Notice of Public Meeting The Environmental Quality Board convened for a regular meeting at 9:30 a.m., November 18, 2003 in the Caddo Room at Quartz Mountain Lodge, Lone Wolf, Oklahoma. This meeting was held in accordance with 25 O.S. Sections 301-314, with notice of the meeting given to the Secretary of State on October 13, 2003. The agenda was mailed to interested parties on November 7, 2003 and was posted on November 14, 2003 at the Department of Environmental Quality and at Quartz Mountain Lodge. Mr. Richard Wuerflein, Chair, called the meeting to order. Roll call was taken and a quorum was confirmed.

MEMBERS PRESENT
Richard Wuerflein
Brita Cantrell
Mike Cassidy
Jack Coffman
Bob Drake
Jennifer Galvin
Jerry Johnston
Steve Mason
Herschel Roberts
Don Ukens

MEMBERS ABSENT
Roger Miner
Lee Paden
Terri Savage

DEQ STAFF PRESENT
Steve Thompson, Executive Director
Jimmy Givens, General Counsel
Craig Kennamer, Chief of Staff
Eddie Terrill, Air Quality Division
Scott Thompson, Land Protection Division
Jon Craig, Water Quality Division
Judy Duncan, Customer Service Division
Gary Collins, ECLS Division
Myrna Bruce, Secretary, EQ Board/Councils

DEQ STAFF PRESENT
David Dyke, Administrative Services Division
Pam Dizikes, Air Quality Division Legal
Ellen Bussert, Administrative Services Division
Jamie Fannin, Administrative Services Division
Don Pendergraph, ECLS District Manager

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

Approval of Minutes Mr. Wuerflein called for motion to approve the Minutes of the September 9, 2003 Regular Meeting. Mr. Johnston made motion to approve the Minutes as presented. The second was from Mr. Coffman.

Rulemaking - Air Pollution Control OAC 252:100-41 and Appendix E and F -- Ms. Sharon Myers, Air Quality Council Chair, advised that the proposed amendments to OAC 252:100-41 would incorporate by reference any changes that were made in federal standards that effect the NESHAPS to bring the rules in line with the federal rules. Ms. Myers added that changes to Appendix E and F would bring the Ambient Air Quality Standards for ozone in line with the federal standards. Hearing no discussion, Mr. Wuerflein called for a motion. Motion was made by Mr. Mason to accept the proposals as presented. Second was by Mr. Drake. Mr. Eddie Terrill, Air Quality Division Director, asked for confirmation from Ms. Krug, Assistant Attorney General, as to whether two votes should be taken; one for SC 41 and
another for Appendix E and F. Ms. Krug advised that one vote would be sufficient as both proposals are in Agenda Item #4. Mr. Wuerflein requested roll call.

Roll call.

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Motion carried.

Consideration of and Action on the Environmental Quality Report - Mr. Wuerflein called upon Mr. Craig Kennamer, Chief of Staff. Mr. Kennamer outlined the DEQ’s needs for providing environmental services within its jurisdiction, gave an update on new federal mandates, and an update on recommended statutory changes. Those statutory proposals included:

1) A request to repeal the statute concerning the biomedical waste facility Certificate of Need to make it consistent with all the other programs;
2) A proposal to change the statute to exempt small air emissions sources emitting under 40 tons per year from the requirement to obtain a permit;
3) Addition of a definition of 'Prior Converted Croplands' to the definition of "waters of the state" to be consistent with the federal program;
4) Correction of a scrivener's error in last year's Laboratory Services bill, to make it clear that DEQ can supply laboratory services to public water supplies;
5) Based on a liability case at a Superfund site, addition of an exemption in the Tort Claims Act for immunity from liability for remediation activities when the government is acting in a capacity to protect its citizens;
6) Legislation that clarifies DEQ’s access to Superfund sites;
7) In the Brownfield Program, a proposal for a deed restriction on property so that a new owner has to preserve the integrity of the cleaned-up site; and
8) Adding (e.g.) petroleum sites and mining sites to eligibility under the Brownfield program.

Mr. Kennamer and Mr. Thompson fielded questions and comments regarding the legislative proposals. Mr. Wuerflein called for motion to accept the Environmental Quality Report as presented. Motion was made by Mr. Johnston and seconded by Ms. Galvin.

Roll call.

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Motion carried.

New Business -- Mr. Wuerflein recognized Senator Robert Kerr who welcomed the Board to Senate District 38 and expressed his appreciation for the very important and difficult job that the Agency does and the accomplishments it has made.

Executive Director’s Report -- Mr. Thompson provided members a copy of the 2003 Environmental Quality Report and commended Denise Harkins for the graphics, Wendy
Caperton as coordinator, and Division staff for contributions. Mr. Thompson announced that he is now Vice-President of ECOS and would leave immediately following the meeting to attend a meeting in Washington DC where he hoped to discuss funding to meet the needs of Water/Wastewater infrastructure; talk about impacts new drinking water requirements will have on small communities; discuss with President’s Council relations between states and EPA; and, to meet with new EPA Administrator, Michael Leavitt.

Mr. Thompson stated that he is proud of the work being done at Tar Creek by the Land Protection Division, particularly Mary Jane Calvey's extraordinary job as coordinator.

He related that future 'big ticket' issues would include all issues surrounding Grand Lake and treatment of State status with tribes.

