

**DRAFT MINUTES**  
**HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL**  
**January 29, 2009**  
**DEQ 10<sup>th</sup> Floor Conference Room**  
**707 North Robinson**  
**Oklahoma City, Oklahoma**

**For HWMAC approval**  
 2009 Scheduled meetings  
 April 23 - July 23 - October 22

**Notice of Public Meeting** The Hazardous Waste Advisory Council convened for a regularly scheduled meeting at 10:00 a.m. January 29, 2009 in the 10<sup>th</sup> Floor Conference Room at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma. The meeting was held in accordance with the requirements for regularly scheduled meetings of the Open Meetings Act, Section 303 of Title 25 of the Oklahoma Statutes and notice of the meeting was given to the Secretary of State on October 24, 2008. The agenda was posted at the Department of Environmental Quality a minimum of 24 hours prior to the meeting. Mr. Michael Graves, Chair, called the meeting to order. Roll call was taken and a quorum was confirmed.

**MEMBERS PRESENT**

Wesley Anderson  
 Lee Grater  
 Michael Graves  
 Paul Hagameier  
 Ray Reaves  
 Alan Riffel

**MEMBERS ABSENT**

Earl Hatley  
 Bob Kennedy  
 Vacancy

**DEQ STAFF PRESENT**

Scott Thompson  
 Jon Roberts  
 Mike Edwards  
 Pam Dizikes  
 Don Hensch  
 Sherry Combs  
 Myrna Bruce

**OTHERS PRESENT**

Christy Myers, Court Reporter

**The sign-in sheet is attached as an official part of these Minutes.**

**Chairperson's Report** Mr. Graves announced that Council member Bruce Elwell had passed on November 18, 2008.

Mr. Graves reported that the hazardous waste rules passed by the Council on October 16, 2008 were before the Environmental Quality Board at its November 27, 2008 meeting in Tahlequah. The Board approved the rules and forwarded them for Governor approval.

**Approval of Minutes** Mr. Graves called for approval of the Minutes. Mr. Ray Reaves moved for approval of the October 16, 2008 Minutes as presented. Mr. Riffel made the second. Roll call as follows with motion passing. With five votes needed, the motion did not pass and the Minutes will be brought to a vote at Council's next meeting.

*See transcript pages 6 - 8*

Ray Reaves	Yes	Wesley Anderson	Abstain
Alan Riffel	Yes	Mr. Hagameier	Abstain
Lee Grater	Yes	Mr. Graves	Yes

**Emergency Rulemaking Petition** Mr. Graves recused himself as Chair passing the meeting to the Vice Chair, Mr. Lee Grater. Itero Energy LLC brought to the Council an Emergency Rulemaking Petition regarding the new Definition of Solid Waste published by EPA on October 7, 2008 at 73 FR 64668-64788. Mr. Grater called upon Mr. Jon Roberts for staff comments. Mr. Roberts advised that in accordance with DEQ Rules of Practice and Procedure, the Agency must bring to the Council any petition for rulemaking. He briefed the Council on the federal rule as it relates to the petition received from Itero Energy. The petition requested changes to recent revisions to the Federal Hazardous Waste Regulations that exclude certain hazardous secondary materials that are sent for reclamation from the definition of ‘solid waste’.

Mike Gruener, CEO of Itero Energy explained the nature of the company providing a PowerPoint presentation and Mr. Derek Hardberger of Hall/Estill also spoke on behalf of the petitioner.

Staff fielded questions and comments from the Council and the public.

Mr. Grater made motion as to whether there should be emergency rulemaking. Mr. Hagameier made the second.

*See transcript pages 8 - 66*

Ray Reaves	No	Wesley Anderson	No
Alan Riffel	No	Mr. Hagameier	No
Lee Grater	No	Mr. Graves	Recused

Mr. Reaves made the motion to ask that DEQ take action on the petition. Mr. Hagameier made the second.

*See transcript pages 66 - 67*

Ray Reaves	Aye	Wesley Anderson	Aye
Alan Riffel	Aye	Mr. Hagameier	Aye
Lee Grater	Aye	Mr. Graves	Recused

**New Business** None.

**Adjournment** Motion to adjourn made by Mr. Hagameier and Mr. Reaves made the second.

Ray Reaves	Aye	Wesley Anderson	Aye
Alan Riffel	Aye	Mr. Hagameier	Aye
Lee Grater	Aye	Mr. Graves	Recused

**A copy of the hearing transcripts and sign-in 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 HAZARDOUS WASTE  
MANAGEMENT ADVISORY COUNCIL  
REGULAR MEETING  
HELD ON JANUARY 29, 2009, AT 10:00 AM  
IN OKLAHOMA CITY, OKLAHOMA

\* \* \* \* \*

1 COUNCIL MEMBERS

2

3 MICHAEL GRAVES - CHAIRMAN

4 RAY REAVES

5 ALAN RIFFEL

6 LEE GRATER

7 WESLEY ANDERSON

8 PAUL HAGAMEIER

9 EARL HATLEY

10 BOB KENNEDY

11

12 STAFF

13 MYRNA BRUCE - DEQ SECRETARY

14 JON ROBERTS

15 CATHERINE SHARPE

16 PAM DIZIKES - ATTORNEY

17 JEFFERY SANGER

18 SHERRY COMBS

19 SONNY JOHNSON

20 MARY JOHNSON

21

22 ALSO PRESENT

23 DEREK HARDBERGER

24 MICHAEL GRUENER

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## PROCEEDINGS

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MR. GRAVES: This regularly

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scheduled meeting of the Hazardous Waste

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Management Advisory Council was called in

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accordance with the Open Meeting Act.

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Notice for this January 29, 2009 meeting

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was filed with the Secretary of State on

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October 24, 2008. The Agenda was duly

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posted at the DEQ, 707 North Robinson,

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Oklahoma City, Oklahoma.

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Only matters appearing on the posted

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Agenda may be considered at this regular

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meeting. In the event that this meeting is

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continued or reconvened, public notice of

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the date, time, and place of the continued

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meeting will be given by announcement at

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this meeting.

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Only matters appearing on the Agenda

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of a meeting which is continued may be

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discussed at the continued or reconvened

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meeting.

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Can we have a roll call, please.

25

MS. BRUCE: Okay. First I'd like

1 to say that the court reporter is usually  
2 here. She called in sick, so I will be  
3 taking her this tape and she will  
4 transcribe it as if she were here.

5 Roll call. Mr. Reaves.

6 MR. REAVES: Here.

7 MS. BRUCE: Mr. Riffel.

8 MR. RIFFEL: Here.

9 MS. BRUCE: Mr. Grater.

10 MR. GRATER: Here.

11 MS. BRUCE: Mr. Anderson.

12 MR. ANDERSON: Here.

13 MS. BRUCE: Mr. Hagameier.

14 MR. HAGAMEIER: Here.

15 MS. BRUCE: Mr. Graves.

16 MR. GRAVES: Here.

17 MS. BRUCE: We have absent Mr.

18 Hatley and Mr. Kennedy and we have a

19 vacancy, but we do have a quorum.

20 MR. GRAVES: Thank you very much.

21 Before we do anything else I would  
22 encourage everyone to do what I just did  
23 which is turn off your cell phones.

24 For my Chairperson's Report, I have  
25 some sad news to report. One of our

1 Members, Bruce Elwell, died right before  
2 Thanksgiving.

3           Bruce was born December 19, 1955 in  
4 Enid, and he died Tuesday, November 18,  
5 2008 at his home. He graduated from  
6 Fairview Public Schools in 1974 and then  
7 attended Northwestern University, Alva,  
8 graduating with a Bachelors Degree in  
9 Business in 1984.

10           He served as County Commissioner for  
11 21 years. He was sworn in to a seat on the  
12 District 3 County Commission in 1987. His  
13 leadership reached state and national  
14 levels. He held positions on the  
15 Association of County Commissioners of  
16 Oklahoma Board of Directors, serving as  
17 Secretary/Treasure and President. He  
18 represented Major County at the State  
19 Capitol.

20           He also served as President of the  
21 Oklahoma County Officers and Deputies  
22 Association two consecutive years and the  
23 Board of Directors for the National  
24 Association of Counties for more than ten  
25 years.

1           It was a pleasure to work with Bruce  
2 and we will miss him. That was shocking  
3 news to get this morning.

