MINUTES
HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL
July 15, 2015
Oklahoma Department of Environmental Quality
Multipurpose Room
Oklahoma City, Oklahoma

Official after Approved by HWMAC
On October 8, 2015

Notice of Public Meeting - The Hazardous Waste Management Advisory Council (HWMAC) convened for a Special Meeting at 10:00 a.m. on July 15, 2015 at the Oklahoma Department of Environmental Quality (DEQ), 707 N. Robinson, Oklahoma City, Oklahoma. The meeting was held in accordance with the Open Meetings Act, with notice of the meeting given to the Secretary of State on April 15, 2015. The agenda was posted at the DEQ at least twenty-four hours prior to the meeting. Mr. Lee Grater, Chair, called the meeting to order. Ms. Quiana Fields called roll and a quorum was confirmed.

MEMBERS PRESENT	DEQ STAFF PRESENT
Wesley Anderson	Stephen Baldridge
Michael Graves	Kelly Dixon
Bob Kennedy	Quiana Fields
Ray Reaves	Traci Kelly
Marsha Slaughter	Mike Edwards
Debra Smith	Jon Roberts
Terry Vandell	Michelle Wynn
Lee Grater	Adrian Simmons
	Don Hensch
	Lloyd Kirk
MEMBERS ABSENT	**OTHERS PRESENT**
Noble Stanfield	Kerry Huff, Court Reporter

Chairperson's Report - None

Discussion, Amendment, and Roll Call Vote to Approve the Minutes of the April 15, 2015 meeting - Mr. Graves moved to approve and Mr. Anderson made the second.

See transcript pages 4 - 5

Wesley Anderson	Yes	Marsha Slaughter	Yes
Michael Graves	Yes	Debra Smith	Yes
Bob Kennedy	Yes	Terry Vandell	Yes
Ray Reaves	Yes	Lee Grater	Yes

Presentation and Discussion – Mr. Don Hensch, Engineering Manager of the LPD gave an overview on the DEQ's proposed draft rule changes to Subchapter 15 of OAC 252:205, transfer stations. A continuation of the discussion initiated in the April 15 meeting including the DEQ's response to comments received.

See transcript pages 5 - 7

Presentation and Discussion – Mr. Jon Roberts, Environmental Programs Manager of the LPD spoke on EPA's rule changes planned for incorporation by reference in the October 8 HWMAC rulemaking meeting.

See transcript pages 7 - 36

New Business – None

Adjournment – Mr. Graves moved to adjourn and Mr. Kennedy made the second.

See transcript pages 36 - 37

Wesley Anderson	Yes	Marsha Slaughter	Yes
Michael Graves	Yes	Debra Smith	Yes
Bob Kennedy	Yes	Terry Vandell	Yes
Ray Reaves	Yes	Lee Grater	Yes

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TRANSCRIPT OF PROCEEDINGS

OF THE HAZARDOUS WASTE

MANAGEMENT ADVISORY COUNCIL MEETING

JULY 15, 2015, AT 10 00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

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REPORTED BY KERRY L. HUFF, CSR #1725

MEMBERS OF THE COUNCIL:

Wesley Anderson
Michael Graves
Bob Kennedy
Ray Reaves
Marsha Slaughter
Debra Smith
Noble Stanfield
Terry Vandell
Lee Grater

MR. GRATER: Call the meeting to order this morning. The meeting of the Hazardous Waste Advisory Council is hereby open, and I believe we have quorum.

The July 15, 2015, special meeting of the Hazardous Waste Management Advisory Council is called in accordance with the Open Meeting Act.

Notice was filed with the Secretary of State on April 15th, 2015. The agenda was duly posted 24 hours prior to the meeting at the DEQ.

Only matters appearing on the posted agenda may be considered at this regular meeting. In the event that 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 at this meeting which is continued may be discussed at the continued or reconvened meeting.

MR. GRATER: Would you call the roll, please?

MS. FIELDS: Mr. Anderson?

MR. ANDERSON: Here.

MS. FIELDS: Mr. Graves?

MR. GRAVES: Here.

MS. FIELDS: Mr. Kennedy?

MR. KENNEDY: Here.

MS. FIELDS: Mr. Reaves?

MR. REAVES: Here.

MS. FIELDS: Ms. Slaughter?

MS. SLAUGHTER: Here.

MS. FIELDS: Ms. Smith?

MS. SMITH: Here.

MS. FIELDS: Mr. Stanfield is absent. Ms. Vandell?

MS. VANDELL: Here.

MS. FIELDS: Mr. Grater?

MR. GRATER: Present.

MS. FIELDS: We have a quorum.

MR. GRATER: Chairpersons of the court, we have the minutes from the previous meeting. I assume you've had a chance to review them in the package we were sent. Does anyone have any comments regarding the minutes of the previous meeting?

Do we have a motion to approve them?

MR. GRAVES: So moved.

MR. ANDERSON: I second.

