

MINUTES
HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL
January 11, 2007
10th Floor Conference Room
707 North Robinson
Oklahoma City, Oklahoma

Approved HWMAC
October 11, 2007

Notice of Public Meeting The Hazardous Waste Advisory Council convened for a continued meeting at 10:00 a.m. January 11, 2007 in the 10th Floor Conference Room of 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. The agenda was posted the meeting facility and the Department of Environmental Quality a minimum of 24 hours prior to the meeting. Mr. Robert Kennedy called the meeting to order and roll call was taken and a quorum was confirmed.

MEMBERS PRESENT

Wesley Anderson
David Bradshaw
Brian Correa
Bruce Elwell
Gerald Ihler
Bob Kennedy
Alan Riffel

DEQ STAFF PRESENT

Jon Roberts
Mista Turner-Burgess
Matt Pace
Sherry Combs
Myrna Bruce

MEMBERS ABSENT

Michael Graves
Kathy Martin

OTHERS PRESENT

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

Chairperson's Report Mr. Kennedy reported that the rules presented to the Environmental Quality Board had been approved.

Approval of Minutes Mr. Kennedy called for approval of the October 6, 2005 Minutes and the October 5, 2006 Minutes with a change on page 76, line 8 to 'bill of lading' and a correction to the spelling of Mr. Riffel's name. With those changes, Mr. Bradshaw moved for approval and Mr. Ihler made the second. Roll call as follows with motion passing.

See transcript pages 5 - 10

Jerry Ihler	Yes	Bruce Elwell	Yes
Brian Correa	Yes	Wesley Anderson	Yes
Alan Riffel	Yes	Bob Kennedy	Yes
Mr. Bradshaw	Yes		

Rulemaking - OAC 252:210 Highway Spill Remediation [New] Mr. Matt Pace, Environmental Complaints and Local Services Division (ECLS), presented the rulemaking proposal pointing out that the emergency rule had been passed by the Environmental Quality Board. He mentioned the changes that had been made to that

emergency rule for Council's consideration for permanent adoption. Ms. Mista Turner-Burgess, ECLS attorney fielded questions and comments from the Council and public. Mr. Correa expressed concerns that the statute is most likely unconstitutional; that the statute excludes spills that are not the result of a collision; and that the fees are so high that small businesses will be negatively affected. Mr. Kennedy called for a motion to which Mr. Bradshaw moved to accept the regulations as presented and that they be recommended to the Environmental Quality Board for permanent adoption. Mr. Anderson made the second. Roll call as follows with motion passing.

See transcript pages 10 - 22

Jerry Ihler	Yes	Bruce Elwell	Yes
Brian Correa	Yes	Wesley Anderson	Yes
Alan Riffel	Yes	Bob Kennedy	Yes
Mr. Bradshaw	Yes		

Announce Dates/Locations for future 2007 Meetings Discussions led to meetings being scheduled for April 12 in Bartlesville; July 12 in Oklahoma City and October 11 in Oklahoma City.

New Business None

Adjournment At 10:35 a.m. Mr. Kennedy adjourned the meeting.

A copy of the hearing transcripts and sign-in sheet are attached and made an official part of these minutes.

1 DEPARTMENT OF ENVIRONMENTAL QUALITY
2 STATE OF OKLAHOMA
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9 TRANSCRIPT OF PROCEEDINGS
10 OF THE HAZARDOUS WASTE MANAGEMENT ADVISORY
11 COUNCIL
12 REGULAR MEETING
13 HELD ON JANUARY 11, 2007, AT 10:00 A.M.
14 IN OKLAHOMA CITY, OKLAHOMA
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22
23 MYERS REPORTING SERVICE
24 Christy Myers, CSR
25 P.O. BOX 721532
OKLAHOMA CITY, OKLAHOMA 73172-1532
405-721-2882
c_myers@cox.net