4           The rest of my report is I didn't  
5 represent the recommendations to Council  
6 from the last meeting at the DEQ Board when  
7 it met in Tahlequah and it passed.

8           And as a personal matter I want to  
9 just say what I told -- when I was talking  
10 to Jimmy at the DEQ Board meeting, which is  
11 I do work all over the country, and I must  
12 say in my opinion, I think the DEQ is the  
13 best environmental agency in the country;  
14 and I think part of that is we listen and  
15 they do things in a timely and responsive  
16 manner.

17           And so I just personally appreciate  
18 all that you guys do.

19           Okay. Next item on the Agenda is  
20 Discussion of Amendment, and roll call to  
21 approve the Minutes of the October 16, 2008  
22 Hazardous Waste Management Advisory Council  
23 meeting. Those Minutes were sent to you  
24 all in your packets.

25           Does anybody have any additions or

1 corrections?

2 Does anybody have any question --

3 any Council Members have any questions

4 about the Minutes? Anybody in the public,

5 if you have seen this, have any questions

6 about them?

7 Well hearing none, then I'll take a

8 motion to -- I'll entertain a motion to

9 adopt.

10 MR. REAVES: I'll make the

11 motion.

12 MR. RIFFEL: I'd second.

13 MR. GRAVES: Myrna, take the roll

14 call vote, please.

15 MS. BRUCE: Mr. Reaves.

16 MR. REAVES: Yes.

17 MS. BRUCE: Mr. Riffel.

18 MR. RIFFEL: Aye.

19 MS. BRUCE: Mr. Grater.

20 MR. GRATER: Aye.

21 MS. BRUCE: Mr. Anderson.

22 MR. ANDERSON: Abstain.

23 MS. BRUCE: Mr. Hagameier.

24 MR. HAGAMEIER: Abstain.

25 MS. BRUCE: Mr. Graves.

1                   MR. GRAVES:    Aye.

2                   MS. BRUCE:    With only four votes,  
3 that did not pass.    We'll bring it forward  
4 again at the next meeting.

5                   MR. GRAVES:    Okay.    Next item on  
6 the Agenda I'm going to turn the gavel over  
7 to the Vice-Chair.    I'm going to recuse  
8 myself which means I will not take part in  
9 any of the discussion or the vote on this  
10 particular matter.

11                   MR. GRATER:    There's been a  
12 request made by Itero Energy, LLC to  
13 redefine or clear the regulations up  
14 regarding the definition of "solid waste"  
15 and "solid waste recycling" in keeping with  
16 the changes that the EPA made to 40 CFR  
17 Particular 60, 261, and 270 on the 30th of  
18 October 2008.

19                   I believe we'll pass the report to  
20 Jon Roberts which you will give your  
21 comments regarding this.

22                   MR. ROBERTS:    Thank you.    First  
23 off, I'd like to say thank you to those of  
24 you who came from the hinterlands to make  
25 it to Oklahoma City this morning to have

1 our meeting. I know the weather kind of  
2 messed everything up. But I appreciate you  
3 guys coming.

4 We're here today because DEQ  
5 received a petition for emergency  
6 rulemaking on December 31st. And in  
7 accordance with DEQ's rules of practice of  
8 procedure, if the Agency receives a  
9 petition for rulemaking we are supposed to  
10 refer that petition to the Council for  
11 review.

12 Itero Energy is requesting that DEQ  
13 (inaudible) recent revisions to the Federal  
14 Hazardous Waste Regulations that exclude  
15 certain hazardous secondary materials that  
16 are sent for reclamation from the  
17 definition of "solid waste" which we, in  
18 the environmental business, since we like  
19 to have acronyms, we call it the DSW rule.  
20 As you know, if a material is (inaudible)  
21 solid waste then it's not a hazardous  
22 waste.

23 Mr. Derek Hardberger of Hall Estill  
24 is here to speak on behalf of Itero. But  
25 first, if I may, let me give you a brief

1 synopsis of the federal rule as it relates  
2 to the petition; how it fits into the  
3 Oklahoma Hazardous Waste Program and then  
4 describe the Council's options for action.

5           After several years in the making,  
6 the DSW Rule was adopted by EPA in October  
7 of 2008 with an effective (inaudible)  
8 December 29th. However, (inaudible)  
9 authorized state, the rule won't be in  
10 effect in Oklahoma until we actually adopt  
11 it by the Department.

12           Without going into a lengthy  
13 discussion of the rule, the purpose of it  
14 is to promote legitimate -- legitimate  
15 recycling of hazardous secondary materials  
16 such as sludges, by-products, and spent  
17 materials by removing those materials from  
18 solid and hazardous waste regulations if  
19 they are stamped poorly during that  
20 recycling or reclamation.

21           Under DEQ's regulations as they  
22 exist today, the company that accepts  
23 hazardous secondary materials from offsite  
24 for reclamation must first obtain a  
25 hazardous waste permit from the Agency.

1 Now as you know the purpose of the  
2 permitting process is to ensure that the  
3 facility will be constructed and operated  
4 in a manner that is protective of human  
5 health and the environment and includes a  
6 review of many aspects of a facility's  
7 operations, construction, operating  
8 requirements, closure, post-closure,  
9 financial insurance, liability insurance,  
10 et cetera.

11 Under the DSW Rule these  
12 requirements for the reclamation facilities  
13 are fully self-implemented. There is no  
14 state review of these areas prior to these  
15 facilities beginning operations. And this  
16 represents a pretty significant departure  
17 from the current regulations.

18 With respect to our RCRA  
19 authorization, because the DSW Rule is less  
20 stringent than existing regulations, there  
21 is no EPA mandate that Oklahoma adopt the  
22 rule and, in fact, if we were to not adopt  
23 it that wouldn't affect our state RCRA  
24 authorization at all.

25 Now this doesn't mean that we don't

1 plan to adopt the rule, I'm just explaining  
2 that should we not adopt it for whatever  
3 reason, that won't effect our authorization  
4 from EPA.

5 In response to the petition, the  
6 Council has three options.

7 You can either direct the DEQ to  
8 begin the rulemaking process and if there's  
9 any other instructions that you would pass  
10 on to us in regards to that, you can do  
11 that also.

12 You can ask us to continue to review  
13 the petition and give it some additional  
14 study and evaluation before acting on it;

15 Or the Council could reject the  
16 petition, in which case the DEQ wouldn't  
17 take any further action regarding that at  
18 this time.

19 So with no further ado, I'll turn  
20 the floor over to Mr. Derek Hardberger who  
21 will present Itero's petition and answer  
22 any questions you might have.

23 MR. HARDBERGER: Thank you, Jon.  
24 And Members of the Council, I do appreciate  
25 you being here and accommodating us on a

1 week of nasty weather. I hope everybody  
2 had good travel and I also hope my  
3 presentation comes up on the screen.

4           When we -- we've been working with  
5 the DEQ, and I would agree with what Mr.  
6 Grave's said about -- I also work all over  
7 the country and I've had nothing but  
8 fantastic experiences with the DEQ. So I  
9 truly appreciated their help in this  
10 process.

11           And this issue came up in October  
12 and it struck my client as a (inaudible) in  
13 opportunity as a method to address a  
14 compelling public interest of how to  
15 beneficially reuse materials that are  
16 currently being disposed as waste because  
17 of the constraints of RCRA. That in turn  
18 will reduce the amount of waste flowing  
19 into disposal facilities; recover useful  
20 products. It is a win for basically  
21 everyone involved.

22           But let me jump to the presentation  
23 and then I'll speak a little bit more about  
24 that.

25           Jon gave a good overview and I have

1 not had a chance to look at the briefing  
2 paper too closely, but it does appear to  
3 outline the basic concepts of the rule.  
4 Let me just, if I may, just take a few  
5 minutes or a few seconds to give you kind  
6 of an overview of what Itero proposes for  
7 the Council and what the rule does.

8           What Itero is proposing is that the  
9 Council consider recommending the DEQ's  
10 adoption and incorporation of the US EPA's  
11 revision to the definition of "solid  
12 waste". And it's interesting, while  
13 they're -- Mr. Roberts is correct that  
14 there is no mandate in the actual text of  
15 the rule. There are several places  
16 throughout the rule that EPA strongly --  
17 and that's the actual term -- strongly  
18 encourages states to adopt this revision.  
19 Like I said earlier, the petition addresses  
20 the (inaudible) public interest.

