

MINUTES
HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL
October 5, 2006
Multipurpose Room
707 North Robinson
Oklahoma City, Oklahoma

HWMAC approved
January 11, 2007

Notice of Public Meeting The Hazardous Waste Advisory Council convened for a continued meeting at 10:00 a.m. October 5, 2006 in the Multipurpose 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
Brian Correa
Bruce Elwell
Michael Graves
Gerald Ihler
Bob Kennedy

DEQ STAFF PRESENT

Jon Roberts
Catherine Sharp
Sonny Johnson
Monty Elder
Matt Pace
Gary Collins
Mista Turner-Burgess
Sherry Combs
Myrna Bruce

MEMBERS ABSENT

David Bradshaw
Kathy Martin
Alan Riffel

OTHERS PRESENT

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

Chairperson's Report - Mr. Kennedy reported that the Jody Rinehart had resigned her position on the Council and introduced Brian Correa who had filled that position; and that Steve Tomberlin had resigned and Alan Riffel had filled that position. Mr. Kennedy also spoke regarding the roles of the Councils, DEQ, the public, and the regulated community to assure a cleaner Oklahoma during Oklahoma's centennial year and for future generations.

Approval of Minutes Mr. Kennedy noted that the Council had not received the October 6, 2005 Minutes in their Agenda Packet; therefore, it was recommended that approval be postponed to Council's January meeting.

OAC 252:205-3-1 and 205-3-2 and OAC 252:4-7-51; 52; and 53 Mr. Jon Roberts discussed Agenda items 5 and 6 together stating this is the annual incorporation by reference of the federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279 revised July 1, 2006 and to incorporate amendments taking effect after July 1, 2006.

Mr. Roberts pointed out that changes to Chapter 4 would be necessary to modify the DEQ rules related to hazardous waste permitting requirements to include provisions for the new RCRA Standardized Permit. He asked for Council's consideration stating that staff recommended the rulemaking for emergency and permanent adoption adding that emergency adoption would get the rules implemented as quickly as possible so that industry could begin taking advantage of the standardized permitting rules then could take advantage quickly as possible of the other reduced regulatory requirements. Mr. Kennedy called for a motion after Mr. Roberts fielded questions. Mr. Michael Graves made the motion to approve as presented and Mr. Jerry Ihler made the second.

See transcript pages 7- 16

Roll Call		Michael Graves	Yes
Wesley Anderson	Yes	Jerry Ihler	Yes
Brian Correa	Yes	Bob Kennedy	Yes
Bruce Elwell	Yes	Motion Carried	

Rulemaking - OAC 252:210 Highway Spill Remediation [New] Mr. Matt Pace from the Environmental Complaints and Local Services Division (ECLS) presented the rulemaking proposal advising that the ECLS Division would have responsibility for implementing the rules after they were passed by the Environmental Quality Board. He pointed out that emergency rulemaking would be necessary to implement the requirements of Senate Bill 1938, the Oklahoma Highway Remediation and Cleanup Services Act, passed by the Oklahoma Legislature during the 2006 session. Mr. Pace added that The Act becomes effective November 1, 2006 and gives the DEQ authority “to license, supervise, govern, and regulate highway remediation and cleanup services and operators” in Oklahoma and requires the DEQ to develop rules to implement its provisions. Mr. Pace stated that the new Chapter 210 would contain those rules. He then advised the process taken by staff to bring the rulemaking language to Council for consideration. Questions and comments from the Council and public comments were fielded by Ms. Mista Turner-Burgess, ECLS Legal, Mr. Sonny Johnson, hazardous waste program attorney. Mr. Turner-Burgess advised that staff is asking for Council approval as emergency rulemaking and that the permanent rule proposal would be brought before the Council at its January meeting. Mr. Kennedy called for motion for approval. Mr. Michael Graves made the motion to recommend to the Environmental Quality Board the emergency regulations as provided by staff and amended by discussion. Mr. Elwell made the second.

See transcript pages 16 - 97

Roll Call		Michael Graves	Yes
Wesley Anderson	Yes	Jerry Ihler	Yes
Brian Correa	No	Bob Kennedy	Yes
Bruce Elwell	Yes	Motion Carried	

Election of Officers for 2007 – Mr. Graves nominated and made the motion for Mr. Bob Kennedy to be the Chair for the upcoming year. Mr. Bruce Elwell made the second.

See transcript pages 97-98

Roll Call		Michael Graves	Yes
Wesley Anderson	Yes	Jerry Ihler	Yes
Brian Correa	Yes	Bob Kennedy	Yes
Bruce Elwell	Yes	Motion Carried	

Mr. Kennedy opened the floor for nominations for Vice-Chair to which Mr. Graves nominated Mr. David Bradshaw and Mr. Elwell made the second.

See transcript pages 99 - 100

Roll Call		Michael Graves	Yes
Wesley Anderson	Yes	Jerry Ihler	Yes
Brian Correa	Yes	Bob Kennedy	Yes
Bruce Elwell	Yes	Motion Carried	

New Business None

Dates and Locations The Council to pick January 11, 2007 for a meeting in the Multipurpose Room and would decide if another meeting would be necessary when it would be necessary.

Adjournment At 10:10 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.

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DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS

OF THE REGULAR MEETING

HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL

HELD ON OCTOBER 5, 2006, AT 10:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

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MEMBERS OF THE COUNCIL

- BOB KENNEDY - VICE-CHAIR
- KATHY MARTIN - MEMBER (Absent)
- GERALD IHLER - MEMBER
- MICHAEL GRAVES - MEMBER
- BRUCE ELWELL - MEMBER
- BRIAN CORREA - MEMBER
- WESLEY ANDERSON - MEMBER
- ALAN RIPPLE - MEMBER (Absent)
- DAVID BRADSHAW - MEMBER (Absent)

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY

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PROCEEDINGS

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MR. KENNEDY: Okay. I m going to go ahead and open by saying this October 5, 2006 regularly scheduled meeting of the Hazardous Waste Management Advisory Council was called in accordance with the Open Meeting Act.

Notice for this meeting was filed with the Secretary of State on December 5, 2005 and the location was amended on July 24, 2006. The Agenda was duly posted at the DEQ, 707 North Robinson, Oklahoma City, Oklahoma, 24 hours prior to the meeting.

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 of a meeting which is continued may be discussed at the continued or reconvened meeting.

1 So, Myrna, if you would do the roll
2 call.

3 MS. BRUCE: Wesley Anderson.

4 MR. ANDERSON: Here.

5 MS. BRUCE: Brian Correa.

6 MR. CORREA: Here.

7 MS. BRUCE: Bruce Elwell.

8 MR. ELWELL: Here.

9 MS. BRUCE: Michael Graves.

10 MR. GRAVES: Here.

11 MS. BRUCE: Gerald Ihler.

12 MR. IHLER: Here.

13 MS. BRUCE: Absent is Kathy

14 Martin, Alan Ripple, and David Bradshaw.

15 Bob Kennedy.

16 MR. KENNEDY: Here.

17 MS. BRUCE: We do have a quorum.

18 MR. KENNEDY: Okay. We re also -

19 - each time we meet we re getting a little
20 fancier and fancier here with our
21 electronics. And just so everyone is
22 aware, when you need to speak you can push
23 the blue button, at a certain point it will
24 either turn off or you can push the blue
25 button to cancel that.

1 Also, later if there s anyone from
2 the community or form the regulated -- from
3 the public or the regulated community that
4 wants to speak, we have a podium up here
5 with the same arrangement there, speaking
6 with the -- hitting the blue talk button.

7 Item Number 3 on our Agenda is the
8 Chairperson s Report. We would like to
9 report that we don t have a Chairperson.
10 Jody Rinehart has been in that position,
11 her term was up for renewal and she chose
12 not to. Brian Correa has taken her place.
13 And just by way of reference Steve
14 Tomberlin was also a member of this
15 Council, he is no longer on our Council and
16 we welcome Mr. Alan Ripple, who has taken
17 his place on the Council. Alan is not here
18 today at this meeting.

19 There s not much to report, as you
20 can see. It s almost -- this one could be
21 called an annual meeting with this last --
22 about a year ago in October when we last
23 met, we cancelled our January 17th, our
24 April 6th, and July 11th meetings due to no
25 real pressing issues before this Council.

1 But just in thinking about this
2 Council and just the State -- our State of
3 Oklahoma is entering into 2007, which is
4 the Centennial year. One hundred years is
5 quite a long time, especially when you
6 think of the EPA being established just 35
7 years ago. If I have my history right, it
8 was 1971. I guess it just made me think
9 about our part as a Council, working along
10 with DEQ, also with the public and
11 regulated community, just to insure our
12 State s longevity from an environment
13 protection standpoint. And that that would
14 continue into this coming century.

15 We know we have some challenges and
16 some clean-up issues in our State. But
17 initiatives such as the Brownsfield
18 Program, I think, are really good proactive
19 efforts securing a cleaner Oklahoma for our
20 upcoming generations.

21 Being a little sentimental there but
22 I just think we ve got -- I appreciate
23 being on this Council, I appreciate
24 everyone being here. I know we have a lot
25 to discuss, we went through a three-quarter

1 lull of cancelled meetings and now we have
2 a full crowd here on some issues. So
3 that s all I have for Item Agenda Number 3.

4 We ll go to Item 4. This is the
5 discussion, amendment, and roll call vote
6 to approve the Minutes from our October
7 2005 meeting. Those Minutes were not
8 mailed out with the packets that the
9 Council received. We re just finding them
10 right now in front of you. If you ll take
11 30 seconds to review those. No.

12 What we re going to do is, we don t
13 know how long this meeting is going to
14 last. And we know at least in January
15 we re going to be having another meeting.
16 So what we might do is just -- obviously,
17 we haven t had time to review those, so if
18 we want to, we ll postpone Item Agenda
19 Number 4 until we have a chance to review
20 that. It could be that this is a very
21 lively discussion here and we have to break
22 for lunch and have some time to review
23 those, and if we reconvene after lunch we
24 could maybe put Item Agenda 4 again, here,
25 but we ll sort of see how that goes.

1 So that brings us to Item Number 5,
2 which is a rulemaking hearing for OAC
3 252:205-3-1 and 205-3-2. These are
4 emergency and permanent rulemaking to
5 incorporate by reference the federal
6 Hazardous Waste Regulations found in 40 CFR
7 Parts 124 and 260 through 279 revised as of
8 July 1, 2006, and to incorporate amendments
9 to 40 CFR, taking effect after July 1,
10 2006.

11 Jon Roberts will be making the
12 presentation on that.

13 MR. ROBERTS: Thank you. I d
14 like to go ahead and if it s, okay, discuss
15 Agenda Items 5 and 6 together because
16 they re kind of combined.

17 This is going to be our annual
18 rulemaking hearing to incorporate by
19 reference the Federal Hazardous Waste
20 Regulations. Oklahoma adopts the Federal
21 Hazardous Waste Regulations by reference as
22 opposed to developing our own set of
23 federal -- or our own set of Hazardous
24 Waste Regulations that are supposed to be
25 equivalent to the federal. And each year

1 EPA publishes a new 40 CFR, which is where
2 the federal Hazardous Waste Regulations
3 are. That s printed on July 1st of each
4 year and so sometime after that, we need to
5 incorporate those new regulations into our
6 state program so that we ll have an
7 equivalent state program.

8 This year we ve got -- there were
9 four significant revisions to the federal
10 regulations since last year, that I d like
11 to bring to your attention.

12 One was a standardized permitting
13 rule that came into effect several months
14 ago and what it allows is facilities that
15 want to do a very limited type of treatment
16 for storage of hazardous waste on their
17 sites, they can get a permit to do that.
18 There s some limitations within that, such
19 as, it s not available as commercial
20 hazardous waste treatment storage and
21 disposal facilities. It primarily would
22 probably be something where a generator
23 would want to have a standardized permit if
24 they wanted to store hazardous waste for
25 longer than 90 days or if they wanted to do

1 some non-thermal treatment of hazardous
2 waste that they generate.

3 Another provision that was
4 incorporated, since the last 40 CFR, had to
5 do with a paperwork reduction initiative.
6 EPA has implemented some new rules that
7 reduces the paperwork burden for facilities
8 as far as maintaining records and what
9 records have to be submitted to the State.

