

MINUTES
SOLID WASTE MANAGEMENT ADVISORY COUNCIL
January 10, 2008 Regular Meeting
Department of Environmental Quality
Multipurpose Room 707 N. Robinson
Oklahoma City Oklahoma

For EQB February 29, 2008
 SWMAC Approved
~~May 8, 2008~~–September 11, 2008

Notice of Public Meeting The Solid Waste Management Advisory Council convened for its regular meeting at 9:00 a.m. January 10, 2008, in accordance with the Open Meeting Act, Section 311 of Title 25 of the Oklahoma Statutes. Notice of regular meeting was filed at the Office of the Secretary of State on November 2, 2007. 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. Jay Stout, Chair, called the meeting to order and welcomed Mr. Bryan Taylor, Mayor of Bethany, to the Council. Council also wished Dee Ready well wishes in her retirement. Roll call confirmed that a quorum was present.

MEMBERS PRESENT

Donald Fletcher
 Steve Landers
 T. J. McCullough
 Patrick Riley
 Jeff Shepherd
 Jay Stout
 Bryan Taylor
 Bill Torneten
 Ralph Triplett

DEQ STAFF PRESENT

Scott Thompson
 Dee Ready
 Ferrella March
 Fenton Rood
 Sonny Johnson
 Jon Roberts
 Sherry Combs
 Myrna Bruce

MEMBERS ABSENT

Vacancy

OTHERS PRESENT

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

Approval of Minutes of the 9/20/07 regular meeting Mr. Jay Stout called for a motion to approve the minutes. Mr. Triplett made the motion and Mr. Torneten made the second.

See transcript pages 6-7

| | | | |
|------------------|-----|----------------|---------|
| Roll Call | | Jeff Shepherd | Yes |
| Donald Fletcher | Yes | Bryan Taylor | Abstain |
| Steve Landers | Yes | Bill Torneten | Yes |
| T. J. McCullough | Yes | Ralph Triplett | Yes |
| Patrick Riley | Yes | Jay Stout | Yes |

Public Forum - No issues raised.

Proposed revisions to OA 252:515 Subchapter 21 (waste tire processing, certifications, permits and compensation). Mr. Stout started the hearing with a reminder that this rulemaking had been discussed at length at Council's September 20, 2007 meeting and then it was tabled to this meeting. Mr. Fenton Rood reiterated that past discussion relaying that the proposal as received in Council's packet was the same as the past information. Letters of comments were received from Geocycle dated December 21, 2007; from Bristow Rubber Recycling dated January 9, 2008; and from Holcim dated January 9, 2008. Oral comments were made by Mr. Jimmy Bennett of Geocycle; from

Mr. Jim Barnett representing the Environmental Federation of Oklahoma (EFO); and from Mr. Bob Kellogg representing Buzzi-Unicem. All of these comments were responded to by staff and Council's questions were answered. Mr. Steve Thompson, DEQ Executive Director, provided helpful Legislative insight for Council's consideration of the rulemaking.

Mr. Shepherd made motion to approve the rulemaking as presented with the inclusion of the suggested apportionment language in OAC 252:515-21-71(e) Eligibility Requirements. Mr. Fletcher made the second. Mr. Thompson stated that staff would provide the Council with the Waste Tire Task Force final report when it becomes available mid-summer.

See transcript pages 7 - 85

| | | | |
|------------------|-----|----------------|-----|
| Roll Call | | Jeff Shepherd | Yes |
| Donald Fletcher | Yes | Bryan Taylor | Yes |
| Steve Landers | Yes | Bill Torneten | Yes |
| T. J. McCullough | Yes | Ralph Triplett | Yes |
| Patrick Riley | Yes | Jay Stout | Yes |

Public Forum Continued – No issues were raised.

Adjournment Mr. Shepherd made motion to adjourn. Mr. Stout made the second. Motion passed unanimously. The meeting was adjourned at 11:07 a.m.

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
OF THE SOLID WASTE MANAGEMENT
ADVISORY COUNCIL MEETING
HELD ON JANUARY 10, 2008 AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA

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MEMBERS OF THE COUNCIL

JAY STOUT, CHAIR

JEFF SHEPHERD, VICE-CHAIR

STEVE LANDERS, MEMBER

T.J. MCCULLOUGH, MEMBER

DONALD FLETCHER, MEMBER

PATRICK RILEY, MEMBER

BILL TORNETEN, MEMBER

RALPH TRIPLETT, MEMBER

BRYAN TAYLOR, MEMBER

STAFF MEMBERS

MYRNA BRUCE, SECRETARY

FENTON ROOD, PROGRAMS MANAGER

SONNY JOHNSON, LEGAL STAFF

FERRELLA MARCH, WASTE TIRE PROGRAM

SCOTT THOMPSON, DIRECTOR

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COUNCIL MEETING

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MR. STOUT: I'd like to call to order the meeting of the Solid Waste Management Advisory Council.

It is customary at the top of the meeting that we acknowledge that the agenda has been posted in the proper amount of time for the public. I think the most important thing that guests need to remember is that, in this meeting, items that are not on the agenda may be addressed only in public forum for us to listen and consider for future meetings. No discussion or decisions would be made by Council on something that is not on the agenda.

You know, last time we met, I kind of paraphrased the opening, and I noticed that in the minutes it was word-for-word like it's always been, so it's covered if you are missing a word-for-word statement.

We will have a roll call, please.

1 MS. BRUCE: Me and everyone else
2 needs to remember to push the blue button
3 to talk.

4 Ralph Triplett.

5 MR. TRIPLETT: Present.

6 MS. BRUCE: Bill Torneten.

7 MR. TORNETEN: Present.

8 MS. BRUCE: Bryan Taylor.

9 MR. TAYLOR: Present.

10 MS. BRUCE: Patrick Riley.

11 MR. RILEY: Here.

12 MS. BRUCE: Jeff Shepherd.

13 MR. SHEPHERD: Here.

14 MS. BRUCE: T.J. McCullough.

15 MR. MCCULLOUGH: Here.

16 MS. BRUCE: Steve Landers.

17 MR. LANDERS: Here.

18 MS. BRUCE: Donald Fletcher.

19 MR. FLETCHER: Here.

20 MS. BRUCE: Jay Stout.

21 MR. STOUT: Here.

22 MS. BRUCE: Thank you. We do
23 have a quorum. In fact, we have a full
24 house.

25 MR. STOUT: It's always great to
have a new person join this Council, which

1 doesn't happen really that often. Some of
2 us have probably been around too long, but
3 I would like for you to welcome Bryan
4 Taylor. Bryan is Mayor of Bethany and is
5 our newest Council Member appointed by
6 Senate pro tem. He was elected in 2001 to
7 the City Council in Bethany at the age of
8 23. Now, in 2006, he's lost all of his
9 hair after becoming Vice-President of his
10 own business, a family business, Taylor
11 Foam, Inc.

12 Bryan, we welcome you. Thank you
13 for being a part of this.

14 MR. TAYLOR: Thank you. It is a
15 pleasure to serve on this Board, and I look
16 forward to diving in and being a part of
17 it. Thank you.

18 MR. STOUT: Okay. And with new
19 comes the opposite end of the house. I
20 would like for Dee Ready to please come
21 forward.

22 Dee Ready, as all of you know, been
23 with staff and is retiring at the end of
24 this month. We want to express our
25 appreciation for her efforts and work with

1 us.

2 MS. READY: Thank you, Jay. I
3 appreciate everybody and I've enjoyed
4 working with everybody here.

5 MR. STOUT: Thank you.

6 MS. READY: Thank you.

7 MR. STOUT: Let's give them both
8 a hand.

9 (Applause)

10 MR. STOUT: Approval of the
11 Minutes of the September 20, 2007 meeting.
12 Is there a motion?

13 MR. TRIPLETT: Mr. Chairman, I
14 would move that we approve the minutes.

15 MR. STOUT: Motion has been made.
16 Is there a second?

17 MR. RILEY: Second.

18 (Discussion)

19 MR. STOUT: Roll call for
20 approval of the minutes please.

21 MS. BRUCE: Ralph Triplett.

22 MR. TRIPLETT: Yes.

23 MS. BRUCE: Bill Torneten.

24 MR. TORNETEN: Yes.

25 MS. BRUCE: Bryan Taylor.

1 MR. TAYLOR: I'll abstain.

2 MS. BRUCE: Patrick Riley.

3 MR. RILEY: Yes.

4 MS. BRUCE: Jeff Shepherd.

5 MR. SHEPHERD: Yes.

6 MS. BRUCE: T.J. McCullough.

7 MR. MCCULLOUGH: Yes.

8 MS. BRUCE: Steve Landers.

9 MR. LANDERS: Yes.

10 MS. BRUCE: Donald Fletcher.

11 MR. FLETCHER: Yes.

12 MS. BRUCE: Jay Stout.

13 MR. STOUT: Yes.

14 MS. BRUCE: Motion approved.

15 MR. STOUT: As indicated in my

16 opening statement, under public forum, if

17 you have something you wish to address, you

18 will probably have to remind several of us

19 of that.

20 As indicated in my opening statement

21 -- and by the way, it's great to see so

22 many people here with us today. We have

23 kind of had few pickings the last time or

24 two we've met. So welcome, and thank you

25 for being here.

1 Public forum is now open, if anyone
2 wishes to address the Council on something
3 other than an item on the agenda. We
4 invite you to the podium to identify
5 yourself and share with us what you would
6 like.

7 My track record, is you have thirty
8 seconds to make it to the podium. It works
9 every time.

10 Please identify yourself.

11 MR. WILLIAMS: I'm Don Williams.
12 I'm a governmental affairs consultant,
13 representing Bristow Rubber Company, and we
14 submitted a proposal that I believe was
15 sent to the Board. I just wasn't sure if
16 that was considered as being on the agenda,
17 or if it's pertinent for this part of your
18 agenda.

19 MR. STOUT: There has been some
20 informal debate this morning regarding what
21 you are asking. I think it will probably
22 play out by Council Members during this
23 meeting.

24 MR. WILLIAMS: So, later in the
25 agenda?

1 MR. STOUT: I'll bet it's brought
2 up.

3 MR. WILLIAMS: Okay. Thank you.

4 MR. STOUT: Yes. Would anyone
5 else like to make a comment?

6 If not, then Number 6, Proposed new
7 and amended language to OAC 252:515,
8 Subchapter 21. I'm chuckling because waste
9 tire processing seems to be, you know,
10 becoming a rather lengthy subject for us
11 now, like when we were rewriting the rules
12 a couple of years ago.