21           And also Jon talked about the -- the  
22 time frame that was actually approved on  
23 October 7th and published on October 31st,  
24 it is now effective.

25           The key aspect of this rule -- and I

1 think Jon hit the nail on the head, it's in  
2 the past, recycling facilities had to go  
3 through RCRA permitting. And there is a  
4 reason for that because in the early days  
5 of RCRA, and I don't want to dare speak for  
6 the Agency, but from what I can tell from  
7 reading the rule and comments from the EPA,  
8 there was a legitimate concern over what  
9 they called "sham recycling".

10           Having a permit structure in place  
11 really is a deterrent to that. The RCRA  
12 permitting process is cumbersome. I mean  
13 it just is what it is. It's expensive and  
14 it has a lot of very stringent  
15 requirements.

16           Over time and in responses to Court  
17 cases and revisions to the DSW Rule, the  
18 EPA apparently has changed its opinion of  
19 sham recycling. It doesn't want to have  
20 sham recycling but also realizes that, yes,  
21 there are beneficial products that can be  
22 recovered.

23           I think the country, right now,  
24 we're in a unique moment of time. Waste  
25 for waste sake is not what we want. If

1 there are recoverable products what would  
2 be in a recoverable waste stream, let's get  
3 them out of there. Let's put material to  
4 work. This is what that rule is aiming to  
5 do. If that is implemented, you'll have  
6 products that will be extracted out of a  
7 given material; you'll have a decrease in  
8 the amount of waste that goes to the  
9 landfills. There will still be a waste  
10 stream, but a decreased amount.

11 Also, and this is very important,  
12 the burden that has been placed upon  
13 companies to handle that material that  
14 formerly would have to be disposed of as  
15 hazardous waste, is (inaudible) to  
16 tremendous costs. Those costs can now be  
17 avoided, a (inaudible) product can be  
18 extracted and it's a win-win for everybody.

19  
20 So, I've talked about the safe and  
21 sound recycling and basically the EPA is  
22 the one that has taken a common sense  
23 approach on this.

24 And at the outset, they said okay,  
25 what's the universe of materials that we

1 can make this rule subject to?

2 Well, it's any material (inaudible)  
3 in the definition that's in the proposed  
4 reg; it's any material that if discarded  
5 would be hazardous waste. That's the basic  
6 definition. So it's a pretty broad  
7 universe.

8 Littered throughout the rule they've  
9 made certain references that samples can  
10 include listed sludges, by-products, and  
11 spent materials.

12 So what are the components of the  
13 rule? I think the briefing paper -- and  
14 again I don't know if the Council has had  
15 time to read this at all. I haven't, but I  
16 assume it outlines this where it  
17 (inaudible).

18 It has three components that are  
19 major. One is that it excludes secondary  
20 materials from the definition of solid  
21 waste that are under the control of the  
22 generator and are reclaimed to recycle. So  
23 you have the people that generate the  
24 material. That's one exclusion. There is  
25 a conditional exclusion for that material

1 if they are transferred to another party  
2 offsite for recycling. And then a third  
3 component includes a non-waste termination  
4 process and for -- just to paraphrase this  
5 is an option that allows companies that  
6 have the material to seek from the DEQ or  
7 regulating authority a determination that  
8 their waste is in fact, or the material is  
9 in fact not a waste, and therefore they do  
10 not have to go through these two different  
11 exclusions. So that's kind of the general  
12 universe.

13           Typically, when you see exclusions I  
14 think that from a regulatory standpoint  
15 from industry, they think, all right, what  
16 are our burdens and what's the burden on  
17 the DEQ? Because, frankly, they've got  
18 concerns I would imagine -- I can't speak  
19 for them -- about what they're going to  
20 have to do to implement these rules.

21           Well, the EPA apparently has decided  
22 that they're going to place the burden for  
23 these exclusions on the regulated  
24 community. In fact, you know, it kind of  
25 tracks what you have to do currently under

1 RCRA right now.

2           So what are the burdens? Well,  
3 under either of the two exclusions that we  
4 talked about there is an initial  
5 notification that the recycling facility  
6 and the material generator estimate to the  
7 DEQ. It is not a lengthy notice but it has  
8 pertinent information that could help the  
9 Agency track the facility; track the type  
10 of material that's being utilized; track  
11 the amount or volumes of the material;  
12 track the contents being extracted from it.  
13 So it's good information.

14           After that, those facilities have to  
15 maintain records of what they receive and  
16 what they ship offsite to the recyclers or  
17 onsite if they do it with a generator.  
18 What's critical in all of this is that  
19 under the EPA's revision the source of the  
20 hazardous secondary material, as long as it  
21 does a couple of other things -- and I'll  
22 talk about that in a second -- it's not a  
23 generator. The point of generation goes  
24 from -- let's just use a factory. A  
25 factory normally would be shipping that

1 material off as hazardous waste to  
2 landfills. Under these exclusions --  
3 especially under the conditional exclusions  
4 for transfer, if they meet their  
5 requirements and they ship that material  
6 offsite, they are not a generator. The  
7 point of generation, the point of liability  
8 under RCRA lays with the recycling  
9 facility.

10 In order to meet that, that factory,  
11 that plant, has to perform due diligence  
12 and it is well set out in the rules. It's  
13 subject to a lot of comment and it is to --  
14 this is their device to prevent sham  
15 recycling.

16 The burden on the factory or the  
17 generator of the hazardous secondary  
18 material is this. If they don't perform  
19 their due diligence then they are liable as  
20 well.

21 MR. HAGAMEIER: So does the due  
22 diligence transfer from the originator of  
23 the material? Ordinarily, you would expect  
24 the Agency to have a list of approved and  
25 then instead of relying on the state to

1 approve and legitimize those recycling  
2 facilities, it's the burden of the  
3 generator to do due diligence on those  
4 facilities and therefore legitimize that  
5 facility themselves.

6 MR. ROBERTS: Right. This is my  
7 interpretation of what the EPA is thinking.  
8 The penalties under RCRA are very, very  
9 severe if you engage in sham recycling and  
10 sham discarding. The necessity for having  
11 a RCRA permit is retarding the beneficial  
12 reuse of the recycling of this material,  
13 whether it be floor products, whether it be  
14 metals, who knows what. But frugality is  
15 the theme of this rule. So instead of  
16 engaging in this cumbersome permitting  
17 process, the EPA has looked back and said,  
18 you know what, we have some very severe  
19 penalties if you don't comply with RCRA.  
20 Those are still in effect. You have to toe  
21 the line, generators of the secondary  
22 hazardous material if you want to send this  
23 thing off for (inaudible) or a recycling  
24 facility.

25 And, oh, by the way, legitimate

1 recycling facility, if you're not toeing  
2 the line, just like any other (inaudible)?  
3 facility generator, then you're going to be  
4 (inaudible) (inaudible).

5           So this is to me looking kind of  
6 through the fog of rulemaking, not much has  
7 changed except for the hurdle to allow  
8 beneficial reuse and recycling has been  
9 minimized. The safeguards are still there.  
10 The onus and the threats of enforcement are  
11 still there and they are very, very severe  
12 and very real. But I think the federal  
13 government realizes that we need to empower  
14 folks in the industry to utilize their  
15 materials to the fullest.

16           And the facts of it, you know  
17 frankly, let's take a look outside. The  
18 economy is, across the country, is not  
19 doing great. Companies are spending  
20 millions of dollars a year trying to get  
21 rid of their hazardous materials. This  
22 could reduce that cost dramatically but  
23 also yield a useful product too.

24           So to go on from that, and I've  
25 talked about the due diligence and I've

1 talked about the waste generator. From  
2 what we can tell -- reading through this  
3 and reading through the existing Oklahoma  
4 regulations and the statutes. And this new  
5 rule, this new revision that's being  
6 proposed, this conflicts with (inaudible)?  
7 all departments. I think there is -- and I  
8 don't want to speak to DEQ, but from what I  
9 can define, the general consensus is, there  
10 needs to be beneficial reuse of materials.  
11 Reduction and waste is a problem for the  
12 State of Oklahoma's environment. Reduction  
13 in waste is a positive for the Oklahoma  
14 business community. It doesn't require any  
15 permitting from the Agency or significant  
16 resources, from what we can tell the state  
17 administers.