MR. GRATER: The motion has been approved and seconded.

Will you call the roll, please?

MS. FIELDS: Mr. Anderson?

MR. ANDERSON: Yes.

MS. FIELDS: Mr. Graves?

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MR. GRAVES: Yes.
MS. FIELDS: Mr. Kennedy?
MR. KENNEDY: Yes.
MS. FIELDS: Mr. Reaves?
MR. REAVES: Yes.
MS. FIELDS: Ms. Slaughter?
MS. SLAUGHTER: Yes.
MS. FIELDS: Ms. Smith?
MS. SMITH: Yes.
MS. FIELDS: Ms. Vandell?
MS. VANDELL: Yes.
MS. FIELDS: Mr. Grater?
MR. GRATER: Yes.
MS. FIELDS: Motion passed.
MR. GRATER: First item on the agenda is a presentation and discussion of the DEQ's proposed draft rule changes to Subchapter 15 OAC 252:205: Transfer Stations. A continuation of the discussion initiated April 15 meeting including the DEQ's response to comments received.
Mr. Hensch?
MR. HENSCH: Thank you, Mr. Grater. The rules we're presenting today, again, they're just for discussion. If we decide to go ahead with them, they will be presented formally at the October meeting for

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approval and recommendation of the board.
We have -- the rules that were draft rules that were passed out to you at the April meeting, we have made one or two very minor editorial changes to that, but the substance of the rules remains the same as you've seen previously.
We initiated this process -- we were in the middle of approving a new -- or reapproving an existing signed operations plan for an existing transfer station, and it's being done as a result of a compliance effort and a number of other things.
But that has shown us some flaws in the rules, and some things weren't very clear on what we expected from them, what they could expect from us. And also it became very clear there was no expiration date on these D&O plans. So we thought that would be a good idea to have that there so we would get a revisit, the public could get a revisit periodically on these plans.
When we presented them in April there were some comments from existing transfer station, Environmental Management, Inc., in Guthrie. And they submitted comments at the meeting, and we have responded to those, and you were sent a copy of those a few weeks ago.

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Basically while we understood his comments -- and I can see some of his feelings on that or feelings of the facility -- we decided that we didn't want to -- we didn't think there needed to be any changes in the draft rules as they stood.
Having said that, one reason we're here today is to get your input on that because you have not had a chance to do anything or say anything on these rules, and so we'd like -- if you have any comments, any questions, any discussions, please let us know, and we can discuss it today.
Obviously if there is very complicated questions, we may need to do some research and get back to you on that. But if you have any questions about the rules, Adrian here is the engineer that's been working on that primarily.
If you have any questions of the rules or our response to comments, Adrian and I -- either one -- will attempt to answer them. Thank you.
MR. GRATER: Any questions or comments from the council? Apparently not.
MR. HENSCH: Okay. Thank you.
MR. GRATER: Okay. Next item is the presentation and discussion of EPA's rule changes planned for incorporation by reference at the

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October 8th Hazardous Waste Advisory Council Rule Making Meeting. Mr. Roberts?
MR. ROBERTS: Thank you, Mr. Grater. Let me go back to the previous session first. We want to open the floor to any comments from the public --
MR. GRATER: I'm sorry.
MR. ROBERTS: If anybody's here that may want to comment on these draft rules --
MR. GRATER: The chair apologizes.
Is there any comments from the public on the waste transfer rules?
I guess not. Okay.
MR. ROBERTS: What we also wanted to kind of bring to your attention -- again, this isn't for a formal rulemaking today. This is just to kind of brief the council on the new definition of solid waste rule that was passed by EPA back in January.
We're contemplating, you know, incorporating this rule into our annual incorporation by reference rulemaking this coming October, but it's a fairly complicated rule, and so we wanted to kind of give the council a little bit of a heads-up on what was in this rule that we would be incorporating and then there is also still one or two, you know, provisions in the rule and federal rule that we still have a

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1 little bit of discomfort with. And so we wanted to
2 kind of bring that to your attention also and get
3 some feedback from you on how we -- how you may wish
4 that we go ahead and proceed with that.
5 But as I said, this definition of solid waste
6 rule -- of course, the definition of solid waste is
7 one thing that EPA has been trying to define ever
8 since it created hazardous waste rules back in 1980,
9 and it's been a bone of contention ever since.
10 But this is their latest attempt at trying to,
11 you know, define what constitutes solid waste under
12 the federal regulations. As I said, it was
13 promulgated back in January of this year, and its
14 effective date on the federal level actually was this
15 past Monday, July 13th.
16 But it doesn't become effective in authorized
17 states until it's been adopted by those states, and
18 Oklahoma is one of those authorized states so it is
19 actually not in effect here in Oklahoma yet. We did
20 send the council a briefing paper back a couple of
21 weeks ago kind of discussing the ins and outs of the
22 rule, and our current thought is to go ahead and
23 adopt the rule in full as is. But we still have one
24 or two area of -- areas of concern that we wanted to
25 bring up.

