 opinion here, so we don't have a 100
20 percent consensus. But I guess I'll ask,
21 do you guys think we have a majority that
22 want to make this recommendation? I'm
23 going to guess --

24 MR. LANDERS: I recommend not, in
25 light of something I've learned today, and

1 I recommend not.

2 MR. TORNETEN: Ralph, are you --

3 MR. TRIPLETT: (Inaudible).

4 MR. TORNETEN: Okay.

5 MR. SHEPHERD: I'd have to say

6 that I wouldn't be in favor of it either,

7 Bill.

8 MR. TORNETEN: Elzie, what's your

9 feeling?

10 MR. SMITH: You're just going to

11 pick on the new guy.

12 MR. TORNETEN: Even the new guy

13 gets a voice.

14 MR. SMITH: Just judging from

15 what's being said right now, I would say

16 not.

17 MR. TORNETEN: Patrick, what

18 about you?

19 MR. RILEY: Let me try to

20 straddle the fence a little bit. I don't

21 think that there's a need to repeat the

22 study that was done five years ago. And I

23 think if we try to do that, I think we'll

24 always find things that need -- that could

25 use improvement. And to do a study like

1 this every five years or spend the effort,
2 I think is unnecessary.

3 With that being said, to go back and
4 look at things and try and adjust where we
5 see it would be an improvement, I don't see
6 anything wrong with that. Reviewing it
7 internally at DEQ I think is probably the
8 best way to go. I mean, I don't remember
9 what the original study cost, but it was
10 significant, I believe, in effort and in
11 cost. So I would not be in favor of doing
12 that. If -- so I guess I'm undecided at
13 this point. Maybe if we define the scope a
14 little bit more of what the review would
15 entail, I would have a stronger
16 (inaudible).

17 MR. FLETCHER: I'm in favor of
18 going back and looking at the cost that we
19 looked at, real world cost that we're
20 spending today on the landfills due to our
21 experience that we have in the landfills,
22 such as clay offsite and the sand is way
23 too high, there's other things that are way
24 too low. And I think that's why that there
25 was a five year review, not just to say

1 that, you know, we're going to do this by
2 the means but actually look at real world.
3 I think if you don't make these cost
4 adjustments now, I think that you're
5 probably going to be that much farther off
6 five years from now.

7 MR. TORNETEN: I guess I have a
8 little concern that the Department is
9 obligated to do this every five years. And
10 if in looking at it to the level that we
11 have, we see -- we see some real
12 discrepancies, some issues that look like
13 they could be out of whack, I'm a little
14 uncomfortable with the fact that the
15 Department's looked at it, seen what is
16 potentially a problem with some numbers
17 that are out of line and just left it at
18 that. Whether we make a recommendation to
19 them or not, I think I feel like the Land
20 Protection Division at least is in the
21 position now, it's been called to their
22 attention that, you know, there are some
23 potential issues on some of these numbers.
24 It's been brought to their attention by
25 people in the industry that some of these

1 numbers don't line up. Where do we go from
2 here. Whether we make that recommendation
3 or whether they just do it on their own
4 accord, you know, it may or may not happen.
5 But I kind of feel like we're pushing the
6 Department to do or we're giving them
7 support to do what I think they're already
8 mandated to do, whether it's a formal
9 review, an informal review or what.

10 MR. FLETCHER: I would recommend
11 an informal review just based on what we
12 see here in the state. And we've given the
13 numbers to what those are and we know that
14 right now they're off and I can't see that
15 they're going to change to the lowering of
16 them in the next five years.

17 MR. TORNETEN: I guess we can
18 leave it at that. We don't necessarily
19 have to put out any kind of formal
20 recommendation to you all. You've heard
21 the discussion and, you know, unless DEQ is
22 specifically asking for a recommendation
23 from us, which I don't know whether that
24 can happen at this meeting or not, but it
25 may have to happen at a subsequent meeting.

1 But in the absence of that, I don't think
2 we've got enough of a consensus here to put
3 a formal recommendation out here. I mean,
4 ultimately I can ask the Department, is it
5 not within you guys' latitude to do this
6 because you think it's necessary, whether
7 or not we give you a recommendation or not?
8 I mean, you can do this, you don't need a
9 recommendation from us. You may not want
10 to do this.