10 Another revision is one that just
11 corrected some errors in the Hazardous
12 Waste Regulations that have been passed
13 down through the years. There s really
14 nothing significant as far as regulatory
15 changes goes. All that did was just
16 correct some errors, misspellings,
17 corrected citations that were incorrectly
18 cited in the regulations and et cetera.

19 One revision that takes effect after
20 July 1, 2006, which we want to incorporate
21 in our Hazardous Waste Regulations now is
22 that cathode ray tubes, if they are going
23 to be managed for recycling, they re exempt
24 from the definition of hazardous waste. So
25 that there are reduced regulatory

1 requirements for cathode ray tubes for
2 facilities who collect those and then want
3 to send those off for some kind of
4 recycling. And so that is one thing that
5 we would like to incorporate into our
6 Hazardous Waste Regulations right now
7 because that would be something that would
8 be a benefit to the regulated community, as
9 far as the reduced requirements for cathode
10 ray tubes.

11 If we waited on that then they
12 wouldn't come into effect until we do our
13 next incorporation by reference at this
14 time -- or around this time next year. And
15 so, technically speaking, anybody who
16 wanted to manage cathode ray tubes would
17 have to do the hazardous waste
18 determination and then manage that,
19 accordingly. So we think that would be a
20 good thing to go ahead and implement that
21 now.

22 As far as the Chapter 4 rules go,
23 because the standardized permitting
24 requirement is a new permit that's not
25 currently addressed by our Hazardous Waste

1 Regulations, we have to also modify the
2 Chapter 4 rules, which are DEQ's rules of
3 practice and procedure, but we need to
4 modify those rules to incorporate the
5 standardized permit into those rules as
6 they -- I believe they are Tier I or a Tier
7 II permit. If we went ahead and
8 incorporated those into our 205 rules but
9 failed to do so in Chapter 4, there could
10 be some questions, I think, about whether
11 we were really authorized to review and
12 approve any of the standardized permits,
13 should anybody choose to do that.

14 We're asking for both emergency and
15 a permanent rulemaking. The emergency
16 rulemaking is to get the rules implemented
17 as quickly as possible so that industry
18 could begin taking advantage of the
19 standardized permitting rules if they chose
20 to, and then also, they could start then
21 taking advantage as quickly as possible of
22 the other reduced regulatory requirements.
23 And then the permanent rulemaking would be
24 just to make these rules permanent.
25 Without the emergency provision, if we just

1 adopted these rules permanently they would
2 probably not take effect in Oklahoma until
3 probably next summer, when the Legislature
4 finally reviews them. Under the emergency
5 provision, we can pass the rules up to the
6 Governor s office once they have been
7 approved by the Board, and they would come
8 into effect, once the Governor signs them
9 and then they would be in effect until the
10 permanent rules came into effect later on
11 next summer.

12 Any questions?

13 MR. KENNEDY: Any questions by
14 the Council?

15 COUNCIL MEMBER: Are we going to
16 vote on it here in a second?

17 MR. KENNEDY: Yes, we ll do that,
18 but right now --

19 MR. CORREA: Jon, I just noticed
20 one thing, or one difference between your
21 analysis that you had written on this rule
22 where you stated the requirements, the
23 regulatory requirements that would be in
24 the rules and it references, paragraph (1),
25 and in your write up it calls it,

1 subparagraph, and then in the actual
2 Oklahoma Register document it says just
3 paragraph. I mean it doesn't make any
4 difference, there's only one Paragraph (1).
5 So I think everybody knows, but just in
6 case you wanted to get that, like, you
7 refer to these as paragraphs or
8 subparagraphs, I'm not sure exactly which
9 one it is.

10 MR. ROBERTS: Which one exactly
11 are you talking about?

12 MR. CORREA: In your standardized
13 permit.

14 MR. ROBERTS: In the Chapter 4 or
15 the 205?

16 MR. CORREA: In 205.

17 MR. ROBERTS: Okay.

18 MR. CORREA: We have Part 267 in
19 Item Number (2) it references Paragraph
20 (1), and in your analysis document that
21 they distributed, you refer to it as
22 Subparagraph (1).

23 MR. ROBERTS: Oh, I see what
24 you're saying.

25 MR. CORREA: I don't know if it

1 makes any difference to us, but in case it
2 does to you, I just --

3 MR. ROBERTS: I appreciate that.
4 I m not sure where you start with a
5 paragraph and a subparagraph, but we can
6 take a look at that and then if Paragraph
7 (1) isn t the correct terminology for that,
8 we can maybe make that revision for the
9 Board, for them to review and just let them
10 know that we misidentified that.

11 MR. KENNEDY: Any other comments
12 from the Council? Any questions or
13 comments by the -- you guys, the regulated
14 community or the public?

15 Hearing none, do we have a
16 recommendation to approve this rulemaking?

17 MR. GRAVES: So moved.

18 MR. IHLER: Second. I ll second.

19 MR. KENNEDY: Okay. Mr. Ihler,
20 second.

21 Myrna, would you call the role.

22 MR. ROBERTS: This is for 5 and
23 6, Agenda Items 5 and 6.

24 MR. KENNEDY: Yes. You covered
25 both of those.

1 MR. ROBERTS: Okay.

2 MR. KENNEDY: We ve done that
3 before when they were fairly similar to
4 this one.

5 So this is for the approval of Item
6 Agenda Numbers 5 and 6.

7 MS. BRUCE: Wesley Anderson.

8 MR. ANDERSON: Yes.

9 MS. BRUCE: Brian Correa.

10 MR. CORREA: Yes.

11 MS. BRUCE: Bruce Elwell.

12 MR. ELWELL: Yes.

13 MS. BRUCE: Michael Graves.

14 MR. GRAVES: Yes.

15 MS. BRUCE: Gerald Ihler.

16 MR. IHLER: Yes.

17 MS. BRUCE: Bob Kennedy.

18 MR. KENNEDY: Yes.

19 MS. BRUCE: Motion approved.

20 MR. KENNEDY: Okay. Agenda Item

21 Number 7. Now I have a hunch that this is

22 why a lot of people might be here today.

23 That you weren t chomping at the bit to

24 hear Jon Roberts presentation of Items 5

25 and 6.

1 This is OAC 252:210, which is new,
2 Highway Spill Remediation. Emergency
3 rulemaking to implement the requirements of
4 Senate Bill 1938, the Oklahoma Highway
5 Remediation and Clean up Services Act,
6 passed by the Oklahoma Legislature during
7 the 2006 session. The Act becomes
8 effective here in about four weeks,
9 November 1, 2006 and gives the DEQ
10 authority, "to license, supervise, govern,
11 and regulate highway remediation and clean
12 up services...and operators", in Oklahoma.
13 The Act further requires DEQ to develop
14 rules to implement its provisions. New
15 Chapter 210 will contain the implementation
16 rules.

17 And for our presentation, Matt Pace,
18 with ECLS.

19 MR. PACE: Good morning. Can
20 everybody hear me okay? Okay.

21 My name is Matt Pace and I do work
22 in the Environmental Complaints and Local
23 Services Division. And you guys may be
24 wondering why somebody from ECLS is here to
25 present the rules today. That s mainly

1 because the ECLS Division will have
2 responsibility for implementing these
3 rules, once the rules are passed.

4 And on behalf of the ECLS Division,
5 I come before the Hazardous Waste
6 Management Advisory Council this morning to
7 present the proposed rules, the public
8 comments, and DEQ's response to those
9 comments of the newly formulated Chapter
10 210, Highway Spill Remediation. These will
11 be for the Council's recommendation to the
12 Environmental Quality Board.

13 So formulation of Chapter 210 was
14 necessary because of the passage of Senate
15 Bill 1938 during the Oklahoma Legislative
16 Session of 2006. This bill created the
17 Oklahoma Highway Remediation and Clean up
18 Services Act and gave authority for
19 implementing and enforcing the Act to DEQ.
20 So in order for us to develop a rule that
21 is clear and consistent with Senate Bill
22 1938, DEQ sought the input of both the
23 regulated community and other stakeholders
24 who may have an interest in these rules by
25 holding several meetings before our

1 publication date. These meetings provided
2 valuable information and comments for our
3 effort in developing a set of rules, that
4 being Chapter 210.

5 The proposed rules were then
6 published for public notice in the Oklahoma
7 Register on September 1st of 2006. This
8 publication date then initiated the public
9 comment period -- or the official public
10 comment period. DEQ provided an
11 opportunity for all interested parties to
12 submit comments, both written and oral, by
13 holding a public meeting on September 6,
14 2006 and then also accepting written
15 comments for the 30 days following the
16 publication date.

17 Since the proposed rule publication
18 date, several comments have been submitted.
19 According to the Administrative Procedures
20 Act and the DEQ Rulemaking Standard
21 Operating Procedure, DEQ must respond to
22 those comments. DEQ has evaluated each and
23 every comment and responded to the comments
24 and either given justification for not
25 including them in the rules or agreeing

1 with the comment and requesting that the
2 rule be adopted with the proposed change.

3 So now I will present those comments
4 and go over each comment with you all. And
5 what we ll do is we ll just go down each
6 section of the rules -- or each subchapter
7 within the rules and I will let you the
8 comment was and then how DEQ responded to
9 those comments.

10 The first subchapter, 210-1-1,
11 purpose, authority, and applicability, we
12 received one comment. The comment was, can
13 political subdivisions be exempted from
14 licensing requirements?

15 The DEQ staff interpreted the Bill -
16 - Senate Bill 1938 as not providing for any
17 exemption from licensing. But the statute
18 does allow the on-scene law enforcement
19 office to make exceptions as needed in
20 emergency situations. So DEQ staff does
21 not feel that it is necessary to exempt any
22 political sub-division from the rules.

23 The next subchapter, 210-1-3,
24 definitions, we had several comments. The
25 first comment, can truck, truck-tractor, et

1 cetera be removed from the definition of
2 collision?

3 DEQ staff determined that truck,
4 truck-tractor, et cetera can not be removed
5 from the definition of collision. Changing
6 this definition would conflict with Senate
7 Bill 1938's definition and does not
8 recommend the removal of truck, truck-
9 tractor, trailer, or any combination
10 thereof from the definition within the
11 proposed chapter 210.

12 The next comment, can motor
13 vehicle be used in the definition of
14 collision instead of truck, truck-tractor,
15 et cetera and be defined consistent with 47
16 Oklahoma Statute subsection 1-134?

17 Again, we concluded that Senate Bill
18 1938 clearly addressed that only trucks,
19 truck-tractors, trailers, or any
20 combination thereof so that the regulatory
21 definition can not include other vehicles
22 such as passenger cars. DEQ recommends
23 that no change to the definition be
24 included -- definition of collision.

25 The third comment, can "lead

1 official" be used instead of law
2 enforcement officer ?

3 DEQ staff has addressed this by
4 defining law enforcement officer as the
5 "lead official" as defined under the
6 Emergency Response Act. And this comment
7 actually came in prior to the publication
8 date, so we went ahead and put that into
9 the rules. So that s already in the rules
10 that you have before you today.

11 The fourth comment, can you quantify
12 the size of a spill that would require
13 clean up by a licensed contractor?

14 DEQ staff does not believe that
15 spill size should be quantified. Since the
16 risks vary greatly depending on the
17 strength of the spilled material and the
18 location and proximity to water supplies or
19 population centers, it would be impossible
20 to quantify spills requiring clean up. The
21 lead response official, with the input of
22 DEQ when required or requested, will be
23 responsible for determining the need for
24 clean up. When clean up is indicated it
25 must be done by a licensed clean up

1 service. Therefore, DEQ does not recommend
2 quantifying spill sizes that would require
3 clean up by a licensed contractor.

4 The next comment, can the hazardous
5 material definition mirror the DOT,
6 Department of Transportation, definition?
7 DEQ has determined that the hazardous
8 material definition should not completely
9 mirror the DOT definition. Staff further
10 concludes that not all hazardous materials
11 would be included in the DOT definition.
12 While defining a hazardous material in
13 these rules as anything regulated by DOT as
14 a hazardous material would most likely
15 capture 99 percent of what needs to be
16 captured and that definition would exclude
17 all cargo intended exclusively for home
18 use.