1 MEMBERS OF THE COUNCIL

2 BOB KENNEDY - CHAIR

3 KATHY MARTIN - MEMBER - ABSENT

4 GERALD IHLER - MEMBER - ABSENT

5 MICHAEL GRAVES - MEMBER - ABSENT

6 BRUCE ELWELL - MEMBER

7 BRIAN CORREA - MEMBER

8 WESLEY ANDERSON - MEMBER

9 ALAN RIFFEL - MEMBER

10 DAVID BRADSHAW - MEMBER

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12 STAFF MEMBERS

13 MYRNA BRUCE - SECRETARY

14 JON ROBERTS

15 MATT PACE

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PROCEEDINGS

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MR. KENNEDY: Good morning to everyone. This is sort of a quaint little room here. Is there a remodel going on down at the --

MR. ROBERTS: Doing some sort of remodeling down in the multi-purpose room.

MR. KENNEDY: Multi-purpose room? Okay.

This regularly scheduled meeting of the Hazardous Waste Management Advisory Council was called in accordance with the Open Meeting Act.

Notice for this January 11, 2007 meeting was filed with the Secretary of State on November 30, 2006. At least 24 hours prior to the meeting, the Agenda was duly posted at the DEQ, 707 North Robinson, Oklahoma City, Oklahoma.

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

1 meeting will be given by announcement at
2 this meeting. Only matters appearing on
3 the Agenda of a meeting which is continued
4 may be discussed at the continued or
5 reconvened meeting.

6 And it looks like we ve added one.
7 Myrna, would you go ahead with the roll
8 call.

9 MS. BRUCE: Mr. Ihler is absent.
10 Mr. Correa.

11 MR. CORREA: Here.

12 MS. BRUCE: Mr. Riffel.

13 MR. RIFFEL: Here.

14 MS. BRUCE: Mr. Graves is absent.
15 Mr. Bradshaw.

16 MR. BRADSHAW: Here.

17 MS. BRUCE: Mr. Elwell.

18 MR. ELWELL: Here.

19 MS. BRUCE: Mr. Anderson.

20 MR. ANDERSON: Here.

21 MS. BRUCE: Ms. Martin is absent.

22 Mr. Kennedy.

23 MR. KENNEDY: Here.

24 MS. BRUCE: And we do have a
25 quorum.

1 MR. KENNEDY: And we do have an
2 addition.

3 MS. BRUCE: And we do have
4 Mr. Ihler.

5 MR. KENNEDY: Mr. Ihler. Okay.
6 Not much of a Chairpersons Report. We did
7 meet last quarter and hammered out mostly
8 some of the language for the new Highway
9 Spill Remediation Rule Chapter 210. And
10 that was presented along with amendments to
11 252 Chapter 4 of the rules of practice and
12 procedure and 252:205 Hazardous Waste
13 Management rules to the Environmental
14 Quality Board and everything was approved.
15 Some of the issues, as far as whether they
16 were deemed to be emergency rules, were not
17 challenged but I think there was a couple
18 of "no votes" on that, Jon, if you recall.

19 MR. ROBERTS: On the Chapter 4 in
20 205.

21 MR. KENNEDY: On the Chapter 4 in
22 205. Not on the -- actually the one that
23 we expected to hear maybe more discussion
24 on, which was Chapter 210, was fairly quiet
25 and maybe that as a result of a lot of the

1 discussion and a lot of the questions and
2 answers and trying to get that ironed out
3 by the meetings they had with the regulated
4 community and concerned parties, got worked
5 out prior to those rules. So it was fairly
6 quiet on that, it was approved as emergency
7 rules. That s why we re here today,
8 primarily, is to look at the -- revisit
9 Chapter 210 as a permanent rulemaking.

10 Anyway, that s about all that I have
11 for that. Make sure I get all my -- some
12 things from the past and some things from
13 today here.

14 Next we move to Agenda Item 4, which
15 is our Discussion, Amendment, and Roll Call
16 Vote to Approve the Minutes of the October
17 6, 2005 and the October 5, 2006 Hazardous
18 Waste Management Advisory Council meetings.
19 If you recall, both of them are on here
20 because we did not receive the October 6,
21 2005 Minutes prior to our last meeting and
22 we got those in the morning but we really
23 didn t have any kind of break in the day to
24 kind of review those and approve those. So
25 those have been postponed to this meeting.