18           Again, there is an initial  
19 notification process, there's a record  
20 keeping obligation on the particular of the  
21 folks that would be subject to this  
22 exclusion and due diligence component.  
23 There is a financial assurance requirement  
24 that the recycling facility must meet. The  
25 DEQ has a very well developed financial

1 assurance group. I've dealt with them a  
2 lot. They know what they are doing and  
3 they are really a pleasure to work with.  
4 They have tremendous (inaudible)?  
5 experience in that area.

6 So assessing what financial  
7 assurance would be required for these  
8 facilities, I do not think would be a large  
9 burden upon the DEQ.

10 And I've talked about how this  
11 revision will reduce the amount of waste  
12 disposed in useful products and reduction  
13 of unnecessary compliance costs.

14 You know, when I look through the  
15 Administrative Procedures Act and talked  
16 about emergency rulemaking there's two  
17 components of it.

18 One is that there has to be some  
19 type of imminent peril that's assisting  
20 that's (inaudible)? health and human  
21 environment or a compelling public  
22 interest.

23 I think there is a clear compelling  
24 public interest here for recycling,  
25 recovery of beneficial products, reduction

1 in costs, efficiency. Those things hit the  
2 heart of what is useful in the State of  
3 Oklahoma and it protects the environment.  
4 And frankly, it helps protect the jobs in  
5 Oklahoma. That's revenue. And right now  
6 that is very important. There is no  
7 compelling reason otherwise to not adopt  
8 these things immediately. It's just  
9 (inaudible).

10 So what I thought might help the  
11 Council, if you'll (inaudible) for a few  
12 minutes, is kind of a quick sample of what  
13 we're talking about of how the adoption of  
14 the rule would be beneficial for one  
15 (inaudible) industry and some of the  
16 context that we're talking about.

17 And I'll turn it over to Mike  
18 Gruener, CEO of Itero Energy.

19 MR. GRUENER: Good morning,  
20 Council Members. Thank you very much for  
21 your time today. My company is a crude oil  
22 recycling facility a little north of  
23 Chickasha. What we do is we take in  
24 petroleum waste streams from an exempted  
25 production facilities. And our end product

1 is essentially pipe line grade crude oil  
2 that we are able to recover from those  
3 waste streams.

4 I thought particular of the morning  
5 it would be interesting to look at, some of  
6 the opportunities that we've seen come to  
7 the surface as we look at adopting this new  
8 rule.

9 So I had some dialogue with a small  
10 petroleum refinery, as an example, and that  
11 refinery, they look at maybe about one  
12 percent. Could be -- and it swings widely  
13 from the one percent, to two, to three.  
14 But we'll use one as a conservative number  
15 for the waste stream from the crude oil  
16 they are bringing into their facility and  
17 these waste streams could be just storage  
18 or also from the unrefined process crude  
19 oil streams that are created there.

20 A lot of times those materials end  
21 up in disposal sites. They also can be  
22 stock piled. We've also seen that as well  
23 on the site as well. So the key thing is  
24 there is a high percentage of recoverable  
25 crude oil and associated energy in those

1 waste streams. And having this provision  
2 to enable the recycler to more easily work  
3 with some of these generators is I think is  
4 what we're talking about, something to  
5 consider seriously.

6           So the key note at the high level is  
7 trap in the waste streams are jobs, state  
8 tax revenue and precious energy. The  
9 proper recycling of those waste steams is  
10 what helps protect the environment by of  
11 course, reducing the amount of waste,  
12 creating more jobs, yield that additional  
13 crude oil and energy that we know we need  
14 to get every drop we can and of course,  
15 when we are recovering crude oil, we are  
16 also creating additional sales tax revenue  
17 for the State of Oklahoma.

18           MR. HARDBERGER: And one thing to  
19 kind of add on that, one percent doesn't  
20 seem like a lot. Let's just take  
21 refineries; there are many other industries  
22 around that would have the same issue. If  
23 you look on an economy scale perspective,  
24 one percent, let's just say a million  
25 barrels, one percent starts to add up.

1 There are attendant disposal costs with  
2 that. There are attendant temporary  
3 storage costs with handling those  
4 materials. And you know frankly, the  
5 headaches of managing it as a hazardous  
6 waste.

7           What this rule would do in this  
8 certain example would eliminate this  
9 hurdle; eliminate the hurdles of recovering  
10 that energy. I guess to me is it here  
11 would be of having a pot full of stew, you  
12 eat about three-fourths of it, you know  
13 that you had \$5.00 and yet you throw it  
14 down the sink. That's just waste. And it  
15 goes into you septic tank and fills it up,  
16 for no other reason other than that is just  
17 the kind of process we have right now.

18           Now, we have a rule that's on the  
19 books at the federal level and from what I  
20 can see in my review of the briefing paper  
21 that the DEQ does recommend adoption of  
22 this rule. Let's seize as much of that  
23 stew as we can.

24           MR. GRUENER: And to extract  
25 these materials efficiently, you have to

1 apply the technology to it, so our facility  
2 is all aboveground close loop system. We  
3 receive a tailing directly into tanks,  
4 there's no disposal pit for that type of  
5 scenario, which is we see in the petroleum  
6 industry.

7           We apply centrifuge technology to  
8 the process. And what you may find  
9 interesting is that we don't use any  
10 chemicals to enhance or enable the  
11 separation of materials. So on site we are  
12 taking what we get in and we are apply a  
13 lot of expertise, heat, and a lot of  
14 g-force, and various equipment to extract  
15 or recover in our case, crude oil, from the  
16 material -- and pipeline grade crude oil  
17 from the material we get in.

18           So in addition to that innovation, I  
19 believe that we are the only facility of  
20 our kind in the state at this moment.

21           Also, and I think, hopefully most  
22 recyclers that come in work in good faith  
23 with the state are going to try and  
24 innovate beyond just their current  
25 processing. So we have our current



1 kind of tie this back into what the item  
2 before the Council is, is I think that is a  
3 good synopsis or an object lesson of what  
4 this rule, if it's passed or pursued by the  
5 DEQ, would do. There are many other  
6 industries and many other waste streams  
7 that could have the same type of  
8 constraints, whether it's heavy metals, you  
9 name it. There are opportunities galore.

10           The critical thing, I think, is to  
11 look at it from a very large perspective.  
12 What does this rule do in and of itself?  
13 It is designed to make sure that we use  
14 this industry and the citizens the most of  
15 we can of materials that use to  
16 manufacture; minimize the amount of waste  
17 that goes into the disposal facilities and  
18 also let's do (inaudible). There is no,  
19 from what the -- the EPA has studied this  
20 thing extensively. And they have not  
21 determined that there will be any less need  
22 in the protection of the environment or any  
23 heightened instances for sham recycling.

24           So based on that, the obvious need  
25 for this in the state and the minimal

1 burden that it will place on the DEQ from  
2 our perspective is really urge the Council  
3 to adopt this recommended adoption of this  
4 rule on an emergency basis.

5 I really appreciate your time. I  
6 apologize for the lengthy nature of our  
7 presentation. But if you have any  
8 questions, we'd be welcome to take them at  
9 this time.

10 MR. GRATER: What happens to the  
11 residue that's left over, assuming that you  
12 don't incorporate it? Your scenario listed  
13 recovery of oil and all solid remaining  
14 waste would go to asphalt. What happens if  
15 it doesn't go to asphalt? What do you do  
16 with it?

17 MR. HARDBERGER: Their material  
18 -- we've looked at it from this  
19 perspective, under this new rule, Itero  
20 would be considered a generator. And if  
21 they are not going to incorporate that and  
22 also by the way the asphalt applications,  
23 we will be working with the DEQ to make  
24 that. But that material if it's not  
25 beneficially reused will be characterized

1 as generators are required to do is  
2 disposed of through the process.

3 MR. GRATER: So it would  
4 characterized as a code -- characteristic  
5 waste would pass -- characteristic wouldn't  
6 be a hazardous material.

7 MR. HARDBERGER: Right.

8 MR. GRATER: If it fails  
9 characteristic, it would be?

10 MR. HARDBERGER: Yes.

11 MR. GRATER: Frankly, if it's  
12 petroleum product, then the likelihood of  
13 it passing characteristic waste codes for  
14 benzene is nil. Unless you use a lot of  
15 heat in your extraction process, which  
16 leads to my next question.

17 What happens to the air emissions --  
18 VOC emissions from your heated unit? Do  
19 you have an air permit? Are there any  
20 limitations or requirements for air  
21 emissions on the facilities?