19 So, for example, a large retail
20 company is shipping materials or supplies
21 to one of their locations, such as
22 pesticides, herbicides, swimming pool
23 chemicals, paints, et cetera, those would
24 not be considered hazardous material. So
25 therefore, DEQ recommends no modification

1 to hazardous material definitions. We want
2 to make sure that we re able to capture all
3 of those hazardous materials.

4 MR. CORREA: Matt, why is that,
5 because they re consumer commodities?

6 MR. PACE: Yes.

7 MR. CORREA: Isn t there a
8 certain -- and is that 100 percent, though,
9 that Wal-Mart wouldn t be transporting
10 anything that might not be packaged as a
11 consumer commodity?

12 MR. PACE: Can you repeat that
13 question?

14 MR. CORREA: Well, I think there
15 is an assumption, here, that everything
16 that may be in route to Wal-Mart is some
17 sort of consumer commodity and to somebody
18 who is responding to one of those
19 incidents, I m just wondering if that is
20 100 percent accurate.

21 I mean, do we know that for a fact
22 or is there just an assumption that they re
23 mostly carrying consumer commodities?

24 MR. PACE: Well, yes, it is an
25 assumption that they are carrying consumer

1 commodities. Now, am I saying that right,
2 Mista?

3 I m referring to Mista Turner-
4 Burgess, she is the ECLS division attorney.

5 MS. TURNER-BURGESS: I m not
6 exactly sure what your question was trying
7 to get at, but I think the answer to our
8 comments is, basically, if there is
9 something that is excluded under that used
10 provision, that for home-use provision,
11 that actually might require special clean
12 up, that we would also want that cleaned up
13 by a licensed contractor and if we just use
14 the DOT definition, it excludes some items
15 that we think need to be covered. That s
16 really all he is saying.

17 MR. CORREA: I understand that
18 you want to include everything that may be
19 hazardous. I guess the point I was trying
20 to make -- and I don t know how far this
21 kind of writing goes, as far as guidance
22 documents that somebody may use at a later
23 time, but we know that Wal-Mart, when they
24 have damaged product and materials in their
25 stores, that they ship that material to be

1 disposed as a hazardous waste. So I guess
2 what I m concerned about here is if a
3 truck-load of Wal-Mart stuff happens to
4 spill and somebody goes and cleans it up,
5 they might be able to use this to say that
6 that material is not regulated as a waste
7 because it s household waste, okay. And I
8 don t think that s what we re trying to say
9 here; right?

10 MS. TURNER-BURGESS: If I
11 understand you correctly, you re trying to
12 say that this document -- the comment and
13 response document may be inaccurate. The
14 response -- technical aspect of it is
15 inaccurate. That it wouldn t necessarily
16 be -- it wouldn t be -- like, we might
17 somehow be excluding that material by
18 having it in this response document? Or
19 someone might read this and take this
20 response document as guidance?

21 MR. CORREA: I guess that s what
22 I m thinking is that somebody may interpret
23 what this is saying.

24 Now I understand what you want to
25 do, you want to capture everything that you

1 think may be dangerous.

2 MS. TURNER-BURGESS: Well, I
3 think this is just an example. I think
4 they used it just as an example of trying
5 to explain how the DOT regulation may not
6 capture everything and why we need to other
7 ones. And I think there is going to be an
8 instance where things that are shipped to a
9 Wal-Mart store that is considered cargo and
10 it can potentially be hazardous, would be
11 exempt under DOT regulations from requiring
12 -- if we use that definition as hazardous
13 waste, under ours, would be excluded
14 because it s excluded from their definition
15 of hazardous waste, because it s cargo
16 intended for retail.

17 And I don t know the wording of that
18 statute. I don t have it in front of me.
19 I apologize. But it is just an example and
20 I don t think that someone can rely on it
21 as guidance to say because DEQ wrote it in
22 response that that can be excluded under
23 DOT, that somehow someone s going to rely
24 on this document.

25 Sonny, can you correct me or --

1 MR. JOHNSON: Sonny Johnson, I m
2 supervising attorney for Land Protection
3 Division. Yeah, I think that what we re
4 getting at is that we don t want to allow
5 other definitions of hazardous waste by
6 other entities to interfere with the
7 installation of this particular bill as
8 defined by our legislature. So the
9 legislature -- I m shouting. So I think
10 that our point with this is that we don t
11 want to rely upon other definitions, we re
12 going to rely on 40 CFR definitions and DEQ
13 definitions, state definitions of what is
14 hazardous. So we won t look at this as an
15 exemption. It s covered under the deal.

16 MS. TURNER-BURGESS: And Sonny, I
17 think that the question he is getting at
18 is, can someone use this response --
19 comment and response document as guidance
20 to rely on in the future that, hey, there
21 is some exclusion under DOT?

22 MR. JOHNSON: No.

23 MS. TURNER-BURGESS: Okay. Did
24 that adequately --

25 MR. CORREA: Very good, thank

1 you.

2 MR. PACE: Thank you, Mista.

3 Okay. My next comment that we

4 received, does the hazardous material

5 definition include the diesel in a saddle

6 tank? DEQ staff has concluded that the

7 intent of Senate Bill 1938 is to include

8 the diesel within the saddle tank.

9 However, to further clarify, DEQ recommends

10 that the definition of hazardous materials

11 be revised by adding and/or combustible

12 immediately following flammable in the

13 definition of hazardous material.

14 The next comment, can you change the

15 definition of hazardous materials and --

16 pardon me for a second. This is kind of

17 two-part question, and addresses two

18 different substances.

19 Can you change the definition of

20 hazardous materials to exempt expiration

21 and production waste, or E and P waste?

22 And secondly, can you exempt crude oil?

23 To address the first part, the E and

24 P waste, we have determined that the E and

25 P waste is exempted through reference. The

1 current definition found within 40 CFR Part
2 260, which is the only part of the
3 definition of hazardous materials that
4 relates to E and P waste already
5 specifically excludes E and P waste.

6 To cover the crude oil, DEQ staff
7 firmly believes that crude oil is a
8 hazardous material. Since crude oil is
9 flammable and it is by definition and by
10 nature a hazardous material, according to
11 49 CFR 171, DEQ staff interprets the bill
12 as applying to all hazardous materials and
13 believes that making arbitrary exclusions
14 would be contrary to Senate Bill 1938.
15 Therefore, DEQ does not seek to modify the
16 definition of hazardous material to exempt
17 that of crude oil.

18 MR. CORREA: Hey, Matt, I have a
19 comment about that. And we just went
20 through a discussion about trying to
21 include everything that may be dangerous,
22 okay, and -- so nobody misunderstands
23 whether I support or don't support any part
24 of this statute, but it just seems strange
25 about how we rule, then, some exemption for

1 E and P waste out of the hazardous waste
2 rules and use that to say that those
3 materials aren't dangerous. Because I
4 thought that was the intent of what we were
5 trying to do, by grabbing these consumer
6 commodities, was to get everything. Now
7 we're saying that something is somehow
8 exempt without thinking about how dangerous
9 it is. So I think there is a conflict
10 there with what's going on.

11 MR. PACE: We weren't necessarily
12 trying to exclude any specific materials.
13 We referred to 40 CFR Part 260 to define
14 hazardous waste, I believe -- is it waste
15 or materials? And within that definition
16 it already excluded the E and P waste from
17 being defined as a hazardous waste.

18 MR. CORREA: I understand. What
19 it says though is, substance is including
20 but not limited to a long list of things,
21 and hazardous materials as defined by DOT
22 and hazardous waste as defined by 260;
23 right?

24 MR. PACE: Correct.

25 MR. CORREA: Including but not

1 limited to; right?

2 MR. PACE: Uh-huh.

3 MR. CORREA: So then why would we
4 exclude those materials if they re
5 dangerous?

6 MR. PACE: I m going to refer to
7 Mista again.

8 MS. TURNER-BURGESS: Okay. Try
9 to follow me. You re on the right path.

10 Under Part 260, they re exempted.

11 So they re not sucked in under that
12 definition. The only way that they will
13 fall back in, is, if they re under one of
14 the other two definitions. So if they, by
15 nature, are hazardous waste, they will be
16 under our definition of hazardous material.
17 They will fall under.

18 I am told by industry that there
19 aren t any of their E and P waste that
20 actually would fall in under our definition
21 just by nature. But if they do fall under
22 the definition under a different part, they
23 are not excluded from our whole definition
24 of hazardous materials.

25 MR. GRAVES: Well, let me jump in

1 here because I think that Brian has a good
2 point. As a matter of interpretation, when
3 you use -- you got a catch all or not, a
4 kind of very broad structure of the first
5 sentence, any substance that is spilled is
6 potentially harmful. Then you go on to say
7 -- when you use "include but not limited
8 to", those are examples, that s not a set
9 subset. So what -- I agree, what you
10 really have here is things that through
11 being listed in here are going to be per se
12 fall within it, but there are a lot of
13 other things and what you ve done is you
14 have put the burden on whoever the "lead
15 official" is who shows up out there to make
16 that determination, it s got to be on a
17 case by case basis. Which gets to the
18 question I wanted to ask, which is, what
19 kind of training are those people going to
20 have to recognize all this kind of stuff?
21 Because he s exactly right. If that guy
22 has got to make that determination and it
23 can include all kinds of other stuff that
24 doesn t fall within these categories.

25 MS. TURNER-BURGESS: I think I m

1 going to now refer to Monty Elder with the
2 Customer Service Division.

3 MS. ELDER: It s a tag-team. I m
4 Monty Elder, I m with the Customer Services
5 Division and I also serve as Chair of the
6 Oklahoma Hazardous Materials Emergency
7 Response Commission. And the reason that
8 is relevant is that that commission was
9 established under the Oklahoma Emergency
10 Response Act and that same Act defines what
11 a "lead official" is.

12 The "lead official" is defined as
13 either the fire department, the fire chief,
14 in a incorporated municipality, or outside
15 an incorporated municipality it is the
16 Highway Patrol, OHP.

17 I think it s impossible for us to
18 say, in this rule, exactly what is a
19 hazardous substance because it depends on
20 the circumstances. The big example I like
21 to use -- people in the audience will know
22 this example, is that just about the time
23 this rule was being written, we had a spill
24 of orange juice concentrate into a river --
25 or into a stream, which caused a fish kill.

1 Now you and I, if we were sitting here,
2 would say, do you want to include orange
3 juice in the definition of hazardous and
4 we'd go, no, it's orange juice. But in the
5 particular circumstance, in the right
6 location, it was indeed hazardous.

7 So we felt it was important to put
8 in something that caused the "lead
9 official" to use their knowledge in a
10 discretionary way.

11 There have been discussions in the
12 past about what is a "lead official". And
13 I think the fire chief, the fire
14 department, they have lots of training on
15 that and I know that the OHP has gone
16 through a series of training where their
17 troopers are trained to the awareness level
18 in hazardous materials. Again, that is --
19 the Emergency Response Act sets that up.
20 The Emergency Response Act also allows for
21 the "lead official" to turn the scene over
22 to someone else. And so in that case if a
23 trooper, for example, did not feel
24 qualified to make that determination, he
25 would have that discretion to turn it over

1 to someone we felt had greater training
2 that could make that.

3 MR. GRAVES: Thank you, that s
4 very helpful. But I think the point is --
5 and I m glad she made the point, you really
6 don t have anything that is, quote, exempt.
7 The person on the scene is the one who is
8 going to have to make that determination.

9 COUNCIL MEMBER: That s correct.

10 MR. CORREA: Do we have any folks
11 from the E and P sector in the audience
12 today? Would you like to speak about some
13 of the E and P waste that may be on the
14 highway?

15 MS. BURCKHALTER: My name is
16 Angie Burckhalter and I represent the
17 Oklahoma Independent Petroleum Association.
18 I m not sure I can answer all of your
19 questions, I know Tim Baker is here with
20 the Oklahoma Corporation Commission.

21 I think on -- I had submitted a
22 comment on this, but I think the DEQ has
23 maybe missed the point of my comment. My
24 focus was -- and I had it directed toward
25 the purpose, authority, and applicability

1 when I made this comment. I felt like that
2 the existing law provides the Oklahoma
3 Corporation Commission with exclusive
4 jurisdiction for -- and I m paraphrasing
5 the statute -- for the handling,
6 transportation, storage, and disposition of
7 such things such as salt water, metal
8 brines, waste stool, and other deleterious
9 substances produced from or obtained in the
10 connection with the drilling, development,
11 producing, and operating of oil and gas
12 waste.