11 MR. SMITH: You said that -- the
12 gentleman over here said that they did do
13 that on a couple of items, correct?

14 MR. TORNETEN: Right.

15 MR. SMITH: So they have done
16 that in some respect. But I wouldn't see a
17 problem with some of the items that you
18 mentioned earlier weren't looked at. That
19 would be their responsibility now that it's
20 been called to their attention.

21 MR. GARBER: The method of
22 adjustment that we used for this five years
23 where we have actual cost experience of our
24 own, we used that instead of some
25 speculative number. But again, the only

1 way we used it was not to originate a unit
2 price but to, in the same manner, model the
3 escalation in the prices we paid over the
4 same period. We still, in effect, used the
5 same method. We took the original price
6 and adjusted it based on our cost
7 experience over the five year period
8 instead of what means database showed over
9 the five year period. So we didn't
10 actually originate a new unit price even
11 for those. What we are really talking
12 about and I think what the Members had in
13 mind was saying that, say, \$6.26 a ton, or
14 a cubic yard for offsite clay really should
15 be \$12.22 or something like that because we
16 did not have enough in the \$6.22 for
17 purchasing clay. We did not make that kind
18 of adjustment, even when we had our actual
19 cost experience. We just, again, made the
20 escalation adjustment based on our cost
21 escalation to the original study number.
22 That's sort of a technical point. But
23 again, we did not try to originate new
24 numbers here for lack of, I'm going to call
25 it a thorough investigation. That just

1 didn't seem like it was the appropriate way
2 to go from what I was being asked to do or
3 the way we perceived it.

4 MR. TORNETEN: Well, at this
5 point I don't think we've got a whole lot
6 more to discuss on that issue. It's sort
7 of where it is.

8 MS. SHARP: Can I make sure I
9 understand where it is. I want to make
10 sure that the DEQ is taking care of the
11 needs of the Council adequately. So you're
12 leaving it where -- just to start at the
13 beginning. We have a mandate to revisit
14 the costs every five years. The scope of
15 that review or what happens is not
16 specified by the law. And Greg, working
17 with some Members of the Council has done
18 that and they made certain adjustments. If
19 any Council Members think other numbers
20 should be revisited or that these
21 adjustments didn't address everybody's
22 needs, this is a rule and it can be
23 changed. So I want to make sure that
24 everybody brought forward the areas within
25 the costs that they want reexamined.

1 MR. TORNETEN: In the study
2 session that we had, we looked individually
3 at a number of costs and we called to
4 attention those costs that we thought were
5 out of line. There has been no adjustment
6 of those costs. We simply looked at them
7 and said, you know, based on what we're
8 seeing in industry, these numbers don't
9 match up. That was the motivation, based
10 on that meeting, to come here and make a
11 recommendation to the Department to have a
12 review done on these costs. So that's
13 where it was left at the meeting.

14 MS. SHARP: So I understand a
15 review that could result in an adjustment,
16 that you feel like someone -- some group of
17 the Council or at least the Council feels
18 is closer to reality.

19 MR. TORNETEN: Right.

20 MS. SHARP: Okay.

21 MR. TORNETEN: Right. I mean, I
22 can personally make that recommendation,
23 but it doesn't necessarily reflect the will
24 of the whole Council.

25 MS. SHARP: Just so I understand

1 (inaudible).

2 MR. MCCULLOUGH: You haven't
3 asked, but I'm just going to go ahead --

4 MR. TORNETEN: Sure, weigh in.

5 MR. MCCULLOUGH: Of course, you
6 know, again, a beginner thing here, but
7 from the changes that were made and we
8 actually adopted or approved the proposal
9 and, of course, I'm going to come in and
10 just be a -- not be opposite but,
11 nonetheless, I would like to see probably a
12 closer look at the numbers.

13 MR. FLETCHER: I can't see what
14 it would hurt. If they're off, they're
15 off. If they're not, let's just let them
16 ride. But I can't see what looking at
17 actual numbers are that we're experiencing
18 right now would hurt, based on what we have
19 in our estimations.

20 MR. TORNETEN: So basically what
21 we've got are, it looks like maybe three
22 Members of the Council would like to see
23 the Department review numbers. We've got
24 one-half, one maybe, and we've got four
25 that don't think it's necessary. So that's

1 kind of where we are right now.