13 So, questions and discussions of
14 subchapter -- well, to bring all of us up
15 to date if you weren't here at the last
16 Council meeting on September 20th. This
17 was discussed at great length, then it was
18 tabled for input and possible amendments,
19 written comments by staff, and that was
20 September 20th. You had until now because
21 we did not call a special meeting for that.

22 So, Council is going to pick up
23 right where we left off in reference to
24 discussion of the item that was tabled for
25 today.

1 Questions and discussions, feel free
2 now Council Members, to share your
3 comments.

4 MR. SHEPHERD: I think that
5 either probably Ferrella should stand up
6 and kind of go back over this stuff again,
7 and all of this new stuff that has been
8 submitted, to kind of give us an idea of
9 where we are.

10 Personally, receiving stuff the day
11 before the Council meeting, to me is not
12 really acceptable. Everybody has known
13 since September 20th that we were accepting
14 comments, and we get stuff literally the
15 day before. So I have not really had a
16 chance to dive in and study this stuff, so
17 I would certainly like to have Ferrella go
18 over it again, or Fenton, or Sonny, or
19 whomever is more appropriate at this time.
20 Please.

21 MS. MARCH: Sure. I'm going to
22 have Fenton go over everything, and then we
23 will also review the most current
24 information that you received yesterday and
25 this morning.

1 MR. SHEPHERD: Great. Thanks.

2 MR. ROOD: Okay. If you recall,
3 the last session of the Legislature brought
4 amendments to the Waste Tire Recycling Act,
5 and we came to your last meeting with
6 proposed rules to implement the statutory
7 changes. Most of the discussion from the
8 last meeting revolved around the issue of
9 cleaning up tire dumps. You had a written
10 submittal from Geocycle that addressed that
11 issue. I also gave you our analysis in
12 response to that issue. So that's
13 addressed in my letter here.

14 And then you have also received
15 comments that were submitted yesterday from
16 Bristow Rubber about a different issue
17 relating to how the fund is prorated in the
18 months where their revenues are not
19 sufficient to meet all of the reimbursement
20 requests.

21 And then, Holcim has submitted some
22 comments this morning to you. We have
23 copies of all that in front of you.

24 MR. SHEPHERD: Is there some type
25 of legal action on the disbursement of

1 funds with the Tax Commission?

2 MR. JOHNSTON: There is. An
3 official protest was lodged. It is set
4 before their Administrative Law Judge of
5 the Oklahoma Tax Commission. I cannot tell
6 you. Brent and Don can tell you the status
7 of that hearing.

8 There was to be a ruling in January.
9 I called over there a couple of weeks ago
10 to see the status, and some legal
11 procedures were still ongoing as of the
12 time I talked to them two weeks ago.

13 MR. SHEPHERD: Well, how does
14 this disbursement proposal differ or affect
15 what's currently going on at the Tax
16 Commission now?

17 MR. JOHNSON: This proposal, if
18 adopted verbatim, would not affect it at
19 all.

20 For one thing, all the rules that
21 are in consideration today, won't become
22 effective until the middle of June of this
23 year. So there will be another legislative
24 session before these rules are even in
25 place and we'll be coming back at you as

1 soon as the session is over this time.

2 But as I think we explained, when
3 the entire apportionment question came up,
4 it was the Tax Commission's call to make,
5 and they did so. There has been an appeal.
6 When that responsibility was transferred to
7 the Department, by the Legislature, the
8 Department went ahead and made the
9 disbursements exactly as the Tax Commission
10 had calculated. We felt the precedent had
11 been set, and it was what they were doing.
12 We didn't feel it was our place to change
13 that, particularly with the pending
14 litigation over there.

15 Now, however that plays out, it
16 wouldn't impact -- if you want to approve
17 that language today, that legislation won't
18 impact that because it will be a
19 (inaudible) only for them and what they've
20 done, and they no longer have that
21 responsibility.

22 MR. SHEPHERD: But on the
23 disbursements of funds, are you going to
24 continue to disburse the funds -- I guess,
25 if we vote to approve this proposal, do you

1 automatically switch to this proposal now
2 moving forward, or do you still go by the
3 Tax Commission until June 1.

4 MR. JOHNSON: Well, until these
5 rules are effective. And I don't know what
6 date that would be, it's after the
7 Legislature goes home; 1st of June -- 15th
8 of June. I'm not sure what it is this
9 year.

10 MR. SHEPHERD: Okay.

11 MR. TORNETEN: These proposed
12 rules in our packet, are they any different
13 from those we looked at on September 20th?
14 Is there new language in here that reflects
15 comments you have received, or is this the
16 identical language we looked at?

17 MR. JOHNSON: The packet is
18 exactly the same.

19 MR. TORNETEN: Okay.

20 MR. JOHNSON: Yes. Everything in
21 the rules as presented is as it was
22 presented the first time.

23 (Discussion)

24 MR. SHEPHERD: Again, I'm sorry,
25 explain the 2 percent cleanup and how is

1 that proposed to be calculated in the rules
2 that you have here -- not what the people
3 wanted to change it, but what we have here.

4 MR. ROOD: One of the principle
5 objectives of the Waste Tire Recycling Act
6 has always been to clean up illegal tire
7 dumps, and we have made tremendous progress
8 in that effort across the state.

9 Historically, the statute required
10 processors to include at least 5 percent of
11 the tires that they were processing to be
12 cleaned up from illegal dumps, the statute
13 has now changed to 2 percent. The statute
14 directs us to calculate that 2 percent on
15 an annual basis.

16 The proposal that was presented to
17 you by Geocycle asks that you consider rule
18 language that would make that a twelve-
19 month rolling average. The fundamental
20 issue that I pointed out to you in my
21 letter is that we have no legal authority
22 to consider anything prior to the effective
23 date of the Act, which is July 1, 2007.

24 MR. SHEPHERD: So I guess the big
25 sticking point for the waste tire recyclers

1 is that they may have collected before June
2 1, they may have collected 5 percent.

3 Correct? And then they lose that and it
4 all goes back to zero? Is that right?

5 MS. MARCH: That is correct.
6 Everything goes back to zero, July 1, 2007.

7 MR. SHEPHERD: Okay. But the
8 Legislature said 2 percent on an annual
9 basis. It does not say anything about a
10 rolling twelve-month average, or, okay. So
11 it's just 2 percent annual. We cannot
12 change that, can we?

13 MS. MARCH: No.

14 MR. SHEPHERD: Okay.

15 jay: Why did they decrease from
16 5 percent to 2 percent?

17 MR. ROOD: I can't answer that
18 question, and I have to admit that DEQ is
19 rather frustrated about it. We continue to
20 believe that cleaning up tire dumps is a
21 principle objective of the program.

22 jay: I would think, yes. I
23 don't have any problem in interpreting and
24 I get annoyed with that word being thrown
25 around all the time. To me, it's quite

1 clear that July 1, it's zero. And this is
2 not going to be the first time somebody in
3 business or industry has -- the rules have
4 changed, and you have to start when the new
5 rules start. But I was very curious about
6 the five versus the two.

7 The other item that was given to us
8 at the closing hour yesterday, you know,
9 even though you are retired, you close at
10 5:00. We will address that a little bit
11 later, I think. Maybe it won't have some
12 discussion here right now. But it's not
13 really what's on the agenda right at this
14 moment for us to discuss.

15 MR. TORNETEN: I'm confused. The
16 reason we've postponed the decision on this
17 September 20th was to give the regulated
18 entities time to respond and come up with
19 some alternative language that reflected
20 some of their concerns. I thought the idea
21 was to get that language and those concerns
22 incorporated into the proposed rules here.
23 Yeah, we're not seeing anything different
24 from what we saw on September 20th, so we
25 are kind of back where we started. That's

1 not to say we can't put some new language
2 -- propose some new language in here today,
3 I guess. That's still an option. It would
4 have been a lot smoother and easier if we
5 were looking at it now, rather than trying
6 to develop it today.

7 jay: That's exactly why when the
8 motion was made and seconded to table, I
9 voted against it. Because staff -- and I
10 think my comments must be supported by the
11 fact that no change has taken place since
12 our September 20th meeting in the document
13 that is on our table.

14 The concept of allowing public input
15 certainly is important. But when we have
16 track records of public input not happening
17 in a reasonable time fashion, maybe it's
18 not as big of a concern to the public as we
19 seem to think it is.

20 lan: Well, let me say one thing
21 to that. I guess, I'm as frustrated as you
22 are about we are kind of back where we
23 were. On the other hand, if you look at
24 the way these rules are noticed, you have
25 up to and including the day of the Council

1 meeting to comment.

2 Now, I wish people would comment a
3 lot earlier so that the staff has a chance
4 to respond and we can consider it, and it's
5 in our packet, and so on, but they can
6 comment up to the last minute. That is
7 allowed. We can deal with it or not, I
8 guess, as a Council. It looks like to me,
9 also, the only thing the staff really had a
10 chance to consider with any amount of time
11 is the rolling average comments that were
12 given verbally at the last meeting, and
13 that didn't change because apparently,
14 statutorily, we can't change that. To me,
15 the only thing on the table today is the
16 consideration of the comments from Bristow,
17 and these new ones from Holcim, which of
18 course, they were last minute also. But
19 they do have up to the last minute to
20 comment. I mean, as much as it is
21 frustrating, it's noticed in the rule, in
22 the --

23 jay: I agree with you, but it's
24 hard for me to comprehend receiving
25 something at the last moment. Now, you are

1 going to have a chance, all of you, to
2 address us before we take any action,
3 because right now, it is just the Council
4 that is discussing and commenting on where
5 we've been and where we think we want to
6 go. I'd like for each Council Member to
7 make comment, and I'll exclude you, Bryan,
8 if you wish to be excluded since you're
9 new.

10 We've already heard from two over
11 here. It's your turn.

12 MR. RILEY: Well, I think we need
13 to look at the proposal from Bristow.
14 They've given us a paragraph that we can
15 consider adding to the rules. I think it's
16 more proposed language as opposed to just
17 questions. So I would like to look at
18 that. I'm not opposed to looking at some
19 of the questions addressed by Holcim, but I
20 don't know that there is rulemaking or rule
21 language proposed in that, but it is
22 certainly, if they've made the effort to
23 propose it, we can discuss it.

