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3 **MINUTES**
4 **HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL**
5 **April 23, 2009**
6 **DEQ 10th Floor Conference Room**
7 **707 North Robinson**

8 **HWMAC APPROVED**
9 **October 22, 2009**

10 **Notice of Public Meeting** The Hazardous Waste Advisory Council convened for a regularly
11 scheduled meeting at 10:00 a.m. April 23, 2009 in the Multipurpose Room at the Department
12 of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma. The meeting was
13 held in accordance with the requirements for regularly scheduled meetings of the Open
14 Meetings Act, Section 303 of Title 25 of the Oklahoma Statutes and notice of the meeting was
15 given to the Secretary of State on October 24, 2008. The agenda was posted at the Department
16 of Environmental Quality a minimum of 24 hours prior to the meeting. Mr. Michael Graves,
17 Chair, called the meeting to order. Roll call was taken and a quorum was confirmed.

18 **MEMBERS PRESENT**

19 Lee Grater
20 Michael Graves
21 Bob Kennedy
22 Ray Reaves

23 **DEQ STAFF PRESENT**

24 Scott Thompson
25 Jon Roberts
26 Mike Edwards
27 Pam Dizikes
28 Don Hensch
29 Myrna Bruce

30 **MEMBERS ABSENT**

31 Wesley Anderson
32 Paul Hagameier
33 Earl Hatley
34 Alan Riffel
35 Vacancy

36 **OTHERS PRESENT**

37 Christy Myers, Court Reporter

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

39 **Chairperson’s Report** None.

40 **Approval of Minutes** With no quorum, the minutes were not discussed for approval.

41 **Emergency Rulemaking Petition** Mr. Graves called upon Mr. Jon Roberts for staff
42 comments. Mr. Roberts advised that in accordance with DEQ Rules of Practice and
43 Procedure, the Agency must bring to the Council any petition for rulemaking. He reminded
44 that in January an emergency rulemaking petition was brought before the Council regarding
45 the new definition of solid waste published by EPA on October 7, 2008 at 73 FR 64668-
46 64788. He briefed the Council on the federal rule as it relates to that petition. The petition
47 requested changes to recent revisions to the Federal Hazardous Waste Regulations that
48 exclude certain hazardous secondary materials that are sent for reclamation from the
49 definition of ‘solid waste’.

50 Staff fielded questions and comments from the Council and the public. Staff felt that a final
51 set of rules would be available for Council’s October meeting.

52 **New Business** None

53 **Adjournment** At 10:45 a.m. motion to adjourn was made by Mr. Kennedy and Mr. Grater
54 made the second.

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
HELD ON APRIL 23, 2009, AT 10:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA**

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PROCEEDINGS

MR. GRAVES: This April 23, 2009 Regular Meeting of the Hazardous Waste Management Advisory Council was called in accordance with the Open Meeting Act.

Notice of the meeting was filed with the Secretary of State on October 24, 2008.

The Agenda was duly posted on the glass doors of the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, at least 24 hours prior to this meeting.

Only matters appearing on the posted Agenda may be considered at this Regular Meeting. In the event this meeting is continued or reconvened, public notice of the date, time, and place of the continued meeting will be given by announcement at this meeting. Only matters appearing on the Agenda of a meeting which is continued may be discussed at the continued or reconvened meeting.

Can we have a roll call, please.

MS. BRUCE: Wesley Anderson is absent. Lee Grater, we do expect him. Michael Graves.

MR. GRAVES: Here.

MS. BRUCE: Earl Hatley, we do expect him. Paul Hageameir is absent. Bob Kennedy.

MR. KENNEDY: Here.

MS. BRUCE: Ray Reeves.

MR. REEVES: Here.

MS. BRUCE: Alan Riffel is absent, and we have a vacancy, so at this point we do not have a quorum.

MR. GRAVES: Okay. I don't have a report except to note that we are not taking any rulemaking actions today. We're going to have discussion of rules that we directed that the DEQ draft at our last meeting and then we'll adjourn and have an open forum for anybody who wants to bring something up.

Right now since we don't have a quorum, there's no reason to bring up and discuss the Minutes. So we'll skip over Item 4 and hopefully if we get enough people we'll come back to it.

So why don't we go straight to Item 5, which is the Discussion of the Definition of Solid Waste Rules.

MR. ROBERTS: Thank you, Mr. Chairman. At the January Council meeting, the Council had received a -- or DEQ had received a Petition.

