

MINUTES
AIR QUALITY COUNCIL
December 9, 2004
Department of Environmental Quality
707 North Robinson
Oklahoma City Oklahoma

Approved AQC
 January 19, 2005

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. December 9, 2004 in the Multipurpose Room of the DEQ, 707 North Robinson, Oklahoma City, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the Special Meeting on October 11, 2004. Agendas were posted on the entrance doors at the meeting facility and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting.

As protocol officer, Ms. Beverly Botchlet-Smith convened the hearings by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51, and Title 27A, Oklahoma Statutes, Sections 2-5-201 and 2-5-101 - 2-5-118. Ms. Smith entered the Agenda and the Oklahoma Register Notice into the record and announced that forms were available at the sign-in table for anyone wishing to comment on any of the rules. Ms. Sharon Myers, Chair, called the meeting to order. Roll was called and a quorum confirmed.

MEMBERS PRESENT

Sharon Myers
 David Branecky
 Bob Curtis
 Bob Lynch
 Gary Martin
 Don Smith (arrived at 9:45)
 Rick Treeman
 Joel Wilson

MEMBERS ABSENT

Bill Breisch

OTHERS PRESENT Sign-in sheet is attached as an official part of these Minutes

DEQ STAFF PRESENT

Eddie Terrill
 Beverly Botchlet-Smith
 Scott Thomas
 Leon Ashford
 Cheryl Bradley
 Brad Cook
 Lisa Donovan
 Rhonda Jeffries
 Dawson Lasseter
 Matt Paque
 Max Price
 Joyce Sheedy
 Kendall Stegmann
 Pat Sullivan
 Myrna Bruce

Approval of Minutes Ms. Myers called for motion to approve of the July 21, 2004 Minutes. Mr. Wilson made the motion and Dr. Lynch made the second.

Roll call.

Joel Wilson	Yes	David Branecky	Yes
Gary Martin	Yes	Rick Treeman	Yes
Don Smith	Yes	Bob Curtis	
Bob Lynch	Yes	Sharon Myers	Abstain

Motion carried

Meeting Schedule for Calendar Year 2005 Staff's suggested dates were discussed and approved. Motion to approve the suggested meeting dates and locations was made by Dr. Lynch with second made by Mr. Martin.

Approved dates -- January 19 at DEQ -April 20 in Tulsa - July 20 at DEQ - October 19 at DEQ

Roll call.			
Joel Wilson	Yes	David Branecky	Yes
Gary Martin	Yes	Rick Treeman	Yes
Don Smith	Yes	Bob Curtis	
Bob Lynch	Yes	Sharon Myers	Yes
Motion carried			

OAC 252:100-4 New Source Performance Standards [AMENDED]

Staff representative, Mr. Max Price, stated that staff found a mistake on the notice for this particular change, therefore, staff proposed to withdraw the rulemaking for now and bring it back at a later date. Ms. Myers affirmed that there was no need for further discussion and called for the next agenda item.

OAC 252:100-41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants [AMENDED]

Mr. Max Price advised that the proposed revisions would update the incorporations by reference of Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), and Part 63, Maximum Achievable Control Technology (MACT) standards as they existed on September 1, 2004. He added that no comments on these proposals had been received staff asked the Council to recommend to the Environmental Quality Board that these proposals be adopted as permanent rules. Questions and comments from the Council and audience were fielded and then Ms. Myers called for a motion. Mr. Branecky made motion to approve and Mr. Treeman made the second.

Roll call.			
Joel Wilson	Yes	David Branecky	Yes
Gary Martin	Yes	Rick Treeman	Yes
Don Smith	Yes	Bob Curtis	
Bob Lynch	Yes	Sharon Myers	Yes
Motion carried			

OAC 252:100-17 Incinerators [AMENDED]

Ms. Lisa Donovan, DEQ Staff, conveyed that the proposal would add language that would make clear that air curtain incinerators are subject to the Title V permitting requirements adding that this reference would not change the interpretation of the rule but would clarify the current requirements for air curtain incinerators. Ms. Donovan pointed out that failure to adopt this change would prevent EPA's final approval of the state plan for CISWI and that staff's recommendation was for Council to forward the revision to the Environmental Quality Board for adoption as a permanent rule. After acknowledging questions and comments from Council and the public, Ms. Myers called for a motion to approve as presented. Mr. Martin made the motion and Mr. Treeman made the second.