24 But certainly, the citation of
25 252:515-21-71, Eligibility requirements

1 (inaudible) proposed in the item, paragraph
2 (e) for apportionment. Obviously, the way
3 the Tax Commission has provided the
4 reimbursement when funds are insufficient
5 was not acceptable to the regulated
6 community or there are some problems with
7 the proposed amendment, which we also have
8 comments from the staff at DEQ which tends
9 to agree with the language. So at a
10 minimum, let's take a look at that.

11 MR. STOUT: T.J.

12 MR. MCCULLOUGH: Well again, it's
13 been stated, you know, some what of a
14 frustration last minute response to the
15 September Minutes in question that we have,
16 as Patrick said. I definitely think that
17 this proposal from Bristow is certainly
18 worth looking at and even would be in
19 agreement to looking at that today.

20 The other proposals, I definitely
21 have not had time to prepare for.
22 Especially, even the questions, and so, we
23 can look at all that -- look at all of it
24 but as far as addressing anything other
25 than that paragraph, I'm not prepared.

1 MR. FLETCHER: I would like to
2 look at this amendment from Bristow also.
3 I guess it's my understanding that there's
4 no clear language in there on how this is
5 supposed to be prorated. I think this is
6 something that could help, especially if
7 there is some dispute with the Tax
8 Commission on the other side.

9 I don't see anything a whole lot
10 different in the rest of these submittals
11 that could be cleaned up by us. It might
12 have to go back to the Legislature.

13 MR. STOUT: So --

14 MR. TAYLOR: Mr. Chairman, if I
15 might comment. I do share your frustration
16 with receiving things, last minute. I do
17 understand that comment is taken up until
18 the time of the Board meeting, but it does
19 put us in a little bit of a difficult
20 position to try to read and comprehend
21 what's been put in front of you and make a
22 decision on the fly, which oftentimes are
23 not the best decisions to make. So I do
24 share your frustration with that.

25 However, I do understand that the

1 proposal from Bristow more so than
2 obviously from Holcim, could be considered.
3 That would be my feeling.

4 MR. STOUT: Anything you want to
5 share?

6 MR. TRIPLETT: Mr. Chairman, I
7 agree with Steve and Patrick. I don't
8 think the rolling 2 percent is an option.
9 I think it has already been decided by the
10 Legislature. I would, however, consider
11 the option from Bristow Rubber to change
12 the language for appropriation of the Waste
13 Tire Fund, and I think it's only equitable
14 that it be set up to where the way that
15 they propose it, and I think that DEQ staff
16 is in agreement that it's a fair and
17 equitable way to do it.

18 MR. STOUT: You know, what I
19 think I'm hearing, and certainly Council
20 may correct me if I'm thinking wrong, is
21 that we need to approve the rules that have
22 not been changed, and if we wish to add to
23 them, you would consider adding the
24 252:515-21-71(e).

25 If we are in agreement with that

1 before us at this moment -- do we have any
2 further discussion regarding this
3 particular subject?

4 MR. TORNETEN: We might give
5 anybody who's here to provide comments an
6 opportunity before we vote.

7 MR. STOUT: Yes, thank you. I
8 outlined what I thought we were doing with
9 Council. Now I expect the public to do the
10 same. Address what we are currently
11 considering, and that is as is, accept the
12 addition of (e). Public?

13 MR. WILLIAMS: Mr. Chairman, I'm
14 Don Williams again, with Bristow Rubber.
15 I'm not sure if I understood you. Are you
16 considering adopting what you have before
17 you, and then going to this as another
18 item, or were you asking for comments on
19 our request now?

20 MR. STOUT: Adopting this, or
21 disapproving.

22 MR. WILLIAMS: I understand. I
23 just didn't want to miss the opportunity.

24 MR. STOUT: No.

25 MR. SHEPHERD: So you think you

1 want to adopt the rules as presented by the
2 staff first, and then discuss the
3 apportionment issue, or do you want to do
4 it all at one time?

5 MR. STOUT: I thought we were,
6 again, maybe I misunderstood, I thought the
7 only thing that we were -- well, yes, that
8 is this document. Yes. No, if you want to
9 approve it, included it, the motion would
10 need to be worded that way. If you don't
11 want that in there, then the motion should
12 be to approve as is, and then we debate it.

13

14 MR. SHEPHERD: Then Don probably
15 needs to come up and talk.

16 MR. STOUT: I didn't think that
17 was what his -- see that's the problem with
18 getting, for me at least, getting something
19 last night. I didn't think it had to do
20 with apportionment.

21 MR. WILLIAMS: Thank you very
22 much for the opportunity to come before
23 you.

24 First of all, I certainly understand
25 any frustrations about receiving something

1 this late, and I can tell you, if we would
2 have known the situation back earlier, we
3 certainly would have responded earlier.

4 MR. STOUT: Now, why did you not
5 know when all of this is always on line?

6 MR. WILLIAMS: The proration that
7 we're talking about here does not occur
8 every month. As a matter of fact, it
9 hadn't occurred even when the Tax
10 Commission had jurisdiction over this area
11 since over a year ago.

12 We only recognized it -- the first
13 notice we had that the staff of DEQ felt
14 that they should follow the precedent was
15 on December 31st, when we received the
16 prorated amount for the month of November.
17 That would have been the payment for tires
18 processed during the month of November.
19 So, immediately, we started trying to
20 figure out what the policy was. When we
21 met with staff, they suggested that we
22 could propose a rule as an amendment to
23 your rules, and this would be the proper
24 way to try to handle it. So we moved as
25 quickly as we could, but that's the reason

1 you received it yesterday.

2 MR. STOUT: Any comments that you
3 would like to address?

4 MR. WILLIAMS: Yes, I would. The
5 law, as I believe -- I believe you have a
6 copy of the law, but we are used to
7 proration within the Waste Tire Act, and we
8 are prorated every month, usually ten
9 percent of the fund goes into capital
10 investment reimbursement. We are always
11 prorated on that, but we always all take an
12 equal proration.

13 There's also another category of
14 funds that reimburses for production of
15 crumb rubber or usage by the kilns for
16 waste to energy. We are always prorated
17 within that. The method, that not only we
18 scratched our heads about, but I believe
19 also the staff of DEQ did, when the Tax
20 Commission went through a very complicated
21 way of putting in ratios that in effect, by
22 the time they went through their
23 calculation would have actually paid
24 someone more than they had requested. Then
25 they came to another calculation to bring

1 that back down. We feel that a fair
2 proration method is to determine on this --
3 for simplification, say, if there happened
4 to be \$100,000 in the fund, and there were
5 \$200,000 in approved disbursements approved
6 by DEQ, everyone would get 50 percent. To
7 me, that's a common sense proration and
8 would effect everyone equally. That's what
9 we're asking for in this language we've
10 presented.

11 But once again, it was December 31st
12 before we recognized that the Department
13 felt that they needed guidance from some
14 level before they could depart from the
15 method that had been used by the Tax
16 Commission.

17 MR. SHEPHERD: Under your
18 proposal though, if there's \$200,000 that
19 is being requested, and one company has
20 submitted \$190,000, and another company has
21 submitted \$10,000, then the company that
22 submitted \$190,000 is going to get half,
23 then the other company is going to get half
24 of \$10,000, which is a better ratio for the
25 company that submitted less. That doesn't

1 seem very fair to me.

2 MR. WILLIAMS: I believe if I
3 gave the correct division there, it would
4 be 50 percent on both. And I want to
5 correct one thing, if maybe you
6 misunderstood what I said. We apply for
7 reimbursements and then our applications
8 are taken by DEQ and they are approved
9 based on the evidence we present, that the
10 tires were actually picked up and they are
11 tires in the program. But in that case,
12 everyone would receive an equal proration
13 percentage-wise. I'm not sure of any other
14 way than that, and that's the way we do
15 with the capital investment. Different
16 firms have invested more to qualify for the
17 capital investment over time. That is also
18 effected by the tonnage you handle during a
19 month, and so, they come in all over the
20 board, and that has always been prorated as
21 an equal percentage for everyone.

22 MR. SHEPHERD: Well then, I guess
23 the question for Sonny is if there is
24 \$200,000 that is requested, and there's
25 only \$100,000 available, how do you make up

1 the difference? Do you make up the
2 difference?

3 MR. JOHNSON: You don't make up
4 the difference. Under this proposal like
5 you said in your example, everyone would
6 get 50 percent.

7 MR. SHEPHERD: Of what they
8 submitted?

9 son: Of what was approved by the
10 Department.

11 MR. LANDERS: Why would you not
12 do that -- I'm asking either Don or Sonny,
13 or anyone else, why would you not do it
14 strictly based on tons processed? I mean,
15 that's really what you want to reward
16 someone for, right?

17 MR. WILLIAMS: This section of
18 law, when it was last changed in 2005, I
19 believe, before the changes this last year,
20 we tried to -- I say we, the staff of DEQ
21 and then working with the Legislature,
22 tried to clarify these classifications.
23 First of all, off the top of the fund comes
24 some of the administrative expenses. The
25 part that goes to the Tax Commission and

1 DEQ, and then more is going to go to DEQ,
2 and some goes to audit. Then, ten percent
3 is set aside for reimbursement of capital
4 expenditures.

5 Then, there is a category whereby we
6 are reimbursed at the rate of \$53.00 a ton
7 for transportation and collection, \$54.00 a
8 ton for processing -- it's actually a per
9 tire reimbursement that goes to folks who
10 do erosion control. They use tires for
11 bank erosion control. That is all within
12 this category that all this language
13 addresses. And then the approval as was
14 stated by staff of our claims is based on
15 our tons that we collected and transported,
16 or processed, or the tires that were used
17 in erosion control. So that's in that
18 first calculation. And then, I'll have to
19 tell you, for the last twelve months before
20 we found out in December, there had always
21 been enough money in the fund to pay 100
22 percent of all these. And this time, maybe
23 the example I gave of 50 percent was
24 extreme. I think this time it was 90
25 percent. I don't know if I've figured the

1 percentage, but it was over 90 percent that
2 was available this time. But by the time
3 they used the Tax Commission calculation,
4 folks didn't necessarily receive the same
5 apportionment.

6 MR. LANDERS: To read this, I
7 generally think, well, yeah, why would you
8 not do it like this. It's a pretty common
9 sense, simple way to do it. Why did the
10 Tax Commission not do it the simple way? I
11 understand it's the Tax Commission.