Mr. Thompson pointed out that DEQ is the recipient of an award for its Reclamation Program where old dilapidated buildings and property are turned into soil conservation programs that we call rural Brownfield program. He commended Marvin Boatright of the Land Protection Division for his work on that program.

Mr. Thompson stated that OGE had received an award for their effort in ScienceFest 2003 at the Oklahoma City Zoo; and they, in turn, recognized the DEQ for its participation in this day of environmental education and learning about environmental issues.

The floor was opened for questions, comments, and discussions regarding the above-mentioned items.

Jimmy Givens, General Counsel, advised that the Agency had received a rulemaking petition from the PACE Union, Ponca Tribe, and Concerned Citizens of Ponca City asking for a significant additional stringency in the fugitive dust rule. Mr. Givens stated that the proposal was presented in October to the Air Quality Council. The Council instructed staff to proceed with the rulemaking process and that item will be on the agenda for the January 14, 2004 Air Quality Council meeting.

With no further questions or comments, Mr. Wuerflein called for a motion to adjourn. Mr. Coffman made that motion with the second from Mr. Drake. The meeting adjourned at 10:30 a.m. with public forum following.

A copy of the transcript and the attendance sheet are attached and made an official part of these Minutes.
DEPARTMENT OF ENVIRONMENTAL QUALITY BOARD
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF REGULAR MEETING - ITEM NUMBERS 1-6
HELD ON NOVEMBER 18, 2003, AT 9:30 A.M.
QUARTZ MOUNTAIN LODGE
LONE WOLF, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR
MEMBERS OF THE ENVIRONMENTAL QUALITY BOARD

MS. CANTRELL - MEMBER
MR. CASSIDY - MEMBER
MR. COFFMAN - MEMBER
MR. DRAKE - MEMBER
MS. GALVIN - MEMBER
MR. JOHNSTON - MEMBER
MR. MASON - VICE CHAIR
MR. MINER - MEMBER
MR. PADEN - MEMBER
MR. ROBERTS - MEMBER
MS. SAVAGE - MEMBER
MR. UKENS - MEMBER
MR. WUERFLEIN - CHAIR
STAFF MEMBERS

MS. MYRNA BRUCE - SECRETARY
MR. STEVE THOMPSON - EXECUTIVE DIRECTOR
MR. EDDIE TERRILL - DIRECTOR/AIR
MR. JON CRAIG - DIRECTOR WATER QUALITY
MS. ELLEN BUSsert - ADM SERVICES
MR. CRAIG KENNAMER - CHIEF OF STAFF
MR. JIMMY GivENS - AGENCY COUNSEL
MS. SUSAN KRUG - ASST. ATTORNEY GENERAL
MR. WUERFLEIN: Good morning.

Welcome to the DEQ meeting.

The regular meeting of the

Environmental Quality Board has been called
according to the Oklahoma Open Meeting Act,
Section 311 of Title 25 of the Oklahoma
Statutes. Notice was filed with the
Secretary of State on October 8, 2002.
Agendas were mailed to interested parties

The agenda for this meeting was
posted at the Quartz Mountain Lodge and the
DEQ, 707 North Robinson in Oklahoma City,
Friday, November 14, 2003.

Only matters appearing on the posted
agenda may be considered.

If this meeting is continued or
reconvened, we must announce today the
date, time and place of the continued
meeting and the agenda for such
continuation will remain the same as
today's agenda.

I hope everybody had a chance to meet Representative Walker. We are sure glad to have you here. Do you have any comments to make or something, we would sure entertain them.

REPRESENTATIVE WALKER: I want to welcome everyone here to southwest Oklahoma. And I hope you enjoy your stay. I'm just sitting in this time and seeing what's going on and maybe I'll learn something. I'm sure I will.

MR. WUERFLEIN: We appreciate having you.

REPRESENTATIVE WALKER: Thank you.

MR. WUERFLEIN: Call the roll call.

MS. BRUCE: Good morning. Ms. Cantrell.

MS. CANTRELL: Here.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Here.
MS. BRUCE: Mr. Drake.

MR. DRAKE: Here.

MS. BRUCE: Ms. Galvin.

MS. GALVIN: Here.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Here.

MS. BRUCE: Mr. Mason.

MR. MASON: Here.

MS. BRUCE: Mr. Roberts.

MR. ROBERTS: Here.

MS. BRUCE: Mr. Ukens.

MR. UKENS: Here.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: For the record, absent are Mr. Minor, Mr. Paden, and Ms. Savage.

MR. WUERFLEIN: Okay. First on the agenda is the approval of the minutes of our September Meeting.

MR. JOHNSTON: Move to approve.

MR. COFFMAN: Second.

MR. WUERFLEIN: Move by Jerry Johnston, second by Jack Coffman. Any discussion? Any other comments on minutes
as printed? Vote.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Ms. Galvin.

MS. GALVIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Mr. Roberts.

MR. ROBERTS: Abstain.

MS. BRUCE: Mr. Ukens.

MR. UKENS: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

Move right on to Item No. 4.

Rulemaking for Section 252:100. Call on

Sharon Myers to make the presentation.

MS. MYERS: Good morning, Mr. 
Chairman.

MR. WUERFLEIN: Good morning.

MS. MYERS: Mr. Thompson.

MR. THOMPSON: Good morning.