2 MR. SMITH: And I'm -- let me
3 back up, I guess, a little bit. I guess
4 I'm kind of -- Patrick -- I don't
5 necessarily want to see a full-blown study,
6 but if there are a few items --

7 MR. TORNETEN: Right.

8 MR. SMITH: -- that you guys have
9 seen that you think -- I don't see --

10 MR. FLETCHER: I don't think
11 we're asking for a full blown study, just
12 to look at what we presented to Greg,
13 really, and that would be adequate for me.
14 I don't think we went in there and hit all
15 that many different things. You guys can
16 look at what we actually discussed in that
17 meeting and if you think they're wrong,
18 then you guys can maybe come up with some
19 better numbers.

20 MR. TORNETEN: We probably
21 focused on, I would say, maybe 10 unit
22 costs, strictly big earthwork numbers and
23 geosynthetics are what we looked at. And
24 of course, they are, again, those are the
25 big drivers in the bottom line numbers.

1 What we saw were some significant
2 discrepancies. That motivated us to think,
3 well, you know, a more thorough review of
4 these numbers seems to be in order and
5 that's what we came here today to discuss.
6 We're sort of split, I think, down the
7 middle. You know, I don't know that
8 anybody violently opposed to the Department
9 revisiting this subject. We're still maybe
10 four against and four for.

11 MR. THOMPSON: Hi, I'm Scott
12 Thompson. I would just say this, we'll be
13 happy to take a look at those things and
14 toss them out at some future Council
15 meeting and let you guys fight about it,
16 you know, and whatever the Council decides
17 to do will be fine with us. I would say,
18 you know, that's something to sort out over
19 the next year probably, as opposed to
20 trying to get it done in the short term,
21 but try to get some real world figures from
22 our own experiences as well as whatever you
23 guys have provided and just identify a few
24 items that look like they're out of line
25 based on whatever realistic costs are.

1 And, you know, we may -- I think there's a
2 chance we could see a little decline in the
3 next year, depending on what fuel prices
4 do.

5 MR. TORNETEN: Possible.

6 MR. THOMPSON: But if fuel prices
7 stay where they are and keep going up, we
8 probably won't. But, you know, we could
9 take a look at those things and just toss
10 them out there for discussion and just
11 however it goes, it goes. I don't think we
12 have any burning desire either way. But we
13 do think it's important to go ahead and
14 deal with the current escalations that are
15 on the table, I guess.

16

17 MR. GARBER: They already have
18 adopted our H and I.

19 MR. THOMPSON: Okay. I missed
20 the first part. So we can do that, you
21 know, and go through a series of
22 discussions in future Council meetings and
23 try to sort it out. Whatever the Council
24 chooses to do is fine, pass it on up to the
25 Board and see what they do.

1 MR. TORNETEN: Sounds good to me.
2 Does anybody have a problem with that? It
3 sounds like a good direction.

4 MR: Do we have to make a motion
5 or anything?

6 MR. TORNETEN: No, we can't, I
7 don't think. It has to be informal. All
8 right. That's kind of where we'll leave
9 that.

10 MR. FLETCHER: I would like to
11 thank Greg for sitting down with us,
12 though, and spending those hours with us
13 and going over those numbers. I think you
14 did a great job and you put together a
15 really good presentation and sent us out
16 some good things to look at. It was very
17 helpful.

18 MR. GARBER: Thank you. I find
19 it quite informative myself and I'm going
20 to finalize my memo to Scott and to my
21 staff and we'll pursue it.

22 MR. TORNETEN: Great. I think
23 we've worked our way through questions and
24 discussions. Any additional questions or
25 discussion by the public? All right. I

1 think we're down to a roll call vote for
2 adjournment. I motion to adjourn. Do we
3 have a second?

4 MR. SHEPHERD: Second.

5 MS. BRUCE: Ralph Triplett.

6 MR. TRIPLETT: Yes.

7 MS. BRUCE: Elzie Smith.

8 MR. SMITH: Yes.

9 MS. BRUCE: Jeff Shepherd.

10 MR. SHEPHERD: Yes.

11 MS. BRUCE: Patrick Riley.

12 MR. RILEY: Yes.

13 MS. BRUCE: T.J. McCullough.

14 MR. MCCULLOUGH: Yes.

15 MS. BRUCE: Donald Fletcher.

16 MR. FLETCHER: Yes.

17 MS. BRUCE: Steve Landers.

18 MR. LANDERS: Yes.

19 MS. BRUCE: Bill Torneten.

20 MR. TORNETEN: Yes.

21 MS. BRUCE: We are adjourned.

22

23 (END OF PROCEEDINGS)

24

25

