

MINUTES

**REGULAR SCHEDULED MEETING
SOLID WASTE MANAGEMENT ADVISORY COUNCIL
9:00 A.M. February 21, 2002
Department of Environmental Quality
707 North Robinson
Oklahoma City, OK 73101**

These Minutes are a summary of the meeting held February 21, 2002, as required by the Open Meeting Act. The meeting was recorded and the tapes are available for inspection and copying at the Land Protection Division Office located in Oklahoma City, Oklahoma, 405-702-5213.

This meeting was convened in accordance with the notice of regularly scheduled council meetings on file at the Office of the Secretary of State as required by the Open Meeting Act, Section 311 of Title 25 of the Oklahoma Statutes. This notice was filed with the Secretary of State by December 15, 2001. The agenda for this meeting was posted on the entrance door of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK, 24 hours prior to the meeting in accordance with Section 311 of the Open Meeting Act.

Agenda Items 1 and 2.

Chairman Ken Purdy called the meeting to order at approximately 9:00 am. Roll call was taken and the following council members were present: Ken Purdy, Ralph Triplett, Jr., Jay Stout, Steve Landers, Bill Torneten, Casey Elliott and Jeff Shepherd; Chairman Purdy declared a quorum was present.

Agenda Item 3. APPROVAL OF THE MINUTES OF THE OCTOBER 11, 2001 REGULAR MEETING

Motion was made by Jay Stout and seconded by Ralph Triplett, Jr. to approve the minutes of the October 11, 2001 meeting (shown on the agenda as October 21, 2001). A roll call vote was taken and the motion passed.

Agenda Item 4. PUBLIC FORUM

Chairman Purdy then opened discussion for public forum. No comments were made.

Agenda Item 5. DISCUSSION OF LEGISLATIVE ACTIVITIES AND BILLS ANTICIPATED THIS SESSION RELATED TO SOLID WASTE

Mr. Fenton Rood discussed the Key Bills for the 2002 Legislative session, and noted that not much activity related to solid waste is being proposed this session.

Mr. Rood was asked if SB 1414 (moving jurisdiction of underground storage tanks from the Oklahoma Corporation Commission to the DEQ) would have an impact on personnel. Mr. Rood stated that if the bill passes, it would affect personnel because the UST program would not come to DEQ without the necessary funding.

An explanation of HB 2176 (certification of trash cops) was requested by Mr. Triplett. Mr. Rood stated that this is a proposal from the Association of County Commissioners. County Commissioners across the state are in the process of organizing regional engineering districts which will have

personnel inspecting all county bridges, county roads and all the places where illegal dumps are routinely found. The purpose is not to duplicate efforts, but to provide help to the other services for that district.

Agenda Item 6. INFORMAL PRESENTATION OF DRAFT EMERGENCY RULES

Mr. Jon Roberts gave a presentation on emergency rules that will be presented at the April 18, 2002 Council meeting. He noted that the emergency rules were to implement statutory requirements passed by the Legislature in the 2001 session, as well as other statutes requiring DEQ to develop rules for implementation. He also noted that all of the changes that will be in the emergency rules will also be incorporated into the new overall rule package that the DEQ has been working on for the past few years.

The first set of rule changes will implement SB 337 requiring a vegetative cover plan to be submitted to DEQ for solid waste landfills that extend more than 50 feet in height above the surrounding terrain and accept more than 200 tons per day of solid waste. The vegetative cover plan is to address how owner/operators of those landfills will vegetate areas of the landfill that will remain undisturbed for more than 90 days. These will require modifications to both the permitting and operational requirements rules of the 510s and 520s.

The second set of rule changes will implement HB 1398 which provides a mechanism for county or local governments to receive reimbursements from the Waste Tire Indemnity Fund at the rate of 50 cents per tire for the use of baled waste tires in approved engineering projects. The tires must come from tire dumps that are identified on the priority clean-up list; dealer tires and out-of-state tires are not eligible for reimbursement. The required modifications will be reflected in the permitting rules of the 520s as well as Subchapter 21 of the 520s.

The third set of rule changes will implement SB 89 which transferred regulation of soil borrow areas for landfills from the Department of Mines to DEQ. The required modifications will be identified in the permitting, operational, closure and post-closure, and financial assurance rules in both the 510s and the 520s.

The fourth set of rule changes will implement a statutory provision for incentive payments for persons that want to generate energy from landfill methane gas. This set of rules was initially proposed with the rewrite-dewrong process a couple of years ago, but were not passed by the council at that time.

Finally, the fifth set of rule changes will implement a statutory requirement that DEQ develop rules regarding the timelines in which the Environmental Quality Board (EQ Board) has to make a decision on approving or disapproving applications for a Certificate of Need for new biomedical waste processing facilities. Those rules will be in Subchapter 19 of the 520s.

Chairman Purdy asked whether HB 1398 would allow tires from community collection to be eligible for compensation. Mr. Roberts said they would be eligible.

Mr. Jeff Shepherd asked how many sites are on the priority clean up list, and Mr. Roberts answered approximately 90.

Mr. Bill Torneten asked if vegetative cover would be required if a landfill receives less than 200 tons per day of waste. Mr. Roberts answered that under the current vegetative cover rules, they do; but

under the proposed rules, if a landfill is under 50 feet tall or receives less than 200 tons per day, vegetative cover would not be required.

Mr. Jay Stout inquired as to why the vegetative cover requirement was changed. Mr. Roberts answered that he was not certain where this bill originated, but since it is a statutory requirement, the solid waste rules were revised accordingly.