12 dwil: That was the question we
13 had. Of course, when this first came up, I
14 believe it was a year ago this past
15 October. I believe it would have been
16 October of 2006. When we saw this --
17 again, we immediately came over here to ask
18 the staff here at DEQ and said, boy, this
19 is a completely different proration method
20 that we haven't seen. Some of this has
21 been passed on to me. I'm understanding
22 that the legal staff of DEQ went to the Tax
23 Commission and questioned them about their
24 methodology. You know, I'd have to let
25 them speak to that. I do have a little

1 one-page that goes how they do it. I can
2 just tell you that it is a very complicated
3 formula that they came up with to make the
4 proration, and the simple fact that it
5 ended up in many cases of prorating more to
6 someone than they had actually approved
7 for. Then they go through and take that
8 back and make another formula to
9 redistribute that. So, I have a document
10 here from the Tax Commission that we can
11 get copies of, but it didn't make sense to
12 us.

13 One clarification I would like to
14 make is as we moved through this last, we
15 did have an official protest with the Tax
16 Commission. Bristow Rubber, at the time
17 during the session that we saw, we saw that
18 that was going to be moot, when we saw that
19 those responsibilities were going to be
20 moved in the bill from the Tax Commission
21 to the DEQ. So we dropped, by official
22 letter, our protest from the Tax
23 Commission, because going forward, we
24 didn't see that would have any effect
25 anyway.

1 tay: Mr. Chairman, if I might, I
2 would love to see that chart that he's got
3 that shows the way the Tax Commission is
4 currently doing that. I know it's the Tax
5 Commission, but I'm sure they had some
6 reason for putting forth the apportionment
7 the way they did.

8 MR. STOUT: Not necessarily.

9 tay: Well maybe not. But before
10 I go to change it, I would like to see what
11 that is, and maybe they're rewarding
12 somebody for processing more tires than
13 other that haven't, and maybe that's a part
14 of their change in proration.

15 MR. STOUT: Do you want to
16 comment, Sonny?

17 MR. JOHNSON: Why is everyone
18 looking at me? I will admit when we went
19 over and discussed with the Tax Commission
20 to find out what was the basis, I was
21 confused then, and I'm pretty much still
22 confused. But let me say that in a literal
23 reading of the law, in that provision that
24 sets out the allocation of funds, there are
25 two separate formulas about proration.

1 It says if there are insufficient
2 funds, and we call them tiers, for the ones
3 that are commonly referred to as pay-outs.
4 If there is insufficient funds in this tier
5 to pay all of these claims, then it shall
6 be apportioned in this way. That's what it
7 says in the statute. And then it goes to
8 the next tier and it says the same thing in
9 similar language about that tier. A
10 literal reading of the statute could come
11 up with the way the Tax Commission did it.

12 When the bill was first proposed
13 before the Legislature and came to us for
14 review, when we looked at it we thought
15 this is the common sense apportionment, and
16 we didn't have any idea that someone would
17 look beyond the common sense method.
18 Again, as Don pointed out, when they made
19 their calculation, the Tax Commission, on
20 one tier, and by the formula they used, it
21 actually had some people receiving 20
22 percent more than they applied for. So
23 their payout would have been 120 percent.
24 So, I said well, this is not equitable, so
25 they blocked it off there and made a second

1 sub-tier within the pay schedule to drop
2 those people back to just the 100 percent
3 they were approved for, and then they
4 divvied up that pot again. So again, we
5 looked at that and said, isn't it more
6 equitable to do an apportionment that the
7 common man understands is apportionment,
8 which is if you throw all the money into a
9 pot and everybody that's been approved,
10 whatever the percentage is, that's the
11 percentage you get of that pot. People
12 that cleaned up a lot of tires are going to
13 get a lot more money. People that cleaned
14 up fewer are going to get less. But they
15 are all going to get the same percentage.
16 So, that's my story.

17 MR. TRIPLETT: Mr. Chairman.

18 MR. STOUT: Yes.

19 MR. TRIPLETT: Anybody that's
20 been in county government or has received
21 gross funds -- and I've been there for 20
22 years, and I have never gotten a formula
23 for how I received my highway funds from
24 the Oklahoma Tax Commission. Things are a
25 mystery over there.

1

2 MR. WILLIAMS: If I could add, Mr.

3 Chairman, I was under the understanding,

4 and I'll have to ask Sonny about this, that

5 the Tax Commission actually said that they

6 could see how it could be interpreted

7 either way, but because -- I don't know,

8 the Tax Commission has some different rules

9 in other agencies, even on rulemaking.

10 They did not spell out their way of

11 calculating this in any rules of the Tax

12 Commission, but because of the fact that

13 they had started doing it, it was going to

14 take a hearing before an Administrative Law

15 Judge, and eventually go through, well, it

16 was going to take a lot for them, even

17 though they saw that there could be another

18 way of doing it, to reverse what a staff

19 member had previously done.

20 So, we started out with a protest.

21 Here, again, we recognized that we probably

22 weren't going to get any of the money in

23 the past anyway. We were just concerned

24 about going forward. When the Legislature

25 changed that to the DEQ, we thought that --

1 of course, we always hoped that the
2 additional enforcement that's given to DEQ
3 also we would feel this year, is going to
4 bring in more funds so there won't be
5 apportionments, but that possibility
6 exists.

7 MR. FLETCHER: Sonny, the way it
8 is right now, you guys could interpret it
9 different than the Tax Commission?

10 MR. JOHNSON: Always, any law,
11 different people can interpret different
12 ways.

13 MR. FLETCHER: So, if you give it
14 to three different people, they can all
15 interpret it a different way.

16 MR. JOHNSON: Right.

17 MR. FLETCHER: So this really
18 cleans up the language.

19 It seems like a pretty fair way to
20 me to do something when you take a
21 percentage of what is owed and give
22 everybody the same percentage.

23 MR. JOHNSON: I would agree with
24 you. And I might point out that the
25 statute, of course, is the law, and that's

1 what we all go by. But where there is a
2 statute that is subject to interpretation,
3 or can be interpreted in several ways, it
4 is the proper place for rulemaking to draft
5 a rule that clarifies or explains the
6 statute. We can't change the statute. We
7 can't make it say anything different than
8 it says, but we can certainly do an
9 interpretation.

10 MR. STOUT: Does Council have
11 anymore questions? The public?

12 MR. LANDERS: Well, I would ask
13 if there is anybody that would challenge
14 this?

15 MR. STOUT: I'm still having a
16 hard time understanding why -- at this
17 particular point this is not written rules
18 like the document. Pardon?

19 MR. LANDERS: We're not
20 considering the that.

21 (Multiple conversations)

22 MR. STOUT: Are you representing
23 Bristow?

24 MR. WILLIAMS: Yes, sir. I'm
25 representing Bristow Rubber, yes. We have

1 a plant in Bristow, Oklahoma.

2 MR. STOUT: Okay. We just got
3 some more goodies.

4 MR. WILLIAMS: That is
5 information that I just had in a file that
6 was given, I believe, from the Tax
7 Commission in request to the DEQ questions
8 about how they apportioned it.

9 I had it in my file and it was
10 dated, and I believe in this one they state
11 that their first computation resulted in
12 more funds going this time on this month,
13 three firms more than -- would get even
14 more than they claimed, and then they go
15 through how they tried to redo that.

16 MR. STOUT: Anymore public
17 comments?

18 MR. SKEITH: Mr. Chairman, my
19 name is Andy Skeith. I'm here today on
20 behalf of Holcim, and I have a question
21 regarding the rolling average on the dump
22 cleanup, and I would like to direct it to
23 the staff more than anything.

24 It is my understanding that last
25 year before the Legislature changed the

1 percentages from 5 percent to 2 percent,
2 the DEQ operated under a rolling average at
3 that time. Was that true?

4 MS. MARCH: That is correct,
5 prior to July 1, 2007.

6 MR. SKEITH: Did the Legislature
7 give any direction as to changing it from
8 the rolling average to the annual, that we
9 are talking about doing here today? I
10 mean, I was just curious as to why DEQ last
11 year was under the rolling average, and
12 then the Legislature changed it from the 5
13 percent to 2 percent, and now we have
14 decided not to go with the rolling average.

15 MR. ROOD: The statute says 2
16 percent on an annual basis, and that became
17 effective July 1st.

18 MR. SKEITH: Did the law change?
19 I mean, was the annual basis with that new
20 language?

21 MR. ROOD: That is not new
22 language.

23 MR. SKEITH: Okay. So we just
24 basically had the discretion of DEQ last
25 year before the Legislature changed to use

1 the rolling average?

2 MR. ROOD: Yes.

3 MR. SKEITH: Could you shed some
4 light as to why we decided to go to the
5 rolling average?

6 MR. ROOD: We can certainly
7 pursue a rolling average on an
8 administrative basis, but I need to point
9 out two factors to everybody.

10 Number one, as I said in my letter,
11 when the law became effective; and number
12 two, when these rules become effective.

13 So, if the rules become effective,
14 what Sonny, in the early part of the
15 summer?

16 MR. JOHNSON: Yes.

17 MR. ROOD: Then there's no such
18 thing as a rolling average until they
19 become effective. So, it gets rather
20 convoluted in terms of how we calculate
21 this, and all we can do is go on the basis
22 of what the law tells us; which was
23 beginning July 1st, 2 percent on an annual
24 basis.

25 MR. SKEITH: Thank you very much.

1 MR. BENNETT: I'm back. I want
2 to address that 2 percent just a little
3 bit.

4 THE REPORTER: Would you tell me
5 your name again.

6 MR. BENNETT: I'm Jimmy Bennett,
7 representing Geocycle.

8 Last year, if I'm not mistaken, the
9 statute read 5 percent annually, and the
10 reason it was changed to a rolling average
11 was at that time we had some people that
12 had been in the system, worked the whole
13 year, and walked off without doing any
14 cleanup, scott-free. And I was in on this,
15 with Steve Thompson, the DEQ. To prevent
16 this from ever happening, we went to a
17 twelve-month rolling average, which gives
18 the DEQ a little more control over us by a
19 monthly basis, monitoring us to make sure
20 we have a 2 percent, or 5 percent at that
21 time, and not go a whole year and then get
22 out of the program and draw -- this
23 particular company drew the money for a
24 year and didn't do any cleanups, and went
25 out of business, but they got paid all

1 year.