Roll call.			
Joel Wilson	Yes	David Branecky	Yes
Gary Martin	Yes	Rick Treeman	Yes
Don Smith	Yes	Bob Curtis	
Bob Lynch	Yes	Sharon Myers	Yes
Motion carried			

Appendix E. Primary Ambient Air Quality Standards [REVOKED]

Appendix F. Secondary Ambient Air Quality Standards [REVOKED]

Appendix E. Primary Ambient Air Quality Standards [NEW]

Appendix F. Secondary Ambient Air Quality Standards [NEW]

Mr. Leon Ashford, DEQ Staff, stated that this proposal would add the 24-hour and annual PM 2.5 standards to both the Primary and Secondary Ambient Air Quality Standards and provided information regarding the Standards. He related that Appendices cannot be amended; therefore, the recommendation would revoke the outdated Appendices and approve the new Standards. During comments a question regarding footnote number nine arose that required clarification. Ms. Myers called for a motion to continue the hearing until the latter part of the day so that staff could make that clarification. Mr. Wilson made the motion and Mr. Treeman seconded.

Roll call.			
Joel Wilson	Yes	David Branecky	Yes
Gary Martin	Yes	Rick Treeman	Yes
Don Smith	Yes	Bob Curtis	
Bob Lynch	Yes	Sharon Myers	Yes
Motion carried			

At 10:15 the hearing continued and Mr. Ashford cleared up the confusion regarding the footnote advising that the staff’s proposal remained as recommended. Ms. Myers entertained a motion and Mr. Branecky moved to pass the rule as presented to the Environmental Quality Board as a permanent rule. Dr. Lynch made the second.

Roll call.			
Joel Wilson	Yes	David Branecky	Yes
Gary Martin	Yes	Rick Treeman	Yes
Don Smith	Yes	Bob Curtis	Yes
Bob Lynch	Yes	Sharon Myers	Yes
Motion carried			

OAC 252:100-41 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants [AMENDED]
OAC 252:100-42 Control of Toxic Air Contaminants (TAC) [NEW]
Appendix O. Toxic Air Contaminants (TAC) Maximum Acceptable Ambient Concentrations (MAAC) [NEW]

Ms. Botchlet-Smith called upon staff member, Mr. Brad Cook, for staff presentation. Mr. Cook related that amendments are being proposed due to EPA’s encouragement that States find solutions and develop programs for controlling air toxics. The Department’s proposed amendments would divide existing Subchapter 41 into two subchapters. Subchapter 41 would retain the federal requirements for toxics while state-only requirements will be clarified, modified, and relocated to a new Subchapter 42. A new Appendix O would contain a list of toxic air contaminants and set ambient air concentrations for these substances.

Mr. Cook entered into the record e-mail comments from GPA and OG&E and letters of comment from OG&E, OIPA, Koch Hydrocarbon, Trinity Consultants, Terra Nitrogen American Airline and EPA Region VI. Staff addressed concerns raised in those letters and fielded questions from Council and the public. Ms. Cheryl Bradley provided an overview of Appendix O and staff’s reasons for including each. She also advised of a list of websites accessible by the public. Ms. Botchlet-Smith called upon the public for comments. Commenters were Thelma Norman for American Airlines, Nadine Barton for CASE, Jim Shellhorn for Terra Nitrogen, and Steve Moyer for Sinclair Oil. When Ms. Myers called for a motion Mr. Branecky moved to continue the hearing to the Council’s January 19, 2005 meeting. Second was by Mr. Treeman.