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1 You know, it's kind of an interesting rule in
2 that, you know, as I said, it is a fairly lengthy and
3 complicated rule, and it contains both provisions
4 that we are required to adopt because those are
5 provisions that are more stringent than the current
6 rules that we're operating under and then there is
7 provisions of the rule that are optional, that we
8 don't have to adopt if we, for whatever reason,
9 choose not to.
10 The mandatory provisions -- there is a new
11 definition of contained. This is EPA's effort to try
12 to identify what constitutes when a hazardous
13 secondary material is contained so that there's no
14 releases to the environment and therefore it's being,
15 you know, properly managed.
16 There is some additional requirements on
17 speculative accumulation. There is legitimacy
18 criteria the EPA has promulgated for recycling to try
19 to define when recycling is legitimate as opposed to
20 a sham and then there is some variance requirements
21 in the current rules that the EPA strengthened a
22 little bit for people who want to get a variance
23 from -- definition of solid waste for a material is
24 not already, you know, excluded under some other
25 rule.

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1 You know, the optional provisions -- there is
2 three new exclusions from the definition of solid
3 waste that EPA is proposing. One is called the
4 Generator-Control Exclusion where hazardous secondary
5 materials that's sent to a recycler but remains under
6 the control of the generator is exempt from the
7 definition of solid waste.
8 There is a Verified Recycler Exclusion where
9 hazardous secondary materials that's transferred to a
10 recycler that has been verified through DEQ as being
11 able to legitimately recycle the material. That's
12 another exclusion. And then there's a
13 Remanufacturing Exclusion for certain high-value
14 solvents that are generated and recycled within
15 specifically defined industries that are identified
16 by NAICS code.
17 So those are the -- those are kind of the
18 general, you know, broad overview of the rule. I
19 need to -- I want to go ahead and just kind of touch
20 on a few of these in a little bit more detail.
21 I won't go through everything that I went
22 through in your briefing paper, but there are a few
23 of the high points that I think we aught to cover a
24 little bit. The definition of contained -- you know,
25 this was a concept that was in the original 2008

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1 definition of solid waste rule that the council chose
2 not to incorporate into our rules back in 2009.
3 This was a -- there is a concept that was, you
4 know -- in those original rules was described but
5 there was no real rule language that would implement
6 it so the industry and regulatory agencies would have
7 some kind of specified, you know, definition of what
8 constitutes containment.
9 But in this new definition of contained, there
10 is three criteria that have to be met in order for a
11 material to be considered contained. It has to be
12 held in a unit that's in good condition that doesn't
13 have any leaks or any unpermitted discharges.
14 There has to be some kind of a system to
15 identify what material is within the unit, and the
16 material that's in the unit has to be compatible with
17 the unit that it's in and with any other material
18 that's within that unit itself.
19 And then there's a fourth criteria that says
20 that hazardous secondary materials being held in a
21 unit that meets the requirements of Part 264 or 265
22 are presumptively contained. So this would mean
23 hazardous secondary materials that's in tanks,
24 containers, landfills, surface impediments, drip
25 pads, containment buildings.

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1 If any of those units meet the requirements of
2 264 or 265, then any hazardous secondary material
3 being held in there is presumptively contained. The
4 only concern that we have with this definition -- and
5 actually this goes back to the original 2008 rule
6 too -- is applying a performance standard to
7 hazardous secondary materials that may be stored on
8 the ground prior to being recycled.
9 The definition contemplates that hazardous
10 secondary materials could be stored on the ground if
11 it meets this performance standard of contained. But
12 the only problem with that is if you store it on the
13 ground in a unit that's not a -- that doesn't meet
14 Part 264 or 265, you're really not going to have any
15 way of knowing there has been any releases to it or
16 from it unless -- or until there has probably been a
17 significant amount of contamination because there is
18 no monitoring that's required under the definition.
19 So we still have somewhat of a concern with
20 that portion of the definition of contained, but all
21 in all, though, we think the definition is good
22 because it just puts into rule what was described in
23 the 2008 rule that we didn't adopt.
24 So as a result of that concern, we're
25 considering, you know, one of three ways to try to

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1 deal with that in the rules that we will present to
2 you in October. We could either exclude all
3 hazardous secondary materials management from on the
4 land so that you couldn't store any hazardous
5 secondary materials on the land even in a unit that
6 meets the Part 264 or 265 standards.
7 We could limit the management to only those
8 units that meet 264 or 265 standards, or we could,
9 you know, possibly also allow the hazardous secondary
10 materials to be stored on the land prior to recycling
11 but include some kind of a provision that says there
12 is no free liquids or something in it so to help try
13 to minimize the potential for any releases or
14 something. So that's one area that we would
15 appreciate feedback from the council or any other
16 interested parties on that aspect of the rule.
17 The other required portion that I want to talk
18 about briefly is the legitimacy criteria. As you
19 know, that's been one of the bones with EPA for years
20 as what constitutes legitimate recycling. And
21 through the years EPA has come out with various
22 regulatory interpretations and memos and stuff to try
23 to define what they consider to be legitimate
24 recycling.
25 And with this rule they finally codified