13 So I think what my point is instead
14 of trying to change some kind of definition
15 of some sort, that really the authority on
16 those type of things is with the
17 Corporation Commission and not DEQ. I
18 think the statutes very clear on that. And
19 I think there is also a guidance document
20 that DEQ and the Corporation Commission
21 agreed to that kind of spells out these
22 type of requirements. And my comments went
23 to that point.

24 MR. CORREA: Thank you. I think
25 that is a very good point and if we re

1 including something that will end up
2 conflicting with some other statutes then
3 we have a different problem altogether.
4 Are the DEQ folks familiar with the statute
5 that she is referring to, that provides the
6 Corporation Commission with the exclusive
7 authority to regulate and control a spill
8 on a highway?

9 MS. BURCKHALTER: I gave it to
10 them, so I don't know how familiar they
11 are.

12 MS. TURNER-BURGESS: This is
13 Mista. We are very familiar with that and
14 the jurisdictional document that she is
15 referring to. Basically, our
16 interpretation is, that we aren't trying to
17 regulate those substances that are within
18 Corporation Commissions jurisdiction, all
19 that we are charged with, is licensing
20 people who have to clean up hazardous waste
21 spills. And that's a little different.
22 It's not the same -- we aren't taking
23 jurisdiction. We aren't assuming
24 jurisdiction over those materials.

25 MR. CORREA: Well, I guess it's

1 not clear to me that this rule recognizes
2 and makes people aware that there is
3 another statute that controls certain types
4 of materials. On it s face value, just --
5 I mean this is comments again. I don t
6 know that anybody will ever refer to this
7 again, but just reading this regulation, it
8 sounds to me like it includes everything,
9 yet maybe we should come right out and say,
10 except for those materials that are
11 governed by, and then reference the
12 statute.

13 MS. TURNER-BURGESS: I think that
14 our stance is that it covers all hazardous
15 materials that the bill -- Senate Bill did
16 not exclude hazardous substances that might
17 be regulated by the Corporation Commission.
18 It didn t exclude substances that might be
19 regulated by DOT. It said we have to
20 license anybody that s going to clean up a
21 spill of these types of materials. And I
22 don t think that we have the authority to
23 say that because the Corporation Commission
24 regulates oil and its waste product, that
25 we per se, will just exclude that from

1 needing a license contractor to clean it
2 up.

3 MR. CORREA: I can understand
4 that.

5 MS. TURNER-BURGESS: And I think
6 that is the difference. And I think that s
7 what our --

8 MR. CORREA: But yet on the other
9 hand, you have excluded it in your
10 comments.

11 MS. TURNER-BURGESS: Excluded?

12 MR. CORREA: I mean you just went
13 through a justification of why everything
14 is included, including E and P waste that
15 the Corporation Commission regulates, yet,
16 this comment seems to suggest that it s
17 not.

18 MS. TURNER-BURGESS: The comment
19 says there are definitions of hazardous
20 waste. We did not attempt to define what
21 hazardous waste, hazardous substances were.
22 We just said, look, hazardous materials,
23 and we went to existing definitions of
24 hazardous materials -- or hazardous waste,
25 hazardous materials, and hazardous

1 substances, and we included everything; all
2 those different definitions that we could
3 find, we included. And in one of those
4 definitions of hazardous waste, which is
5 provided by DOT, it specifically excludes,
6 and it says that E and P waste is not
7 hazardous. Which is why I was saying,
8 technically, it s excluded. It s not being
9 brought in per se by the hazardous waste
10 definition that we incorporated, it might
11 get included just by the definition and --
12 is it eight, nine -- what are those
13 classes? It may come in under the eight
14 hazard classes if we discover or if someone
15 on scene or if the person who spilled it
16 knew that it actually rose to the level of
17 being hazardous in a hazardous class.

18 And I understand this is very
19 complicated. We ve had a hard time
20 wrapping our minds around it and
21 understanding that it s kind of a --
22 everything is included but per se these
23 things that are already defined in another
24 regulation or statute are included in that
25 one section of hazardous waste that per se

1 would seem to include E and P then goes on
2 to specifically exclude it. So it s just
3 not per se included.

4 MR. CORREA: Okay. So your
5 written response isn t saying that exempted
6 E and P waste is not subject to this rule?

7 MS. TURNER-BURGESS: Correct.

8 MR. CORREA: Okay.

9 MS. TURNER-BURGESS: It might get
10 brought in under the others. But it s not
11 per se brought in, it s exempt.

12 MR. CORREA: Okay. Well, I guess
13 you just confused me, then.

14 MS. TURNER-BURGESS: Sorry.

15 MR. CORREA: It sounds like there
16 is another issue at hand here, though, that
17 I m not sure how or when it could be
18 resolved but if we have some conflicting
19 statutes on the books, I would think that
20 would be a problem.

21 MS. TURNER-BURGESS: And that
22 would be something that would need to be
23 dealt with in the Legislature.

24 MR. CORREA: Thank you.

25 MR. GRAVES: Our wonderful

1 Oklahoma Legislature does this all the
2 time. They enact these things without
3 going back to look at how they mesh up with
4 all their other Boards and stuff. But the
5 bill is pretty clear, there are no
6 exemption in their reference back to the
7 Corporation Commission at all. I think
8 these rules have to be written this way and
9 if the Legislature wants to change it,
10 they ll have to change it.

11 MS. BURCKHALTER: I just have one
12 follow-up comment to that. You know, I
13 realize that the DEQ was put in a very
14 difficult position because the bill was so
15 poorly written and doesn t provide much
16 guidance at all. But I think the statute
17 for the oil and gas has been out there,
18 it s been out there for a very long time,
19 that s what we ve been following for many,
20 many years and I think the way the rule is
21 now, there is no recognition that that
22 statute is out there. There is no -- if
23 someone picked up the rule, they would not
24 be able to understand that the Commission
25 has jurisdiction in some of those areas.

1 That s why the guidance document was
2 developed to define what those boundaries
3 are. So I would disagree. I think the
4 statutes very clear when it comes to oil
5 and gas.

6 MR. KENNEDY: All right. Thank
7 you. As Brian has pointed out, it s just a
8 lot of times the most important part of any
9 new rule is applicability and definitions.
10 I mean that sort of sets the stage for the
11 rest of what is written.

12 MR. GRAVES: There s something
13 else you could do, too, while you re
14 beating up on your Legislatures for writing
15 sloppy language. What Oklahoma really
16 needs is what the federal system does,
17 which is to have some real legislative
18 history. I mean we get these things with
19 no comments or explanations, that go into
20 the record like you get in federal
21 legislation. And so, reading them cold it
22 just -- you have no idea sometimes what on
23 earth they re talking about.

24 So if you really want -- I d really
25 urge you to go back to Legislatures and

1 urge them to finally enact something
2 approximating the federal system so you
3 have some kind of legislative history so
4 you know, we know what on earth -- and they
5 may have talked about that on the floor and
6 we have no idea about how it meshes up with
7 Corporation Commission because there is not
8 a word of it in here.

9 Anyway, I ll get off my soap box.

10 MR. KENNEDY: So at this point
11 we d like to welcome Matt back.

12 MR. PACE: Should I reintroduce
13 myself?

14 MR. GRAVES: Yes.

15 MR. PACE: Okay. Since there s
16 no problem with that comment, we ll move on
17 to the next one.

18 (Laughing)

19 MR. PACE: Can you change the
20 definition of "highway" so that it is
21 limited to only paved, high traffic
22 highways?

23 Well, according to DEQ, Senate Bill
24 1938 does not specifically define
25 "highway". So we had to go to a location

1 to find out how "highway" was defined. We
2 went to 47 Oklahoma Statute subsection 1-
3 122 and that defines "highway" as
4 including, "the entire width between the
5 boundary lines of every way publicly
6 maintained when any part thereof is open to
7 the use of the public for purposes of
8 vehicular traffic". Somewhat broad but
9 this definition does not limit highways to
10 paved, high traffic highways. So we do not
11 recommend any change to the definition of
12 "highway".

13 Okay. That is all of the comments
14 within that subchapter 210-1-3. We now
15 move on to 210-1-5, which is the general
16 provisions.

17 First comment, can you delete the
18 reference to the term, "technician" in 210-
19 1-5 since it has different meaning in OSHA
20 and NFPA regulations? And I believe the
21 NFPA refers to the National Fire Protection
22 Association.

23 We do not feel that it is necessary
24 to delete the reference to technician. The
25 new regulations specifically cite OSHA

1 regulations and not NFPA, so "technician"
2 is the proper term. No modification on the
3 use of "technician" is recommended by DEQ
4 staff.

5 Next comment, if a licensed clean up
6 contractor uses a subcontractor, does the
7 subcontractor need to be licensed, too?

8 DEQ staff has concluded that
9 subcontractors must also be licensed.
10 Senate Bill 1938 indicates that all
11 operators be licensed prior to engaging in
12 remediation and clean up services. So DEQ
13 seeks no change to the rules in response to
14 this comment.

15 The next comment. Can companies,
16 including oil and gas companies, which
17 routinely handle and transport hazardous
18 chemicals, be excluded from the licensure
19 requirements when cleaning up their own
20 spills?

21 DEQ staff has determined that
22 companies cleaning up their own spills can
23 not be excluded from licensure
24 requirements. This would be contrary to
25 the statute as it s written -- or to the

1 Senate Bill as it s written. However, non-
2 hazardous materials spilled anywhere or
3 hazardous materials spilled on private
4 property could be cleaned up by the company
5 without the need for a licensed remediator.
6 So DEQ does not believe that the rule
7 should be modified.

8 Can the requirement that tow trucks
9 be licensed be included in the section
10 addressing prerequisites for licensure?

11 DEQ responds that they do not
12 believe that it is necessary to move this
13 requirement to a different section. They
14 further believe that it is fully
15 enforceable where it is located. However,
16 the certification portion of the signature
17 statement in the actual application that s
18 going to be completed by the potential
19 licensees, has been modified to include a
20 statement that the applicant will only use
21 tow trucks registered by the Department of
22 Public Safety. So we do not recommend any
23 change.

24 Okay. We now move to subchapter
25 210-1-7, which are the prerequisites for

1 new licenses and renewal.

2 The only comment we received for
3 this subchapter is, can the age
4 prerequisite be changed to 21?

5 DEQ staff has deemed that 18 years
6 of age is an appropriate prerequisite.
7 Eighteen (18) years of age was chosen as
8 the age requirement since it is the legal
9 age to sign contracts and it is the age we
10 use in all other licensing regulations.
11 Therefore, DEQ does not recommend modifying
12 the age prerequisite.

13 Okay. The next subchapter that we
14 move to is 210-1-9, the licensure and
15 requirements.

16 The first comment is, that since the
17 renewal application is not due until
18 December 31, and the license expires on
19 December 31, it seems like the license
20 could expire before a new one could be
21 issued.

22 And that makes sense and we agree
23 that that should be changed. We recommend
24 correcting this by having the renewal
25 applications due on December 15th rather

1 than December 31st. This will give DEQ
2 ample time to review the application and
3 issue a renewal license before the old one
4 expires. As such we recommend Section 1-
5 9(b) be modified by changing the renewal
6 date to the 15th.

7 The next subchapter, 210-1-11,
8 licensee s duties; recordkeeping.

9 First comment is, can a highway mile
10 marker or physical address be included as
11 location options in the recordkeeping
12 requirement?

13 DEQ staff agrees. We recommend
14 Section 1-11(a)(3) be changed to include
15 highway mile marker and physical address as
16 options for identifying spill locations.

17 The next comment. How many years do
18 licensees have to retain records?

19 DEQ staff has recommended that
20 records be retained for three years. As
21 such, we recommend that adding Section 1-
22 11(c) as follows: "Records retention. All
23 records required to be maintained by the
24 licensee pursuant to this Section shall be
25 retained for a minimum of three years".