Roll call.

Joel Wilson	Yes	David Branecky	Yes
Gary Martin	Yes	Rick Treeman	Yes
Don Smith	Yes	Bob Curtis	Yes
Bob Lynch	Yes	Sharon Myers	Yes

Motion carried

Division Director's Report Mr. Terrill welcomed Mr. Don Smith to the Council. He announced that a Compliance-Enforcement information seminar was being planned to follow the January 19 Council meeting. He also mentioned the possibility of a special Council meeting for NSR issues. Mr. Terrill noted that he had received a letter of resignation from Mr. Bill Breisch.

NEW BUSINESS - None

ADJOURNMENT – 11:30 a.m. Next meeting scheduled for January 19, 2005 at the DEQ.

A copy of the hearing transcript and the 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 AIR QUALITY COUNCIL
OF PUBLIC HEARING ON ITEM NOS. 1-5B
OAC 252:100-41
CONTROL OF EMISSION OF HAZARDOUS AIR
POLLUTANTS AND TOXIC AIR CONTAMINANTS
[AMENDED]
HELD ON DECEMBER 9, 2004, AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA

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REPORTED BY: Christy A. Myers, CSR

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MEMBERS OF THE COUNCIL

- DAVID BRANECKY - MEMBER
- BILL BREISCH - MEMBER
- BOB LYNCH - VICE-CHAIR
- GARY MARTIN - MEMBER
- SHARON MYERS - CHAIR
- RICK TREEMAN - MEMBER
- DON SMITH - MEMBER
- JOEL WILSON - MEMBER
- BOB CURTIS - MEMBER

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY
- EDDIE TERRILL - DIVISION DIRECTOR
- SCOTT THOMAS - AQD
- JOYCE SHEEDY - AQD
- MATT PAQUE - LEGAL
- LISA DONOVAN - AQD
- MAX PRICE - AQD
- BEVERLY BOTCHLET-SMITH - AQD
- CHERYL BRADLEY - AQD
- LEON ASHFORD - AQD

2 PROCEEDINGS

3 MS. MYERS: Good morning. I'm
4 ready to call the meeting to order. I
5 would like to ask everybody to turn off all
6 cell phones and pagers, please. Myrna, are
7 you ready?

8 MS. BRUCE: Joel Wilson.

9 MR. WILSON: Here.

10 MS. BRUCE: Gary Martin.

11 MR. MARTIN: Here.

12 MS. BRUCE: Don Smith.

13 MR. SMITH: Present.

14 MS. BRUCE: Bob Lynch.

15 DR. LYNCH: Here.

16 MS. BRUCE: David Branecky.

17 MR. BRANECKY: Here.

18 MS. BRUCE: Rick Treeman.

19 MR. TREEMAN: Here.

20 MS. BRUCE: Bob Curtis is absent.

21 Bill Breisch is absent. Sharon Myers.

22 MS. MYERS: Here.

23 MS. BRUCE: We do have a quorum.

24 MS. MYERS: Okay. The next item

25 on the agenda is Approval of the Minutes

Christy A. Myers

1 for the July 21st meeting.
2 MR. WILSON: I'll move to approve
3 the Minutes.
4 MS. MYERS: We have a motion to
5 approve the Minutes.
6 DR. LYNCH: I'll second that.
7 MS. MYERS: Myrna.
8 MS. BRUCE: Joel Wilson.
9 MR. WILSON: Yes.
10 MS. BRUCE: Gary Martin.
11 MR. MARTIN: Yes.
12 MS. BRUCE: John Smith.
13 MR. SMITH: Yes.
14 MS. BRUCE: Bob Lynch.
15 DR. LYNCH: Yes.
16 MS. BRUCE: David Branecky.
17 MR. BRANECKY: Yes.
18 MS. BRUCE: Rick Treeman.
19 MR. TREEMAN: Yes.
20 MS. BRUCE: Sharon Myers.
21 MS. MYERS: Abstain.
22 MS. BRUCE: Motion passed.
23 MS. MYERS: Next item on the
24 agenda is the meeting schedule for 2005.
25 MR. TERRILL: And that's behind