2 On the other side, when we go to the
3 rolling average, in the new interpretation
4 of this law, it gives the DEQ the right to
5 appoint me to go clean up a dump site or --
6 I guess make me go clean up a dump site.
7 Is that correct?

8 MS. MARCH: Compel. Compel.

9 MR. BENNETT: Yes. I believe the
10 statute reads I must obtain at least 2
11 percent to be in -- my compliance. If I've
12 got my 2 percent in April and we come up on
13 a dump site that's going to take \$100,000
14 for a trackhoe and a dozer to go clean it
15 up, July 1st, would that being on a rolling
16 average, I lose a percentage. And I'm
17 already in compliance at 2 percent. I feel
18 like you're going to have a big problem.

19 MR. STOUT: Help me here. To me,
20 that's two different things, what you just
21 said.

22 A rolling average versus 5 and 2
23 percent. Which are you speaking in favor
24 of? We can't change the percentage.

25 MR. BENNETT: I'm not changing

1 the percentage. The percentage is 2
2 percent. That was changed in the
3 legislation.

4 The only thing that changed in the
5 legislation, from the way the statute read
6 last year, was the 2 percent from the 5
7 percent. It read annually last year.

8 MR. STOUT: So when does this
9 rolling average start, or does it go on
10 forever?

11 MR. BENNETT: You do it on a
12 twelve-month rolling average.

13 MR. STOUT: Okay. Isn't that an
14 annual basis? What you just said, would
15 you repeat it?

16 MR. BENNETT: I wasn't through
17 talking. I was going to explain the
18 twelve-month rolling average as we set it
19 up last year.

20 MR. STOUT: Well, to me, twelve
21 months is an annual basis. How do you
22 explain away twelve months?

23 MR. BENNETT: Twelve-month
24 rolling average. You start -- for
25 instance, we started today. Come this time

1 next year, you drop off this month,
2 whatever tires I collected this month, goes
3 away. You pick up the following month. It
4 gives me one year. If I go do a dump site
5 today that's got, for instance, 50,000
6 tires in it at a cost of \$30,000, I've got
7 eleven months to put that percentage to my
8 use, and then it drops off at the twelfth
9 month.

10 I guess the point I'm making is the
11 law read the same last year, except the 5
12 percent and the 2 percent. We were able to
13 determine a rotating average last year, why
14 can't we do it this year?

15 MR. STOUT: That's certainly not
16 our Council's -- you know, we can't say yes
17 or no.

18 MR. BENNETT: I just wanted to
19 make a point.

20 MR. TORNETEN: I would have a
21 question. Could you accommodate that by a
22 definition of "annual" in the rule
23 revision? Should we define "annual" to
24 mean "this"?

25 MR. ROOD: We could certainly

1 consider that, but I will remind you of the
2 difficulty that we face, because the law
3 became effective July 1st. We have no
4 legal authority to address anything prior
5 to the effective date of the law.

6 MR. STOUT: See, that's what I'm
7 having trouble with this rolling average.
8 If it starts July 1, we change the rule --
9 I don't care what the rules are, you start
10 July 1. If you want to roll it for the
11 next twelve months, you call it rolling.
12 You can call it anything you want, but it
13 starts July 1.

14 MR. SHEPHERD: I think what the
15 waste tire people are trying to get is
16 before the law change, it was 5 percent.
17 So some of them may have had that 5
18 percent, and they are going to lose that
19 credit. Is that right?

20 MR. BENNETT: Yes.

21 MR. SHEPHERD: So it drops off to
22 zero, and then they basically have to go
23 back out and start all over again, and see
24 if they can carry that twelve-month average
25 -- that rolling average, then they still

1 get credit for the 5 percent they may have
2 already had. Is that right?

3 MR. STOUT: If I had 5 percent
4 before July 1, and it was approved by DEQ,
5 how come I haven't been paid?

6 MR. JOHNSON: Well, it's not a
7 matter of not being paid. The 5 percent is
8 a requirement in order they qualify to get
9 paid. So if anyone had in excess of 5
10 percent, that means they're in compliance
11 with the statute and are eligible for
12 payment.

13 MR. SHEPHERD: And I think I'm
14 seeing where Fenton is, is it say 2 percent
15 July 1. So regardless of whether or not we
16 call it a rolling twelve-month, you've lost
17 that 5 percent. You've lost whatever you
18 had before July 1. That's something we
19 cannot change. That is the bottom line of
20 this whole situation is, we cannot change
21 that. It's going forward from July 1, as a
22 2 percent rolling average. You cannot
23 carryover anything. That is not our fault.

24

25 MR. TORNETEN: It doesn't say you

1 can't carryover.

2 MR. SHEPHERD: That's what Fenton
3 said.

4 MR. TORNETEN: But couldn't you
5 interpret that July date to apply to the 2
6 percent, that changed from 5 to 2 percent,
7 rather than the fact as to how you
8 calculate it?

9 MR. STOUT: We don't have the
10 privy to change that.

11 MR. LANDERS: It sounds like to
12 me, even if you started doing the twelve-
13 month rolling average again, you could not
14 even start until August of 08. So you
15 could do the twelve-month rolling, you
16 could interpret it that way, as you have in
17 the past, but you could not start until
18 August of 08 because this new rule was
19 effective -- you won't get twelve months to
20 start rolling over until August of this
21 year. I think that's what Fenton is
22 saying.

23 MR. TAYLOR: So then come August,
24 we could have a rolling average from that
25 point forward.

1 MR. LANDERS: Do you intend to do
2 it that way?

3 MR. FLETCHER: But if you do that
4 right now Fenton, the law changes from 5 to
5 2, if you do a rolling average, I did it in
6 June, I don't have to do anything next
7 year. Because when it went from 5 to 2,
8 and you're giving me credit for 5, over
9 that next twelve months, I'm already 3
10 percent better; isn't that correct?

11 MR. ROOD: But under the example
12 that you gave us, you were at 5 percent in
13 June, the law changed in July, you start at
14 zero.

15 MR. FLETCHER: That's what I
16 said. It starts at zero. If you give them
17 a twelve-month average starting in June,
18 you're rolling over 5 percent, when the law
19 changed it to 2 percent. Isn't that
20 correct?

21 MR. ROOD: Correct.

22 MR. FLETCHER: So now then you
23 don't have to do anything for twelve
24 months, essentially.

25 MR. ROOD: That's not the way we

1 read the law.

2 MR. FLETCHER: It could happen.

3 MR. MCCULLOUGH: Regardless of
4 the percentage you're carrying, I mean, if
5 you submit for whatever your percentage is,
6 whether it's 7 percent, 2 percent, or 5
7 percent, would you not still be paid for
8 what you submitted?

9 MR. BENNETT: The percentage --
10 for instance, Geocycle, by law, it says I
11 must attain at least 2 percent. So I can
12 rock along here, if you determine it to be
13 annual and that's all I'm going to do is 2
14 percent a month. That's all I'm required
15 to go clean up out of a dump site. When I
16 clean those tires up out of a dump site,
17 I'm going to get paid transportation for
18 those tires, and if I process them, which
19 most of those kind of tires have to go
20 through a shredder, I'll get reimbursed for
21 that. All of the additional expense of the
22 trackhoes, and the dumpsters, and the
23 bobcats that it takes to go clean those
24 tires up is my cost. That does not come
25 out of the tire fund.

1 MR. STOUT: So, if you're going
2 in the hole, I would think you would be
3 tickled to death that it has been dropped
4 to 2 percent.

5 MR. BENNETT: Actually, I was for
6 it to stay at 5 percent.

7 MR. STOUT: That's another issue.

8 MR. BENNETT: I was just
9 addressing your question.

10 MR. STOUT: I wasn't being funny
11 when I said what I did.

12 MR. BENNETT: I wasn't either. I
13 was for it to stay at 5 percent for the
14 environmental part of the deal. At that
15 time, it was based on the rolling average.
16 I didn't lose my money. At the time that
17 happened, we were at about 9 or 10 percent,
18 percentage, that meant we had went and
19 cleaned up a lot of dumps in the state.
20 But we lost the percentage.

21 MR. LANDERS: The money you lost
22 -- may lose, lost -- by the additional
23 equipment, what have you, is that not a
24 separate issue though, of an annual versus
25 a twelve-month rolling? Is that not a

1 separate issue?

2 And then the second question I have
3 is, were you told to go clean up the dump?

4 MR. BENNETT: No, I wasn't. But
5 to answer that question, I believe -- I
6 can't remember who stated it last time,
7 they way they interpret this new law is we
8 can be made to go clean them up now. And
9 since this has dropped to 2 percent, more
10 than likely we are going to be made to go
11 do it. Now, that's kind of what I'm trying
12 to address here. If I'm in compliance at 2
13 percent with the law, how can I be made to
14 go get extra and it doesn't carry over.

15 MR. STOUT: Well, you can
16 interpret it that you don't have to do it.

17 MR. BENNETT: Okay. I want to
18 understand.

19 MR. TORNETEN: Does the staff
20 have some criteria for how they compel who
21 to clean up what sites? Surely they do.

22 MR. ROOD: As we have stated
23 earlier, we continue to believe that
24 cleaning up illegal tire dumps is one of
25 the central purposes of the entire program.

1 Clearly, if we reduce the percentage of
2 tires that they are cleaning up out of tire
3 dumps, it is going to take us a whole lot
4 longer to get those dumps cleaned up.
5 Frankly, at 2 percent of their total
6 activity, I don't think we can predict
7 those dumps will be cleaned up. So we have
8 asked for the authority, then, to
9 prioritize on a public health basis if
10 we've got a dump that is a serious public
11 health issue, give us the authority to tell
12 them to clean it up, and that's what we've
13 asked.

14 MR. TORNETEN: So how do you
15 decide who cleans up what dumps? Is there
16 some kind of an equitable criteria for
17 that?

18 MS. MARCH: We have pretty much
19 -- we also -- when a tire dealer calls in
20 and they need a pickup, we also can assign
21 a processor to that tire dealer on a
22 rotating basis. So we will assign the
23 cleanup of the illegal dump on a rotating
24 basis. And sure, we'll have to consider
25 other factors, like the expense of the

1 cleanup, how big the illegal dump is; some
2 of them are five thousand tires, some of
3 them are twenty thousand tires. So, sure,
4 that will have to be taken into
5 consideration when assigning these dumps to
6 processors, and that will be handled
7 administratively.