1 So we have both our October 5, 2005 and our
2 October 5, 2006 -- it s kind of weird, the
3 days and the years flip-flop on those two,
4 it s not a typo, to approve here.

5 Are there any questions or
6 discussion by the Council of either sets of
7 those minutes?

8 I have only one minor change and
9 that s on the October 5, 2006, the one we
10 just had. And by the way, on a hundred
11 page transcript, our thanks go to you for
12 all the work you do on this.

13 THE REPORTER: You re welcome.
14 It s tedious work, but it s worth it when
15 you get through it.

16 MR. KENNEDY: And it s much
17 easier to reference now in this as we go to
18 page 76, line 8. It says, a "bill elating
19 on something, dot, dot, dot." That was
20 probably some quick slur on my part. That
21 was a "bill of lading." Bill hyphen of
22 hyphen lading.

23 THE REPORTER: This will correct
24 it. I can t go back and correct that.

25 MR. KENNEDY: That s fine.

1 THE REPORTER: What you re saying
2 will correct it.

3 MR. KENNEDY: Okay.

4 THE REPORTER: Okay?

5 MR. KENNEDY: I just didn t want
6 anyone to read this later and be confused
7 that I was elated by this bill that was
8 introduced. So that is a bill-of-lading.

9 THE REPORTER: That makes a big
10 difference, see? Thank you for pointing
11 that out.

12 MR. RIFFEL: I would also correct
13 the spelling of my name on Pages 2 and 5 --

14 THE REPORTER: I can global them.

15 MR. RIFFEL: Very good.

16 THE REPORTER: It is R-i-f-f-e-l?

17 MR. RIFFEL: It is correct right
18 here, yes.

19 THE REPORTER: Okay. R-i-f-f-e-
20 l, all right. Great.

21 MR. KENNEDY: And again -- I m
22 sorry, I apologize. You were not here the
23 last quarterly meeting but we want to
24 welcome Alan Riffel to the Council.

25 MR. RIFFEL: Thank you.

1 MR. KENNEDY: And you re from
2 what area?

3 MR. RIFFEL: I m from the City of
4 Woodward.

5 MR. KENNEDY: Okay. Any other
6 questions or comments concerning either of
7 those sets of minutes? Any questions or
8 discussion by the public?

9 MR. BRADSHAW: Mr. Chairman, I
10 move the approval of the Minutes as noted
11 with exceptions.

12 MR. KENNEDY: All right. We have
13 a motion, do we have a second on that?

14 MR. IHLER: I ll second that.

15 MR. KENNEDY: Okay.

16 MS. BRUCE: Mr. Ihler.

17 MR. IHLER: Yes.

18 MS. BRUCE: Mr. Correa.

19 MR. CORREA: Yes.

20 MS. BRUCE: Mr. Riffel.

21 MR. RIFFEL: Yes.

22 MS. BRUCE: Mr. Bradshaw.

23 MR. BRADSHAW: Yes.

24 MS. BRUCE: Mr. Elwell.

25 MR. ELWELL: Yes.

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2 MS. BRUCE: Mr. Anderson.

3 MR. ANDERSON: Yes.

4 MS. BRUCE: Mr. Kennedy.

5 MR. KENNEDY: Yes.

6 MS. BRUCE: Motions passed.

7 MR. KENNEDY: Okay. Item --

8 Agenda Item Number 5 is a rulemaking
9 hearing; OAC 252:210, Highway Spill
10 Remediation.

11 Permanent rulemaking to implement
12 the requirements of Senate Bill 1938, the
13 Oklahoma Highway Remediation and Cleanup
14 Services Act, passed by the Oklahoma
15 Legislature during the 2006 session. The
16 Act became effective November 1, 2006 and
17 gives the DEQ authority "to license,
18 supervise, govern, and regulate highway
19 remediation and cleanup services... and
20 operators" in Oklahoma. The Act further
21 requires DEQ to develop rules to implement
22 its provisions. New Chapter 210 will
23 contain the implementing rules. Once
24 adopted, these permanent rules will
25 supersede the Emergency rules passed by the

1 Environmental Quality Board on November 14,
2 2006.

3 And we have a presentation, round
4 two, with Matt Pace with the ECLS. Thank
5 you, Matt. Does he need to be near one of
6 those?