1 tab number -- well, it says schedule for
2 calendar for next year. What we did, we
3 tried to schedule them in concert with the
4 Board meetings, since anything that we pass
5 has to go on to the Board for approval.
6 And we initially set them for three in
7 Oklahoma City and one in Tulsa. Of course,
8 that's subject to the Council's pleasure in
9 changing that. What I would like to do,
10 though, I would like to leave that April
11 20th meeting in Tulsa there, because of the
12 ozone season starting up and the Tulsa
13 situation.

14 And also, I might mention that Mr.
15 Breisch isn't here today and the reason
16 he's not here is he has resigned from the
17 Council. We got his letter. I talked to
18 him the day before yesterday and he just
19 feels like it's time. He's been on this
20 Council for a long, long time, longer than
21 even I can remember. So we'll be honoring
22 him with a little ceremony in Tulsa on the
23 20th of April. So we'll miss him. But
24 it's up to the Council's pleasure, whatever
25 you all want to do.

1 Now, we will be having some special
2 meetings. I might just mention this does
3 not include the meetings we'll do for new
4 source review. We'll probably be
5 scheduling those some time, March, April,
6 May time frame, but there will be a special
7 meeting for NSR only and these are our
8 regularly scheduled meetings to conduct
9 regular Council business.

10 MS. MYERS: Council, any
11 comments, discussion? Suggestions?

12 DR. LYNCH: Do we have to make a
13 motion on this? It sounds fine to me.

14 MS. MYERS: Is that a motion?

15 DR. LYNCH: I'll move that we
16 approve the dates as listed.

17 MR. MARTIN: Second.

18 MS. MYERS: We have a motion and
19 a second. Myrna, would you call roll,
20 please.

21 MS. BRUCE: Joel.

22 MR. WILSON: He moved to approve
23 the dates. Do you also want to approve the
24 locations?

25 DR. LYNCH: Yes.

1 MS. MYERS: Okay. So the motion
2 is for the dates and the locations.

3 MS. BRUCE: The dates and the
4 locations.

5 MS. MYERS: Yes.

6 MS. BRUCE: The dates are January
7 19th; April 20th, in Tulsa; July 20th;
8 October 19th. Those other three dates are
9 in Oklahoma City unless something changes
10 between now and then. Ready for roll call?

11 MS. MYERS: Yes.

12 MS. BRUCE: Joel Wilson.

13 MR. WILSON: Yes.

14 MS. BRUCE: Gary Martin.

15 MR. MARTIN: Yes.

16 MS. BRUCE: Don Smith.

17 MR. SMITH: Yes.

18 MS. BRUCE: Bob Lynch.

19 DR. LYNCH: Yes.

20 MS. BRUCE: David Branecky.

21 MR. BRANECKY: Yes.

22 MS. BRUCE: Rick Treeman.

23 MR. TREEMAN: Yes.

24 MS. BRUCE: Sharon Myers.

25 MS. MYERS: Yes.

1 Okay. At this point we go into the
2 rulemaking process. Beverly.

3 MS. BOTCHLETT-SMITH: Good
4 morning. I'm Beverly Botchlett-Smith, the
5 Assistant Director of the Air Quality
6 Division. And as such, I'll serve as a
7 Protocol Officer for today's hearings.

8 These hearings will be convened by
9 the Air Quality Council in compliance with
10 the Oklahoma Administrative Procedures Act
11 and Title 40 of the Code of Federal
12 Regulations, Part 51, as well as the
13 Authority of Title 27A of the Oklahoma
14 Statutes, Section 2-2-201, Sections 2-5-101
15 through 2-5-118.