MS. MYERS: The rulemaking presented at this time is affecting
Subchapter 41 which is the Air Toxic rule
incorporation by reference. It's pretty
straightforward incorporating what the
federal standards are and there's a list of
all those standards in the documents.

MR. THOMPSON: She needs to speak
into the microphone.

MS. MYERS: (Inaudible).

MR. WUERFLEIN: Could we move the
microphone? There we go. It's still
pointing sideways, I think.

MS. MYERS: Do you need me to
repeat that?

Basically, this rule is just
incorporating by reference any changes that
have been made in the federal standards
that affect the NESHAPS to bring our rules
in line with the federal rules. It effects
Subchapter 41 and also Appendix E and F.
And E and F is -- it's bringing the Ambient Air Quality Standards for ozone into what the National Air Quality Standards are. We're just bringing our rules in line with federal standards. Any questions?

Mr. Wuerflein: Any questions from the Board? Nothing controversial that we can't argue forever.

Ms. Myers: No.

Mr. Wuerflein: Seeing no questions from the Board, are there any questions from the public? I don't see any from the public. Come back to the Board, is there a motion to accept the proposal.

Mr. Mason: So moved.

Ms. Bruce: I'm sorry, I didn't get who?

Mr. Wuerflein: Steve Mason.

Mr. Drake: Second.

Mr. Wuerflein: Second by Bob Drake. Any other discussion? If not, we'll have roll call on it.

Mr. Terrill: Excuse me, do we need to take two votes on this? Susan, do we need to vote on this twice?
MS. KRUG: That's what I was sitting here trying to figure out.

MR. TERRILL: They are two separate things. Subchapter 41 is one change and then Subchapter -- Appendices E and F is another.

MS. KRUG: But they are both Item No. 4.

So, that would be fine.

MR. WUERFLEIN: The motion is to accept all of agenda Item No. 4. Go ahead with the roll call.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Ms. Galvin.

MS. GALVIN: Abstain.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.
MR. ROBERTS: Aye.

MS. BRUCE: Mr. Ukens.

MR. UKENS: Yes.

MS. BRUCE: Mr. Wuerflein.

MR. WUERFLEIN: Yes.

MS. BRUCE: The motion passed.

MR. WUERFLEIN: Agenda Item No. 5 is the Environmental Quality Report. I understand Craig Kennamer is making that presentation.

MR. KENNAME: Good morning, Mr. Chairman. I have the Environmental Quality Report and at the last meeting part of that report was presented, so I'm not going to go over the budget part or the mandate part. But as Paul Harvey says, I have the rest of the story. And this morning I'm going to go over the legislation, the proposed legislation, and we have a couple of items.

The first is the biomedical waste facility Certificate of Need which you all
are familiar with. We are proposing the repeal of that Statute and the reason for that repeal is that the Certificate of Need that is required by the Board to approve. This is the only instance where the Board does that. It puts the Board and the agency in a position where we are determining market place competition and economic liability. So we propose that we repeal that Statute and make it consistent with all the other programs. Are there any questions on that?

MR. THOMPSON: Well, let me just add, I think at the last Board meeting we had discussed making that an opportunity rather than seeking a bill on that. I had conversations with the Solid Waste Industry. There is no one that is opposed to the legislation at all that we've been able to contact. They understand the dilemma that it puts the Board in and so we decided that probably it would be best just to recommend to you that we go forward with legislation to revoke that provision of the law.
MR. KENNAMER: The second piece is the Air Quality Permit, Exempt Facilities.

We are proposing that we change the Statute to exempt other sources, small sources, from the requirement to obtain a permit. And these would be facilities that emit under forty pounds per year -- I mean tons per year. And the current exemption is limited to de minimis sources. This would expand that but it would mean about three percent of the total tons emitted per year. So it's not a large pollutant but what it does, it saves in staff time regulating these facilities by issuing permits. They are still subject to the National Emissions Standards, they just wouldn't be subject to the permitting requirements and the fees. So we're proposing this legislation to allow staff to adjust their time to work on the more important emitters which represent about ninety-seven percent of the emissions that are emitted each year.
Questions on that one?

MR. COFFMAN: Can you give us an example of what a small emitter under that less than forty tons, would be?

MR. TERRILL: The bulk of them are going to be E and P sources, Exploration and Production sources. We've got probably -- the industry estimates somewhere between 75 and 150 thousand small sources out there that are not in our system anyway and we just needed a way to get them out -- either that or we need to permit them. And it was just felt that it was easier to do this because we really don't do anything as far as reductions or anything that would just fee them and permit them and we just feel like our resources can be used for better purposes. It's not fair just to take that one segment, so we thought we would include this as a broad exemption, if you will, to include all small business-type sources like that. But the greatest bulk of them are Exploration and Production sources.

MR. COFFMAN: So small gas
engines or small diesel engines, stationary
souces, mud pumps, those devises?

MR. TERRILL: Yes. Anything

where the (inaudible) is forty tons or less
of the criteria, we're going to exempt
them. But as I said, the only thing we're
concerned about -- we're going through the
rulemaking and have been for about a year
with the Council though we still haven't
got EPA approval yet to do this. But our
only concern is the inventory, we need to
have a way to make sure we know what the
inventory is when we need it. We aren't
doing anything for these folks anyway,
other than feeing them. And we just feel
like we have a better use of our resources
to turn our attention a way to other
things.