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1 basically the four areas that they consider to be
2 necessary for legitimate recycling. These are the
3 four areas that they basically kind of put into place
4 over the years through policy, but now they've got it
5 specifically in the rules so that everybody will be,
6 you know, on the same playing field of what
7 constitutes a legitimate recycling. So we think that
8 was a very good thing that they did with the 2015
9 rule also.
10 As far as the optional provisions go, I'll just
11 touch real briefly on these three exclusions. Again,
12 none of these are in our current rules because we
13 didn't adopt the 2008 rule. So these would be new
14 exclusion for Oklahoma.
15 The first one is called the Generator-Control
16 Exclusion, and, like I said, it has to deal with
17 hazardous secondary materials that are generated and
18 reclaimed within the US and remains under the control
19 of the generator. Those are excluded from the
20 definition of solid waste.
21 So this would be an entity that generates some
22 type of recyclable hazardous secondary materials with
23 Company X. He can send it to Company Y to get
24 reclaimed as long as X and Y are either the same
25 company or operating under a common -- a common

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1 parent company.
2 And as long as, you know, there is some kind of
3 agreement in place, you know, spelling out each
4 other's responsibility with the management and
5 accepting responsibility for it, that would be
6 excluded from the definition of solid waste so it
7 could be recycled.
8 So one thing that the new rule does add that
9 wasn't originally there in 2008 is that you have to
10 maintain documentation of the legitimacy of your
11 recycling and then also there's some specified
12 preparedness and prevention standards that the
13 generator would have to meet while he is managing the
14 hazardous secondary material on site. So those are
15 some good things that they added to that exclusion
16 that we fully support.
17 The second exclusion is the Verified Recycler
18 Exclusion, and this is one where it's -- you can -- a
19 generator of hazardous secondary materials could send
20 his material to a recycler that has been verified by
21 DEQ as being able to properly handle the materials
22 and recycle it.
23 And basically what they have to go through is a
24 variance process through us where this entity would
25 petition DEQ for a variance to say that the material

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1 that they're going to be accepting is not a solid
2 waste. And there is several things that they have to
3 do or that they have to demonstrate for us to show
4 that they're going to be able to legitimately recycle
5 the material.
6 Once they've done that and we've agreed that
7 their application is acceptable, there's a public
8 notice comment built into the rule and everything
9 that they would have to follow so the public has a
10 chance to see what this facility is going to be
11 doing.
12 And assuming everything goes as planned, then
13 we would issue a formal declaration that they've --
14 granting the variance and then this recycling
15 facility would be verified and then at that point
16 they can start taking hazardous secondary materials
17 for recycling. And that would be subject to our
18 Tier 2, you know, plan of approval process and our
19 Chapter 4 rules under that particular exclusion.
20 The last exclusion is a remanufacturing
21 exclusion. This was kind of an interesting one that,
22 in my personal opinion, EPA kind of slipped it under
23 the -- slipped it in there without a whole lot of
24 ability to comment.
25 This was an exclusion where certain high-value

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1 solvents from specified industries -- and there is
2 only I think four. Yeah. There are only four
3 industries that are eligible to have this exclusion.
4 But certain high-value solvents generated at one
5 entity in this industry could be transferred to
6 another entity within that same group of industries
7 without it -- for continued use without it having to
8 be classified as a solid waste.
9 So the idea here is, you know, Company X who is
10 in one of these specified industries, they generate a
11 spent solvent that's too contaminated for their use,
12 but it's not so contaminated that it couldn't be used
13 by another entity in one of these four industries.
14 So they can transfer it to that industry and
15 have it be continually used or used some more rather
16 than just sending it off for disposal because it
17 still has a lot of use left in it. So that's a good
18 thing over all.
19 Our, you know -- the interesting thing about
20 this is, though, that in the proposed -- when this
21 proposed rule came out for this new definition of
22 solid waste rule, this was just a concept that EPA
23 described within the preamble of the rule. There was
24 actually no rule text that they put out there for
25 review.

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1 So one of our comments on that proposed rule
2 was that, you know, we think this is a good idea, and
3 we support legitimate recycling, but we didn't feel
4 that asking for comment on a concept without having
5 any rule or text to actually review was not the right
6 way to go about doing this particular exclusion.
7 So -- but, anyway, EPA did go ahead and put that
8 exclusion into the final rule.
9 All in all it is a good exclusion. The process
10 may have been a little bit questionable, but it is a
11 good exclusion. So that's basically it in a very
12 long nutshell. I'm certainly willing to take any
13 questions that the council may have or thoughts you
14 have especially about our concern with the contained
15 standard as it applies to storing hazardous secondary
16 materials on the ground. So I'll go ahead and take
17 any questions that you or the public may have.
18 MR. GRATER: Any questions from the council?
19 MS. SLAUGHTER: I have just one. Jon, you
20 talked about the first exclusion. You talked about
21 documentation. I'm curious about what that would
22 look like. Is that a manifest kind of a thing for
23 this stuff --
24 MR. ROBERTS: They do have to have paperwork
25 showing that it was transferred from place to place.