16 These hearings were advertised in
17 the Oklahoma Register for the purpose of
18 receiving comments pertaining to the
19 proposed OAC Title 252, Chapter 100 Rules
20 as listed on the agenda and will be entered
21 into each record along with the Oklahoma
22 Register filing. Notice of special meeting
23 was filed with the Secretary of State on
24 October 11th, 2004. The agenda was duly
25 posted 24 hours prior to the meeting on the

1 doors of the DEQ. If you wish to make a
2 statement, it's very important you complete
3 the form at the registration table. You
4 will be called on at the appropriate time.
5 Audience members, please come to the podium
6 to make your comments and please state your
7 name.

8 At this time, we'll proceed with
9 what's marked as Agenda Item No. 5A on the
10 hearing agenda, OAC 252:100-4, New Source
11 Performance Standards. And we call upon
12 Mr. Max Price of staff to discuss the
13 proposed rule.

14 MR. PRICE: Madame Chairman,
15 Members of the Council, ladies and
16 gentlemen, we have found a mistake on the
17 notice for this particular change that
18 we're proposing and we are going to
19 withdraw it for now and bring it back at a
20 later date.

21 MS. MYERS: Okay. Is there any
22 need to have any discussion on it then,
23 Max?

24 MR. PRICE: I don't believe so.

25 MS. MYERS: Okay.

1 MS. BOTCHLETT-SMITH: We'll
2 proceed with what is marked as Agenda Item
3 No. 5B, OAC 252:100-41, Control of Emission
4 of Hazardous Air Pollutants and Toxic Air
5 Contaminants. And again, Mr. Max Price
6 will present the staff position.

7 MR. PRICE: Madam Chairman,
8 Members of the Council, ladies and
9 gentlemen, the proposed revisions to OAC
10 252:100-41-15 will update the
11 incorporations by reference of Part 61,
12 National Emission Standards for Hazardous
13 Air Pollutants (NESHAP), and Part 63,
14 Maximum Achievable Control Technology
15 (MACT) standards as they exist on September
16 1st, 2004.

17 There are 16 New Part 63 MACT
18 standards to be incorporated by reference.
19 These standards are described in the
20 proposed rule and in the Council memos, so
21 I don't think we need to take up the
22 Council's time going through each one of
23 them at this time.

24 Staff has received no comments on
25 these proposals and because these changes

1 are routine housekeeping, staff asks the
2 Council to recommend to the Environmental
3 Quality Board that these proposals be
4 adopted as permanent rules.

5 MS. BOTCHLETT-SMITH: Do we have
6 any questions from the Council for Mr.
7 Price? Mr. Smith.

8 MR. SMITH: This is my first
9 meeting on the Council, so I'm going to ask
10 you a very general question. Can you
11 briefly describe what this is as routine
12 housekeeping?

13 MR. PRICE: All right. Yes, sir.
14 Every year we have to adopt the new MACT
15 standards that the EPA promulgates and it's
16 just a matter of putting them into our rule
17 and listing them. That allows us to then
18 send a letter off to EPA and request
19 delegation for them and then we can enforce
20 them.

21 MR. SMITH: What do the changes
22 do?

23 MR. PRICE: Well, actually, these
24 changes are actually changes in the MACT
25 standards, the NESHAP stuff and involves

1 different industry categories and their
2 emissions and toxics -- or I should say
3 HAPS in this case.

4 MR. SMITH: Does this make
5 standards more stringent?

6 MR. PRICE: Yes, sir. Yes, sir.

7 MR. SMITH: Can you give me an
8 example?

9 MR. PRICE: Well, let me give you
10 an example of some of the things we have
11 here. Here we go. Look at Subpart ZZZ,
12 this particular MACT standard is for
13 internal combustion engines and it would
14 apply some new standards. I'm not really
15 sure what they are off the top of my head.
16 Let's see -- okay, here's one.

17 Subpart EEEEE, that's five E's,
18 national emission standard for hazardous
19 air pollutants from steel foundries. In
20 other words, it's basically a new standard
21 they have to meet as far as emissions for
22 this particular source category.