(Comments about the microphone)

MR. ROBERTS: As you'll recall, DEQ had received a Petition for emergency rulemaking to adopt the federal definition of solid waste rule. We received that Petition back in, I believe, it was December of '08. The Council considered the Petition at its January '09, and at that meeting declined to accept the Petition but directed that the DEQ go ahead and start working on developing rules that we wanted for adopting the federal definition of the solid waste rule. So over the past few months DEQ staff has been working to develop some rules to adopt the definition of solid waste. We didn't want to adopt it as is basically because we thought that there were three fundamental flaws in EPA's rule as it stands. And those were that there was limited oversight by regulatory agencies prior to facility operations. We also felt that there were few operational standards within the rule for reclamation facilities to operate under, and then we were especially concerned about the heavy reliance on an extremely vague definition of what they called containment, how to ensure that hazardous secondary materials were contained so they were not released to the environment.

And we felt that the net result of the federal rule was it was a fully self-implementing rule with few guidelines by which the management facilities or regulatory agencies could monitor compliance with the rule.

We also had a concern that this self-implementing strategy would also greatly hinder generators of hazardous secondary materials who are required to do some type of a due diligence effort to determine whether the facilities that they want to send their hazardous secondary materials to are actually in compliance. So we began -- we started working on the rules and came up with some draft rules internally, and then we sent a letter out to all of the people who are on DEQ's mailing list for rulemaking actions which I'm not sure how many there are, but maybe there's a hundred or 125 people or so around the state that have expressed an interest in receiving notification of DEQ rulemaking activities.

And in that letter we included a link to our webpage of where the draft rules could be found. As of today, we've not received any comments from anybody on our draft rules. But we just want to make it clear to everybody that we are very open to receiving comments on the rules and we want to work closely with the people who have a concern to come up with a set of rules that are going to be -- that everybody can agree upon and hopefully have those available for Council review when we do our October -- our normal rulemaking in October when we do our incorporation by reference, at that time. So we ask that anybody who wishes to comment on our rules and participate in this process to be sure and sign-up at the back table with your name, affiliation, and an e-mail address because what we would like to do as much as possible is work -- you know, is accept comments and draft rules and then respond to those comments via e-mail as that being the most effective way, I think, to try to get this done. And then if we feel like there needs to be some face-to-face meetings between interested parties, then DEQ will be happy to set those up also in the interim.

One thing I would like to note is -- but you may have some interest on where this rule stands at the federal level. I attended a meeting last week of the Association of State and Territorial Solid Waste Management Officials. And the task force that I am on disgusted this -- the DSW rule very briefly. And there are two or three states in the country that have adopted the rule as is but that was simply because they apparently had a statutory requirement to adopt what ever federal rules that come out. And so they didn't have any choice but to adopt those rules. Of the five or six states, task force states, that I talked with the rest of those states are all taking a "wait and see" attitude on the federal rule.

As you may recall there have been a couple of entities -- I believe the Sierra Club was one and the American Petroleum Institute I think was another, who had filed petitions with EPA to at least do some kind of reconsideration of the definition of solid waste rule. And there hasn't been any determination, that I am aware of, from EPA on what they are going to do with those petitions. But these other states that I have talked with have all decided that they are going to take a "wait and see" attitude and not proceed with any rulemaking until they find out the outcome of those petitions.

So as far as I know, Oklahoma is probably the only state in the Union that is at least voluntarily moving forward to do some kind of action on the DSW rule. But for reasons that I discussed earlier, you know, we felt that there needed to be some enhancements on the rule as opposed to just taking EPA's rule, as is. And so that is what we are working towards and I guess I will open up the floor to any questions or comments that anybody may want to add at this point.

MR. REAVES: Jon, just to refresh my memory, is this not the result of some commercial entity asking us to redefine -- wasn't that what this was about or did this come solely from within?

MR. ROBERTS: The emergency petition was a company here in Oklahoma that has asked for it. But the draft rules that we have developed were just

developed by DEQ staff. We felt that, you know, when people start wanting to look at brand new rules and stuff, they like to have something to start with. And so we came up with what we thought would be a good start and then start discussions from that.

MR. GRAVES: Anybody else from the Council have any comments?

MR. KENNEDY: Jon, do you have any feel for the number of companies in Oklahoma that might be impacted by that? What specific waste types -- the largest group that might be affected by this rule.

MR. ROBERTS: Well the company that did the emergency petition, if I remember correctly, they are wanting to accept --

MR. KENNEDY: I believe it's KO51.