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1 Similar to a manifest. It doesn't have to be
2 manifested itself, obviously, but there does have to
3 be some kind of documentation to show that the
4 quantity that was sent from the generator to this
5 other entity did actually get received at that other
6 entity.
7 MS. SLAUGHTER: Thank you.
8 MR. ROBERTS: Uh-huh.
9 MR. GRAVES: If we recommend adoption of all
10 these and the board approves that and then some of
11 these provisions get knocked out by the DC circuit in
12 the ongoing litigation, what happens then? Do we
13 have to go back in and re-amend our rule?
14 MR. ROBERTS: Yes. We would have to do --
15 whatever rule changes came about as a result of the
16 litigation that is going on, we would have to, you
17 know, go back and amend the rules to comply with
18 whatever the new standard is at that time.
19 MR. GRAVES: Would that leave anybody -- if
20 that were to occur and somebody in the state had
21 taken advantage of one of these -- particular one of
22 these exclusions that got knocked out, would that
23 leave them open for liability since it would not have
24 been really authorized?
25 MR. ROBERTS: It potentially could. You know,

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1 it would obviously depend on what the effect of the
2 ruling was and how, you know, the courts directed EPA
3 to implement it, but certainly there's --
4 theoretically there is a possibility that if a court
5 was to vacate one of these exclusions or something,
6 then somebody who had been operating -- handling
7 their hazardous secondary materials under one of
8 these exclusions could -- which takes it out of the
9 realm of being a solid waste and therefore can't be a
10 hazardous waste -- could suddenly find themselves
11 handling hazardous waste that they weren't planning
12 to handle. That's certainly something that could
13 come about from that.
14 MR. GRAVES: Do we have any idea in looking at
15 these rules how many entities in the state some of
16 these that would apply to?
17 MR. ROBERTS: No. We had one entity -- you may
18 recall back when they did the original 2008
19 definition of solid waste rule that we didn't adopt.
20 We did have one entity in the state that was
21 interested in us adopting the rule. But since this
22 new rule has come out, you know, we've not heard from
23 anybody that anybody is necessarily interested in us
24 picking this rule up.
25 MR. GRAVES: Okay. Would you guys have a

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1 recommendation -- I mean I understand your concern
2 with the definition of containment. Do you guys have
3 a recommendation for which way to go on that one? Do
4 you guys want to exclude -- keep on excluding --
5 wouldn't apply to land-based units?
6 MR. ROBERTS: I think so, yes, at this point.
7 Now, you know, we're certainly open to additional
8 comments from anybody who may be affected by that,
9 and if there is anybody here in the public that does
10 have a concern about that, we're certainly willing to
11 listen to that.
12 But, you know, for me personally I can't really
13 think of a scenario where you would take something
14 that's supposed to be handled as a valuable commodity
15 and store it on the ground. That just doesn't --
16 just doesn't seem to fly very well with me.
17 Maybe there's a scenario out there that I'm not
18 aware of so -- but I can't think of one. So I think
19 our preference at this point would be to, you know,
20 at least maybe put some kind of exclusion in to not
21 have it stored on the ground.
22 Although I think we would be okay if it was at
23 least stored within a unit that met the 264/265
24 standards, but that would be a pretty tall order for
25 a regular everyday generator to build basically a

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1 disposal -- or a storage cell that meets the
2 hazardous waste landfill requirements. So --
3 MS. VANDELL: Let's see. How does this work?
4 Yeah. Your comment on the contained concerns -- and
5 rightfully so too -- is a scenario where somebody
6 would store it directly on the ground. There -- I
7 mean I know from practice in the field it can be as
8 simple as, you know, a thick 20-mil plastic liner
9 and, you know, for interim storage and then covering
10 that material so that you don't get rainfall and
11 infiltration. I guess my question is I thought that
12 you had to basically accept what EPA already has.
13 MR. ROBERTS: We can, you know -- if we tweak
14 the definition of contained a little bit to
15 absolutely exclude storage on the ground, then, you
16 know, we can do that. That would be considered,
17 though, a more stringent requirement that we have.
18 And so we would have to do some additional, you
19 know, notices and stuff in our rulemaking process to
20 do that, but we can, you know -- we can do that. The
21 only thing we can't do is do something that would be
22 less stringent than what EPA sets out.
23 MS. VANDELL: But to meet the 40 CFR 264/265,
24 that would -- in other words, a simple lining, would
25 that meet those standards?