23 MR. SMITH: Is it required by the
24 state to follow the national standard here?

25 MR. PRICE: Yes, sir.

1 MR. TERRILL: These are all part
2 of our SIP and all these are -- really,
3 they're pretty minor changes and EPA --
4 this is a routine thing that EPA does every
5 year in updating these standards. And in
6 some cases, they may or may not be more
7 stringent. It may just be a clean-up of
8 language that they had that they caught
9 when they were implementing the standard.

10 So if we don't do this, then that
11 means we've got a real problem because part
12 of the rule will be in our SIP, part of
13 it's not, and it creates confusion with the
14 regulated community as to who's enforcing
15 this rule, so.

16 MR. BRANECKY: And the facilities
17 will be subject to these standards --

18 MR. TERRILL: Regardless.

19 MR. BRANECKY: -- either way.
20 It's just whether the state enforces it or
21 the EPA enforces it.

22 MR. TERRILL: That's right.

23 MR. SMITH: Thank you.

24 MS. BOTCHLETT-SMITH: Any other
25 questions from the Council? Do we have any

1 questions from the public? Hearing none,
2 Sharon.

3 MS. MYERS: If there are no
4 further questions from the Council or from
5 the public, I will entertain a motion.

6 MR. BRANECKY: I move we adopt --

7 MR. WILSON: I'm sorry. I had
8 one question on this. When do you all post
9 this on your website so that the regulated
10 community can see -- one question that
11 always seems to come up is who do we send
12 our reports to? And if the state hasn't
13 adopted these, you send a report to EPA.
14 And so when does this become available to
15 the public for them to access on your
16 website?

17 MR. TERRILL: It generally goes
18 up -- it will go through the Board first
19 and then it will go up within probably 20
20 to 30 days after that. It depends on how
21 quickly they turn around upstairs.

22 You bring up a good point, though,
23 Joel. One of the things that we've been
24 thinking real seriously about doing and
25 we'll probably do that after we have our

1 enforcement compliance seminar that we're
2 going to do in January, and that is put on
3 our website a list of contacts of where
4 things need to go. Because this comes up a
5 lot and we have such a turnover of folks
6 that it moves around within our own
7 division somewhat. And another
8 reason we're going to do this is because
9 we're changing the way that we track our
10 records in the building. We're moving to a
11 centralized record system and so we're
12 going to put together a list of the things
13 that are submitted by industry, and a
14 contact person. Because a lot of that
15 stuff is suppose to -- some of it is
16 supposed to come to me, some of it goes to
17 the folks that actually do the work, but
18 having a list that we update on a regular
19 basis so folks can come up and quickly look
20 to see, well, here's who this needs to --
21 it needs to go to the attention of. It's
22 something we -- you pointed it out before
23 and we've got it on the drawing board to
24 start doing that.

25 MR. WILSON: Okay.

1 MS. BOTCHLETT-SMITH: I'm sorry.

2 Further questions from the Council?

3 MS. MYERS: Now can we entertain
4 a motion?

5 MR. BRANECKY: I move that we
6 pass this rule as presented.

7 MS. MYERS: We have a motion. Do
8 we have a second?

9 MR. TREEMAN: I'll second it.

10 MS. MYERS: Myrna.

11 MS. BRUCE: Joel Wilson.

12 MR. WILSON: Yes.

13 MS. BRUCE: Gary Martin.

14 MR. MARTIN: Yes.

15 MS. BRUCE: Don Smith.

16 MR. SMITH: Yes.

17 MS. BRUCE: Bob Lynch.

18 DR. LYNCH: Yes.

19 MS. BRUCE: David Branecky.

20 MR. BRANECKY: Yes.

21 MS. BRUCE: Rick Treeman.

22 MR. TREEMAN: Yes.

23 MS. BRUCE: Sharon Myers.

24 MS. MYERS: Yes.

25 MS. BRUCE: Motion passed.

1 (END OF PROCEEDINGS)
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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE AIR QUALITY COUNCIL
OF PUBLIC HEARING ON ITEM NOS. 5C