MR. COFFMAN: Thank you.

MR. WUERFLEIN: Thank you, Eddie.

MR. KENNAMER: This next one is
Prior Converted Croplands Definition. Last
year you may remember that we changed the
definition of "waters of the state" to
specifically clarify that surface
contaminants, wastewater surface contaminants, that are exempted from the regulations and also what was included with prior converted croplands were exempted from the definition of "waters of the state".

So at the time we did that we were supposed to also include or were requested to include a definition for what prior converted croplands meant. And that definition did not make it into the legislation. So we're proposing to add -- re-open that and add that definition of "prior converted croplands". That will make it consistent with federal law which is the "Swampbuster" legislation which has the definition of "prior converted croplands". That will make it consistent with federal law and will enable us to keep our delegation program pretty consistent with the federal program. Questions on that one?

The next one is Laboratory Services Statutes "Cleanup". Last year when that Laboratory section was opened up and they
did some clean-up work, they made a scrivener's error. And they changed the language so that when we provide laboratory services to public water supplies, it now has to be done under a pollution context, which isn't correct. We don't always address or we don't always provide laboratory services to public water supplies under a pollution context. So we just went back and clarified that language so that it makes it clear that we can supply laboratory services to public water supplies without having a pollution element to it.

MR. THOMPSON: Let me --

MR. KENNAME: That also eliminates some other language, some outdated language.

MR. THOMPSON: And let me just tell the Board that that scrivener's error was not an error in the agency, it was done by someone trying to be helpful to us. And so we're going to go back and see if we can't clarify that language.

MR. KENNAME: The other thing
that that part does, is it identifies that
we can provide public water supplies
services to tribes. That was not clearly
stated, the laboratory services for tribes.

The next area is in the area of
Environmental Cleanups. And this is a
situation where we actually had a real live
incident that occurred out by Henryetta.
And what we're trying to do is amend the
law so that Tort Claim liability doesn't
occur when a state or municipality is
involved in a superfund type clean up. And
in the Henryetta site, the remediation
involved a large area and a new property
owner came in and bought some property next
to it and then claimed that the remediation
work was damaging -- or had damaged his
property.

And, under federal law, the State
and the federal government are shielded
from liability, but the municipality is
not. And if it's a State operated site,
it's not clear whether the State can also
be shielded from liability. So what we've
done here is clearly, under the Torts
Claims Act, clearly exempted governmental entities from who perform these remediation efforts, because they've already extended a tremendous amount of dollars and then to be caught up in litigation defending something that they had done on the property to protect human health and the environment is wrong. And Henryetta is still -- while we received summary judgment and were let out of the case, Henryetta is still tied up in the case.

MR. THOMPSON: This kind of thing has a very chilling effect on what -- the way the agency tries to operate. It is our desire to clean up these sites and then turn them over to the municipality through some -- through a variety of arrangements so that it can be used as an economic development tool for that community. We've done that in a number of places. We're doing it at Okmulgee, we're doing it at Duncan, we've done it at Henryetta. There's a range of these kinds of activities that are going on and when a community -- when they are brought
litigation on this thing it has a sort of a
chilling effect on their desire to do that.
So it's a good effort and I think they just
need extra protection.

MR. MASON: Throughout
government, is government generally exempt
from tort claims.

MR. THOMPSON: I'm going to turn
to my legal staff to try to answer that.

MR. WUERFLEIN: Are you looking
at Jimmy or Susan?

MR. THOMPSON: I'm looking at
Jimmy or Susan or Craig for that matter.

MR. JIMMY GIVENS: I'll start it
off and let the others chime in.

I guess the answer to your question
is, yes, in the sense that the State enjoys
sovereign immunity except to the extent
that it waives it. What we have done in
this particular legislation is add this
exemption to a set of exemptions in the
Tort Claims Act that make very clear that
when the government is acting in a capacity
in essence to protect its citizens that it
should enjoy some immunity from liability
for those sorts of activities. So under
some circumstances the government can be
sued, but generally speaking the government
has to give you permission to sue. Does
that make sense? You want to elaborate on
that?

MS. KRUG: No, that's fine.

MR. COFFMAN: Steve, was your
question then why Henryetta is tied up in
this?

MR. MASON: I think, yes.

MR. CRAIG KENNAME: Well, I
think one of the things is that while
Henryetta probably will prevail on this
issue -- it's not as clear when you get
down to the municipality/local government
areas. So they've still got all the
litigation expense of defending their
position.

MR. JIMMY GIVENS: Yes. It's
probably better to say that you enjoy
immunity from liability than it is to say
that you can't be sued. Because you can be
sued.

MS. KRUG: Anybody can always be
sued. It's just the (inaudible) and the
details of to what extent and for what
activities.

MR. THOMPSON: I guess the way I
would explain this is that it makes it much
simpler for municipalities to seek summary
judgments against these kinds of activities
because it is clarified, it is more clear
in the law that they are not held
accountable. Is that reasonable?

MS. KRUG: Yes.

MR. KENNAMER: They'll be able to
go the same speed that would --

(Multiple Speakers)

MR. WUERFLIEN: Is there any
other questions?

MR. MASON: Let me ask you
another question. Let's say we had botched
the cleanup in Henryetta. What can the
public do?

MR. KENNAMER: That was the
discussion we were having earlier.