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1 MR. ROBERTS: You know, I don't think so. I
2 mean, you know, the standards of 264 are talking
3 about, you know, double liner and leachate collection
4 system and groundwater monitoring and all that kind
5 of stuff.
6 MS. VANDELL: Right.
7 MR. ROBERTS: The rule itself really doesn't
8 say what -- how much of 264 or 265 you have to meet.
9 It just says, you know, the unit that meets the
10 applicable standards of 264 or 265 are presumptively
11 contained.
12 And so I think the interpretation would be that
13 whatever those standards are based on how you're
14 storing it, that's going to be the standards you have
15 to meet.
16 MS. VANDELL: Thanks.
17 MR. ROBERTS: Okay. But we'd certainly be, you
18 know -- we're certainly willing to take comments on
19 that too, and, you know, we can look at it a little
20 bit closer to see if there is -- could be any wiggle
21 room for the final rules.
22 MR. GRATER: Jon, I had a couple of comments or
23 questions. First of all, I do have concerns about
24 storage on the ground. I can't imagine if -- even if
25 it -- unless something is demonstrated somehow to be

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1 totally unleachable, that anybody – that the DEQ
2 would allow or some generator would willingly place
3 something on the ground that could potentially leach
4 whether it was due to the nature of the material in
5 and of itself or rainfall, and that would include
6 storage in drums sitting on the ground in the open
7 because you can't tell when they're leaking or not
8 until after they've leaked for a considerable period
9 of time usually.
10 So I would – I have some concerns about that.
11 I don't know that we necessarily would need to go as
12 far as the full 264 requirement, but certainly
13 something that's reasonable in the way of protection
14 from the ground and sheltered from rainfall and
15 precipitation would seem to be in order as well as
16 perhaps a storage limitation.
17 Say you can only store it there for X, a
18 reasonable amount of time and not unlimited time,
19 perhaps an indefinite period of time. Say a year.
20 That would probably be excessive.
21 Second of all, under the verified standards for
22 what constitutes a recycler, are those verified
23 standards determined by federal rule, or are they
24 something that DEQ is going to have to broaden?
25 MR. ROBERTS: No. The federal rule has six –

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1 there are six demonstrations you have to make to be
2 considered a verified –
3 MR. GRATER: So they live or die by those?
4 MR. ROBERTS: They live or die by those, and
5 there is – essentially there is an approval process.
6 We have the option if somebody – if we didn't feel
7 somebody sufficiently demonstrated, you know, one or
8 more of those provisions, you know, we have the
9 option to go back and ask for additional information
10 or something.
11 It's because the rule says – basically –
12 essentially it has to be to our satisfaction that
13 they've met those demonstrations. So we would have
14 the ability to do that review and do some
15 back-and-forth correspondence with them to get
16 everything we needed to be able to verify them and
17 then there is a – within the rule itself, you know,
18 there's a public notice/comment concept within it.
19 So you have to make, you know, radio notices or
20 newspaper notices and stuff and then the public has a
21 chance just like they do under our Tier 2 rules
22 anyway to request a hearing, comment on the proposal
23 and everything. So it's a pretty rigorous process
24 they have to go through.
25 MR. GRATER: And then on the solvent reuse,

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1 assuming Company A generates a valuable solvent, it
2 is no longer useful to them and they send it to
3 Company B for reuse and Company B – what kind of
4 controls are going to be on that material in
5 shipment? Is it going to have to be manifested?
6 Is it going to be treated as a solid waste during
7 shipment, or is it going to be regarded as hazardous
8 material?
9 MR. ROBERTS: Since it – if it meets the
10 exclusion, then it's not a solid waste, and therefore
11 it's not a hazardous waste.
12 MR. GRATER: So it would be hazardous material
13 likely?
14 MR. ROBERTS: It could be a hazardous material
15 under DOT standards and so if it has to be placarded
16 and everything under DOT anyway, they still have to
17 do that. But they just don't have to manage it as
18 hazardous waste. They don't have to – it doesn't
19 count towards their generator status.
20 You know, they still have to meet the
21 requirements of containment. It still has to be
22 contained so it has to be in tanks or containers or
23 whatever – however you want to contain it with. You
24 know, there's documentation requirements as far as
25 tracking it from Point A to Point B so there is

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1 still – those provisions are still in there. It's
2 just not considered solid waste or hazardous waste.
3 MR. GRATER: But in that circumstance, after
4 Company B finishes with it, then nobody else can use
5 it, then it's Company B's material to dispose of it
6 properly?
7 MR. ROBERTS: Yes. I think that would be
8 correct. Yes.
9 MR. GRAVES: Does the – so the first part of
10 the rule applies to certain industry codes, but does
11 that apply to the receiver too? They have to be a
12 company within those same four codes or –
13 MR. ROBERTS: Yes.
14 MR. GRAVES: Okay.
15 MR. ROBERTS: Yeah. The generator and receiver
16 all have to be within those same codes. You can go
17 between codes.
18 MR. GRAVES: Yeah.
19 MR. ROBERTS: You can go from Company A and
20 Code No. 1 to Company B, Code No. 2, but it has to be
21 one of those four.
22 MR. GRATER: We can safely assume that these
23 companies are involved in the electronics
24 manufacturing industries?
25 MR. ROBERTS: Let's see. There's