22 MR. HARDBERGER: Those will all  
23 be addressed through discussions with the  
24 DEQ. The first step is to schedule these  
25 (inaudible).

1                   MR. GRATER:    So at this point in  
2 time there are no provisions for air  
3 permitting or VOC emissions or monitoring  
4 on this process?

5                   MR. HARDBERGER:   Well, all  
6 processes are subject to it.   Every  
7 facility that operates in the State of  
8 Oklahoma has to evaluate whether or not  
9 they are subject to (inaudible) whatever  
10 rules, and that's --

11                  MR. HAGAMEIER:   So this provision  
12 neither exempts a facility for the waste  
13 that it disposes of?

14                  MR. HARDBERGER:   Correct.

15                  MR. HAGAMEIER:   Or the processes  
16 that it uses for proper permitting and  
17 authorization under DEQ and air, waste, or  
18 water management.

19                  MR. HARDBERGER:   Precisely.

20                  MR. GRATER:    I think it's also  
21 important to note it for the record, that  
22 currently most of this one percent of the  
23 oil based waste from refineries is being  
24 used as kiln fuel in cement kilns.   It is  
25 manifested and shipped as a hazardous

1 waste. It's tracked as a hazardous waste,  
2 but it's essentially used for fuel  
3 generation in cement kilns and the residue  
4 ends up incorporated as cement or  
5 by-product waste from cement kilns such as  
6 CKD, Cement Kiln Dust.

7 So effectively the material is  
8 already being recycled, it's just being  
9 recycled as a hazardous waste.

10 MR. HARDBERGER: Well, it's --  
11 right now that material that they are  
12 handling is OCD subject sludge material.

13 MR. GRATER: It's manifested  
14 material. It has to be manifested  
15 material. Okay.

16 MR. HARDBERGER: Are there any  
17 other questions?

18 MR. REAVES: I have one question,  
19 Mr. Chairman. Maybe, Jon, you have already  
20 alluded to this but I don't know that you  
21 would be (inaudible) to this. Does DEQ  
22 have a position on this?

23 MR. ROBERTS: On the rule,  
24 itself?

25 MR. REAVES: (Inaudible).

1                   MR. ROBERTS: We are not opposed  
2 to the rule. We are opposed to the  
3 petition as an emergency for some reasons  
4 that I'll explain. If you want, I can go  
5 ahead and start in on that or give you guys  
6 more time to ask questions.

7                   MR. GRATER: Yes, if there are no  
8 other questions for the Petitioners, that  
9 leads into Item 3 under 5 which is the  
10 DEQ's position.

11                   MR. ROBERTS: Okay. Well, like I  
12 said, DEQ does support the DSW rule and  
13 adopting it in some form. But we do have a  
14 couple of concerns with the Petition as it  
15 stands. So we are opposed to the petition  
16 itself because we'd like to give these  
17 concerns some additional study and  
18 evaluation and get some input from the  
19 stakeholders.

20                   One of our concerns deals with  
21 regulatory policy issues, and the other  
22 deals with the actual need for an emergency  
23 declaration in the first place.

24                   With respect to the regulatory and  
25 policy issues we had initially believed

1 when rule first came out that we would need  
2 to make some revisions to the Hazardous  
3 Waste Management Act in order to be able  
4 ensure that we had the statutory authority  
5 to adopt the rule.

6           However, upon further review, we  
7 determined that is not the case. So we are  
8 not going to pursue any statutory changes  
9 related to the rule. However, there are a  
10 couple of issues that we think are equally  
11 important and should have the benefit of  
12 the normal rulemaking process complete with  
13 the full public participation,  
14 opportunities and comments, rather than  
15 skirting some of those requirements by  
16 going through emergency rulemaking.

17           As we've mentioned earlier, the  
18 proposed rules seeks to remove from  
19 hazardous waste regulations, certain  
20 materials that currently must be managed  
21 and permitted hazardous waste facilities.  
22 And as a result, the facilities have  
23 reclaimed these -- hazardous secondary  
24 materials will no longer go through a state  
25 review process before they begin

1 operations.

2                   And as Mr. Hardberger alluded to,  
3 the requirements are for -- for the  
4 reclamation of facilities are fully self-  
5 implementing and the due diligence to  
6 ensure that it is operated in a manner that  
7 is protective of the health and  
8 environment, and that the materials are  
9 legitimately recycled. Legitimately  
10 recycled falls on the generator of  
11 hazardous secondary materials. And we  
12 don't believe that some aspect of the  
13 self-implementation strategies are adequate  
14 and so we plan to --

15                   (Interruption in Tape)

16                   MR. ROBERTS: -- such things as  
17 cost estimates, financial assurance and  
18 liability insurance prior to the facility  
19 actually beginning operations.

20                   We also have a concern with siting  
21 criteria. As you know under current  
22 regulations, any facility that obtains a  
23 hazardous waste permit, is subject to  
24 certain siting criteria such as flood plain  
25 restrictions. No such criteria exists

1 under the DSW rule.

2           Now how that pertains to Itero is  
3 that as of today for Itero to accept these  
4 hazardous secondary materials, they have to  
5 obtain a DEQ permit and be subject to the  
6 siting criteria. But under the DSW rule,  
7 they will be accepting those exact same  
8 materials but not be subject to any siting  
9 criteria. And so whether or not there  
10 should some siting criteria as part of the  
11 DSW rule in Oklahoma, we think it is  
12 something that should be evaluated a little  
13 bit more thoroughly and get some input from  
14 the stakeholders on that issue.

15           Again, we think that is another  
16 reason why that this should go through the  
17 full -- the normal rulemaking process so we  
18 can have full public participation.

19           We also question whether there is  
20 actually an emergency. As Mr. Hardberger  
21 touched on, the Administrative Procedures  
22 Act gives us two criteria to meet for a  
23 rule to be elevated to an emergency status.  
24 It has to meet one of these criteria.  
25 Either there has to be an eminent peril to

1 the preservation of the public health,  
2 safety or welfare; or there has to be a  
3 compelling public interest requiring an  
4 emergency rule and we don't feel that  
5 either one of those criteria are met.

6           With respect to the eminent peril,  
7 since the material that is going to be  
8 managed that Itero is currently a fully  
9 regulated hazardous waste as being managed  
10 at hazardous waste disposal facilities, it  
11 is currently being managed in a way that is  
12 protective of the health and environment.  
13 And there was nothing else in Itero's  
14 position that suggested that there was an  
15 eminent peril to the public or to the  
16 environment if the rule wasn't adopted  
17 immediately.

18           With respect to the compelling  
19 public interest, the proposed rule is  
20 primarily designed to benefit the  
21 generators of hazardous secondary materials  
22 by giving them an additional option for  
23 management of that material that would  
24 otherwise be managed as a hazardous waste.  
25 We haven't received any inquiries from

1 anybody -- from any generators of hazardous  
2 secondary materials about whether we are  
3 going to adopt this rule or not. And so we  
4 don't feel -- at least it hasn't been  
5 indicated to us that there is really a  
6 compelling interest with generators around  
7 the state that they want the DEQ to hurry  
8 up and adopt this rule.

9           So again, I just want to say that  
10 DEQ does support adopting the rule. We  
11 would just like to be able to have some  
12 dialogue with stakeholders and public  
13 regarding some of the extra safeguards, for  
14 lack of a better term, that we would like  
15 to see in the rule before we proceed with  
16 rulemaking on it. So that's our position.

17           MR. HARDBERGER: Council, if I  
18 may, I have two brief comments and then  
19 I've also been authorized to speak on  
20 behalf of several members of the public to  
21 present their position on the rule.

22           MR. GRATER: Sure.

23           MR. HARDBERGER: I appreciate Mr.  
24 Roberts' comments on the cost estimate  
25 issue, and how to determine whether or not

1 -- what level of financial assurances is  
2 satisfactory. The rules are (inaudible)  
3 with instructions on how to go about  
4 financial assurance, it does include cost  
5 estimates. The DEQ does this a lot whether  
6 it be in -- whether they are injunction  
7 wells, RCRA facilities, surface  
8 (inaudible), they do, do this. So this is  
9 not anything this is reaping in the well  
10 here.

11           On the issue, the siting criteria,  
12 there is initial notification that must  
13 given to the DEQ before the facility can  
14 get up and running. That issue can be  
15 addressed. The DEQ has the ability to say,  
16 we don't like the way your facility --  
17 where your facility is located, move it.