1 The next subchapter, 210-1-13,
2 license suspension and revocation. We
3 received two comments in this subchapter.

4 First one is, can you limit the
5 reasons for revoking or suspending licenses
6 to violations of this set of rules?

7 DEQ agrees that the reasons for
8 revoking or suspending licenses should be
9 limited to this set of rules. We further
10 recommend Section 1-13(a)(3) be modified by
11 removing the "Environmental Quality Code"
12 from that sentence.

13 So now it will read, "Any violation
14 of this Chapter or any final DEQ order".

15 The second comment, why is there a
16 provision for how to obtain a new license
17 after suspension? And when would a license
18 be suspended for a specific period of time?

19 This is kind of a two-part question
20 and to answer both of these questions, DEQ
21 is not going to suspend the license for a
22 specified period of time, but instead, DEQ
23 would suspend the license until the
24 licensee returns to compliance. Failure to
25 achieve compliance within 12 months of

1 suspension would require a new license.

2 So as such, DEQ staff recommends
3 that Section 1-13(b)(2) be changed by
4 striking, "after the specified term of
5 suspension or, if the term is indefinite"
6 from that sentence. So now that would
7 read, "may apply for reinstatement of their
8 license at any time during the 12 months
9 following the date of their suspension by"
10 and so on.

11 The next subchapter, 210-1-15 covers
12 fees. We did not receive any comments for
13 this subchapter.

14 And that concludes all of the
15 comments that we received and have
16 submitted to you guys today. However, we
17 did receive two comments first thing this
18 morning, before we were able to include it
19 in the documents that you have before you,
20 so they were not addressed in the printed
21 response. So we will go ahead and cover
22 those right now.

23 First comment, the acts nor the
24 rules provide for any penalties in the
25 event someone other than a licensed

1 contractor performs remediation.

2 DEQ does not feel that it is
3 necessary to include penalties within the
4 rules because DEQ already has the authority
5 under the Environmental Quality Code to
6 issue fines and orders. Therefore, we do
7 not recommend any change to the rules,
8 based on this comment.

9 The next new comment was, the
10 definition of "spill" should be amended to
11 include any release of hazardous material
12 caused by a collision.

13 DEQ believes that changing the
14 definition of "spill" is not required.
15 Senate Bill 1938 only addresses spills
16 resulting from the collision of a truck,
17 truck-tractor, trailer, or any combination
18 thereof. So we do not recommend modifying
19 the definition of "spill: to include any
20 release of hazardous material caused by a
21 collision.

22 So it s only going to apply to the
23 spills resulting from the collision
24 involving the truck, truck-tractor,
25 trailer, or any combination thereof.

1 Both of these comments, as I said,
2 are not listed in the comments that you
3 have before you today. However, they will
4 be included in the public record once we --
5 that goes out for publication.

6 Those were all of the public
7 comments that really applied to these
8 rules. We did receive some general
9 comments and questions. Several of them
10 were out of the scope of the rulemaking
11 process so we didn't include them within
12 the particular subchapters. They are
13 listed there for your review and we can
14 cover those if you would like. Otherwise,
15 that concludes my presentation.

16 MR. KENNEDY: Okay. Thank you,
17 Matt.

18 Are we to -- obviously Chapter 210
19 was mailed to us several weeks ago in our
20 packets and I noticed we also had a copy
21 when we arrived here, and it doesn't look
22 like the changes and the comments there
23 have been integrated into what --

24 MR. ROBERTS: They have been.
25 The one that is titled -- at the very top

1 it says HW Council Draft with Proposed
2 Changes and dated October 4th of 2006.

3 MR. KENNEDY: Hold on. I have
4 too many copies right now. Okay. Here we
5 go.

6 MR. ROBERTS: That is the one
7 that is the original 210 s that were mailed
8 out with the packets but then this one also
9 incorporates the changes recommended by DEQ
10 so we can see them in this context.

11 MR. KENNEDY: So we can see them
12 in this context.

13 MR. ROBERTS: Right.

14 MR. KENNEDY: Okay. I see. I
15 was just -- if we get to the point where
16 we re going to approve these, I wanted to
17 know which one to state for approval.

18 Any other questions -- or any
19 questions and discussion by the Council,
20 concerning what Matt has presented?

21 MR. GRAVES: Yeah, I have
22 several, so somebody needs to get back up
23 there.

24 210-1-11(a), the licensee shall
25 maintain and make available to DEQ, upon

1 request, a record of all remediations. I
2 assume you re talking about all
3 remediations that are performed, pursuant
4 to this set of rules, not every remediation
5 this guy has done on private property. You
6 need to change that to make it clear.

7 MS. TURNER-BURGESS: Do you have
8 any proposed language?

9 MR. GRAVES: Not yet. I ve just
10 -- but I ll get you some.

11 Next, on subpart (1), when you say
12 name and contact information for the person
13 or entity responsible for the spill, what
14 do you mean? That is an ambiguous term.
15 The truck gets run off the road by a
16 speeding motorist, the person who is
17 responsible for the spill is the speeding
18 motorist, that s not who you mean; is it?

19 COUNCIL MEMBER: I want a copy of
20 the rules.

21 MR. GRAVES: Okay.

22 MS. TURNER-BURGESS: No. We ll
23 work on language, okay?

24 MR. GRAVES: Okay. All right,
25 back up in 1-9. I understand you want

1 general liability insurance policy but
2 general liability insurance policies do not
3 include pollution coverage anymore, you
4 have to get a separate pollution coverage
5 and there are at least nine different kinds
6 of coverage, which ones do you want?

7 MS. TURNER-BURGESS: We actually
8 called the Insurance Commissioner to try to
9 sort all of that out and we were trying to
10 take input at the public meetings on
11 exactly what type. We were told, since
12 we re not insurance experts, that we just
13 needed the general liability coverage that
14 specifically included the environmental
15 (inaudible).

16 MR. GRAVES: Well, general
17 liability policies usually will cover --

18 MS. TURNER-BURGESS: Right,
19 they ll cover that.

20 MR. GRAVES: -- accidents, but
21 pollution coverage is very specific kinds
22 of stuff. My question was, you re going to
23 take that out because you don t need it?

24 MS. TURNER-BURGESS: No. They
25 need to specifically include the

1 environmental coverage.

2 MR. GRAVES: Well, but those are
3 separate policies. You don't get that
4 under general liability.

5 MS. TURNER-BURGESS: Okay. We
6 were told it would just be --

7 MR. GRAVES: At least my clients
8 don't.

9 MS. TURNER-BURGESS: If you have
10 better language, we want to make sure that
11 it is included --

12 MR. GRAVES: But my question is
13 for what?

14 MS. TURNER-BURGESS: -- and we
15 could --

16 MR. GRAVES: I mean there are --

17 MS. TURNER-BURGESS: For any
18 damage that is done to the environment or
19 people who are cleaning it up. If a spill
20 takes place, if there is any potential
21 damages due to that environmental hazard
22 for the remediation.

23 MS. ELDER: In case the person
24 doing the remediation makes the situation
25 worse, there needs to be some insurance so

1 that that worsened problem can be taken
2 care of. Because that has, unfortunately,
3 happened in the past. A contractor who
4 perhaps was not versed in the material,
5 made a situation worse and then somebody
6 else has to come take care of it. And the
7 way the law reads, is the person who is
8 responsible for the material that s
9 spilled, they re responsible for paying for
10 the clean up. But if, during the course of
11 the clean up, the situation gets worse
12 because of the actions of the contractor,
13 then this insurance would cover remediating
14 from the failed remediation.

15 MR. GRAVES: Okay. Your focus is
16 on covering -- making sure you cover the
17 remediation itself.

18 MS. ELDER: Right.

19 MR. GRAVES: Because most
20 pollution coverages are not dealing with
21 remediations, they re dealing with damages
22 to the land or the property.

23 MS. ELDER: Right. But this
24 would be damages to the land or property
25 that occurred because of the remediation,

1 not because of the spill, because the
2 licensee would have to carry the coverage.

3 In other words, the person who --
4 the truck driver who had the spill and
5 there were damages to the environment just
6 because of the spill from the collision,
7 they've got to have their own insurance.
8 This addresses the insurance of the
9 contractor in case they make the situation
10 worse. For the part that's made worse
11 they've got to be responsible for that.

12 MS. TURNER-BURGESS: How do we
13 fix that?

14 MR. GRAVES: Again, are you --
15 how about the land? Is it supposed to
16 cover the land owner's damages because
17 that's what most pollution coverage covers?

18 MS. TURNER-BURGESS: It should.
19 If they make it worse and it's public or
20 private property --

21 MR. GRAVES: You're
22 misunderstanding me.

23 MS. TURNER-BURGESS: Okay.

24 MR. GRAVES: Because that doesn't
25 have anything to do with remediation, it

1 has to do with damages to the -- the
2 diminution in value in property, perhaps
3 from a stigma, from having a big spill on
4 your land, for instance. Those are the
5 kinds of things that pollution coverages
6 will sometimes cover. I don't -- I wanted
7 to know if that's the kind of thing you're
8 talking about or are you just talking about
9 the remediation cost themselves because you
10 get different kinds of policies?

11 MS. TURNER-BURGESS: Right.

12 Well, this one was not specified in the
13 statute. We were kind of left vague and
14 not being versed in the policies that are
15 available, we would actually be open to
16 suggestion if you have a suggestion on what
17 type of policy ought to be applicable on
18 that type of situation.

19 And again, our concern when we were
20 thinking of the environmental coverage is,
21 when someone goes out and they try to clean
22 it up and they do it the wrong way and they
23 cause it to be worse, they don't complete
24 it, what their liability is to the
25 landowner, whoever the landowner is, and

1 the people.

2 MR. GRAVES: I understand.

3 MS. TURNER-BURGESS: And I don't
4 know how to get to that other than what the
5 Insurance Commissioner said.

6 MR. GRAVES: Well, what I'm going
7 to do is go back and get with the guy who
8 handles all my clients and we'll talk with
9 them about this because what you don't want
10 to do is have people carrying things they
11 don't need because this stuff is expensive,
12 pollution policies are expensive. General
13 liability, everyone knows what that is, but
14 I will look into that and get back with you
15 guys.

16 MR. CRUISE: George Cruise with
17 Environmental Clean up. I think what we're
18 doing here is -- a transporter has to have
19 pollution insurance, okay, if you're going
20 to transport hazardous material. And it's
21 my understanding that if a transporter has
22 a spill, it's up to him to have it cleaned
23 up; correct? So if he's going to have to
24 have it cleaned up, the clean up company
25 will not be liable for the other impact, is

1 my understanding. It would fall back on
2 the transporters insurance.

3 MR. CORREA: Wouldn't the kind of
4 insurance that you're looking for be like a
5 professional liability, like engineers have
6 and stuff?

7 MR. CRUISE: Right.

8 MR. CORREA: That if they make a
9 mistake, they have a policy for that. What
10 do you call that?

11 COUNCIL MEMBER: Errors and
12 omission insurance.

13 MR. CRUISE: Right. Now they do
14 have what they call in-ground insurance,
15 which we carry, you know, for pipes and
16 stuff that we clean with our vacuum truck.
17 But that wouldn't fall under --

18 MR. KENNEDY: No, the
19 professionals -- the errors and omissions
20 policy for -- you're an expert in this
21 field and --

22 MR. CORREA: Would that
23 be (inaudible).

24 MR. KENNEDY: That could be. I
25 mean when we're getting into -- it's really

1 -- that s just the whole line of how
2 insurance companies work, is that
3 delineation of what s your responsibility
4 and what s --

5 MS. TURNER-BURGESS: Absolutely.

6 MR. KENNEDY: With this -- this
7 would be a huge battle between two
8 insurance companies over whose --

9 MS. TURNER-BURGESS: So I might
10 make a recommendation that we leave it,
11 that it includes pollution coverage and
12 recommend those, but then come up with some
13 language from people who know what kind of
14 coverage should be had and give that to the
15 Board. I mean, I d be concerned about just
16 striking it. What we re up against, too,
17 we have to remember is, this goes into --
18 this bill goes into effect on November 1st.
19 We have to have rules. We can t not have
20 them. The bill specifically said there had
21 to be insurance or bonding requirements, so
22 we have to have that included. Some rules
23 are going to have to go before the Board.
24 So I m trying to figure out how can we work
25 this out without striking it but making

1 sure that it gets changed to the
2 appropriate coverage by the time we get to
3 the Board, which is -- is it next month?
4 It s next month.