OAC 252:100-17

INCINERATORS [AMENDED]

HELD ON DECEMBER 9, 2004, AT 9:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE
(405) 721-2882

MEMBERS OF THE COUNCIL

- 2
- 3 DAVID BRANECKY - MEMBER
- 4 BILL BREISCH - MEMBER
- 5 BOB LYNCH - VICE-CHAIR
- 6 GARY MARTIN - MEMBER
- 7 SHARON MYERS - CHAIR
- 8 RICK TREEMAN - MEMBER
- 9 DON SMITH - MEMBER
- 10 JOEL WILSON - MEMBER
- 11 BOB CURTIS - MEMBER
- 12

STAFF MEMBERS

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- 14
- 15 MYRNA BRUCE - SECRETARY
- 16 EDDIE TERRILL - DIVISION DIRECTOR
- 17 SCOTT THOMAS - AQD
- 18 JOYCE SHEEDY - AQD
- 19 MATT PAQUE - LEGAL
- 20 KENDAL CODY - LEGAL
- 21 LISA DONOVAN - AQD
- 22 MAX PRICE - AQD
- 23 BEVERLY BOTCHLET-SMITH - AQD
- 24 BRAD COOK - AQD
- 25 CHERYL BRADLEY - AQD

Christy A. Myers

Certified Shorthand Reporter

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CONTINUED STAFF MEMBERS

LEON ASHFORD - AQD

Christy A. Myers

Certified Shorthand Reporter

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PROCEEDINGS

MS. BOTCHLETT-SMITH: The next item on the agenda is OAC 252:100-17, Incinerators. And we will call on Ms. Lisa Donovan to give the staff position on the proposed rule.

MS. DONOVAN: Madam Chair, Members of the Council, ladies and gentlemen, the Department is proposing amendments to OAC 252:100-17, Incinerators. On December 1, 2000, EPA adopted emissions guidelines and standards of performance for commercial and industrial solid waste incineration, or CISWI units. Sections 111(d) and 129(b)(2) of the Clean Air Act require states with existing CISWI units subject to the emission guidelines to submit EPA plans that implement and enforce the emissions guidelines. Further, sections 111(d) and 129(b)(2) of the Clean Air Act authorize EPA to develop and implement a federal plan for CISWI located in states with no approved and effective state plan.

Christy A. Myers

Certified Shorthand Reporter

1 Staff presented a draft state plan

2 to the Air Quality Council on October 8th,
3 2003. The DEQ submitted Oklahoma's state
4 plan to EPA Region 6 for review on November
5 19th, 2003. The Oklahoma plan has not
6 received final approval from EPA at this
7 time. On October 3rd, 2003, EPA published
8 the final federal plan for CISWI units.

9 The federal plan includes language
10 requiring all CISWI, including air curtain
11 incinerators, to obtain Title V operating
12 permits. The federal plan requires all
13 CISWI subject to the subpart to apply for
14 Title V operating permits. Air curtain
15 incinerators are left out of the list of
16 Title V exempted units specified in 40 CFR
17 sections 62-14525(a) through (h) and (j)
18 through (o). Under the federal plan
19 requirements for CISWI, all air curtain
20 incinerators, including those that burn 100
21 percent wood waste, 100 percent clean
22 lumber, or a 100 percent mixture of only
23 wood waste, clean lumber and/or yard waste
24 are required to obtain a Title V permit.

25 DEQ observed that the Oklahoma Air

Christy A. Myers

Certified Shorthand Reporter

6

1 Pollution Control Rules, the Federal

2 Emissions Guidelines, and the NSPS for
3 CISWI do not specify that air curtain
4 incinerators should obtain Title V permits.
5 However, following discussions with EPA,
6 staff was informed of EPA's rationale for
7 specifying that air curtain incinerators
8 are required to obtain Title V operating
9 permits.