18           As far as an emergency, no one has  
19 ever claimed, at least the petitioner has  
20 never claimed, that there is an eminent  
21 peril to the environment. But what is  
22 compelling is this, is that there is an  
23 avenue now to promote beneficial reuse of  
24 recycling. That effects everyone in here  
25 that generates waste and uses products. It

1 lowers costs of goods, it lowers the amount  
2 of waste that goes into disposal  
3 facilities. That is absolutely compelling.

4

5 The charge of the DEQ, from what I  
6 can tell by statute says --

7 (Tape change)

8 MR. HARDBERGER: -- there's been  
9 tremendous discussions nationally about  
10 reduction of the carbon footprint. And  
11 tremendous discussions on how we are going  
12 to reduce the amount of waste we generate.  
13 Here it is sitting in our laps. That is  
14 absolutely compelling. And you can take it  
15 away from the amount of dollars it means  
16 for the businesses that are normally  
17 (inaudible), with treating their material  
18 as hazardous waste right now. So to me  
19 that is absolutely compelling.

20 And if I may shift gears, I have  
21 been contacted by Jim Barnett from EFO.  
22 Mr. Barnett could not attend today. He  
23 asked me if I would put a couple of words  
24 through for him. And I believe EFO has  
25 sent out a letter to the Council voicing

1 their strong support for the petition for  
2 rulemaking on an emergency basis. And they  
3 echo the rationale that we have talked  
4 about today.

5 I have also received word from  
6 American Airlines through their maintenance  
7 based in Tulsa which I believe employees  
8 more than eight thousand people, that they  
9 are strongly in support of this rule as  
10 well. To address the compelling public  
11 interest arguments, I think that EFO, which  
12 represents the majority of the  
13 manufacturing businesses around the state  
14 along with a tremendous amount of  
15 municipalities and entities of that light,  
16 strongly support this rule. That is just  
17 absolutely critical.

18 American Airlines, they are very  
19 supportive of this rule. That to me  
20 evidences (inaudible). So I don't want to  
21 beat this thing to death but those are the  
22 comments I have been authorized to forward  
23 on and I'll turn the floor back over to the  
24 Council.

25 MR. GRATER: Any other questions

1 or presentations of the Council?

2 MR. REAVES: I'd just like to ask  
3 one, Mr. Chairman. We're talking about  
4 (inaudible) and you're (inaudible) sometime  
5 to go over -- to do these type of things  
6 the DEQ requested, do you know what type of  
7 a time factor we are looking at to do that;  
8 maybe both things could be satisfied?

9 MR. ROBERTS: The next -- when we  
10 do our emergency -- when we've done our --  
11 we typically still like to present the  
12 rules to the Council before they actually  
13 go to the Board.

14 The next Council meeting is  
15 scheduled for April, and theoretically we  
16 could have rules put together for the  
17 Council at that time. But the next Board  
18 meeting won't be until August, after that.  
19 So assuming the Board adopted them by  
20 emergency, and the Governor signed off on  
21 the emergency and approved the rule, it  
22 would be some where toward the end of this  
23 year before the rule would actually be in  
24 effect.

25 MR HAGAMEIER: Does DEQ have

1 plans -- you say you support the rule, do  
2 you have plans to support that? What's the  
3 time frame for implementing DEQ's --

4 MR. ROBERTS: If we did it under  
5 the normal rulemaking, we typically have  
6 our annual incorporation by reference of  
7 the federal rules in October. And at that  
8 point under the normal process it would be  
9 approximately July 1 of 2010, next year,  
10 when the rule would go into effect.

11 MR HAGAMEIER: And after that you  
12 would put your framework around this issue  
13 -- the regulatory framework if there needs  
14 to be any additional -- what is your  
15 assessment of this program in terms of  
16 requirements of the DEQ and personnel and  
17 additional (inaudible).

18 MR. ROBERTS: Under -- I'm not  
19 quite sure I understand your question.

20 MR HAGAMEIER: How about if we  
21 adopt this, does the DEQ have the resources  
22 to -- is this going to place any additional  
23 burdens on the DEQ?

24 MR. ROBERTS: If the rule was  
25 adopted as it is, without any

1 modifications, like cost estimate reviews  
2 or anything, I don't think the extra Agency  
3 effort would necessarily be spent up-front  
4 on reviewing anything because there  
5 wouldn't be anything for us to review.

6           There would be additional effort  
7 when we went out to do an inspection of a  
8 facility and then we ask for records to  
9 show that they have their financial  
10 assurance in place, and their liability  
11 insurance in place, and they would have to  
12 bring that information back to the DEQ and  
13 study it to evaluate how they came up with  
14 their cost estimates for financial  
15 assurance. And then we would deal with  
16 that as an enforcement issue on the back  
17 end as opposed to a review on the front end  
18 to hopefully get everybody on board before  
19 operations start up.

20           MR HAGAMEIER: Does the DEQ see  
21 this -- you say you support it, do you see  
22 this as a process -- I can certainly see an  
23 awful lot of benefit for recycling and  
24 recovery, I can see a benefit if this is  
25 adopted as a regular order, of course,

1 rather than as an emergency rule and seeing  
2 the DEQ supporting the spirit in which the  
3 EPA put this together which is to encourage  
4 recycling rather than to throw -- I think  
5 the idea here is to get rid of some of the  
6 (inaudible) that exists for the recovery  
7 of, at this point the only petitioners for  
8 petroleum products. Conceivably there are  
9 other uses. I guess the question there is,  
10 it's a bit of a back track of process to  
11 encourage more recycling --

12 MR. ROBERTS: Yes. We absolutely  
13 support as much recycling as possible,  
14 definitely. The more waste that's  
15 generated, the better off the (inaudible)  
16 is all they way around. I mean the less  
17 waste generated --

18 (Comments)

19 MR. GRATER: From my standpoint,  
20 I've spent a long time dealing with RCRA  
21 and hazardous waste. And first of all,  
22 this rule does have the capacity to effect  
23 things other than oil refinery type of  
24 wastes who principally would obviously  
25 effect the generators of most of the

1 (inaudible) solvents, common solvent  
2 recovery operations. It would effect metal  
3 recoveries in regard to plating operations  
4 or recovery of catalyst beds -- rare earth  
5 metals from catalyst beds and possibly EPA  
6 does make some reference to excluding  
7 battery recovery but I think their  
8 references were in regard to lead acids so  
9 that would potentially leave at least in my  
10 reading of the regulations, it would leave  
11 some opportunity for continued recycling  
12 under this type of a program for Nicad's  
13 and lithium hydroxides and that sort of  
14 thing, all of which are useful and  
15 beneficial; these are elements that are not  
16 destroyed in use, they just need to be  
17 refined and reused.

18           The main change that this rule has  
19 is that it takes the burden of generated  
20 hazardous waste off of the generator and  
21 transfers it to the recycler. The  
22 generator no longer has to manifest this  
23 hazardous waste and potentially doesn't  
24 have to pay taxes on it. Doesn't have to  
25 file by-annual reports on it, it is a

1 considerable financial incentive for them  
2 if they don't make a penny off of disposing  
3 of the material, they can save tens-of-  
4 thousands of dollars in accounting and  
5 material tracking costs and liability  
6 costs.

7           The material, nonetheless, when it  
8 leaves the generator, even though it is no  
9 longer manifested as a hazardous waste, it  
10 still is what it is. And in the case of  
11 some plating waste, those could potentially  
12 be some pretty nasty materials.

13           In regard to oil refinery material,  
14 it's one of those things where RCRA doesn't  
15 make a whole lot of sense. My background  
16 is as a chemist and I tend to have rather a  
17 practical nature which interferes with my  
18 job.

19           Essentially, there is nothing in  
20 this material when it goes out as a  
21 hazardous waste that isn't in the crude  
22 product that's taken out of the ground  
23 which is a natural product to begin with,  
24 and there is nothing in the material that  
25 goes out as hazardous waste nor does it

1 have any chemicals that are listed for  
2 having treatment standards under the LDR  
3 regulations. They are not in the product  
4 that go out that we use in our vehicles and  
5 our homes everyday. It's really a case of  
6 it's not so much as what it is, it's who  
7 has it and where it is.

