

MINUTES

REGULAR SCHEDULED MEETING SOLID WASTE MANAGEMENT ADVISORY COUNCIL

9:00 A.M. April 18, 2002
Northeastern State University
Muskogee Campus – Mike Synar Center
2400 W. Shawnee
Muskogee, OK 74402

These Minutes are a summary of the meeting held April 18, 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, and Northeastern State University, Muskogee Campus, Mike Synar Center, 2400 W. Shawnee, Muskogee, 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 9:05 am. Roll call was taken and the following council members were present: Guy Hylton, Ken Purdy, David Griesel, Ralph Triplett, Jr., Jay Stout, Steve Landers, Bill Torneten, Casey Elliott and Jeff Shepherd; Chairman Purdy declared a quorum was present. Chairman Purdy then welcomed new council member, Guy Hylton.

Agenda Item 3. APPROVAL OF THE MINUTES OF THE FEBRUARY 21, 2002 REGULAR MEETING

Motion was made by Mr. Stout and seconded by Mr. Triplett to approve the minutes of the February 21, 2002 meeting. A roll call vote was taken and the motion passed unanimously.

Agenda Item 4. PUBLIC FORUM

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

Agenda Item 5. DISCUSSION OF LEGISLATIVE ACTIVITIES

Mr. Fenton Rood of the DEQ noted there was not much activity related to solid waste being proposed in the 2002 Legislative session. He further noted that County Commissioners wanted to change some of the language on tire baling, but that would not have an impact on the meeting today.

Before continuation of the meeting, Chairman Purdy acknowledged Mr. Jerry Johnston and Mr. Steve Mason of the EQ Board and welcomed their attendance. Appreciation was extended to Mr. Landers for providing the meeting facilities and to those who provided refreshments. Chairman

Purdy announced that lunch would be served at approximately 11:30 and the meeting would continue as a working lunch.

Agenda Item 6-A. EMERGENCY RULEMAKING TO AMEND OAC 252:510 AND OAC 252:520

Mr. Jon Roberts of the DEQ gave a short presentation regarding the rulemaking actions before the Council, noting that the purpose of this Council meeting was to begin the process of adopting the rules resulting from the DEQ's rules development process. In order to do this, three rulemaking actions were placed before the Council: (1) emergency amendments to OAC 252:510 and 252:520, (2) permanent adoption of OAC 252:515 (the new rules that resulted from the rules development process) and (3) permanent revocation of OAC 252:510 and 252:520.

Mr. Roberts stated that the purpose of the emergency rules was to adopt several amendments to implement five statutory requirements, three of which were passed during the 2001 legislative session. The other two statutory requirements had directed that DEQ adopt rules, however no rules had ever been adopted. Mr. Roberts also advised the Council that the Notice of Rulemaking for the emergency rules was published in the Oklahoma register on March 15, 2002, and a copy of the draft rules were provided to the Council and posted to the DEQ web page on or shortly after March 15, 2002. He also noted that no comments had been received.

The five statutory requirements identified by Mr. Roberts were:

- (1) SB 337, requiring a vegetative cover plan to install vegetation at landfills that exceed 50 feet in height and accept more than 200 tons of solid waste per day;
- (2) SB 89, which transferred regulation of landfill soil borrow areas from the Department of Mines to the DEQ;
- (3) HB 1398, requiring waste tire baling permits for units of local or county governments to use baled tires in engineering projects;
- (4) A requirement for DEQ to develop rules for certain entities to receive incentive payments for the use of landfill methane gas; and
- (5) A requirement for DEQ to develop rules regarding time frames for the EQ Board to review Certificates of Need for biomedical waste facilities.

With respect to the emergency rules regarding tire baling permits, Mr. Roberts noted that they are based on the statute passed last year; however, because the Legislature this year is contemplating additional revisions to the tire baling statute, it may be necessary to modify the emergency rules passed by the Council today. Mr. Roberts noted that if this happened, DEQ would identify those changes needed to the Board, and recommend the emergency rules be adopted with those changes included. Furthermore, the DEQ committed to advising the Council members of any proposed changes for their review so that if they felt an emergency meeting of the Council was necessary to further discuss the proposed changes, it could be called prior to the Board meeting.

Discussions between Council members and DEQ regarding the emergency rules began. The only specific changes to the emergency rules requested by the Council involved contents of closure plans regarding soil borrow areas. After discussion to determine specific language, the Council adopted the following language for OAC 252:510-19-3(15):

"A plan and schedule for grading, planting, fertilizing, and establishing vegetation on disturbed areas and final cover, including reshaping and revegetation of on and off site soil borrow areas to blend with surrounding terrain, or another approved reclamation plan."