5 MR. CORREA: Maybe you should
6 talk to one of the insurance companies who
7 write pollution coverage.

8 MS. TURNER-BURGESS: Okay.

9 MR. CORREA: I kind of have the
10 feeling that what you re asking for here
11 doesn t exist or it won t be written at any
12 kind of reasonable price. Because there is
13 no way to assess what you might do.

14 MS. TURNER-BURGESS: Well, and
15 you guys are talking about a different kind
16 altogether, though, that a professional --
17 and maybe that would cover it. What s it
18 called, I don t know. We ve had a hard
19 time --

20 MS. ELDER: One of the things
21 that has been in effect for a while, the
22 Oklahoma Hazardous -- the Emergency
23 Response Act requires DEQ to keep a list of
24 qualified clean up contractors. But there
25 is no way until now to determine what

1 qualified was. So by the direction of the
2 OHMERC, one of the things that we have
3 done,
4 was have a voluntary list, people -- we
5 send out a thing to clean up contractors
6 and say, if you want to be on our list,
7 which the law doesn't -- the Emergency
8 Response Law, different from this law, the
9 other law, didn't say anybody had to use,
10 didn't say that you had to be on it, but
11 says we have to keep it. If you want to be
12 on that list, send us a bunch of
13 information and we'll have it so people can
14 see that information. And on that
15 information collected, was insurance. And
16 people -- clean up contractors would tell
17 us that they had pollution insurance.

18 Some of our responders who use the
19 current list, which will go out of effect
20 when we get a license but is still
21 currently in effect -- some of our folks
22 from the city, some of our Hazmat people
23 came to the OHMERC and said, we'd like it
24 to be not quite so open-ended and
25 voluntary, we would like people to

1 demonstrate certain requirements before
2 they can get on this list. And so we had a
3 number of meetings that we halted, because
4 Senate Bill 1938 came along and it seemed
5 moot at that point. But in those
6 discussions we had a discussion with the
7 fire chiefs and folks like that and they
8 all were insistent that we use the term,
9 "pollution coverage" or "environmental
10 insurance" and that clean up contractors
11 specifically have that. And so that s one
12 of the places that that language came from,
13 is from a series of meetings we had trying
14 to look at coming up with a list of clean
15 up contractors prior to this licensing
16 bill.

17 And so my understanding was, in
18 leading those meetings, that there was such
19 a thing as environmental pollution
20 insurance and that in fact environmental
21 companies had been carrying that type of
22 thing. And there are representatives from
23 environmental companies here who may or may
24 not be able to speak to that. But that s
25 one of the places that language came from.

1 MR. KENNEDY: And if anyone does
2 have a comment. I know, normally, the
3 procedure is the Council's discussion and
4 questions and comments and then to the
5 public, but since this might be a fairly
6 lengthy discussion on several issues, we
7 might integrate while it's appropriate, on
8 any given topic -- kind of go back and
9 forth here.

10 MR. GRAVES: I want to go back to
11 210-1-11(a) and suggest that after the word
12 remediations, at the end of the first
13 sentence, insert, "performed pursuant to
14 this chapter". But then I want to get back
15 to the one under (a)(1) on responsible. I
16 mean, are you really talking, there, the
17 contact information for who owns the
18 vehicle? Is that who you're talking about
19 or --

20 MR. KENNEDY: I believe so.

21 MS. ELDER: For who owns the
22 material.

23 MS. TURNER-BURGESS: Yes. I
24 suggested --

25 MR. GRAVES: That was my question

1 because those can be two different people.

2 MS. TURNER-BURGESS: Okay. I
3 suggested name and contact information for
4 the person or entity responsible for the
5 material spilled. Does that clarify it
6 enough?

7 MR. GRAVES: For the material?

8 MR. KENNEDY: Yes.

9 MS. TURNER-BURGESS: For the
10 material itself.

11 MR. GRAVES: Yeah, that s fine.
12 But I wasn t sure who you meant.

13 MS. TURNER-BURGESS: Okay. So
14 that would be inserting "materials" after
15 "the" and before "spill", striking "spill"
16 and adding "spilled".

17 MR. GRAVES: Yeah. Okay.

18 MR. KENNEDY: So the name and
19 contact information for the person or
20 entity responsible for the materials
21 spilled, period.

22 Sir?

23 MR. MCRAE: On the pollution
24 insurance you re talking about, what we
25 carry is a general liability insurance

1 policy with the pollution rider -- I m with
2 Hazmat Response.

3 MR. KENNEDY: And your name?

4 MR. MCRAy: Robert McRay.

5 MR. KENNEDY: Thank you.

6 MR. MCRAy: I m out of Kansas
7 City.

8 We carry a general liability policy
9 with a pollution rider on that policy and
10 some other riders on that policy, but
11 telling somebody they need to have
12 insurance doesn t do a lot of good if you
13 don t tell what limits that insurance has
14 to have.

15 If you have a \$1,000 pollution
16 liability insurance, you might as well not
17 have a pollution liability insurance, if
18 there s not some parameters of an amount or
19 where you want that insurance to be.

20 MR. GRAVES: What does that rider
21 provide? Do you have the language or
22 something?

23 MR. MCRAy: I would have to look
24 at our specific policy to see what the
25 pollution liability rider pertains to. We

1 have different limits with different
2 customers of what amount of pollution
3 liability insurance we need to carry, what
4 needs to be included in that, and what our
5 umbrella coverage needs to have, what our
6 gen-liability has to have.

7 MR. GRAVES: But is that because
8 your general liability itself doesn't cover
9 a spill?

10 MR. MCRAE: I wouldn't know about
11 the general liability. I just know what we
12 cover -- or what we carry. We have a
13 separate rider for pollution in our
14 insurance policy and whether that's driven
15 by what our customers want us to have or
16 what we've decided over the years we need
17 to have, I couldn't speak for that.

18 MR. GRAVES: Okay. But the rider
19 has a -- you're saying --

20 MR. MCRAE: The rider has a
21 separate dollar figure attached to their --
22 to it.

23 MR. GRAVES: So just putting a
24 million dollars -- yeah, I see what you're
25 saying. You'd almost have to specify --

1 that s ambiguous (inaudible).

2 MR. MCRAVY: Did you want a
3 \$100,000 liability, do you want a \$10,000
4 liability? It s more than just what are
5 the coverage limits of that policy.
6 Because if it s a very -- like you say,
7 that s expensive insurance to carry. It s
8 going to vary widely, depending on what the
9 limits of the coverage are.

10 MR. GRAVES: Because I would read
11 -- the way this is written, you need a
12 general liability policy at a million
13 dollars, and you ve got to have pollution
14 coverage, but that could be for One-fifty.

15 MR. MCRAVY: Right.

16 MR. GRAVES: Whatever it provides
17 for. I d really like to see the language
18 to see what it is.

19 MS. ELDER: I believe that when
20 we -- the discussions that I ve been part
21 of that the intent was to have basically a
22 liability insurance but that the specific
23 pollution coverage be a minimum of a
24 million dollars. So that, I believe, was
25 the intent of that, at least from the

1 discussions that I had been party to.

2 MS. TURNER-BURGESS: I have an --
3 this is Mista, again. I have an example
4 Certificate of Liability. Like you said,
5 each insurance company is going to call it
6 something different, they're going to
7 charge something different for it. This
8 specific one calls it transporters
9 pollution liability, in one spot, and then
10 they also have an included contractors
11 pollution liability. I don't know what it
12 covers, I don't have specifics. But those
13 limits, I think, were -- it looks like a
14 million dollar limit on each of those.

15 MR. GRAVES: You've got a term
16 sheet but you don't have the language of
17 the policy itself?

18 MS. TURNER-BURGESS: Right.

19 MR. GRAVES: Is any of them an
20 insurance policy?

21 MR. JOHNSON: Would it help you,
22 Michael, if you look at that paragraph
23 we're talking about and -- I agree with
24 what you're saying, if you just switch the
25 language around, has a general liability

1 insurance policy that includes pollution
2 coverage in the amount of at least one
3 million dollars.

4 MR. GRAVES: Yeah. That would
5 make it clearer. I'd still like to know
6 what the coverage is.

7 MR. KENNEDY: So the revision
8 being --

9 MR. GRAVES: Because what I'm
10 taking it is that -- if I'm understanding
11 what you people are saying, which is, that
12 it's that rider which actually is going to
13 cover the spill, clean up part, not the
14 general liability policy. I mean that
15 would be my understanding. I mean -- so,
16 yeah, if that's the minimum amount of
17 coverage then that would -- that you want,
18 then that would be the way to word it.
19 Then it's clear that you got to have a --
20 whatever that thing is, you need to
21 (inaudible).

22 MR. KENNEDY: We're at 252:210-1-
23 9 (b)(3)?

24 MR. GRAVES: (b)(3).

25 MR. KENNEDY: Submitting

1 documentation to DEQ that the applicant has
2 a general liability insurance policy that
3 includes pollution coverage in the amount
4 of one million dollars.

5 MR. GRAVES: At least. Of at
6 least one million dollars.

7 MR. KENNEDY: Of at least one
8 million -- okay. Of at least one million
9 dollars, then period.

10 MR. ROBERTS: Mr. Chairman, you
11 also want to have that same language in 1-
12 9(a)(3) for the initial license?

13 MR. GRAVES: Yes.

14 MR. KENNEDY: Okay. That s where
15 I originally had it underlined. So it s
16 just a parallel statement for (a)(3) and
17 (b)(3).

18 I had a question about 1-11(a)(7);
19 shall include, at a minimum, the following:
20 location and date of ultimate disposal.
21 Should that -- again, people that are in
22 this line of work, is that always known
23 that -- I m just thinking when you have a
24 spill, the clean up -- you know, the
25 mechanism of what -- smaller spills -- I m

1 assuming -- I m thinking more in the
2 hazardous waste business, we have, say a
3 drum spill kit or maybe there was something
4 leaking in there and they clean up and then
5 it might be added to the manifest. But
6 then there s other spills that generate
7 totally different documents. There may be
8 a bill elating on something that was just a
9 hazardous material that becomes a hazardous
10 waste. And I m just wondering, is Item 7
11 always known by the remediation contract or
12 -- the date of ultimate disposal, I don t
13 know if that --

14 MR. ROBERTS: Well, if I could
15 interject --

16 MR. KENNEDY: What do you mean by
17 that?

18 MR. ROBERTS: -- I would think
19 that once somebody did a clean up, they
20 would -- I mean they have to do something
21 with the stuff that they cleaned up and at
22 some point in time they should know where
23 it was ultimately disposed of. They may
24 not know that particular day, for instance,
25 but at some point in time, they re going to

1 have to manage it and get rid of it and
2 then at that point in time, I think we
3 would want to have either a bill relating to
4 show what landfill it went to or --

5 MR. KENNEDY: Well, I m just not
6 sure that the licensee is going to have the
7 record, of say, the date of ultimate
8 disposal because if it were a manifest,
9 there would be a transporter there. It may
10 go back to the yard and then ultimately go
11 to -- so their paperwork may not show the
12 final TSD receipt and the date. Anyway, I
13 was just wondering about the language of
14 date of ultimate disposal.

15 MS. ELDER: One of the reasons
16 that we had people request of us in
17 meetings prior to the official public
18 comment period, they requested that in the
19 recordkeeping that that final disposal be
20 in the records because, for example, the
21 City of Oklahoma City had a great concern
22 that the contractor didn t pull away with
23 the hazardous waste and go to the nearest
24 creek and lose a load and drive off and --
25 you know, they wanted some record of where

1 it went in case there was ever a complaint
2 on that.

3 MR. GRAVES: Are you assuming
4 then, that the remediation contractor is
5 going to be the one who manifest the waste?

6 MS. ELDER: We re assuming that
7 the remediation contractor has picked it up
8 or done some activity that -- maybe you
9 have an absorbent, maybe removed dirt,
10 something like that, and then the
11 remediation clean up contractor is going to
12 take that somewhere to be disposed of. And
13 they want to know where that is.