MR. ROBERTS: -- yeah, separator sludge, to reclaim it. I believe -- I've not received any calls from any other entities.

Don Hench, who is our engineering manager, has said before that he has received some informal inquiries from like, you know, people that may want to do solvent reclamation or something, but nothing specific. The only company that we know of specifically that is interested in this rule at this time is just the one company that did the emergency petition.

(Comment)

MR. GRAVES: Just a quick reading of this looks like what they are doing is -- would not be -- the federal rule was exempting these materials from the definition of solid waste, so they could not be hazardous waste.

MR. ROBERTS: Correct.

Graves: And what we're doing here or would be doing is putting some requirements particularly siting requirements on a facility that would be receiving these materials are also putting some, as I read it, some requirements in 205 1973 on generators and I assume that's the generators of the material where it came from. I guess

my only question there is, are those requirements duplicative of what the generator -- the (inaudible) materials are having to do?

MR. ROBERTS: The main requirement for generators of hazardous secondary materials essentially is that they can't speculative accumulate and they have to make sure that their hazardous secondary material that they generate are contained which is this very vague concept that EPA really doesn't discuss very well either in the rule or in the preamble. So what we are attempting to do here is to put some standards down for the generators of -- how they can make sure that their hazardous secondary materials aren't speculative accumulated. The easiest way to do that is to require labels on containers or have some kind of procedure, if you're storing a material in another manner, to show that you have the throughput that demonstrates that it is not speculative accumulated. Otherwise, there is really no standard that an inspector or even a facility who's reviewing their procedures could really look at to ensure that they're not speculatively accumulating. When it comes to the whole containment concept, you know, the hazardous waste rules already have some very good generator standards for how to make sure their hazardous waste is contained and not released into the environment, and that's why they came up with their standards for containers, drip pads -- what were the other ones -- containment buildings and tanks. But the DSW rule doesn't have any standards like that, it just says you have to make sure it's contained. So we felt that basically implementing those same management standards for hazardous secondary material generators would be a very good -- go a long way towards demonstrating that you're containing your material.

MR. GRAVES: I understand. What I meant to say was absent this rule, basically these materials are hazardous waste?

MR. ROBERTS: Yes, that's correct.

MR. GRAVES: So these are what generators -- what this rule is basically doing is imposing on this what they're doing already.

MR. ROBERTS: Yes, that's correct.

MR. GRAVES: It's not really something new, it's just making sure that there's not somebody trying to backslide by taking advantage of the exception.

MR. ROBERTS: Yes.

MR. GRAVES: Okay. I have a question on the next section on the location restrictions. I certainly understand flood plains. Why is there a discrepancy between how far away you can be from a flood plain or surface water and wellhead protection; why is one set, one mile, and the other one a half of a mile? I know you probably took this from something else but it would seem to me that whatever it is ought to be consistent.

MR. ROBERTS: And I don't deny that. The surface waters, of course, the goal here is to protect public drinking water supplies; whether they are a surface water supplier or underground drinking water supplier.

The surface waters requirements is essentially straight out of our hazardous waste rules for hazardous waste, TSD facilities. The wellhead protection, what we were trying to get at is we thought it was a good idea to have some way to protect underground sources of drinking water. The half mile, you know, to be honest with you is a number that we just kind of pulled out of the hat and put it down here to have something to work with for discussion purposes. I couldn't honestly tell you why -- well, let's make this a half a mile.

MR. GRAVES: Okay. On the next page, you have two subsection E's. I assume that what you were doing is asking which of those people would prefer, because you're going to pick one or the other.

MR. ROBERTS: The concept behind this particular rule is that if company "X" submits an application to us that meets the criteria of the rule as far as location restrictions, let's say flood plain, just to throw something out. And then once we have received the application, whatever entity it is, is responsible for flood plains, re-

designates the flood plains so that now this facility is within the flood plain, where it was out of the flood plain, when they initially sent their application in to us or after they had started operation. The intent that we're trying to do here is we're not going to make -- we don't want these facilities to feel like they have to chase a moving ball. Once they've submitted the application to us that's the standard that they're going to meet and then if there's any subsequent re-definitions or anything, they don't have to change their facility operations or their operational plan or anything to meet the new definition. But if they make any modifications, future modifications, after the plan has been approved then they would meet those -- whatever those new restrictions are.

So these are just two different ways that we came up with to try and get that point across. We're not necessarily married to either one of these. This is just a point -- this is just a concept we're trying to convey.