7 THE REPORTER: This is fine.

8 MR. PACE: Okay. I ll stand
9 right here.

10 Good morning, everyone, good
11 morning, Council, audience members. My
12 name is Matt Pace and I m with ECLS and
13 I ll be presenting our permanent rules
14 today. There s not much difference between
15 the rules that we discussed back in
16 October, the Emergency rules. The only
17 thing that we have added to those rules is
18 found back in 252:210-1-15, under fees.
19 We ve added two additional license fees
20 there, (3) and (4); the late fee of \$100
21 and the reinstatement fee of \$100. Those
22 were the only two items that we added to
23 the rules.

24 MR. KENNEDY: Was there not also
25 a change in the -- hold on here. I don t

1 have all my versions lined out here. On
2 252:210-1-11(a)(1) I know there was
3 discussion at our Council that --
4 responsible for the spill, which may or may
5 not have been the person who was actually
6 responsible for the spilled materials and I
7 think some of that language has changed to
8 better clarify that point, because it could
9 be that a car causes an accident and then
10 goes off. Well, they might be, quote,
11 responsible for this spill but we wanted to
12 clarify whose responsibility of the
13 material itself that was spilled. And it
14 looks like we did clarify that by saying
15 material spilled.

16 MS. TURNER-BURGESS: Yes.

17 MR. KENNEDY: Okay.

18 MS. TURNER-BURGESS: The
19 permanent rules -- this is mixed up with
20 ECLS. The permanent rules that are before
21 you are the same except for a few changes,
22 and I'm going to help out a little bit, as
23 you recommended the emergency rules. So
24 after we made the changes that you wanted
25 made to the emergency rules and gave them

1 to the Board that s really essentially what
2 you see. The only addition is what Matt
3 said, the reinstatement fee and the late
4 fee and also the language that goes with
5 those fees. So in 1-9(c) you ll see where
6 this language that implements the late fee
7 tells you when it needs to be paid.

8 And then in the reinstatement fee,
9 the language under 1-13(b)(2)(C), now
10 includes language that implements the
11 reinstatement fee when it s applicable.

12 But those should be the only changes
13 that you see different than the ones that
14 you actually recommended in the emergency
15 set.

16 MR. KENNEDY: Okay. Okay, then.
17 That was fairly short, wasn t it? Much
18 shorter than your last presentation.

19 Any questions or discussion by the
20 Council? You may have had some time since
21 our last meeting where we sort of did this
22 as an emergency and wanted -- if anything
23 else has come up between what we approved
24 as emergency and sort of today as you ve
25 pondered these rules, this is sort of our

1 time to make any more tweak to that to
2 where we can get these in if we all agree
3 upon it prior to voting on it. I m sorry.

4 MR. BRADSHAW: Matt, David
5 Bradshaw. What is ECLS? I mean that s
6 pretty tough, I know.

7 MR. PACE: ECLS, that s the
8 acronym for our division, which stands for
9 Environmental Complaints and Local
10 Services.

11 MR. BRADSHAW: Okay.

12 MR. PACE: We re just going to be
13 the division that s primarily responsible
14 for implementing these rules. So basically
15 our division is going to have
16 responsibility for this.

17 MR. BRADSHAW: Good.

18 MR. KENNEDY: Any other questions
19 or comments from the Council?

20 MR. CORREA: Are you going to
21 vote next?

22 MR. KENNEDY: Yes, after I also
23 ask if there s any questions from the
24 public.

25 Are there any questions from the

1 public? The regulated community? Okay.

2 Hearing none, let s -- is there a motion

3 then to approve?

4 MR. CORREA: Before we vote, Bob,

5 I would just like to say some things for

6 the record and maybe help people understand

7 why I voted, no, against this last time

8 when really it s just the DEQ s hard work

9 to try and create some regulations -- rules

10 to implement this statute, which even

11 without the DEQ s work would still be in

12 effect and be the law in the state of

13 Oklahoma, and people would have to attempt

14 to follow it as best as they could without

15 the rules.