Motion was made by Mr. Stout and seconded by Mr. Griesel to approve the emergency rulemaking for OAC 252:510, to include the language revisions as stated.

A roll call vote was taken and the motion passed unanimously.

Mr. Roberts then suggested that the motion for the emergency 520s should also include "or another approved reclamation plan" at the end of OAC 252:520-23-8(c)(5) to make the 520 requirements equivalent to the 510 revision.

Motion was made by Mr. Griesel and seconded by Mr. Triplett to approve the emergency rulemaking for OAC 252:520, to include the wording "or another approved reclamation plan" as discussed.

A roll call vote was taken and the motion passed unanimously.

Agenda Item 6-B. PERMANENT RULEMAKING TO ADOPT OAC 252:515

Mr. Roberts briefly discussed the two-year rule development process that culminated in OAC 252:515. He noted that the draft rules were informally presented to the Council at the February 21, 2002 meeting and that at that time there were still several areas of disagreement among members of the rules development group. At the Council's request, an additional rules development meeting was held March 8, 2002. As a result of that meeting, Mr. Roberts noted that only three areas remained where a consensus could not be reached. Those three areas concerned the proposed floodplain restriction, proposed protective cover requirements for leachate collection systems, and a proposal by the Oklahoma Association of Solid Waste Professionals to make the leachate collection system construction requirements applicable to systems approved after the effective date of the rules, rather than applicable to systems constructed after the effective date. Mr. Roberts also advised the Council that the Notice of Rulemaking for OAC 252:515 was published in the Oklahoma register on March 15, 2002, and a copy of the draft rules were provided to the Council, the rules development group, and posted on the DEQ web page on or shortly after March 15, 2002. He also noted that the only written comments regarding the 515s were from the Oklahoma Association of Solid Waste Professionals.

Chairman Purdy opened for comments and recognized Mr. Bob Kellogg, attorney with Shipley, Jennings & Champlin, Oklahoma City, OK.

Mr. Kellogg stated that he represents the Oklahoma Association of Solid Waste Professionals, and referenced his letter to the DEQ dated April 10, 2002. He thanked Mr. Roberts of the DEQ for the efforts put forth to discuss all issues placed before him. Mr. Kellogg stated there were only three issues that he would discuss today.

The first issue involved how the drainage layer over a leachate collection system is configured. His suggestion was to add a new paragraph to the geonet drainage layer criteria which reads "a geonet of 1×10^{-6} cm/sec or greater is sufficient."

He also suggested changing the wording of 515-13-1(a) (regarding the applicability of the leachate collection system construction standards) by replacing the word "constructed" with the word "approved." Thus the rule would only apply to existing land disposal facilities approved after the effective date of this Chapter.

The third item pertained to the location restrictions on floodplains. He recommended DEQ follow the 100-year floodplain restriction as it is currently written in 252:510-7-2(a) rather than changing it as proposed in 252:515-5-32(a).

Mr. Kellogg expressed his appreciation and offered to provide answers to any technical questions.

Chairman Purdy recognized Mr. Scott Thompson, Division Director of the Land Protection Division for the DEQ.

Mr. Thompson referenced the first issue regarding the protective layer over a leachate collection system, noting that the purpose of the protective layer is twofold: to drain leachate down to the collection point and to be a buffer to protect the liner. He noted that DEQ would be willing to consider "select trash" as an option with respect to the protective cover, or even other materials, and not necessarily require the use of soil only. He also noted that the DEQ would be comfortable with going with a foot of 5×10^{-4} material over a geonet and then select trash over that. DEQ's concern with a permeability of 10^{-6} is that the primary source of information that is available regarding this subject seems to indicate that a couple of orders of magnitude of permeability will be lost over time. Thus, it is necessary to start with a high enough permeability so that drainage occurs through the material.

With respect to the other two issues, Mr. Thompson noted that the DEQ is comfortable with the rules as written.

There was additional discussion between Council members and DEQ staff regarding this issue. Mr. Thompson noted that DEQ would prefer to retain the language proposed in the 515s and interpret the language to mean that "select trash" could be used as a protective layer, and that in the case of a geonet, we could live with a foot of 5×10^{-4} over the geonet with "select trash" above. DEQ staff would still need to work with industry in defining "select trash."

After listening to the discussions, Mr. Kellogg stated he believed DEQ had not adequately justified its position as to why the proposed rule should remain as it is. He noted that he believes the proposed rule would stifle progress and engineering, and that the rules should simply say cover the FML with 24-inches of material that will maintain a liquid level less than or equal to 12 inches and protect the underlying FML. This will meet EPA criteria, and discussions on how to achieve that standard should be left to the engineers to work out on a case-by-case basis.

A short recess for lunch was called and the meeting reconvened at 12:20.