MR. JIMMY GIVENS: Let me begin
by saying that's not the situation here.

MR. MASON: I appreciate that it
is not here but as a citizen.

MR. GIVENS: It is the same as
what we were talking about earlier, in the sense that there are times the government simply says that the concerns of the government in protecting its citizens are more important than the private rights that a citizen might otherwise have to recovery. And that's what we're dealing with here. It's like a number of other exceptions in the Statute.

MR. MASON: Thank you.

MR. KENNAME: The next area is also in the Superfund Brownsfield area of legislation. And we are proposing to have legislation that allows us to have access to Superfund -- proposed Superfund sites. Part of the problem that we are faced with now -- now that the program is shifting more into a State Superfund Program and we have less involvement with the federal government, the federal government had an access statute, an access ability under their law. And now that we are doing more State-led programs, we need to be able to have that same access capability because often times we need to
react and get into the property and do something pretty quick before there's a threat to human health and the environment. We had an instance recently where it took us over a year to get access to a piece of property and in order for us to get in and investigate this property and make sure we protect the property and protect human health from exposure, we need to get that access pretty quickly.

And I was involved early on in the Harsh-Crimer site and that was one of the key problems there, was getting access to prevent further releases and further exposure. And so this would definitely benefit the State and local entities to have access to these kinds of properties.

MR. WUERFLEIN: You said something about State-led programs, does that mean State Director or does that mean the lead cleanup, that you're having trouble getting access?

MR. KENNAMER: What I mean by that is, that we take the lead.

MR. WUERFLEIN: Okay.
MR. KENNAME: Another area that we're looking at the Superfund Brownsfield is that we're looking to put deed restrictions on property so that if a subsequent owner comes in and takes the property through a sheriff sale or whatever, they see that the property has had a clean-up and they can preserve the integrity of the clean-up.

We've had another real life circumstance where a subsequent owner came in and purchased the property and then operated on the property to destroy the remediation that had already occurred. They affected the cap over the Superfund site. So what we're trying to do here is have a notice that's put on the deed so that anybody who buys the property knows there's some responsibilities that come with the property, that they have to protect the integrity of the cap and they have to operate on that property so that there is no future exposure. Because it's very expensive to spend hundreds of thousands and millions of dollars on these
pieces of property and then have somebody come in and within months do enough damage that you've got to go back and do extensive repair costs.

So we're looking at trying to do something along those lines. We've already had in the law a notice requirement, this would just expand the notice requirement to put everybody on notice that if you do do damage that you can be liable for it.

The last thing is the Brownsfield law. What we're doing is just expanding the scope of what can be included in those projects. Under federal law they have a specific list of items that can (inaudible) with Brownsfield program. What we'd like to do is be able to react more quickly to that. For example, we'd like to be able to add petroleum sites and mining sites to the Brownsfield program. Current law is limited it to regulated substances which is a defined term. We're proposing to change that to pollution, which would expand our scope and enable us to move quicker on those kinds of Brownsfield sites.
And that's pretty much it for legislation.

MR. THOMPSON: Keep in mind on the Brownsfield sites, those are all voluntary projects. People come into the Brownsfield area with a desire to clean up an area. So I suspect sometime during the session we'll be asked if we're trying to encroach through this program on other folks. And we're just trying to expand the opportunity for people to be involved in the voluntary program.

MR. KENNAMER: Thank you.

MR. WUERFLEIN: Thank you, Craig.

Open it up for further questions from the Board. Jack.

MR. COFFMAN: Steve, I guess, maybe that concept though would -- do you think that would expand the number of property owners coming to DEQ asking for funding and then do you think the State has the resources to step up to that?

MR. THOMPSON: Well, there are grants -- federal grants that are sometimes
available for these things. We have never promised grant money for Brownsfield projects and when somebody comes to us and wants us to supervise a Brownsfield clean up, our costs are a part of those negotiations. So we cover our costs pretty well.

MR. WUERFLEIN: Anyone else? If not, I'll open this up to questions or comments from the public. Any questions or comments from the audience.

REPRESENTATIVE WALKER: I've heard the term Brownsfield but I'm not sure what that is?

MR. THOMPSON: Brownsfield project is an old, generally, industrial site that because of concerns for liability people shy away from those sites, or have in the past. Now, through a program that is operated both at the State and federal level, the State of Oklahoma, the Department of Environmental Quality has the ability to certify that a site is clean for a specific use. So if you have a project that you want to take a piece of property
that you would otherwise be concerned about the liability, come to the Department with an idea for use, we can develop with you a risk-based assessment for that use. And if that is cleaned up to the appropriate level, we will certify that it is appropriate for that use.

So it brings some of these old damaged properties back in to value. It brings value back to those properties. It's a really, really good program. We've done a lot of work. I know we've done some work in Tulsa with an old chemical plant. We did some work with Sand Springs, there's a Walmart property that sits there now. There's some Home Depot properties. I'm sure Scott can tell us. But that's the kind of thing, this is property that nobody would come near. Folks have come to us and say if we clean it up to this level for this use, can we use it? And we go through the risk assessment and then we do a certification that can be used for that purpose. So it's a neat program.

MR. JOHNSTON: It's economic
MR. THOMPSON: It's a good economic development tool. It's a -- we like it. We're just trying to expand it. This legislation just expands it so that other people can take advantage of it.