8 MR. LANDERS: Does Geocycle
9 actually lose the extra money it takes to
10 get the tires out when he has to rent
11 additional equipment?

12 MR. ROOD: I'm sorry, but that's
13 not our issue. Our issue is to look at the
14 percentage of tires that they recover from
15 illegal dumps.

16 MR. LANDERS: And I guess there
17 is some discretion given to whether someone
18 has met, or is meeting, the 2 percent
19 requirement already versus one of the other
20 processors' that is not?

21 MS. MARCH: I'm going to let
22 Sonny speak to that. My understanding is
23 that it is under the special collection
24 efforts. It's a special collection, it's
25 not really part of the 2 percent

1 requirement that they are required to meet
2 every month. So this would be in addition
3 to the 2 percent, if there is a special
4 collection effort that we need to have
5 done. But I'm going to let Sonny speak to
6 that a little further.

7 MR. JOHNSON: Well, I don't have
8 anything to add.

9 On any special collection effort, I
10 don't think that the Department will look
11 at what percentage anybody has cleaned up.
12 Certainly, anybody that has cleaned up way
13 in excess of what is required under the
14 statute, we're just very grateful, because
15 that's the principle reason for this. It's
16 not to supplement people. It's not to give
17 a subsidy to people. People that buy tires
18 pay that money and it's a system that I
19 think has been working very well.

20 Our main objective under this system
21 is to get these illegal dumps cleaned up,
22 to take care of all the waste tires that
23 are generated in Oklahoma every year, at
24 the rate of about six million a year, and
25 to treat everybody fairly. That's our

1 objective. I haven't gotten involved in
2 how they assign on this rotating basis, but
3 from what I understand, all the processors
4 have been very cooperative every time.
5 When we get a call, and say here's a tire
6 dealer that can't get them picked up, or
7 here's a dump that's got rattlesnakes and
8 mosquitoes, when they call the processors,
9 it's my understanding that nobody has ever
10 said "I'm not going out there." They've
11 been very cooperative, and everybody
12 understands it's going to be their turn.

13 MR. MCCULLOUGH: Mr. Bennett,
14 again, it's been stated several times that
15 as of July 1st, and everybody starts at
16 zero, again, and if you've been submitting
17 claims to that point, then you should be
18 due what you submitted. What exactly are
19 you going to lose by starting at zero
20 whenever you just basically start that
21 month, whatever you would collect that
22 month, you would in turn submit at the end
23 of that month. So what are you telling us
24 that you are losing? I mean, there's
25 nothing we can do about it. Fenton has

1 made that clear, but what do you stand to
2 lose on that when that starts over?

3 MR. BENNETT: What I am losing is
4 -- for instance, last year, January,
5 February, and I believe it ran into March,
6 I'm not for sure -- wasn't it in March when
7 we were out to -- west of Oklahoma City?
8 But what I lost was the cost of the
9 equipment that we used to go clean that
10 dump up on the river. We don't get
11 reimbursed for that. That's at, our, the
12 processors' expense. We're required to get
13 the percentage because of the law. The
14 only thing we get reimbursed for is
15 transportation and the processing of the
16 tires. We don't get any money for what it
17 takes to clean the dumps up.

18 MR. MCCULLOUGH: so that was
19 funds that were lost from last year's
20 collection; is that correct?

21 MR. BENNETT: Explain that.

22 MR. MCCULLOUGH: Well, you said
23 that this work was done last March?

24 MR. BENNETT: Yes.

25 MR. MCCULLOUGH: So what you're

1 saying is you are going to lose funds from
2 last year's collection.

3 MR. BENNETT: I didn't lose
4 funds. I lost my funds. The extra
5 percentage over last year -- I think the
6 requirement was 5 percent, anything over 5
7 percent until July 1st we lost. Actually,
8 if you weren't in compliance, if you had 3
9 percent come July 1st, you went to zero.

10 MR. MCCULLOUGH: So, you're not
11 compensated, and if you collect 4 percent
12 or 2 percent, you are only compensated for
13 2 percent.

14 MR. BENNETT: If I collect 10
15 percent, I'm compensated for the
16 transportation and the processing of the
17 tires that come out of that dump.

18 MR. MCCULLOUGH: Right.

19 MR. BENNETT: I don't get
20 anything, I'm not compensated at all for
21 the equipment that it takes to go clean one
22 of these dumps up.

23 MR. TORNETEN: I think there is
24 some confusion. The 2 percent is only a
25 threshold you have to get to 2 percent

1 before you are eligible for reimbursement,
2 period. It doesn't say that you are not
3 reimbursed for anything over that. So
4 we're kind of getting confused in terms of,
5 it doesn't dictate that you can't get
6 additional reimbursement.

7 You are reimbursed on a monthly
8 basis for whatever you process.

9 MR. MCCULLOUGH: So why are they
10 not being reimbursed for whatever they
11 clean up?

12 MR. TORNETEN: They are being
13 reimbursed, but it's kind of a fairness
14 issue. They are not going to get credit
15 for the fact that they have already met
16 that 2 percent threshold in the first half
17 of the year.

18 MR. MCCULLOUGH: Well, again,
19 there's nothing we can do about it. That's
20 already been established.

21 MR. TORNETEN: But for future
22 reference, if that 2 percent is based
23 strictly on an annual basis, someone could
24 not collect any toward the 2 percent all
25 year, and still be participating and

1 collecting for whatever they process, and
2 they may or may not get the 2 percent.
3 There is no mechanism to ensure that they
4 do; is that correct?

5 MR. BENNETT: That's correct.

6 MR. LANDERS: I really haven't
7 heard an answer to one question and that
8 is, come August, will the reimbursement be
9 made based on a rolling twelve-month
10 average like it has been, or are you going
11 to a strictly fiscal twelve months?

12 MR. ROOD: The statute says 2
13 percent on an annual basis. So come
14 August, we will be reminding everybody what
15 the statute says. An annual basis does not
16 necessarily give us the authority to
17 require 2 percent for that month, but we
18 will continually remind them about their
19 status. If they don't achieve it by the
20 end of the year, then we will be
21 withholding their money.

22 MR. LANDERS: Which is different
23 from the way you did it before July 1st; is
24 that correct?

25 MR. ROOD: It's the only way we

1 can administrate it since it starts July
2 1st.

3 MR. TAYLOR: It used to be on a
4 rolling average, correct?

5 MR. ROOD: Yes.

6 MR. TAYLOR: So had the
7 Legislature defined annual or substituted
8 that with twelve-months rolling average,
9 what would you guys be doing today; would
10 be my question I guess?

11 If they had defined that as a
12 rolling average which you had used in the
13 past, where would that put us right now?

14 MR. ROOD: Back to what they're
15 saying, probably.

16 MR. TAYLOR: Okay, but it says
17 annual. It said annual before you used a
18 rolling average. I guess I'm confused as
19 to why.

20 MR. LANDERS: I understand why
21 you have to start over at July 1st. I
22 understand that. It's the effective date
23 of a new law. But once you get to the
24 point to where you can start rolling over
25 twelve months why -- what I'm hearing is

1 you are not going to do that anymore.

2 MR. THOMPSON: This is Scott
3 Thompson, I'm the Division Director for the
4 Land Protection Division. I think I can
5 speak to that a little bit. When it was 5
6 percent and we were working on a rolling
7 average, we were pretty happy with that.
8 We were reasonably happy that we were
9 cleaning up an adequate number of dumps.

10 Somehow, it went to 2 percent
11 without our desire, blessing, approval,
12 whatever you want to call it, over at the
13 Legislature. Then at the last minute, we
14 were not real happy with that. We became
15 concerned that it would mean there would be
16 very few dumps cleaned up over the next
17 year, or maybe forevermore, and that people
18 would be able to clean up a dump or two
19 here or there and say they met their
20 percentage and they don't have to do
21 anymore.

22 So, we would really like it, since
23 it's gone to 2 percent, we would prefer it
24 was 2 percent monthly; but the statute says
25 annually. So we're going to go with

1 exactly what the statute says; 2 percent on
2 an annual basis.

3 We are going to track it monthly.
4 We're going to tell people you are meeting
5 your 2 percent, or you are not meeting your
6 2 percent, to try to encourage them to get
7 it done.

8 But at the end of the year we can
9 only hold them accountable. And frankly,
10 most of the processors are pretty good.
11 They work with us when we need something
12 done. We haven't had to get really heavy
13 handed with anybody.

14 But the carrot for us in having a
15 waste tire program was to clean up illegal
16 dumps and to try to keep new ones from
17 being created.

18 I think the industry that has been
19 developed over this, especially, using
20 tires for fuel and making crumb rubber
21 products and stuff like that, is great.
22 It's kind of right in line with our
23 mission. We want to continue to ensure
24 that dumps get cleaned up, and we don't
25 want to make that just such a minimal

1 effort in the program that we have tire
2 dumps forevermore. That's kind of where
3 we're coming from with this.

4 So we are taking a strict
5 interpretation at this point, because we
6 want to continue to see dumps cleaned up.

7 MR. TORNETEN: And you do have
8 that authority to assign a dump to the
9 special cleanup status and compel somebody,
10 one of the eligible parties to clean it up.
11 And that cleanup would figure into their 2
12 percent annual, would it not?

13 MR. THOMPSON: That's what we're
14 asking for in this rule packet.

15 MR. TORNETEN: So it may be a
16 moot point. I mean, I don't know how many
17 potential people participate in the fund,
18 but is it fair to say that most everybody
19 gets assigned a cleanup in an annual
20 period?

21 MR. ROOD: Sure.

22 MR. TORNETEN: It may be a moot
23 point. It almost might be a given that
24 they are going to get their 2 percent just
25 in terms of what they are compelled to

1 clean up.

2 MR. STOUT: Is there any other
3 public comment before we take a break?
4 We're losing people in the back, and I'd
5 like to get lost for a little bit.

6 (Whereupon, a break was taken after
7 which the following took place)

8 MR. KELLOGG: Thank you Chairman
9 Stout, Members of the Council. My name is
10 Bob Kellogg. I represent Buzzi Unicem,
11 formerly known as Lone Star.

12 We were dragged into that protest
13 over at the Tax Commission, because we
14 received some reimbursement during some of
15 the months the protest was filed.