16 I just didn t want it to be

17 misunderstood that I, in any way, as a

18 representative of an industry who is

19 effected by this rule and the potential

20 impacts of it that I approve of the statute

21 and/or the regulations. And I think there

22 is some real holes in that statute and it

23 might not be best for the state of

24 Oklahoma.

25 The obvious major hole is that this

1 whole thing only applies to spills that are
2 the result of a collision. And the fact of
3 the matter is that I think that the largest
4 or most impact-full spill that has ever
5 happened in Oklahoma did not involve a
6 collision. It involved simply a leaking
7 tanker truck.

8 With some major holes in a rule like
9 that, I just can't see where this statute
10 and these rules really accomplish what
11 maybe somebody was attempting to accomplish
12 when they got this statute on the books.

13 There is also the exorbitant fees
14 which just serve to push people away from
15 being a part of this industry which you
16 would hope we would want to attract as many
17 people as possible who are qualified to
18 come and do spill cleanup. And when you
19 put these huge fees out in front of them,
20 hey, they might not get a job the whole
21 year. Are they going to go out and spend
22 \$10,000 and go through all this work if
23 they don't even know if anybody is ever
24 going to call them to cleanup something
25 that is affected by this rule.

1 And then there is this issue of, "in
2 state." You have to be a state person.
3 I m no attorney but whenever you start
4 talking about "in state" "out of state"
5 stuff, you have these constitutional
6 questions about whether that is even
7 constitutional to do something like that.

8 Some of the best spill contractors
9 in the country are probably located outside
10 of Oklahoma and may not want to go through
11 the legal mumbo-jumbo, setting up some
12 Oklahoma corporation or whatever, and may
13 not be available to have people in Oklahoma
14 who need them to respond. So that means we
15 might end up with a fewer number of people
16 because of the fees, because they re "in
17 state" who may not be the most qualified.
18 And if the goal of this thing is to protect
19 the environment, we should be welcoming all
20 of the people who may be able to help, who
21 are the most qualified to help Oklahoma.
22 Okay?

23 So I would just hope as we get into
24 this next legislative session that the DEQ
25 and/or the affected entities can work

1 together to improve this rule, if in fact,
2 a rule like this is even desirable, but to
3 improve it so that it s best for the state
4 of Oklahoma, it s best for the environment
5 and it s best for everybody who is affected
6 by it in Oklahoma.

7 I just can t see that in this
8 statute or this rule right now. And I just
9 wanted to say that before we vote and it
10 really has nothing to do with or against
11 the hard work that the DEQ has done to try
12 to make this happen, okay? And it s really
13 all about the statute and I just hope that
14 you guys and the public can go back to the
15 legislature this year and if you really
16 want this kind of program, to improve it,
17 thinking hard about everybody who s
18 affected by it and doing the best thing for
19 everybody. That s all I wanted to say.

20 MR. KENNEDY: Well, all right.
21 Well, we appreciate, first of all, from our
22 last meeting, it was obvious what you
23 stated still is applicable, your
24 appreciation of the DEQ working on this, it
25 was a statute rub for you and we do

1 appreciate you voicing your concerns.

2 MR. BRADSHAW: I have a question
3 for Brian. I agree with what you said, but
4 given that, the Legislature did this. So I
5 guess my view is that it's the DEQ's job to
6 turn this into the rules as best they can,
7 which I think we agree they've done. And
8 now that they've done that, I probably will
9 support it because even though it has all
10 those problems, which I think are fairly
11 serious, I don't see a good alternative to
12 saying otherwise. So how do you feel about
13 that part of it?

14 MR. CORREA: To me it doesn't
15 really make any difference. I mean it's a
16 statute, it's been a statute, people have
17 to abide by it. The guts of it are there.
18 People are supposed to be doing it and some
19 of these fine points that this rule kind of
20 works out -- in total I don't see how they
21 really do a whole lot to the statute. It's
22 there, it's in effect. I plan to vote for
23 it today, Dave, because, I mean, it's water
24 under the bridge at this point. Really I
25 just wanted to express that I hope going

1 forward, we can come back to this and have
2 something that s better.