MR. WUERFLEIN: Any other questions? Comments? While I'm going to pause, I want to recognize Senator Robert Kerr. We thank you for coming. I saw you walk in during the discussion. Do you have any comments to make to the group?

SENATOR KERR: Yes. I'd just like to say that you have a very important and difficult job and certainly I appreciate all that you do. I want to welcome you to Senate District 38 and our beautiful Quartz Mountain Lodge and thank you for picking this place as the site for your meeting.

MR. WUERFLEIN: Thank you, Senator. We've really enjoyed it here. If there are no other comments, I'll return to the Board and ask for a motion to accept the report or to approve the call of
action.

MR. JOHNSTON: So moved.

MR. WUERFLEIN: Jerry Johnston moved.

MS. GALVIN: Seconded.

MR. WUERFLEIN: Seconded by Jennifer. Any other discussion? Call for a roll call, Myrna.

MS. BRUCE: Ms. Cantrell.

MS. CANTRELL: Yes.

MS. BRUCE: Mr. Cassidy.

MR. CASSIDY: Yes.

MS. BRUCE: Mr. Coffman.

MR. COFFMAN: Yes.

MS. BRUCE: Mr. Drake.

MR. DRAKE: Yes.

MS. BRUCE: Ms. Galvin.

MS. GALVIN: Yes.

MS. BRUCE: Mr. Johnston.

MR. JOHNSTON: Yes.

MS. BRUCE: Mr. Mason.

MR. MASON: Yes.

MS. BRUCE: Mr. Roberts.

MR. ROBERTS: Aye.

MS. BRUCE: Mr. Ukens.
Next on your agenda is new business.

Is there anything presented to the staff since the agenda came out? Seeing none, I'll call on Steve Thompson.

Thank you, Mr. Chairman. First of all, I'd like to call your attention to our annual report. This is a document that I believe has gotten to be a better and better document every year. What we have tried to do with the document is to tell some stories, some good stories about what's going on with the agencies, plus, list all the beancounts that we do, all the activities that we do. This year because of circumstances across the world we wanted to honor the people that's served in reserve units or in guard units that are also employees of the department. So that is our lead story.

This is a product of really a couple of people. First, Denise Harkin, who is our graphic artist is responsible for what
I think is a much improved, very slick, very nice report. She works for Judy Duncan, in her shop, in our customer services shop, and has done a great job with this. Wendy Caperton, of my staff, coordinates the effort for the annual report and, of course, we have contributions from all the divisions in the agency. So I would encourage you to look through the report and if you have questions about any of the articles or any of the statistical information in there, let us know.

Just to let you know, I think I reported to you at the last meeting that I had been elected as the Secretary/Treasurer of the National Environmental Commissioners Association which is called ECOS. Since that time, the Vice-President has chosen to seek other pastures and so I have moved up to the position of Vice-President of that organization. I hope I don't move through the leadership positions that quickly as we go along because I'll be out of office in a year. But as a result of that I am leaving
this evening for Washington for a meeting in the White House tomorrow evening with the President's Council on Environmental Quality, as an officer of that organization. We're going to tee up a number of things that we have talked about here with that Council, the increasing gap between funding for water and wastewater infrastructure and our capacity to meet those needs which is growing daily. We are going -- I am specifically asked to talk about the impacts that all new requirements, safe drinking water requirements are going to have on communities, particularly small communities. Our best estimate is that when we get through all the safe drinking water rules through the year, I think 2006, rate payers are going to see a sixty percent increase in their utility bills as a result of those issues. So we're going to discuss with the President's Council the impacts to small communities and we'll also talk about
the relationship between states and the
Environmental Protection Agency which needs
some work.

Following that, at some time while
I'm up there, we are also scheduled to meet
-- I don't think the time is quite set --
we're scheduled to meet with the new
administrator of EPA, the former Governor
of Utah, Michael Levitt. I think our
discussion will probably be along the same
lines but we'll probably have more
discussion about our relationship and our
working relationship with EPA than anything
else.

So I'm excited to be a part of that
effort and hopefully we'll do some good.
You do these things to do good for Oklahoma
and hopefully we can do some good for
Oklahoma while we're up there.

I think you're all aware that the
issues surrounding Tar Creek continue to
make -- to be discussed. In spite of the
issues that are high on the discussion
list, I am extremely proud of the work that
Scott Thompson and the Land Protection
Division has done to provide, for all policy makers, a common sense approach to remediation of the land and some efforts to remediate some water issues up there. We have worked closely with the University of Oklahoma. Senator Inhoffe has committed 45 million dollars to that effort. And regardless of what else happens, we believe that is money that can be well spent in that area and we're looking forward to that effort.

I particularly want to mention Mary Jane Calvy. The issues surrounding all the issues surrounding Tar Creek are extremely difficult for one person to get their arms around and to be able to discuss. And she has done an extraordinary job as our Tar Creek Coordinator. So I wanted to mention her particularly.