16 For your information, that matter of
17 the Tax Commission is currently in the
18 briefing schedule. My Brief is due next
19 week on behalf of Buzzi Unicem. They will
20 have an opportunity to file a Response
21 Brief to all the parties. I expect a
22 ruling in two or three months.

23 That process tells you something,
24 ladies and gentlemen. And that is that
25 what you do for this process needs to be

1 clear, it needs to be well thought out, and
2 it needs to be put in place before the
3 regulated community begins to act so that
4 they will know precisely what is expected
5 of them as they go about their next year,
6 collecting tires.

7 And that was the comment that I made
8 last September when you met. You may
9 recall I said, please make it clear how
10 disbursements are to be done and how the
11 collections are to be done. Put that in
12 the rules and make it clear.

13 Now, the proposal that was
14 introduced just yesterday, I guess, seems
15 to me, as a layman, a reasonable way to
16 apportion the third tier of payments when
17 the fund is insufficient to pay all the
18 demands. But I'm not an accountant.

19 When I looked at the Tax
20 Commission's mechanism for dealing with the
21 matter my clients are involved in, I
22 thought, my gosh, it doesn't make sense.
23 But as I went back and read carefully the
24 precise language of the law, and the
25 process that the Tax Commission followed, I

1 can see that was a mechanism that fit the
2 law. It's not what I would use, but I'm
3 not an accountant, so I don't know. I
4 don't know if you all are accountants. I
5 tend to doubt it. You are here because you
6 have environmental expertise.

7 So what I would ask is that whatever
8 you do with the waste tire program, you
9 make it crystal clear to go forward with
10 the tire collectors and the tire processors
11 and the tire bailors, how they can expect
12 to be reimbursed in the future; because
13 they are going to spend their money and
14 their efforts to earn that income, and that
15 needs to be clear in advance so they will
16 know exactly what is expected of them.

17 With respect to the law that changed
18 July 1, 2007, the only thing that changed
19 was 5 to 2. The annual basis has been
20 there since the law was passed, I think
21 back in 1989. So the only thing that
22 changed was the percentage. It still says
23 annual basis. What does that mean? Who
24 knows. But it's in the power of this
25 Committee to recommend to the Environmental

1 Quality Board what you think it means.

2 What I ask is that on behalf of the
3 processors that rely on a program so that
4 they can be reimbursed for activities that
5 they perform, and reliance on that, that it
6 just be clear and concise for going
7 forward.

8 I have another suggestion that might
9 be helpful to you. I have heard a lot of
10 people talk about the purpose of the waste
11 tire fund. I was a lawyer at the Health
12 Department when this law was first enacted.
13 And I can tell you about the original
14 purpose of it.

15 What's critical to you though, I
16 think, is what happened in the Legislature
17 last year. The best way for you to
18 understand that is, Ferrella and the DEQ,
19 have put together for the Waste Tire Task
20 Force for the Legislature, two excellent
21 summary documents that show the history of
22 the program and how it works. And perhaps,
23 it would be beneficial if you all were
24 given copies of those two summary documents
25 that were given to the Legislature. They

1 are excellent. They are very well done.
2 They explain the program. They explain the
3 nuances. They look at legislation, and I
4 think it would be helpful to you to
5 understand what your tremendous task is
6 that you have on your shoulders, to put
7 something in place to go forward in the
8 future.

9 There are really two elements in the
10 waste tire program today. One element is
11 to clean up tire dumps. We all know this.
12 And as an environmental agency, that is a
13 prime concern.

14 The other element is to keep the
15 waste tire dumps from growing, and that's a
16 prime concern for the Legislature. I
17 believe it was that portion of the
18 Legislature's concern to cause the number
19 of tire dumps to go from 5 percent to 2
20 percent. It wasn't anything nefarious,
21 it's that the Legislature from their
22 perspective believed that a little more
23 emphasis needed to be placed on keeping
24 tire dumps from growing. Whether that's
25 right or wrong, it doesn't matter. That's

1 the law that's in place, and it does make
2 sense.

3 But you can determine what annual
4 means, and when it means. The law simply
5 said, you can collect \$54.00 per ton for
6 processing tires, shredding them, or
7 burning them for fuel in a cement plant,
8 kiln, like my client does, so long as on an
9 annual basis, 5 percent, or now 2 percent
10 of those -- actually this is a different
11 number. This is the number for numbers of
12 tires transported and collected, that's
13 reimbursed I think at \$53.00 a ton. The
14 law just simply says so long as on an
15 annual basis 5 percent of the tires came
16 from dumps, so they could see that the
17 dumps would be cleaned up.

18 Well, the dumps have. According to
19 the reports submitted to the Legislature,
20 the numbers of tires in tire dumps have
21 been reduced dramatically. These people in
22 the room are doing a tremendous job of
23 cutting back on those tire dumps. They're
24 still there, and they need to be addressed.
25 While those numbers have gone down, the

1 numbers of tires being produced in Oklahoma
2 from used vehicles, and so on, is growing.
3 So you can see that there have been some
4 changes. But this old legislation that
5 dates back to, I think, 1988 or 1989 --
6 Fenton's smiling. He remembers when the
7 fellow actually had the machine, down in
8 Choctaw I think it was, he needed a way to
9 purchase his machine. He needed
10 legislation so he could get a loan to buy a
11 billion dollar machine that would shred
12 tires, and that's how that law began.

13 It got the Health Department's
14 blessing because to that law was added the
15 provision that tire dumps be cleaned up.
16 What a wonderful thing. But the
17 Legislature simply said, you can get
18 reimbursements so long as on an annual
19 basis you work on the tire dumps. That's
20 the thought. Simple thought. We have now
21 taken that simple thought and made it
22 almost as complex as the tax code.

23 You can simplify that, and you can
24 make it clear so that everybody knows,
25 going forward, what's to happen. I think

1 maybe it would be benefitted by a little
2 more time to look at how to do that and by
3 copies of those two excellent reports that
4 came from the DEQ, to the Legislature.
5 Steve Thompson and Ferrella have done a
6 tremendous job in that regard.

7 I know that DEQ would like the rules
8 in place. Maybe that's so. But if you do
9 recommend that they go forward to the
10 Board, please understand that the rules
11 that go to the Board aren't clear, they're
12 not concise, and they don't tell the
13 regulated community just how to go about
14 their business in the future. They still
15 need more work. And the Legislature, I
16 think, is going to amend the law anyway.

17 What you have in place now is a
18 system that has been pretty much working.
19 I don't see a problem with it going on for
20 a little while, while you study the system,
21 along with the Legislature getting the
22 rules right.

23 That's my comment, and I'm sticking
24 to it. I would be glad to answer
25 questions.

1 MR. STOUT: What is your
2 knowledge -- not specifically who you
3 represent.

4 MR. KELLOGG: Who do I represent?

5 MR. STOUT: Don't answer based on
6 who you represent. I want your knowledge.
7 Are the rules not clear because we don't
8 like them?

9 MR. KELLOGG: The rules aren't
10 clear because they don't tell the regulated
11 community how disbursements will be
12 apportioned. They don't talk about how you
13 determine what an annual basis is for this
14 general requirement, that in order to get
15 reimbursement, you must collect a certain
16 percentage on an annual basis. That just
17 needs to be made clear, whether it's a
18 rolling average, or a calendar year, or,
19 just make it clear.

20 As this gentleman, I think he's not
21 here, as he pointed out, he's already done
22 work in reliance on that statute, and now,
23 for some reason, his number is going to go
24 to zero on July 1. Well, I looked at the
25 law passed by the Legislature, and I didn't

1 see anything that says, oh, whatever you
2 collected prior to July 1 doesn't count.
3 If it's in there, I haven't seen it.
4 That's one of the things that I've always
5 been careful of is, don't take away the
6 rights that somebody has already accrued.
7 Make everything you do forward looking
8 only. That's my personal view. Most of
9 what I've said today, Mr. Stout, has been
10 my personal view.

11 Back in the days when I was with the
12 Health Department and then the DEQ, and
13 then just watching this program, the Waste
14 Tire Recycling Law has been amended more
15 than any statute on the books of the State
16 of Oklahoma. Why is that? Because State
17 and public money is involved. No other
18 reason. Money. You go to the Tax
19 Commission and get money. So, that has to
20 be clear. That's all of it. Please just
21 be clear. Thank you.

22 MR. STOUT: All right. Let's
23 take a break. Fifteen minutes.

24 (Fifteen Minute Break)

25 MR. STOUT: Steve Thompson who is

1 -- would you be willing to introduce
2 yourself, as well as introduce Mr.
3 Thompson.

4 MR. JOHNSTON: I'm Jerry
5 Johnston. I'm on the DEQ Board which
6 sometime this will reach us and we will
7 have to say, yes, you did a good job.
8 Steve is here hiding, and I thought maybe
9 if he could in a very few seconds, because
10 I know you are about to wind this up, and
11 decide not to decide, or whatever it is
12 you're going to do, maybe have some more of
13 what may happen in the future, than these
14 people in the front row are afraid to say
15 something about -- you might put a little
16 slant on it or ask some questions that they
17 don't feel free to answer right now. So,
18 Steve Thompson, the boss.

19 MR. THOMPSON: Thank you, Jerry.

20

21 Mr. Chairman, Members of the
22 Council, what Jerry asked me to do is try
23 to shed a little light on maybe what we
24 anticipate may happen, particularly with
25 tire dumps in the future, which is the

1 centerpiece of the issue that you are
2 dealing with today.

3 Let me first congratulate -- and I
4 have been warned by the Chairman to be
5 brief, and my definition of brief and his
6 may be different. So I'll try to hurry
7 through it the best I can.

8 Let me first congratulate the staff
9 on the really fine job they've done in
10 cleaning up waste tire dumps across the
11 state.

12 We have seen over the years, a
13 significant reduction in the numbers in
14 waste tires, in dumps, in the state. My
15 understanding -- and I'm sure someone will
16 at some point jump up and say, what Mr.
17 Thompson meant to say -- but my
18 understanding is that we now have about
19 350,000 tires in dumps in the state. If
20 you assume three and a half million tires
21 processed annually, roughly, at 5 percent
22 we were able to get about 175,000 tires out
23 of dumps a year. And so that drove -- and
24 we could require processors to get that
25 amount, and that was driving that number

1 down.

2 Last year the Legislature reduced
3 that amount to 2 percent. So, at 2
4 percent, if you assume three and a half
5 million tires processed, that's 70,000
6 tires a year, if they meet the minimum
7 requirement. That means that -- roughly
8 350,000 tires in dumps are going to take
9 five years to clean up the existing dumps
10 to get to zero.