14 MR. KENNEDY: He d be the perfect
15 man to explain. I mean in general, I know
16 if varies from scenario to scenario.

17 MR. RABATINE: Right. My name is
18 Bob Rabatine and I work with Environmental
19 Management out of Guthrie. We are an
20 emergency response provider nationwide, but
21 we re based here in Oklahoma.

22 The question that you raised -- and
23 this was something that I didn t notice
24 when I first read through that rule, but
25 there are different scenarios and if the

1 contractor takes the waste away, I think
2 that s reasonable that you have it in your
3 file and I think it s the contractors
4 responsibility to document in their records
5 if they did not take it away, if it was
6 over-packed, placed back on the truck and
7 then forwarded as freight, something like
8 that. So in other words, there should be
9 ample information available to the response
10 company as to the disposition of the
11 material.

12 MR. KENNEDY: Okay.

13 MR. RABATINE: Does that answer
14 the question?

15 MR. GRAVES: Well, in that latter
16 scenario, if something falls out of the
17 back of the truck, one barrel rolling
18 around, it s scooped up, over-packed, put
19 back into that -- into where it was going,
20 how would the remediation contractor here
21 necessarily know where it ended up?

22 MR. RABATINE: In that
23 circumstance, they would not. Because,
24 again, that would be -- the trucking
25 company would be maintaining the

1 responsibility of the material.

2 MR. GRAVES: Right. And then
3 they would be in violation of not bringing
4 -- they wouldn't be able to meet this
5 requirement.

6 MR. KENNEDY: Are you really
7 wanting to know the location where it went
8 and its final disposition? I mean to me,
9 this language of ultimate disposal has a
10 certain terminology to it. Those that have
11 been in the hazardous waste business --

12 MS. TURNER-BURGESS: And for that
13 reason -- this is Mista -- we would suggest
14 that you just go ahead and add at the end
15 of 1-11(a)(7), "or disposition", so that it
16 would read, "location and date of ultimate
17 disposal or disposition". And I think that
18 should take care of your questions.

19 MR. KENNEDY: Okay. Is everyone
20 --

21 MR. GRAVES: Location and date of
22 ultimate disposal or disposition. You're
23 still dealing with ultimate out there in
24 front. You're not -- do you have a comma
25 in there before -- after disposal.

1 MS. TURNER-BURGESS: You can
2 strike ultimate.

3 MR. GRAVES: Great.

4 MS. TURNER-BURGESS: Would that
5 take care of your concern?

6 MR. GRAVES: Yes. That would
7 help. That helps a lot.

8 MR. KENNEDY: Yes, I m done.

9 MR. CORREA: Yeah, Mista, I ve
10 got a questions. The legal definition of
11 principal -- on 210-1-7(3), the principal
12 business facilities must be located in the
13 State of Oklahoma; I was just wondering if
14 you could explain to me at least how you
15 would define that.

16 MS. TURNER-BURGESS: Okay. And
17 before I do it, I m going to remind
18 everybody that 1-7 -- that subchapter 1-7
19 is all inclusive, you have to meet all five
20 criteria, okay? Which means that the
21 company has to either be incorporated in
22 Oklahoma or the owner of the business must
23 be a resident of the State of Oklahoma.
24 And that is pursuant to Senate Bill --

25 MR. GRAVES: Yes, that s right

1 out of the Statute.

2 MS. TURNER-BURGESS: It s right
3 out of the Statute --

4 MR. GRAVES: And they don t
5 define any of it.

6 MS. TURNER-BURGESS: So is the
7 principal place of business. But the
8 principal place of business is a legal term
9 of ours and it s going to be where the
10 majority of the paperwork and financial
11 documents and stuff like that is located.
12 Where they mainly operate out of --
13 headquarters.

14 MR. CORREA: Well, I guess that s
15 how I would interpret it, too. Which means
16 it will -- with one felled swoop, we ve
17 eliminated all the emergency response firms
18 that don t have their principal business in
19 Oklahoma.

20 MS. TURNER-BURGESS: That is what
21 the Statute did --

22 MR. CORREA: Yes.

23 MS. TURNER-BURGESS: -- on its
24 face.

25 MR. CORREA: Yes. I understand.

1 And I guess what I m going to move on to
2 from that, which is probably my biggest
3 problem with this whole thing, is this rule
4 impact statement, where all it talks about
5 is the businesses who provide these
6 services and totally ignores the people who
7 actually are responsible for the spill; the
8 trucking company or the owner of the cargo.
9 And I m just very worried that this will
10 reduce the number of professionals
11 available to respond to spills to a much
12 lower level, a much, much lower level than
13 it is today and that this could actually
14 cause more problems and have more impact on
15 the environment than if we just stayed the
16 way we are right now.

17 MS. TURNER-BURGESS: Okay. I
18 agree with what you re saying but what
19 you re looking at is the rule impact
20 statement and what you re kind of really
21 wanting to refer to is, something we don t
22 have, a statute impact statement. The rule
23 -- because the statute is what it is, the
24 rules aren t doing -- the rule isn t really
25 impacting, it s the statute and we just

1 have to implement -- we re trying to
2 implement rules, according to what the face
3 of the statute is, and so the rules really
4 aren t impacting it, it s the statute. And
5 I understand it s a fine line between
6 what s legally necessary in the rule impact
7 statement and what s not. But you re
8 really addressing a statute impact
9 statement concern.

10 MR. CORREA: I ll take it all
11 back. Okay? But I did want, for the
12 record, for the legal folks to put in the
13 record what that word "principal" means,
14 because I think that is going to be
15 critical, going forward here, with whatever
16 happens that we adequately and extensively
17 define what is meant by that word,
18 "principal". Because I think it has a
19 major impact on what might happen in
20 Oklahoma. And I m very concerned about
21 what might happen.

22 MS. TURNER-BURGESS: I think that
23 you will find that there is sufficient case
24 law out there that will adequately cover
25 what principal place of business is.

1 MR. CORREA: So it has to be your
2 first and foremost, i.e. your headquarters?

3 MR. GRAVES: It s really actually
4 very easy to solve if they are in business.
5 And I don t know how much business there is
6 in Oklahoma for this stuff, but you just
7 set up a separate -- you ve got a national
8 corporation, just set up a new subsidiary
9 that s located in Oklahoma. That takes
10 care of it. No big deal.

11 MR. CORREA: But that won t be
12 your principal place --

13 MR. GRAVES: It will be a
14 subsidiary and that s all that s important.
15 It s a separate legal entity.

16 MR. CORREA: So you create
17 another corporation?

18 MR. GRAVES: Yep. You have
19 another sub. It s no big deal.

20 MR. CORREA: Okay.

21 MS. TURNER-BURGESS: This is
22 something that I d advise that the
23 companies to check with their own attorney
24 on.

25 MR. GRAVES: But it s really not

1 a big deal if the business is there.

2 MR. KENNEDY: Any other questions
3 or comments about the rule from the
4 Council?

5 I was on the website yesterday and I
6 couldn't find the application online. Is
7 that -- there's a lot of things that I
8 haven't been able to find on DEQ and then
9 somebody smarter than me shows me exactly
10 where they are. So it could be me, but is
11 that -- on 210-1-9, just the initial
12 license application, is it --

13 MR. ROBERTS: They're not --
14 correct me if I'm wrong, they're not
15 finalized yet until we get the rules
16 finalized.

17 MR. KENNEDY: Okay. I didn't
18 know if there was something to look at,
19 initially --

20 MS. TURNER-BURGESS: We do have a
21 draft.

22 MR. KENNEDY: Okay.

23 MS. TURNER-BURGESS: We have a
24 draft application that's out there. Have
25 we provided that?

1 MR. COLLINS: It has not been
2 sent to the Council but the regulated
3 community has a copy.

4 MR. KENNEDY: Okay.

5 MS. TURNER-BURGESS: It s
6 definitely available and we can give it to
7 anybody that s interested in looking at it.
8 We ve had comments on it and we re still
9 revising it and we probably won t do it on
10 the website until the rules are adopted.

11 MR. KENNEDY: Okay.

12 MR. GRAVES: I d like to see one.

13 MR. CORREA: Hey, Mista, I have
14 another question. You were commenting
15 earlier that the statute requires that the
16 rules be written and so forth and I m just
17 wondering if you could explain what would
18 happen if rules weren t written on November
19 1st.

20 MS. TURNER-BURGESS: We would be
21 in confusion. We would then have to just -
22 - if the Board decides to not adopt rules,
23 we would then be in a position to just
24 follow the statute and so we would just be
25 charging people \$10,000 and doing whatever

1 the statute -- just the face of the statute
2 and it would kind of -- we would have a
3 meaningless program, basically is what
4 would happen. But we would have to, on
5 November 1st, start charging that fee.

6 And what would happen today if you
7 guys decided to not recommend the rules at
8 all, if for some reason there was that
9 recommendation we would still probably have
10 to take the rules before the Board and say
11 they weren't recommended by the Council,
12 but we have to have emergency rules and try
13 to seek adoption that way.

14 MR. CORREA: But really, you will
15 go forward and plan to implement the
16 statute regardless of regulations?

17 MS. TURNER-BURGESS: Yeah, we
18 really don't have a choice.

19 MR. CORREA: Okay.

20 MR. GRAVES: And it -- I mean
21 it's detailed enough you probably could but
22 it's not a good practice.

23 MR. KENNEDY: Well, I'm not
24 saying that it can't be done, I don't
25 recall the last time -- at least a couple

1 of years ago we got squeezed on something
2 and had a four hour meeting followed up by
3 a subsequent meeting, we were able to work
4 through and hammer out in time.

5 MR. GRAVES: Well, what it really
6 does, is if you have a self implementing
7 statute it just confuses the public,
8 because everybody is used to looking at the
9 rules. That s where they ll go first and if
10 they don t find anything there, then they
11 don t necessarily think to go back and look
12 at the statute. It certainly can be done.

13 MS. TURNER-BURGESS: And let me
14 point out just for everybody s information
15 that these are the emergency rules, we will
16 have to implement permanent rules as soon
17 as possible. And so we will be bringing
18 the permanent rules before the January --
19 and I wasn t in here, but I think you guys
20 scheduled a January Council Meeting --
21 we ll bring permanent rules. And at that
22 time any changes; if the statute is going
23 to change or if -- I guess not the statute,
24 that wouldn t be effective yet, but if
25 anybody has any concerns or we haven t

1 foreseen something in the next three
2 months, we need to write the rules
3 drastically different. We can do it at
4 that time in February and then those rules
5 would be effective in June, the permanent
6 rules. Not that it s super comforting to
7 anybody, but that is another opportunity.

8 MR. KENNEDY: No, but that -- it
9 kind of gives some perspective as to what
10 are real issues that can t be lived with
11 and until --

12 MS. TURNER-BURGESS: And that s
13 one of the main reasons we didn t bring the
14 permanent rules today, usually we ll bring
15 them at the same time, but we wanted to be
16 able to see how the program operated and
17 then work out the kinks for the permanent
18 rule.

19 MR. KENNEDY: Actually, before
20 you speak, I want to -- are there any other
21 questions? Otherwise I d like to open it
22 up to the public on any portions that
23 either we ve discussed or things within the
24 Chapter 210 that haven t been brought up
25 that you have a concern about or comment

1 about.

2 MR. ROBERTS: Mr. Chairman, may
3 I make one observation?

4 MR. KENNEDY: Yes.

5 MR. ROBERTS: I m not clear that
6 this was ever actually officially
7 recommended to where it is clear in the
8 record, but on 210-1-11(a) I believe we
9 wanted that last phrase in that sentence to
10 read, a record of all remediation is
11 pursuant to this chapter.

12 MR. GRAVES: Performed pursuant
13 to this chapter.

14 MR. ROBERTS: Performed pursuant
15 to this chapter?

16 MR. GRAVES: Yeah.

17 MR. ROBERTS: Okay.

18 MR. KENNEDY: 210-1-11(a). Okay.
19 Duly noted. Did we get that?

20 MR. ROBERTS: It would say -- the
21 entire sentence would read, the licensee
22 shall maintain and make available to DEQ
23 upon request, a record of all remediations
24 performed pursuant to this chapter.

25 MR. KENNEDY: That s 252:210-1

1 11(a).