8           If this material would go to a  
9 facility and a facility were to become  
10 defunct, it would constitute a significant  
11 financial burden to clean it up, to the  
12 state. (Inaudible) that's us. I have seen  
13 a number of cases where there was some mom  
14 and pop operations -- and I don't mean to  
15 use that term derogative and I don't mean  
16 to imply that the petitioner in this case  
17 is that type of an operation -- where  
18 frankly there has been some pretty shotty  
19 operations going on with government oils  
20 and the people of the state ended up  
21 holding the bag for it.

22           Most of this material right now, as  
23 far as the oil field material goes, it's  
24 already being used for oil field recovery.  
25 There is no residue to dispose, to land

1 dispose at all, it basically does the  
2 cement kilns, the BTU value is extracted  
3 from the petroleum product that's entrained  
4 in the material. The remainder of the  
5 solid residue whether the water goes out,  
6 is any water that goes out as stack vapor;  
7 any solid material, be it metal or other  
8 elemental material that is retained in the  
9 cement and the cement kiln dust, or in the  
10 clinkers that are generated by the cement  
11 kiln, none of which are hazardous waste.  
12 So I will grant that there may be a  
13 compelling financial interest to the people  
14 of the state but I doubt that there is a  
15 significant emergency. And I would support  
16 the DEQ's position to move this forward. I  
17 would ask that if it's possible, to move it  
18 forward faster than sometime in 2010.

19 MR. ROBERTS: We can go through  
20 the rulemaking process quicker. But the  
21 only way, and correct me if I'm wrong, the  
22 only way we could get it in effect in  
23 Oklahoma prior to July of 2010, would be by  
24 an emergency rulemaking. So at some point  
25 in time the Council, and then the Board,

1 and the Governor would all have to agree  
2 that there was an emergency -- to justify  
3 an emergency determination.

4 MR HAGAMEIER: And there are some  
5 processes that you would like to see put  
6 around this that are not onus that would  
7 make the DEQ feel more comfortable about  
8 some of the process of rulemaking.

9 MR. ROBERTS: You mean as far as  
10 like financial?

11 MR HAGAMEIER: Financial  
12 assurance, yes.

13 MR. ROBERTS: Yes. We would  
14 still like to have the option to kind of  
15 enhance the rule a little bit with some  
16 pre-review of things like natural assurance  
17 cost estimates, liability insurance, et  
18 cetera.

19 MR HAGAMEIER: Yes. If this  
20 material leaves the site to recycler, then  
21 it is not effectively recycled. It is what  
22 it is. It's a K-list of hazardous waste or  
23 (inaudible) of hazardous waste and you now  
24 have effectively moved the hazardous waste  
25 from point of generation to another

1 facility. And whether or not that facility  
2 is adequately contained and sufficiently  
3 secure is an open argument.

4 MR. ROBERTS: I think that is one  
5 thing that is important to note here is  
6 that under this rule, this material is  
7 removed from the hazardous waste  
8 designation only if it's going someplace to  
9 be legitimately recycled. But if that  
10 place that it goes, even if though it may  
11 have all of the state approvals, if for  
12 some reason the facility does go under and  
13 they have four, five, ten tanks, how ever  
14 many tanks full of this material that was  
15 suppose to be recycled, the facility goes  
16 under. Since it's no longer recycled, all  
17 that material now becomes a hazardous waste  
18 and has to be disposed of as a hazardous  
19 waste. So that would be a significant cost  
20 to the state.

21 MR HAGAMEIER: Two questions with  
22 respect to this. Do I understand that  
23 there are no other -- sense EPA came out  
24 with its rulemaking, there are no other  
25 recyclers that have petitioned for this?

1 MR. ROBERTS: No.

2 MR. HAGAMEIER: And there have  
3 been no other inquiries whatsoever?

4 MR. ROBERTS: To my knowledge, we  
5 have had no other. Don Hensch is a --

6 MR. HENSCH: I'm Don Hensch with  
7 the Land Protection. I have gotten some  
8 calls from a solvent distributor just  
9 inquiring, you know, what we were going to  
10 do. I've gotten two blind calls, you know,  
11 what are you going to do? And I don't know  
12 who they were with. But we haven't  
13 received any other notifications or any  
14 petitions or anything like that other than  
15 the one from Itero.

16 MR. HAGAMEIER: I guess the other  
17 one is is there a way to move this forward  
18 expeditiously outside of the emergency  
19 rulemaking?

20 MR. ROBERTS: Again, without an  
21 emergency somewhere down the road, there is  
22 nothing we can do to make any faster than  
23 July of next year to put it in place.

24 MR. HARDBERGER: If I may make  
25 one remark about the -- in the scenario

1 where materials shipped to a facility that  
2 goes to (inaudible) that's the benefit of  
3 cost assurance, the financial assurance  
4 mechanisms. I can't tell from the comment  
5 if the concept is that the facility that's  
6 sort of in dispute, just let the DEQ  
7 (inaudible) that entirely. My  
8 understanding from working with past  
9 financial assurance mechanisms that there  
10 is a cost estimate based on (inaudible),  
11 worst case scenario (inaudible) and there  
12 is a (inaudible) credit and trust, there is  
13 hard money at the end of the day. So, yes,  
14 would it be an issue to have to deal with  
15 it? Sure. But would (inaudible) be hard  
16 to deal with it? There should be if the  
17 financial assurance -- assurance  
18 determination process is done correctly.

19

20 MR. HAGAMEIER: And these are the  
21 processes that we would like to take a look  
22 at and put more firmly in place.

23 MR. ROBERTS: Yes.

24 MR. GRATER: And you are not  
25 comfortable with the ones that are in place

1 now?

2 MR. ROBERTS: I'll defer mostly  
3 to Don on these. We do know that there  
4 have been a lot of antidotal information  
5 from EPA for instances, whenever they have  
6 had to go into a facility and do a cleanup,  
7 and this is a permitted facility that  
8 supposedly had financial assurance in  
9 place, that the costs typically were at  
10 least, what, ten times greater?

11 (Comments)

12 MR. HARDBERGER: My understanding  
13 of working within the framework that the  
14 rule adopts which is basically the same  
15 thing you would see with C-wells or other  
16 facilities that require cost estimates and  
17 financial assurance, it's a give and take  
18 with the agency. It's not a unilateral  
19 cost estimate where you just went, yeah,  
20 that looks like that's about what it is and  
21 park that money. It is back and forth. If  
22 the Agency feels like it takes that much  
23 money to clean it up, then park it. It's  
24 pretty simplistic. If the Agency feels  
25 like there needs to be a premium placed on

1 the financial assurance to safe guard from  
2 anticipated contingencies, that they can.  
3 But I think the -- there's nothing wrong  
4 with the mechanism that's proposed by the  
5 rule and there's nothing wrong with the  
6 mechanisms that the state currently  
7 utilizes. The proof in the pudding is  
8 correctly engaging in what the cost  
9 assurance will be.

10 MR. ROBERTS: And we don't have  
11 any concerns with the mechanism that's in  
12 the rule. It's essentially the same cost  
13 estimating and financial assurance  
14 requirements that there is for hazardous  
15 waste disposal facilities. The only  
16 difference is with a permitted facility,  
17 the cost estimates are approved up-front  
18 before a facility goes into operation.  
19 With the DSW rule, the facility determines  
20 what their cost estimates are going to be,  
21 they set up their financial assurance,  
22 there is no state review a head of time  
23 even though we actually go into an  
24 inspection asking for their records, bring  
25 them back to the office, found out that we

1 think they missed this, this, and this.  
2 And then we can either suggest that they  
3 modify their cost estimate, and hopefully  
4 they will agree with it, or it ends up  
5 becoming an enforcement issue where we have  
6 to do a Notice of Violation, if it didn't  
7 come to an agreement, you know, demonstrate  
8 to an Administrative Law Judge why we think  
9 the cost estimates are low. It would be  
10 better to just resolve that up-front, I  
11 think, as opposed to trying to do it as a  
12 possible enforcement issue after the fact.

13 MR. SANGER: I'm Jerry Sanger.  
14 I'm an attorney with the DEQ and I've been  
15 working with some other states and EPA on  
16 this rule. I participated on (inaudible)  
17 but sometimes as many as 20 other states,  
18 representatives from regions and  
19 headquarters to talk about this rule --  
20 this particular rule.

21 A lot of the concerns that Jon has  
22 raised the DEQ has, the same concerns have  
23 been raised by other states during these  
24 calls. And EPA is attempting to address  
25 many of their concerns EPA has not been

1 able to address and I really felt like they  
2 warranted further discussion.