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1 pharmaceutical, basic organic chemical, plastics and
2 resins, and paints and coatings.
3 MR. GRATER: Apparently not. Chemical
4 industries. Okay.
5 Any other comments from the council?
6 MR. KENNEDY: I have one comment, Jon. I don't
7 know how much you all talked with our neighboring
8 states and Region 6 as far as how they're viewing
9 this or potentially adopting as well just to see if,
10 you know, one state near us is going to have some
11 options that Oklahoma might not if we, you know,
12 write things differently.
13 MR. ROBERTS: I don't know specifically about
14 our neighboring states. We do participate, you know,
15 in these monthly calls with states all across the
16 country and EPA where we talk about various RCRA
17 issues, and one of the topics that we talked about a
18 month ago maybe or a couple of months ago was, you
19 know, what states would be adopting – or what states
20 were going to do with this definition of solid waste
21 rule.
22 And of the states that spoke up, most of them
23 were planning on adopting the rule as is. And as far
24 as I know, nobody was planning on, you know, tweaking
25 the rule any. So I don't know what our neighboring

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1 states are doing, but there are several states, you
2 know, around the country, though, that are planning
3 on going ahead and adopting the rule as is.
4 MR. GRATER. Were there no more comments from
5 council?
6 Comments from the public?
7 Seems there are no comments from the public.
8 Mike, do you have comments to make on this?
9 MR. EDWARDS: Actually I don't have comments to
10 make specifically on the definition of solid waste
11 stuff that Jon just talked about. I was just going
12 to give you all sort of a heads up of the other two
13 rules that we're going to be required to incorporate
14 in our October meeting.
15 As I think everyone knows, every year we have
16 to update our incorporation by reference, and every
17 year there are certain rules that we're required to
18 incorporate in order to maintain our authorization
19 status.
20 One of those is the definition of solid waste
21 changes that Jon just talked about, and there are two
22 others. I promise they are not nearly as complicated
23 as the definition of solid waste stuff. So this will
24 be much more brief.
25 The first one I was going to mention --

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1 actually Mr. Graves asked a question that relates to
2 this, having to do with what happens if a court case
3 vacates a previous rule. Well, that happened.
4 On April 8th EPA promulgated a vacatur of the
5 comparable fuels rule and gasification rule -- I
6 never heard the word vacatur before. I thought it
7 was probably a Latin word that was pronounced vacatur
8 or something, but I actually Googled it to make sure
9 I didn't mispronounce it, and it turns out it's
10 vacatur.
11 So I was a little disappointed in that, but EPA
12 was kind enough in their authorization guidance
13 website to provide a summary so I'll just read it to
14 you.
15 The Environmental Protection Agency is revising
16 regulations associated with Comparable Fuels
17 Exclusion and the Gasification Exclusion originally
18 issued by EPA under the Resource Conservation and
19 Recovery Act.
20 These revisions implement vacaturs ordered by
21 the United States Court of Appeals for the District
22 of Columbia on June 27, 2014. So basically they had
23 a court case that vacated a previously existing rule
24 involving comparable fuels gasification. The good
25 news is there are no facilities that we're aware of

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1 in Oklahoma that were utilizing that rule so we don't
2 anticipate it having any impact.
3 And then the third rule that we are going to be
4 incorporating hopefully in October is the disposal of
5 coal combustion residuals from electric utilities. I
6 think you're all – you've heard about that, I think.
7 Again, I'll just read you the summary.
8 The Environmental Protection Agency is
9 codifying a list of ways to generate primarily from
10 processes that support the combustion of coal or
11 other fossil fuels that when co-disposed with coal
12 combustion residuals are not subject to hazardous
13 waste regulations. This action codifies longstanding
14 agency guidance and reflects congressional intent.
15 So I believe an accurate summary is that they
16 are naming coal combustion residuals essentially a
17 nonhazardous waste that can be disposed in Subtitle D
18 landfills with other additional controls. So that's
19 basically it.
20 Those are the three rules we'll be presenting
21 to you in October for adoption to maintain our
22 authorization status. And if you have any questions
23 about those other two, I'd be happy to try and answer
24 them.
25 MR. GRATER: Comments from the council?