2 MR. ROBERTS: Yeah.

3 MR. KENNEDY: Thank you.

4 MR. GRAVES: And do we have --

5 who is the -- are you keeping the official?

6 Did you get the changes that Sonny

7 suggested in 210?

8 THE REPORTER: I started writing

9 them down. At the very beginning, I

10 didn't. So we'll probably have to go over

11 -- it will be in here (transcript), but

12 finding it will be impossible, right now.

13 But I have written it down, if that's what

14 you mean. It is in there (transcript), no

15 matter what.

16 MR. GRAVES: Okay. All right.

17 Okay. All right. Because there was 210-1-

18 9(a)(3) and (b)(3).

19 THE REPORTER: I got that.

20 MR. GRAVES: Okay, you got those.

21 Then the one we just talked about. Then

22 did you get the one for 210-1-11(a)(1) with

23 the adding, materials spilled?

24 THE REPORTER: Okay. I don't

25 have it written down, it will be in the

1 record, but do you want to say it right
2 now?

3 MR. GRAVES: Okay. In front of
4 the word, spill --

5 THE REPORTER: 1-11(a) --

6 MR. GRAVES: (a)(1), at the end.

7 THE REPORTER: Okay.

8 MR. GRAVES: Responsible for
9 the , insert in front of, spill , the
10 word, material and then change the word,
11 spill , to ed, spilled .

12 THE REPORTER: Spilled, e-d?

13 MR. GRAVES: Spilled, right.

14 THE REPORTER: Okay.

15 MR. GRAVES: And then --

16 MR. KENNEDY: Number 7.

17 MR. GRAVES: -- (a)(7) --

18 MR. KENNEDY: Strike the word,
19 ultimate .

20 MR. GRAVES: -- strike the word
21 ultimate . 210-1-11(a)(7) --

22 THE REPORTER: Okay. Got that.

23 MR. GRAVES: -- take out,
24 ultimate , and then add, or disposition
25 after the word, disposal .

1 THE REPORTER: I got that.

2 MR. GRAVES: Okay, good. Those
3 are the ones -- those are the ones we made.

4 THE REPORTER: I've got them.

5 MR. KENNEDY: Okay. Thanks for
6 helping me clean up along the way here.
7 Now we can --

8 MS. BURCKHALTER: Angie
9 Burckhalter with the Oklahoma Independent
10 Petroleum Association. I would recommend
11 under 210-1-1, based on our previous
12 conversation about the Commission's
13 jurisdiction, that there be added, like, a
14 little d there to identify the
15 Corporation Commission's jurisdiction and
16 responsibility on those types of waste,
17 that they do have authority on.

18 MR. CORREA: Where would you put
19 that now?

20 MS. BURCKHALTER: Under 210-1-1,
21 there is (a) purpose; (b) authority; (c)
22 applicability; I would suggest a (d), which
23 may say something like, exclusion or
24 exception, or something to that effect and
25 then that part would reference the

1 Corporation Commission s exclusive
2 jurisdiction on those areas -- or those
3 items that they have control over.

4 MR. KENNEDY: This was discussed
5 earlier and I think it s the DEQ s desire
6 to not have any exclusions written into
7 these regulations.

8 MR. GRAVES: Well, I m
9 sympathetic but unfortunately I don t think
10 we can, the way the statute is worded. I
11 was also going back and looking at the
12 beginning of the statute, it s interesting
13 that right before they inserted the
14 Oklahoma Highway Remediation and Clean up
15 Services Act, they had a little provision
16 up here where they specifically talk about
17 the Corporation Commission and scales --
18 trucks involved in a collision. So clearly
19 they had the Corporation Commission at
20 least in mind and they did not see fit to
21 reference back to their rules. So I don t
22 see how we can do that.

23 MR. KENNEDY: Any other comments
24 from the public? Well, seeing no further
25 questions or comments from the Council or

1 the public, now we get to this point.
2 Based on what Mista has spoken of just on
3 the fact that these are emergency rules and
4 three months later we ll be readdressing
5 these as a permanent rule, with what we ve
6 commented on and language changes we ve
7 made, is the Council at a point where we
8 can --

9 MR. GRAVES: Mr. Vice-Chairman, I
10 move that we recommend to the DEQ Board
11 adoption of these emergency regulations as
12 provided to us and as further amended by
13 discussions.

14 MR. KENNEDY: So that would be
15 the document that is stated, HW Council
16 Draft with Proposed Changes as of October
17 4, 2006 Emergency Rules ?

18 MR. GRAVES: Correct.

19 MR. ELWELL: I ll second the
20 Motion.

21 MR. KENNEDY: All right. We have
22 a Motion and a second.

23 Myrna, would you --

24 MS. BRUCE: Wesley Anderson.

25 MR. ANDERSON: Yes.

1 MS. BRUCE: Brian Correa.

2 MR. CORREA: No.

3 MS. BRUCE: Bruce Elwell.

4 MR. ELWELL: Yes.

5 MS. BRUCE: Michael Graves.

6 MR. GRAVES: Yes.

7 MS. BRUCE: Gerald Ihler.

8 MR. IHLER: Yes.

9 MS. BRUCE: Bob Kennedy.

10 MR. KENNEDY: Yes.

11 MS. BRUCE: Motion passed.

12 MR. KENNEDY: Okay. We move to

13 Agenda Item Number 8, election of officers

14 for 2007. We have to at least meet

15 annually to do this portion. So are there

16 any nominations by the Council as to a new

17 Chair?

18 MR. GRAVES: Mr. Vice-Chair, I

19 nominate you to be Chair.

20 MR. KENNEDY: How did I know that

21 this might happen? It s the most sought

22 after job.

23 Any other recommendations or

24 nominations?

25 How about for a new Vice-Chair if I

1 were to be approved as the new Chairman?

2 MR. GRAVES: But you have to come to all
3 the meetings. (Inaudible).

4 MR. KENNEDY: Can we not have a -
5 -

6 MR. ELWELL: Should we act on
7 this Motion before we consider another
8 Motion for Vice-Chair?

9 MR. KENNEDY: Sure. So is there
10 a -- speaking of myself here, is there a
11 Motion for -- how do we word this? Why
12 don t you word it.

13 MR. GRAVES: I nominate Bob
14 Kennedy as -- move Bob Kennedy be named
15 Chair of the Hazardous Waste Advisory
16 Council.

17 MR. KENNEDY: There s a
18 nomination. Is there a second?

19 MR. ELWELL: I ll second.

20 MR. KENNEDY: Mr. Elwell. And no
21 recommendations for a Vice-Chair?

22 MR. GRAVES: Not yet. Let s vote
23 on that.

24 MR. KENNEDY: Why not do Dave
25 Bradshaw as a penalty for not being here?

1 Okay. We ll need to have one so we can
2 split those EQ Board Meetings between two
3 people.

4 Myrna, would you --

5 MS. BRUCE: Wesley Anderson.

6 MR. ANDERSON: Yes.

7 MS. BRUCE: Brian Correa.

8 MR. CORREA: Yes.

9 MS. BRUCE: Bruce Elwell.

10 MR. ELWELL: Yes.

11 MS. BRUCE: Michael Graves.

12 MR. GRAVES: Yes.

13 MS. BRUCE: Gerald Ihler.

14 MR. IHLER: Yes.

15 MS. BRUCE: Bob Kennedy.

16 MR. KENNEDY: Yes.

17 MS. GRAVES: Mr. Chairman,

18 (inaudible) a longstanding unwritten rule

19 that he or she who doesn t show up get

20 stuck, I nominate Dave Bradshaw as Vice-

21 Chair.

22 MR. ELWELL: I second that

23 Motion.

24 MR. KENNEDY: Okay. There s been

25 a nomination and a second.

1 MR. ANDERSON: I ll second that
2 Motion.

3 MR. KENNEDY: We already have a
4 second here, so we ll have the roll -- or
5 not the roll call vote.

6 MS. BRUCE: Wesley Anderson.

7 MR. ANDERSON: Yes.

8 MS. BRUCE: Brian Correa.

9 MR. CORREA: Yes.

10 MS. BRUCE: Bruce Elwell.

11 MR. ELWELL: Yes.

12 MS. BRUCE: Michael Graves.

13 MR. GRAVES: Yes.

14 MS. BRUCE: Gerald Ihler.

15 MR. IHLER: Yes.

16 MS. BRUCE: Bob Kennedy.

17 MR. KENNEDY: Yes.

18 MS. BRUCE: Motion passed.

19 MR. KENNEDY: For those of you
20 who haven t seen him, he s virtually the
21 Strom Thurman of the Advisory Council.
22 He s been around for a long, long time
23 here.

24 Number 9 is New Business, which is
25 limited to any matter not known or which

1 could not have been reasonable foreseen
2 prior to the time of posting the agenda 24
3 hours prior to the meeting. Is there any
4 new business that would qualify?

5 Okay. Is there a Motion to adjourn?

6 I guess then we ll talk about our calendar
7 -- do we need to talk about our calendar
8 before we adjourn or after?

9 I thought they were -- yeah. Okay.

10 We re actually going to address Agenda Item
11 11 and talk about our upcoming year.

12 Does anyone have any suggestions for
13 dates and locations?

14 We will have one in January.

15 COUNCIL MEMBER: I think we d
16 like to have one in January to be the
17 permanent rules, yes.

18 MR. KENNEDY: Okay.

19 COUNCIL MEMBER: All right?

20 MR. KENNEDY: Early to mid-
21 January? Does anyone have their daytime or
22 a calendar?

23 COUNCIL MEMBER: If I may say,
24 Myrna has blotted out days that she isn t
25 available; January 9th, 17th, 19th, and the

1 31st.

2 COUNCIL MEMBER: I m going to be
3 out of the country on the 31st. I d prefer
4 earlier.

5 MR. KENNEDY: Any suggestions for
6 a January meeting? Normally we do it on a
7 Thursday, is that -- and a location. I m
8 assuming we d want to kick it off here
9 again.

10 MR. GRAVES: I don t know.

11 MR. KENNEDY: Is this best for
12 everyone as far as a regional location?

13 MS. BRUCE: The first Thursday is
14 the 4th, the second Thursday is the 11th.

15 MR. KENNEDY: Should we go with
16 the 11th? That satisfies the early to mid
17 requirement. Okay.

18 And then unless anyone has any
19 really keen foresight for the rest of the
20 year -- is that something that people want
21 to think about in our January meeting?

22 MR. GRAVES: Won t we have a
23 better feel in January of what might be on
24 the docket?

25 MR. KENNEDY: For the rest of the

1 --

2 COUNCIL MEMBER: The only thing
3 that we ll know that we ll have next year
4 is our next incorporation by reference,
5 which we ll want to do about this same time
6 next year.

7 MR. GRAVES: I mean if it stays
8 as quiet as in the last couple of years we
9 probably only need two meetings next year
10 or so.

11 COUNCIL MEMBER: Could very well
12 be.

13 MR. GRAVES: I think that we
14 ought to wait until January and see what it
15 looks like.

16 MR. KENNEDY: Okay. We can add
17 that as an agenda item to maybe fill out
18 the calendar for 2007.

19 So we have a January 11th meeting
20 here at the multi-purpose room at 10:00
21 A.M.

22 Now Agenda Item 10, which is now 11,
23 do we have a Motion to adjourn our meeting?

24 MR. JOHNSON: Bob, you had
25 previously passed the Minutes. So did you

1 want to consider them now or do you want to
2 take them forward to the next meeting,
3 that s fine as well.

4 MR. KENNEDY: I don t think
5 anyone s had --

6 MR. GRAVES: I did.

7 COUNCIL MEMBER: Those speed-
8 reading classes for those attorneys.

9 MR. GRAVES: You don t have to
10 read the transcript, the Minutes are real
11 short.

12 MR. KENNEDY: Are we -- I m not,
13 and again, I don t think it s pressing.
14 Why don t we postpone the approval of our
15 Minutes until our January meeting?

16 MR. GRAVES: Okie-dokie.

17 MR. KENNEDY: Do I have a Motion
18 to adjourn at this point?

19 MR. GRAVES: So moved.

20 MR. KENNEDY: And a second?

21 MR. GRAVES: Do you all want to
22 stay?

23 MR. KENNEDY: I ll second.

24 Thank you all for coming.

25 (End of Meeting)