3           As far as the siting criteria that  
4 Mr. Hardberger had said, the notification  
5 requirement would address that. The DEQ  
6 doesn't feel like simply the notification  
7 requirements really gives us the authority  
8 to refuse somebody's siting for these  
9 facilities where they want to site it. We  
10 get the notification, we know it's going to  
11 be there. But under our current laws and  
12 rules, I don't really think we have the  
13 authority to say, no, you can't locate  
14 there, unless it's actually a public  
15 nuisance which is pretty hard to prove a  
16 head of time.

17           One of the other issues that were  
18 raised by other states, several other  
19 states, is the tracking requirements in  
20 this rule. And how hard or easy it would  
21 be for the state to track this material  
22 once it leaves the generator. Currently,  
23 as has already been stated we do have  
24 manifesting requirements for this waste  
25 where we can track it and know where it's

1 going. How much and how long it's been  
2 there at a particular facility. Under the  
3 current rule if shipments of this waste  
4 goes to a facility, the rule says if it  
5 stays at a particular facility for longer  
6 than ten days, that that facility is  
7 considered an intermediate facility but  
8 there is no laboring requirements in this  
9 rule. So a lot of states have wondered how  
10 a State Inspector is going to be able to go  
11 out and determine whether or not that  
12 particular container has been at a facility  
13 for more than ten days.

14 So just in conclusion, that there  
15 are several states that have raised  
16 concerns about the rule. EPA is working  
17 with the states to address them and as far  
18 as I know, no other states have adopted  
19 this rule yet.

20 MR. HAGAMEIER: That was going to  
21 be my question. There are no other states  
22 that have adopted it at this time?

23 MR. SANGER: Not to my knowledge,  
24 no.

25 MR. GRATER: The definition of a

1 waste is something EPA has struggled with  
2 for a long time. There are essentially,  
3 shall we say, three primary definitions.

4           One, is if it is no longer useful  
5 for any -- if it no longer retains any  
6 economic use, it's a waste; if you declare  
7 it a waste, it's a waste; and if it is  
8 waste-like in character, it's a waste. And  
9 that's a pretty nebulous definition. Those  
10 are a lot like trying to nail Joe over the  
11 wall. And to monitor whether or not there  
12 is effective recycling at the facility as  
13 well as to ultimately financial assurance,  
14 and that falls back to original generator,  
15 the way these rules are written, is what I  
16 see. Ultimately, if the state is -- if  
17 the people of the state are not left  
18 holding the bag for clean up, it would be  
19 the original generator. The only way to  
20 hold the original generator accountable  
21 would be if you can account for every  
22 single drum of waste that comes into a  
23 facility; how long it's been there and  
24 where it went and what it was used for.  
25 That's also inherent in determining whether

1 or not it's a generator recycling. I  
2 personally don't have a problem with the  
3 rule, I think it is a legitimate recycling  
4 opportunity, whether it's in regard to oil,  
5 related wastes, or cleaning wastes or  
6 solvents. But I do think that while the  
7 state obviously has primacy in  
8 administering RCRA, inherent in the state  
9 of primacy for administering any federal  
10 programs is the necessity that the state do  
11 so with care and diligence. And that takes  
12 some forethought and planning. And I think  
13 the Department needs the time to do that.  
14 I wish we could do it faster than we can,  
15 but I also don't see any compelling news to  
16 declare this an emergency.

17 Are there any members of the public  
18 here that aren't associated with -- that  
19 can simply be described as members of the  
20 public that want to comment?

21 MR. KELLOGG: I have a question.

22 MR. GRATER: Sure.

23 MR. KELLOGG: My name is Bob  
24 Kellogg and I'm an attorney in private  
25 practice and I was struck by this Council

1 Member's question about the due diligence  
2 that a generator must undertake. And that  
3 made me curious as to what effect that may  
4 or may not have on the waste being tagged  
5 back as his hazardous waste at some point  
6 in the future.

7 I admire the question. I don't have  
8 an answer. I don't know that anyone in  
9 this room has an answer but from the  
10 perspective of the generator, the notion  
11 that something could come back to him in  
12 the future as a hazardous waste I think  
13 might require some careful consideration.

14 MR. GRATER: That's not a new  
15 concept, believe me. I think that's  
16 inherent for anyone that generates what is  
17 now considered hazardous waste and if they  
18 are smart could be considered hazardous  
19 waste at some point down the line. It  
20 falls into product liability as well as  
21 RCRA. Your concerns are well founded.

22 MR. GRATER: Any other comments?  
23 Position of the Council?

24 MR. JOHNSON: Did you make that  
25 into a motion?

1                   MR. GRATER:    I did not formally  
2    make that as a motion, I just made it as a  
3    statement.

4                   So the motion being that we charge  
5    the DEQ with moving forward with the  
6    rulemaking process as non-emergency.    How  
7    do I want to phrase that, Jon?    Help me.

8                   MR. ROBERTS:    I think -- I'll let  
9    Pam.

10                  MS. DIZIKES:    Just for clarity  
11    why don't we follow the way we have it  
12    listed in the Agenda with separate roll  
13    calls first on whether there is an  
14    emergency rulemaking.

15                  MR. GRATER:    I think that's a  
16    good point.    Motion has been made to -- or  
17    is being made to move on whether this is an  
18    emergency rulemaking.    Is there a second?

19                  MR. HAGAMEIER:    I'll second that.

20                                    (Comments)

21                  MR. GRATER:    Yes, if it is; and  
22    no, if it's not.

23                  MS. BRUCE:    Mr. Reaves.

24                  MR. REAVES:    No.

25                  MS. BRUCE:    Mr. Riffel.

1 MR. RIFFEL: No.

2 MS. BRUCE: Mr. Grater.

3 MR. GRATER: No.

4 MS. BRUCE: Mr. Anderson.

5 MR. ANDERSON: No.

6 MS. BRUCE: Mr. Hagameier.

7 MR. HAGAMEIER: No.

8 MS. BRUCE: Mr. Graves recused.

9 There's five against.

10 MR. GRAVES: So the next order of

11 business would be a roll call vote to ask

12 ODEQ to take action on the petition.

13 MR. REAVES: I would move that we

14 take that vote.

15 MR. HAGAMEIER: Second.

16 MS. BRUCE: Mr. Reaves.

17 MR. REAVES: Aye.

18 MS. BRUCE: Mr. Riffel.

19 MR. RIFFEL: Aye.

20 MS. BRUCE: Mr. Grater.

21 MR. GRATER: Aye.

22 MS. BRUCE: Mr. Anderson.

23 MR. ANDERSON: Aye.

24 MS. BRUCE: Mr. Hagameier.

25 MR. HAGAMEIER: Aye.

1 MS. BRUCE: Motion passed.

2 MR. GRATER: Seeing no other  
3 business under Item 5, I'll pass the  
4 meeting back to Chairman Graves.

5 MR. GRAVES: Thank you. Item 6  
6 on our Agenda is new business which is  
7 limited to any matter not known or which  
8 could not have reasonably been foreseen  
9 prior to the time of posting the Agenda  
10 which would be 24 hours prior to the  
11 meeting.

12 Is there any such new business?  
13 Hearing none, and also noting that we did  
14 not have anybody, other than Mr. Kellogg  
15 identify themselves as a member of the  
16 public -- I don't think it makes a whole  
17 lot of sense to try and have a public forum  
18 at this point. So I'll entertain a motion  
19 to adjourn.

20 (Comment)

21 MR. GRAVES: I'll entertain a  
22 motion to adjourn.

23 MR. HAGAMEIER: So moved.

24 MR. REAVES: Second.

25 MS. BRUCE: Mr. Reaves.

1 MR. REAVES: Aye.  
2 MS. BRUCE: Mr. Riffel.  
3 MR. RIFFEL: Aye.  
4 MS. BRUCE: Mr. Grater.  
5 MR. GRATER: Aye.  
6 MS. BRUCE: Mr. Anderson.  
7 MR. ANDERSON: Aye.  
8 MS. BRUCE: Mr. Hagameier.  
9 MR. HAGAMEIER: Aye.  
10 MS. BRUCE: Mr. Graves.  
11 MR. GRAVES: Definitely.  
12 MS. BRUCE: Motion passed.

13 Meeting adjourned.

14 (Proceedings concluded)

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