MR. GRAVES: Okay. I was kind of confused because it had the same subsection numbers.

MR. ROBERTS: Right.

MR. GRAVES: Assuming that we want to have these things, we certainly can combine the two.

MR. ROBERTS: Right. And we're open to anybody's comments on a better way to get that point across of what we're trying to convey.

MR. GRAVES: In the next section, Number 77, I noted down that you've got some mis-cites on 40 CFR's; so in 7 and 8, it's not 261 or -- I think it's 264.

MR. ROBERTS: Well, no. The 261.142, that is the closure cost estimate requirement for the DSW rule. The DSW rule had its own financial closure and financial assurance requirements but it incorporated into part 261.

They're not going to be in the book that you're looking at there but they're still part of the federal rule that hasn't been incorporated yet into the 40 CFR.

MR. GRAVES: The only thing down here, it seems to me that we might want to consider, is accompanying some kind of a time frame on DEQ within which to act even if it's a target not a set deadline because there isn't anything in here.

MR. ROBERTS: I believe we have those already built in. If you notice the very first rule puts into the Tier I category. So that, by definition, then sets time lines for DEQ to review these plans and get some kind of a response back to the facilities. If I remember right for Tier I applications it's a 30-day turnaround time.

And Mr. Graves, just to go back to your previous question on 1977 (A)(7) -- yeah, 261.142 is the new rule for these facilities that outline how you calculate your cost estimates for closure.

What we're doing in the previous one where we're referencing like 264 is that the definition of solid waste rule requires a closure plan but it doesn't give any real standards on what needs to be in that closure plan. So we felt that pulling in these 264 requirements would meet the closure plan requirements for the DSW rule.

MR. GRAVES: Okay. Those were my only comments. Anybody else from the Council have any?

If not, we'll ask if any members of the public have any comments?

MR. LEOFFORD: Jon, do you have a feel for what EPA is going to do with this rule if it changes administration and request (inaudible)?

MR. ROBERTS: We've got no indication one way or the other.

MR. GRAVES: Anybody else?

MR. GRATER: Excuse me, Mr. Chairman, if I could on your question. The state, we understand is really -- this is one of the few states that acts as EPA; isn't that right? Do you still have that designation so that -- I can understand why EPA is waiting on Oklahoma.

MR. ROBERTS: No, EPA is not waiting on Oklahoma.

MR. GRATER: You don't think so?

MR. ROBERTS: No, I don't think so.

MR. GRATER: Am I giving you too much credit?

MR. ROBERTS: It would be nice if they did because then everything would be great and there would be a perfect program out there.

MR. GRATER: I can remember my days at -- fighting of the EPA and Mark Coleman when I was at Tinker and my understanding was at that time that EPA allowed Oklahoma to still take the lead in most all of the environmental or hazardous waste questions. But maybe that's changed.

MR. ROBERTS: Well, if you're referring to authorization, I mean, we are authorized, you know, EPA has given us authorization to run the Hazardous Waste Program in lieu of EPA. And most states in the nation, there's still a hand full that does not have authorization. But most states in the nation do have authorization from EPA to implement the federal program in their states; but still with EPA oversight and we still have to kind of do things the way EPA wants us to do.

MR. GRATER: At that time it was only Oklahoma, or at least that's what Mark told me.

MR. ROBERTS: We received our authorization, I believe it was in '84.

MR. GRATER: That was the year.

MR. ROBERTS: Okay. All right.

MR. GRAVES: Oklahoma has always been pretty proactive in getting out in front on some of these kinds of issues. That's what I've always commended the Agency on and I think any time we have the opportunity to make it easier for people to actually recycle, reuse some of these materials, I think we ought to take it. So I commend you all for developing these and I look forward to going back over them in more detail and working with you on getting them -- tweaking them and doing it right. But I think it's a good step in the right direction, personally.

Anybody else --

MR. ROBERTS: I appreciate that. Our goal here is to hopefully come up with some rules but, you know, give some standards that both the facilities and the regulators can look at to determine whether they are being operated in compliance with some kind of standard but not have such an onerous set of rules that basically what it turns in to is a full fledged permit. So we're trying to walk that line between being, you know, letting these facilities do what they want to do but still have enough regulatory oversight that we're comfortable with that everything is being operated in compliance. And frankly, to hopefully, eliminate some of the problems that are going to come if we do initial an enforcement action where it's a "he said/she said" thing, and then we've got to argue the whole thing about, well, we don't think this is enough but they think it was enough and so.