An issue that I think we're going to be dealing with in the future, sort of one of the big ticket items, is issues particularly surrounding Grand Lake. There is a lot of desire on the part of agencies, legislators, citizens, to look holistically
at the impacts at Grand Lake not only from area sources but from Tar Creek. I think you are all aware that we did a fish study at Tar Creek -- I mean at Grand Lake although it was not actually in Grand Lake, it was at the Neosho and Spring Rivers, and found lead in the bones of fish there. So there is great interest in taking a look at all the issues around Grand Lake. And Jon Craig, of our Water Quality Division, has been instrumental in getting folks together to look at that. So it is something that we will be looking at in the future. One of the issues that we are becoming more and more involved in as an agency is treatment of State status with tribes. There are, depending upon who you talk to, thirty-seven, thirty-eight, thirty-nine, federally/recognized tribes in the State of Oklahoma. The potential impact for EPA giving all of those tribes treatment as state status as far as air quality and water quality and the ability to meet water quality standards, we think could be a nightmare. So we have devoted
more and more staff time to that issue. I suspect that -- we think that the treatment of state status the determination by EPA will be made for the Cherokees in the air program, very soon. And we will react to that depending upon the determination that EPA makes. The decision making authority for that lies with the regional administrator in Dallas. So we are waiting to see what kind of determinations are made there.

We were the recipient recently of an award. It's an award for a program, our reclamation programs, our building reclamation programs where we take old dilapidated buildings and turn them into soil conservation programs. That is a program that has gotten a lot of benefit down in this part of the State and in other parts of the State. It's what we call sort of our rural Brownsfield program. Anyway, Marvin Boatright, of also Scott's staff, was sort of the Godfather of that program and that program was rewarded at the recent KOB banquet as being the outstanding
government program in the State. So we
were excited to receive that.

We also received some recognition
for an award that was received by our
friends at OG&E for their effort at
Sciencefest. I think Mr. Coffman talked at
the last forum about this effort that was
made where five thousand fifth graders were
brought into the Oklahoma City Zoo from all
across the country for a day of
environmental education and learning about
environmental issues. I told some folks
when I heard about this -- as many things
as I hear about or have to deal with in a
day -- I heard about this and they said
they were going to put it in my schedule.
My first thought was, well, here's another
thing to put in my schedule. And then, I
realized that about fifty percent of the
employees of the Air Quality Division had
been dedicated to this thing. So my second
thought was "Where are all my people
going?" But on the day what I arrived at
that thing and saw all these children, or
these students from all over the country
involved in that thing, it was really
marvelous and worth all the effort.
Anyway, OG&E was the leader of that effort.
They received an award and we congratulate
them for that and we were also recognized
as a part of that.

We have one other item we need to
mention then I'm going to turn it over to
Jimmy but I'll take any questions that you
all have. That concludes my report, but
I'll take any questions from the Board.

MR. MASON: When might we expect
EPA to rule about the Cherokee decision?

MR. THOMPSON: Well, keeping in
mind, Mr. Mason, that we're talking about
EPA here, there are -- as we've tracked the
issue of the Cherokees. They first began
with claiming fourteen counties in
northeastern Oklahoma including a pretty
significant piece of Tulsa. That
application was rejected. So their current
application has to do with dependent
communities, what they believe are Cherokee
dependent communities. We've done some
research on that. To be a dependent
community you have to have support from the tribe to govern your community and we don't see any evidence of that. Then there's the issue of tribal allotments. And then there's the issue of tribally owned trustland.

We believe, in our research of the past court cases, that EPA -- that the courts have supported only the issue of tribally owned trustland. We believe that's the appropriate determination to make but we are unable to have good conversations with EPA about what their determination is. So it could be the dependent communities, individual allotments, tribally owned trustland or it could be any piece of that. We just don't know.

UNIDENTIFIED: Mr. Chairman, question of Steve. What on the water issue -- what's driving those cost up.

MR. THOMPSON: Most particularly the Safe Drinking Water Act requirements. I have my cheat sheet here. There are a range of requirements that are being -- for
45
cities to meet new drinking water
standards: the arsenic standard, the
surface water treatment standard, the
radionucleid standard, the radon standard,
disinfection by-product standard. The fact
that groundwater, which has traditionally
not had to be disinfected now has to be
disinfected. And I don't think we have an
argument, except maybe with the arsenic
standard, that these aren't necessary
standards, it's just the cost of meeting
all of those standards. You will recall
that -- when we talked about our budget
that we're going to ask the legislature for
$850,000 to offset the analytical costs,
$600,000 to meet our equipment needs and we
believe at the end of the day when all of
these kick in we're going to have seventy-
five percent of our communities out of
compliance. So we're asking for four
people -- for funding for four people to do
a technical assistance with these
communities. So we're trying to get at
least our piece of it a little bit under
control but that's not the big cost
element. The cost element is the change in
treatment. The change in the disinfection
material that you have to use. The change
in equipment. All of those kinds of costs
that are going to be faced by small
communities outside of the particular needs
that were part of our budget request.

MR. JOHNSTON: Could I speak to
that just a little. I was on an ALPACA
small community project committee that met
directly with EPA and I was on that for
about five years and up there when they
first started talking about arsenic and I
asked -- well, I don't know whether to say
this in this forum -- anyway, I thought
that everything they did to start with was
bogus and we visited quite vociferously
about that. But their costs figures were
figuring small towns $26,000. And we had
what, nine or ten -- we have five hundred
and sixty or six hundred and forty towns
under twenty-five hundred. And to try to
explain this to those people in the
beltways is like -- I don't know what it's
like, it's very discouraging. Very
discouraging.

MR. THOMPSON: Well, if I could.