In response to a question from Mr. Ralph Triplett regarding HB 1398, Mr. Fenton Rood noted that DEQ has been helping the Association of County Commissioners of Oklahoma investigate uses of the bales and as a result, they need to think through the function that they want DEQ to serve. DEQ's interpretation of the statute is that a solid waste permit is required for every location in which tire bales are installed, and this is how the emergency rules have been written. This means that for each bale project, there will need to be an engineering report, plans and inspection, and full public participation. Mr. Rood noted that he was not sure this was the intention of the statute.

Mr. Steve Landers asked if the Certificate of Need would have to come before the council. The answer was yes.

Chairman Purdy asked Mr. Roberts if the Council concluded the emergency rulemaking business at the April meeting, when would the rules go before the EQ Board. Mr. Roberts stated that the next EQ Board meeting is June 25, 2002. Assuming they pass the EQ Board, then they would go to the Governor for signature, so that they could possibly be in effect by early Fall 2002.

Agenda Item 7. INFORMAL PRESENTATION OF DRAFT SOLID WASTE RULES

Mr. Jon Roberts provided a PowerPoint presentation summarizing the rules development process that had been underway for the past two years. The presentation included a draft of the rules to be considered for rulemaking action at the next council meeting. Mr. Roberts noted that the development process consisted of 16 meetings between members of the regulated community, consultants, interested members of the public and DEQ staff. The draft rules represent a blending of the requirements of OAC 252:510 and OAC 252:520 into a single Chapter, OAC 252:515, "Regulations for the Management of Solid Waste." Mr. Roberts' presentation also identified some of the more significant changes that are being proposed in the draft rules, and noted that revocation of the 510s and 520s would be contingent upon adoption of the 515s, so that if the new rules are not adopted, the current rules would remain in effect. Finally, he noted that the formal notice of rulemaking will be published March 15, 2002 in the Oklahoma Register, and that copies of the notice of rulemaking will be sent to everyone on the solid waste rulemaking mailing list and posted on the DEQ web page.

Mr. Roberts thanked everyone who participated in the rules development process and expressed his appreciation for the long hours that were devoted to the development of the new rules package. Chairman Purdy added the council's admiration of the work produced and thanked everyone involved.

A short recess was called at 11:30 and the meeting reconvened at 11:45. Discussion followed among council members regarding clarification of some portions of the new rules.

Agenda Item 8. NEW BUSINESS

No comments were made.

Agenda Item 9. PUBLIC FORUM ISSUES (continued)

Chairman Purdy recognized Mr. Bob Kellogg, Attorney with Shipley, Jennings & Champlin, Oklahoma City, OK.

Mr. Kellogg addressed his comments to the members of the Council, DEQ staff, and the public. He stated that he was there on behalf of his clients, the Oklahoma Association of Solid Waste Professionals, and stated he also spoke for the entire regulated community, Waste Management, Waste Connections, Allied, and for most of the municipalities as well as the association for small landfill operators.

Mr. Kellogg thanked the staff of the DEQ for their work during the last twenty-seven months, but noted his clients had concerns with the proposed rule package and would not be able to support the proposed rules at the April 2002 Council meeting. He noted that the list of concerns he submitted to the Council members in the week prior to the meeting were what they considered to be significant items that needed to be changed before they could support the draft rules. These included incorporating certain significant cost-saving rules (groundwater monitoring, methane gas monitoring, and OPDES Sector L requirements) being proposed in the 515s into the emergency rules and conducting additional review of the proposed rules to eliminate outdated rules and simplify language. The reasons given for their opinion that the rules process wasn't successful were:

- while the rules development process started out very great, it was doomed to fail from the beginning;
- the process should have developed an outline of what the rules should say, rather than working from actual regulatory text, because by doing so, it became lost in detail; and
- that differences in perspective and bargaining power prevented the regulated community from completely making their voices known throughout the rules development process.

Mr. Kellogg felt the way to proceed at this time was to pass the three significant cost-saving rules by emergency, along with the statutorily required rules, then have the Council take control of the rules development process to rewrite the current rules. This process would be to start with a list of ideas of what should be included in the rules and what the standards should be, then develop an outline from which a rules package could be developed. By doing so, he felt this would result in a set of rules that are easier to understand, more user friendly and hopefully will reduce costs.

Mr. Kellogg then entertained questions from the Council.

The members of the Council asked many questions in an attempt to understand why Mr. Kellogg believes the rules process ultimately did not meet its intended goal, and for clarification of how he believes the process should proceed at this point. After much discussion, it was ultimately agreed that even if the rules that were requested to be included in the emergency rule package were passed by emergency, they probably wouldn't be effective in enough time to result in any cost savings this year. Furthermore, it was agreed that the 515 rules will provide those cost savings.

Motion was made by Jeff Shepherd and seconded by Ralph Triplett, directing the rules group and DEQ to hold one more meeting in an effort to resolve the outstanding issues presented in Mr. Kellogg's submittal to the Council. The purpose of this meeting would be to attempt to resolve as many of the outstanding issues as possible with a goal of having a consensus when the rules are presented to the Council at the April 18, 2002 meeting. A roll call vote was taken and the motion passed.

Chairman Purdy then commented that he would like to get the rulemaking done in a relatively short time, with a goal of having it completed by the end of the year. He asked the Council members if anyone had any objections to holding special meetings, if necessary, to reach that goal. No objections were given.

The Chair thanked Mr. Bob Rabatine for the refreshments.

There being no further comments, Chairman Purdy moved to adjourn. Motion to adjourn was made by Mr. Jay Stout and seconded by Mr. Ralph Triplett. Roll call vote was taken and the motion passed unanimously.

Agenda Item 10. ADJOURNMENT

Meeting adjourned at 12:30 p.m.