MR. GRAVES: And they're trying to take work away from you too.

MR. ROBERTS: Not you specifically, sir, but --

MR. GRAVES: I think it's a good effort and I look forward to working with you. I hope the rest of the Council will weigh in at some point.

We still do not have a quorum, even though we have one of our other members has joined us, so we still can't adopt our Minutes.

Before we leave it, does anybody else have anything on this draft rule?

MR. KENNEDY: I just had a question on this Appendix C, under fees, the 21 question mark fee. Is there any -- I mean hazardous waste recycling is getting close to what we're looking at here and that's to support all of our own writing versus (inaudible).

MR. ROBERTS: That's correct. We believe that there probably should be some kind of fee assessed. We are pretty much a fully fee-funded program, and with generators that are -- whose hazardous secondary materials are leaving the

hazardous waste universe, we'll lose those generator fees, you know, any other facilities that may be managing, you know, for instance KO-51 or whatever, as possibly like a storage facility or something at a refinery or whatever. Since it would be leaving the HazWaste universe we would be losing those fees but we're still going to have inspectors that are going to have to go out and do inspections, engineers that are going to be reviewing these plans, so there's still going to some staff effort that's going to be put into these. So we think some kind of fee is going to be fair, we just have not yet figured out what that would be. But the first cut would be probably the recycling fee. But we want to look at it a little bit closer so we can have more defensible fees to present to the Council.

MR. GRAVES: Anybody else?

MR. ROBERTS: If I could just say one more thing real quick. I just would like to re-emphasis that anybody that's here that would like to participate in this, you know, the kind of give and take on the rules and stuff, please make sure that you're signed in at the back with your name, affiliation, and an email address so that we will have you in our email list and we can make sure that we get these rules out to you and accept your comments so that we can hopefully have a final set of rules for the Council at their October meeting if we don't have one before.

MR. GRAVES: Very good. Okay.

MR. KENNEDY: I just have one more. Do you have a reference for getting the latest look at some of these CFR updates? It took me a while to -- and I'm not sure why some have and some don't, as far as Google, on finding the 261 (4)(A)(24), the actual exclusion for this. Some are updated and some aren't.

MR. ROBERTS: Okay. We have -- now with respect to the DSW rule itself, we have the entire EPA rule posted on our webpage.

Let me go ahead and give you the federal register citation and then if you would like, at the conclusion of the meeting I can run upstairs and find out what the

specific link is to DEQ's webpage so that you can just go in and download it if you would like.

The federal register citation is: 73 FR, pages 64668 through 64788. And that was published October 30th of 2008. And there is also a webpage, and I'm not sure what the link is, but you can Google it very easily. It's called the Code of Federal Regulations Online. And if you put that in as a Google search it'll bring up -- it should link you to an EPA page -- I don't think it's an EPA page, but anyway, a page that has the entire 40 CFR online and then on the left side of that is also -- allows you to search for federal register citations.

MR. KENNEDY: I've had a lot of luck using the (inaudible).

MR. ROBERTS: I think that's what it is.

MR. GRAVES: Anybody, anything else?

So that brings us to Minutes, so we'll just jump down to Item Number 6, New Business, which is limited to any matter not known or which could not have been reasonably foreseen at the time of the posting of the agenda.

Does anybody have any new business?

Hearing none, I'll entertain a motion to adjourn and then we will go into our open forum session.

MR. KENNEDY: I move that we adjourn our meeting.

MR. GRATER: I'll second that.

MR. GRAVES: It's moved and seconded that we adjourn. Roll call vote please.

MS. BRUCE: Lee Grater.

MR. GRATER: Aye.

MS. BRUCE: Michael Graves.

MR. GRAVES: Yes.

MS. BRUCE: Bob Kennedy.

MR. KENNEDY: Yes.

MS. BRUCE: Ray Reeves.

MR. REEVES: Yes.

MS. BRUCE: We're adjourned.

(Meeting Concluded)

C E R T I F I C A T E

STATE OF OKLAHOMA)

) ss:

COUNTY OF OKLAHOMA)

I, CHRISTY A. MYERS, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the above meeting is the truth, the whole truth, and nothing but the truth; that the foregoing meeting was taken down in shorthand by me and thereafter transcribed under my direction; that said meeting was taken on the 9th day of April, 2009, at Oklahoma City, 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 15th day of June, 2009.

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