11 And I don't anticipate that we will
12 ever get to zero, but it does not include
13 additional tires that will go into dumps
14 over time, which we can anticipate that
15 they will surely do. I doubt we'll ever
16 get to the point where nobody is putting
17 tires in dumps.

18 So, here's the crystal ball part of
19 it. I anticipate that the number -- and we
20 will track this over time, that at 2
21 percent the number of tires in dumps will
22 go up. I think that's inevitable. At the
23 point when we can show that those tire
24 dumps are increasing, rather than
25 decreasing, what the Department will do is

1 go back to the Legislature and tell them
2 they missed the boat. They missed the
3 number and we need to increase that number
4 so that we start that trend downward again.
5 But we will have to survey that over time.
6 This is my prediction and that's just what
7 I think is going to happen.

8 In the meantime, both, because the
9 law has an effective date and because of
10 our feeling that those tire dumps are going
11 to increase, I think it is important to
12 ensure that at least 2 percent annually --
13 and it's not 2 percent every month and it's
14 not 2 percent every day. The law requires
15 that 2 percent of the tires in the state be
16 picked up annually starting July the 1st;
17 because of what I believe the history and
18 what the future of tire dumps in the state
19 holds.

20 So with that, Mr. Chairman, I hope
21 that was brief enough. I would be happy to
22 try to answer any questions that you all
23 have.

24 MR. TORNETEN: Is there any
25 compelling reason if we don't pass this

1 proposed rule today, will anything change
2 from what you're doing now?

3 MR. THOMPSON: The answer is, I
4 don't know. I suppose the answer to that
5 question is no. As I understand there are
6 two proposals before you -- two amendments
7 to the existing rules. I think the
8 Department of Health had some language that
9 they wanted to clarify. Some of the things
10 we believe were necessary by clarification
11 of the rules.

12 You have two proposals before you.
13 One is to use a rolling average -- and if
14 that is not included then we will continue
15 to require 2 percent, as the statute
16 requires 2 percent anyway. I think there
17 was going to be -- I understood there was a
18 mail out of a proposal on the proration
19 method. I don't know if that has come
20 before you or not.

21 The question there was whether the
22 proration method used by the Tax
23 Commission, and openly adopted by the DEQ,
24 was appropriate. I don't think we have any
25 objection to the new proration method

1 because it does, in fact, in our minds,
2 drive you back to what a reasonable man
3 would consider the proration method to be
4 used. But if you do fail to act we will
5 continue to operate under the statute as we
6 understand it.

7 MR. STOUT: And what reason would
8 we consider tabling it again? Justified
9 reason?

10 MR. TORNETEN: Well, if this is
11 all going to be very temporary we are going
12 to pass this rule, and it's going to be
13 implemented until when -- the next
14 Legislature?

15 MR. THOMPSON: Mr. Chairman, if I
16 could.

17 MR. STOUT: Yes, please.

18 MR. THOMPSON: What I said was,
19 we are going to track that, and we will
20 have to show that the tire dumps are
21 increasing over time. I don't know when
22 that will occur. It will take some work,
23 and we are going to be a little bit more
24 active in surveying them, but it make some
25 time to be able to do that. And then,

1 assuming that we show that they are
2 increasing, the Executive Director of the
3 DEQ would have to convince the Legislature
4 that there is a need for an increase in
5 that number. If any of you are farmers, I
6 wouldn't bet the farm on it. That's just
7 what we'll attempt to do. So the answer to
8 your question is, it's hard to say. If we
9 are successful in changing the statutes to
10 increase the percentage, then it would be a
11 relatively short time, assuming that we
12 were able to show an increase in the tire
13 dumps. So, it may be a short time, it may
14 be quite a while. I don't know the answer
15 to that question. All I've tried to do is
16 describe for you the process that the
17 Agency will go through to try to determine
18 what we need to do in the future.

19 MR. STOUT: Thank you.

20 MR. TORNETEN: Hasn't there been
21 new tire legislation almost every year for
22 the last several years?

23 MR. STOUT: Yes.

24 MR. TORNETEN: Is there any
25 reason to believe there won't be new tire

1 legislation in this next term?

2 MR. ROOD: There are proposals,
3 that's my understanding.

4 MR. TORNETEN: So there's
5 probably going to be more changes to this?

6 MR. THOMPSON: The Waste Tire Act
7 was passed in 1989, and there has been
8 proposed legislation every year since then,
9 and sometimes, two or three. That does not
10 mean that proposed legislation has always
11 been successful. I mean, I would suggest
12 to you that maybe three or four times in
13 that period, maybe five, some substantive
14 changes have been made to the Tire Act. So
15 just because we have a whole lot of
16 processors, and dealers, and owners, and a
17 whole lot of interest, doesn't necessarily
18 mean that -- and a whole lot of bills,
19 doesn't necessarily mean that the law
20 changes. I don't know. We could probably
21 provide a history of that, but that's just
22 my guess, four or five times in twenty
23 years it's probably been changed.

24 MR. SHEPHERD: I think maybe I've
25 got it figured out. If there's a rolling

1 twelve-month average, the people who have
2 collected the 5 percent prior to July 1 can
3 theoretically have that 5 percent carry
4 over, and therefore, would not be required
5 to collect any waste tires out of a dump
6 for maybe twelve months. So if every
7 single waste tire collector has had the 5
8 percent, then theoretically, for the next
9 twelve months there may not be any waste
10 tires collected out of a dump.

11 I see now where we are trying to
12 say, starting this date, it's 2 percent on
13 an annual basis. That is to try to get
14 people back out there to collect these
15 waste tires. So, I think I understand
16 what's going on. Hopefully, everybody else
17 understands what's going on, and maybe we
18 can move forward on the rules. Is that
19 fair for everybody?

20 MR. STOUT: That's fair enough.
21 Is there someone ready to make a motion for
22 us to approve or disapprove?

23 MR. SHEPHERD: Well, I guess I'll
24 make the motion to approve the rules,
25 including the apportionment rule (e).

1 MR. FLETCHER: I second that.

2 MR. STOUT: Motion has been made
3 and seconded. Any further comments by
4 Council before we vote?

5 Thank you.

6 Roll call vote, please.

7 MS. BRUCE: Ralph Triplett.

8 MR. TRIPLETT: Yes.

9 MS. BRUCE: Bill Torneten.

10 MR. TORNETEN: No.

11 MS. BRUCE: Bryan Taylor.

12 MR. TAYLOR: Yes.

13 MS. BRUCE: Patrick Riley.

14 MR. RILEY: Yes.

15 MS. BRUCE: Jeff Shepherd.

16 MR. SHEPHERD: Yes.

17 MS. BRUCE: T.J. McCullough.

18 MR. MCCULLOUGH: Amen.

19 MS. BRUCE: Steve Landers.

20 MR. LANDERS: Yes.

21 MS. BRUCE: Donald Fletcher.

22 MR. FLETCHER: Yes.

23 MS. BRUCE: Jay Stout.

24 MR. STOUT: Yes.

25 MS. BRUCE: Motion approved.

1 MR. STOUT: Item Number 7 on your
2 agenda is Public Forum again, in case
3 someone arrived late, or has decided they
4 wish to say something other than what we've
5 been talking about.

6 Now you look awful familiar.

7 MR. WILLIAMS: I am familiar Mr.
8 Chairman, and I would just like to thank
9 the Council for the time spent on this
10 issue. And one thing I would like to say
11 is I hope it doesn't get lost as the
12 program is trying to be maybe fine tuned.
13 But we have one of the best waste tire
14 programs in any state in the country and I
15 know the states around us are envious
16 because they have big tire dump problems.
17 We have a staff here at DEQ that is
18 committed to that, and I just thank you for
19 the time you had to spend in dealing with
20 the issue today. I hope that's brief
21 enough.

22 MR. STOUT: Thank you. Along
23 that thought, is there anything that
24 Council thinks we need to recommend on the
25 agenda next time, or did we want to wait

1 and let some of the dust settle? Well, I
2 guess the legislative session will be over
3 before we meet again anyway, won't it? We
4 meet in April?

5 MS. BRUCE: May 8th.

6 MR. STOUT: May 8th. Is there
7 anything we think we want on the agenda to
8 allow any continued discussion -- on new
9 information and new matters?

10 MR. SHEPHERD: I was just curious
11 as to, have there been any bills pre-filed
12 for waste tires? Do you know, Fenton?

13 MR. ROOD: There is an interim
14 task force that is meeting, and it's my
15 understanding that there have been bills
16 pre-filed.

17 MR. SHEPHERD: Do you know what
18 those bills are? Have you had a chance to
19 look at them?

20 MR. ROOD: I don't, off the top
21 of my head, but Steve can certainly answer
22 that.

23 MR. THOMPSON: Mr. Chairman, the
24 deadline for bill filing is the 17th. I'm
25 not aware of any pre-filed bills. There

1 may be. I'm not aware of any, but there
2 may be. But I think the staff could
3 provide more accurate information about
4 what's out there in the tire program after
5 the deadline on the 17th. We could get
6 more comprehensive information to you after
7 that deadline.

8 MR. SHEPHERD: Do you guys -- do
9 you have people attending the task force
10 meeting? That's ongoing right now, isn't
11 it?

12 MR. THOMPSON: We're staffing the
13 task force. I think the task force is
14 looking at a whole range of issues, from
15 hauling, to tire dumps, to fees, to just a
16 whole range of things that they're looking
17 at.

18 The next meeting is January 30th.
19 Is that right? Yes. It's at the
20 legislature. The requirement of the
21 statute was that they have a report by July
22 1st of this year, so the final report will
23 be out in the middle of the summer, and we
24 will be able to provide the Council a copy
25 of the final report. We can also, after

1 the 17th, ask staff to provide you copies
2 of the legislation, the entire legislation
3 that's out there, so you can be more
4 informed as time goes along about what's
5 going on with tires. Now, there's a risk
6 there. Get involved in the tire program at
7 your own risk. But we're happy to provide
8 you all the information that we have to
9 inform the decision.

10 MR. STOUT: Thank you. We're
11 just about ready, or I'm just about ready
12 to adjourn the meeting.

13 Is there anything anyone wishes to
14 say, Council? Then the meeting is
15 adjourned.

16 (Meeting concluded)

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