3 MR. BRADSHAW: And I appreciate
4 you saying that because I don t think this
5 will withstand legal challenge, first of
6 all. And I think it s important that it s
7 on the record for the Board. So I
8 appreciate what you ve said and I agree
9 with it.

10 MR. KENNEDY: Any other comments
11 prior to our vote?

12 MR. BRADSHAW: Mr. Chairman, I
13 move that we accept the regulations as
14 written by the DEQ and recommend those to
15 the Board.

16 MR. KENNEDY: Okay. We have a
17 motion, is there a second?

18 MR. ANDERSON: I second the
19 motion.

20 MR. KENNEDY: Okay. Myrna, would
21 you take the vote.

22 MS. BRUCE: Mr. Ihler.

23 MR. IHLER: Yes.

24 MS. BRUCE: Mr. Correa.

25 MR. CORREA: Yes.

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MS. BRUCE: Mr. Riffel.

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MR. RIFFEL: Yes.

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MS. BRUCE: Mr. Bradshaw.

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MR. BRADSHAW: Yes.

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MS. BRUCE: Mr. Elwell.

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MR. ELWELL: Yes.

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MS. BRUCE: Mr. Anderson.

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MR. ANDERSON: Yes.

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MS. BRUCE: Mr. Kennedy.

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MR. KENNEDY: Yes.

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MS. BRUCE: Motion passed.

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MR. KENNEDY: Okay.

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MR. PACE: If I may, I d like to

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provide you guys with a little bit of

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information before you move on. The

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Governor did sign our rules this last

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Friday, the emergency rules, so those went

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into effect. At that time we sent out our

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information packets, application packets to

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all of our businesses that were interested

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in becoming licensed, sent out 31 of those.

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In addition to that we also made a new web

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page available to the public where they can

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access the application, the rules, our

1 frequently asked questions, and a listing
2 of all of the businesses who are licensed.
3 And that website address will be -- I'll
4 set a stack of web addresses out on the
5 table, if you're interested in that. So,
6 that's it. Thank you.

7 MR. KENNEDY: Okay. Thank you,
8 Matt. Our next Agenda Item is announce
9 dates and locations for future 2007
10 meetings.

11 (Jon Roberts made a recommendation for
12 the summer meeting due to cleanup rule)

13 (Discussion took place of meeting
14 locations)

15 MR. KENNEDY: Okay. So our next
16 meeting is scheduled for April 12, 2007,
17 the following one, July 12, 2007, and
18 October 11th. That one will be -- how
19 about some locations for you, the April or
20 July?

21 (Discussion about locations; April 12,
22 2007, Bartlesville; July 12, 2007 Oklahoma
23 City; October 11, 2007, Oklahoma City)

24 MR. KENNEDY: Okay. There's our
25 calendar. Item Number 7, new business.

1 This is limited to any matter not known or
2 which could not have been reasonably
3 foreseen prior to the time of posting the
4 agenda 24 hours prior to the meeting. Do
5 we have any new business to discuss? Okay.

6 Hearing none, do we have a motion to
7 adjourn this Council meeting?

8 (Adjourned)

9 (Meeting Concluded)

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C E R T I F I C A T E

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4 STATE OF OKLAHOMA)

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) ss:

6 COUNTY OF OKLAHOMA)

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I, CHRISTY A. MYERS, Certified

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Shorthand Reporter in and for the State of

10

Oklahoma, do hereby certify that the above

11

meeting is the truth, the whole truth, and

12

nothing but the truth; that the foregoing

13

proceeding was taken by me in shorthand and

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thereafter transcribed under my direction;

15

that said proceeding was taken on the 11th

16

day of January, 2007, at Oklahoma City,

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Oklahoma; and that I am neither attorney

18

for nor relative of any of said parties,

19

nor otherwise interested in said action.

20

IN WITNESS WHEREOF, I have hereunto

21

set my hand and official seal on this, the

22

17th day of January, 2007.

23

24

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

25