Chairman Purdy stated that during the lunch break DEQ staff and others had discussed some wording changes that would be acceptable to all. Those discussions resulted in the following changes to OAC 252:515-13-33:

- Change the tagline for 13-33 to read "Drainage and protective layer"
- Revise subsection (a) to read: "The drainage and protective layer will consist of a minimum of 24 inches of material that will maintain a liquid head of less than or equal to 12 inches and protect the underlying FML."
- Revise subsection (b) to read: "If a geonet is used"
- Revise paragraph (b)(1) to read: "the hydraulic conductivity of a geonet shall be 1×10^{-1} cm/sec or greater"
- Keep paragraphs (b)(2), (3), and (4) unchanged
- Delete subsection (c).

Chairman Purdy then suggested that while there is a consensus on this particular issue, both sides should get together and prepare a guidance document to clarify the details. He then asked if any members of the Council had serious concerns about their ability to adopt Chapter 515 based upon the proposed revisions to the language of 515-13-33.

Mr. Stout asked that the record reflect he had discontent, but he approves more subchapters than he is against.

Chairman Purdy asked Mr. Thompson to address, for the benefit of the Council, the staff's position on the other two issues on which Mr. Kellogg raised.

Mr. Thompson stated that on the issue of the floodplain (OAC 252:515-5-32(a)), DEQ does not believe the language as written is too onerous. He noted that in the past, some owners have received localized floodplain determinations from the Corps of Engineers and it only took three or four weeks and a cost of \$500.00; this did not seem like an insurmountable situation. Mr. Thompson also noted that because federal entities have the regulatory authority over the floodplain, DEQ wishes to defer to those agencies for a determination.

Mr. Roberts also noted that under current rules, there are two differing floodplain restrictions, and that the 515s attempted to bring them together. He noted the 520s have a specific prohibition of having landfills in the floodplain, while the 510s allow them. Furthermore, he noted that the state statutes allow landfills to get a variance from the floodplain rules as long as that variance is conditioned on a redefinition of the floodplain to not include the land areas proposed for the facility. To resolve this, 515-5-32(a)(2)(A) was added to fully implement what DEQ believes is the intent of the statute.

Mr. Torneten asked whether the rule required Corps of Engineers approval with respect to the floodplain. Mr. Roberts noted that the rule does not specifically talk about Corps approval, but because the DEQ is not the floodplain determining agency, DEQ believes FEMA would be the proper agency to make floodplain determinations.

After further questions and discussion, additional amendments were agreed upon. Chairman Purdy began calling out each subchapter individually to ascertain whether there were any further comments regarding individual subchapters. Additional comments were noted. Motion was then made by Mr. Griesel and seconded by Mr. Shepherd to approve the adoption of 252:515 with amendments as follows:

- Change the tagline for 13-33 to read "Drainage and protective layer"
- Revise subsection (a) to read: "The drainage and protective layer will consist of a minimum of 24 inches of material that will maintain a liquid head of less than or equal to 12 inches and protect the underlying FML"
- Revise subsection (b) to read: "If a geonet is used"
- Revise paragraph (b)(1) to read: "the hydraulic conductivity of a geonet shall be 1×10^{-1} cm/sec or greater"
- Keep paragraphs (b)(2), (3), and (4) unchanged
- Delete subsection (c)
- Delete 13-34, with appropriate renumbering of the sections that follow
- Add subparagraph (E) "solid waste transfer stations" to the definition of Land Disposal Facility
- Insert the words "protective layer" in place of "liner/leachate collection system" in 515-27-8(a)(2)(B)

Roll call vote was taken and the motion passed unanimously.

Chairman Purdy then asked for a second motion to be made requesting Messrs. Griesel, Stout, Torneten, and Shepherd to coordinate the drafting of a guidance document regarding protective cover permeability for leachate collection systems before the first council meeting scheduled in 2003.

Motion was made by Mr. Griesel and seconded by Mr. Elliott to develop such a guidance document to present to DEQ staff by the first meeting of 2003.

Roll call vote was taken and the motion passed unanimously.

Agenda Item 6-C PERMANENT RULEMAKING TO REVOKE OAC 252:510 AND OAC 252:520

Motion was made by Mr. Griesel and seconded by Mr. Shepherd to revoke OAC 252:510 and OAC 252:520.

Roll call vote was taken and the motion passed unanimously.

Agenda Item 7. NEW BUSINESS

No comments were made.

Agenda Item 8. PUBLIC FORUM ISSUES (continued)

No comments were made.

Agenda Item 9. ADJOURNMENT

There being no further comments, Chairman Purdy moved to adjourn.

Motion to adjourn was made by Mr. Griesel and seconded by Mr. Shepherd. Roll call vote was taken and the motion passed unanimously.

Meeting adjourned at 2:10 p.m.