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1 MS. SMITH: Will the coal ash disposal have any
2 additional regulations, or is it going to go as it?
3 Because I know that can be a potential problem.
4 MR. EDWARDS: It is my understanding that
5 the – that there will be additional regulations in
6 terms of – I think it will essentially require
7 controls similar to a hazardous waste landfill but in
8 a Subtitle D landfill in terms of liners, leachate
9 collection and those types of controls. I have to
10 admit I'm not 100-percent familiar with all the
11 details of it, but it is, I believe, a more
12 controlled disposal. It's just not quite as rigorous
13 as hazardous waste would be.
14 MS. SMITH: Okay. Thank you.
15 MR. ROBERTS: If I may interject just real
16 quick, the only part of the coal ash rule that
17 affects our hazardous waste regulatory program is the
18 exclusion from the definition of hazardous waste for
19 materials that are generated during the
20 coal-combustion process and are co-disposed with coal
21 ash.
22 Those would not be considered hazardous waste.
23 Everything else in the coal ash rule actually falls
24 under Subtitle D and will be handled through our
25 solid waste program. So the only thing that we'll be

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1 incorporating will be just that new exclusion for the
2 materials that are co-disposed with coal ash.
3 MS. SMITH: Thank you.
4 MR. REAVES: Just one question. What comes to
5 mind is carbon. What's the latest on the carbon -- I
6 understand there is movement to mention that as
7 hazardous waste -- carbon. Are you aware of that?
8 MR. EDWARDS: I haven't heard anything about
9 that. I defer to these guys if they have, but I have
10 not heard anything about it.
11 MR. ROBERTS: Carbon? I've not heard anything.
12 Like, for sequestration purposes? You know CO2
13 sequestration maybe or something?
14 MR. GRATER: I think I saw something last week
15 on the internet about carbon dioxide being listed as
16 a hazardous – or a priority pollutant emission under
17 the Clean Air Act.
18 MR. REAVES: Yeah.
19 MR. HENSCH: If I can speak here – I've seen
20 the same articles. I have not heard of any formal
21 rulemaking as far as hazardous waste. I know there
22 has been a lot of talk about sequestration in
23 underground injection wells and sequestration of CO2
24 for various things and the priority pollutant request
25 but nothing that today affects hazardous waste rules

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1 that we're aware of.
2 MR. GRATER: Yeah. My take on what I saw was
3 it would fall under the Clean Air Act.
4 MR. HENSCH: Right.
5 MR. GRATER: I thought of a question, and I
6 just forgot it.
7 Are there any questions from the – any
8 comments or questions from the public?
9 Okay. I remembered my question. Do you guys
10 see any impact on secondary use for beneficial
11 purposes for coal ash or fly ash that's going on
12 right now? Do you think there will be a negative
13 impact, sir?
14 MR. ROBERTS: No. I don't think so. You know,
15 we've got – we've had a longstanding, you know,
16 beneficial reuse guidance, so to speak, for coal ash
17 that we put together several years ago, and we have,
18 I believe, looked at that recently, you know, in
19 light of the new coal ash rule.
20 I think we have concluded that it's not going
21 to affect anything as far as that goes, and the coal
22 ash rule, you know, contemplates that there is a
23 beneficial use, you know, for coal ash as long as you
24 meet – and I can't remember now what the standards
25 were that were defined in the rule. But as long as

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1 you meet those standards that are in the rule and
2 then, you know, beneficial use aspect of it will
3 still stand.
4 MR. GRATER: Thank you. Any other comments
5 from the council?
6 MS. SMITH: Can we get a copy of those other
7 two rules, please?
8 MR. ROBERTS: Sure.
9 MS. SMITH: Thank you.
10 MR. GRATER: That would bring us to new
11 business limited to any matters we know in which
12 could not have been reasonably foreseen prior to the
13 time we posted in the agenda 24 hours prior to
14 meeting. Any new business publicly brought up? I
15 believe that concludes our business for today.
16 MR. GRAVES: I move we adjourn.
17 MR. KENNEDY: I'll second.
18 MR. GRATER: Ms. Fields, would you call roll?
19 MS. FIELDS: Mr. Anderson?
20 MR. ANDERSON: Yes.
21 MS. FIELDS: Mr. Graves?
22 MR. GRAVES: Yes.
23 MS. FIELDS: Mr. Kennedy?
24 MR. KENNEDY: Yes.
25 MS. FIELDS: Mr. Reaves?

1 MR. REAVES: Yes.
2 MS. FIELDS: Mr. Slaughter?
3 MS. SLAUGHTER: Yes.
4 MS. FIELDS: Ms. Smith?
5 MS. SMITH: Yes.
6 MS. FIELDS: Ms. Vandell?
7 MS. VANDELL: Yes.
8 MS. FIELDS: Mr. Grater?
9 MR. GRATER: Yes.
10 MS. FIELDS: Meeting adjourned.
11 MR. GRATER: Meeting adjourned.
12 (Meeting adjourned at 10:56.)
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1 ** CERTIFICATE **
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OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY

HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL

Attendance Record

July15, 2015

Oklahoma City, Oklahoma

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Jon Roberts	DEQ/LPD	
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Quiana Fields	DEQ	
Ray Reaves		
Michael Gray	HWAC	
Bud Ground	EFO	
Terry Vandell	Phillips 66	
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