The American Water Works Association and the ASDWA which is the Association of State Drinking Waters Administrators have estimated that the cost for removal of arsenic for those communities faced with that is a dollar and twenty-five cents a gallon.

MR. JOHNSTON: One of their answers was to go get an alternate supply and blend with what you had. Well, if you could go get an alternate supply, why would you mess with what you had. You know, no common sense -- excuse me.

MR. THOMPSON: That's fine. You can be more direct about that than I can.

MR. JOHNSTON: I get upset about that every time I think about it.

MR. THOMPSON: We have twenty-eight communities in Oklahoma, mostly associated with the Garber/Wellington aquifer that are going to have high arsenic levels. So I guess unless you live -- in a sense we're fortunate. If you lived in New
Mexico, eighty percent of your wells would be above the standard for arsenic. And I have no idea what those folks are going to do out there. But Senator -- also Jon has been in contact with Senator Diminici from New Mexico about getting federal aid for communities that are impacted by the arsenic rule. We thought we were going to have the opportunity while I was in Washington to talk with him, and Senator Inhoffe, and Senator Nichols about this and these issues but couldn't work out the schedule. It's going to have a very severe impact on communities, small communities and their rate payers. And we just think that while we're not -- I guess we're no longer going to argue with the standard, we certainly think that some help in meeting those needs is important and so we're going to make a pitch for that.

MR. WUERFLEIN: Noah?

NOAH: Where do rural water districts fall regulation wise. Are they - - I mean obviously they're small communities but regulatory-wise?
MR. THOMPSON: Just like any other water system -- like any public water supply. All public water supplies in Oklahoma are regulated.

MR. WUERFLEIN: I've got a question about the tribal deal -- and I know they set their own standard but we've asked for all this legislative money for air quality studies and TMDL water quality studies, can I assume they are not wanting to fund their own water quality studies before they set their standards?

MR. THOMPSON: Traditionally, tribal environmental efforts have been funded, I guess one hundred percent by federal funding. So they would -- they could do studies, they would apply to the federal -- to EPA for grant money to do whatever studies they wanted that they deemed necessary and would set standards based on that. I think that the concern that a lot of us have about particularly water quality standards is that they won't do water quality based standards, they don't know how many people are familiar
with the issue that's going on in Albuquerque where a tribe set a cultural standard that was apparently an order of magnitude less than the water quality standards. And the city of Albuquerque apparently has spent thirty million dollars in an effort to meet that standard and hasn't come close. And they're, I think they are sort of on hold now. I don't think anything is happening with that right now but there's some estimates that they will need to spend upwards of half a billion dollars in an attempt to meet that standard.

And so, if you take that situation and multiply it by the opportunity of thirty-seven, or thirty-eight, or thirty-nine recognized tribes, federal tribes, in Oklahoma and each one of them pursuing treatment of state standards -- I think one of the concerns a lot of people have is this patchwork of standards that we could have across the state and each upstream discharger, whether industrial or municipal, having to meet a standard like
that. I don't know that that would happen but there is certainly the opportunity there.

MR. WUERFLEIN: Are there any other questions for Steve?

MR. THOMPSON: Thank you, Mr. Chairman.

MR. WUERFLEIN: Thank you, Steve. Jimmy?

MR. GIVENS: As you are aware, when we receive a petition for rulemaking, we are required by the Rule to report to the Board on the status of the petitions that we have received. I don't recall now, I don't believe we mentioned at the Tulsa meeting -- I can't recall now whether it was filed immediately before or immediately after the Tulsa Board meeting. But we have received a petition for rulemaking from the PACE Union, Ponca Tribe, and Concerned Citizens of Ponca City. (Inaudible.) And what they have asked for is a significant additional stringency in the fugitive dust rule. The essence saying that it no longer matters whether the dust is visible when it
leaves the property (inaudible) regardless
of whether it is visible or not, that would
come under the rule and so it would be a
significant change in the fugitive dust
rule. As I have heard it described and
these are not my words but it would
essentially become a zero emission rule for
fugitive dust.

That proposal was presented to the
Air Quality Council at their October
meeting as our rules require for their
consideration about what to do. And the
Air Quality Council instructed staff to
proceed with the rulemaking process.
(Inaudible) but what it does is set the
rulemaking process in motion. There has
been a notice filed on this proposal that
will allow it to be formally considered at
the January Air Quality Council meeting for
a decision whether this rule should go
forward and whether it should be forwarded
to this Body for consideration or not.

MR. WUERFLEIN: Thank you, Jimmy.

That concludes the agenda. Is there
a motion to adjourn?
MR. COFFMAN: So moved.

MR. DRAKE: Second.

MR. WUERFLEIN: Jack. Bob Drake.

Do we need a roll call on that? All in favor say, aye.

BOARD MEMBERS: (Unanimously).

Aye.

(End of Proceeding)
CERTIFICATE

STATE OF OKLAHOMA  )
COUNTY OF OKLAHOMA   ) ss:

I, CHRISTY A. MYERS, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the above proceedings is the truth, the whole truth, and nothing but the truth; that the foregoing proceedings were taken by me in shorthand and thereafter transcribed under my direction; that said proceedings were taken on the 18th day of November, 2003, at Quartz Mountain Lodge, in Lone Wolf, Oklahoma; and that I am neither attorney for nor relative of any of said parties, nor otherwise interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this, the 11th day of December 24, 2003.

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