10 There are two origins of Title V
11 obligations for CISWI, including air
12 curtain incinerators, Section 129(e) and
13 Section 502(a) of the Clean Air Act.
14 Section 129 directs EPA to develop
15 requirements for air curtain incinerators
16 under the authority of Section 111, as well
17 as Section 129. Section 129(e) requires
18 that all sources subject to guidelines of
19 Section 129 obtain Title V operating
20 permits. Further, Section 502(a) of the
21 Clean Air Act requires sources subject to
22 rules written under the authority of
23 Section 111 to have Title V operating
24 permits. Accordingly, even if Section
25 129(e) were not applicable, sources would

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7

1 still be subject to Title V, based on the

2 general obligations for all sources subject
3 to rules written under the authority of
4 Section 111 to have operating permits.

5 Thus, all air curtain incinerators
6 subject to state plans, federal plans or
7 NSPS must obtain Title V operating permits.
8 To facilitate the application of Title V to
9 these sources, EPA specifically included in
10 the federal plan, language describing the
11 need for Title V operating permits for air
12 curtain incinerators.

13 To comply with the federal
14 requirements, staff will ask the Air
15 Quality Council to make appropriate changes
16 to the air curtain incinerator rules in OAC
17 252:100-17. Specifically, staff requests
18 that OAC 252:100-17-63(j) be changed to
19 reflect that air curtain incinerators are
20 subject to Title V permitting requirements.
21 The added language does not change the
22 current interpretation of the rules, but
23 will make clear that air curtain
24 incinerators are subject to Title V
25 permitting requirements found in OAC

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1 252:100-17-73. When approved, the DEQ will

2 submit the revisions to EPA so that
3 Oklahoma's State 111(d) Plan may be
4 approved.

5 It should be noted that air curtain
6 incinerators being used for land clearing
7 operations would not be subject to CISWI
8 permitting requirements. CISWI applies
9 only to incinerators that are a distinct
10 operating unit of commercial or industrial
11 facilities. A commercial facility is
12 defined as one which exchanges, buys, or
13 sells goods and services and an industrial
14 facility is defined as one which procures,
15 manufactures, or supplies goods. If a
16 land-clearing operation does not meet the
17 definition of either a commercial or
18 industrial facility, an air curtain
19 incinerator located there would not be
20 subject to CISWI permitting requirements.

21 Notice of the proposed rule was
22 published in the Oklahoma Register on
23 November 1st, 2004 and comments were
24 requested from the public. No comments
25 have been received.

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1 Although this is the first time the

2 revision has been presented to the Council,
3 it is basically a clarification of what was
4 intended and of how the Department is
5 currently interpreting the rule
6 requirements for air curtain incinerators
7 and it is not a truly substantive change.

8 Failure to adopt this change will
9 prevent EPA's final approval of the state
10 plan for CISWI. Therefore, we ask that the
11 Council recommend the revision to the
12 Environmental Quality Board for adoption as
13 a permanent rule.

14 MS. BOTCHLETT-SMITH: Any
15 questions from the Council of Ms. Donovan?

16 MS. MYERS: Lisa, how many
17 facilities or entities does this affect?

18 MS. DONOVAN: We think six or
19 seven, that's all we have identified right
20 now. When we did the CISWI state plan, we
21 identified six or seven sources in the
22 state that would be subject to CISWI at
23 all, and all of them were air curtain
24 incinerators. And I think we already have
25 one that's in the process of getting their

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10

1 Title V permit, at least one that maybe

2 already has it.

3 MS. BOTCHLETT-SMITH: Any
4 questions from the public? Nadine.

5 MS. BARTON: The (inaudible)
6 energy plant in Tulsa --

7 MS. MYERS: Excuse me, Nadine,
8 please identify yourself.

9 MS. BARTON: My name is Nadine
10 Barton and I'm with CASE, Citizens Action
11 for a Safe Environment. And my question
12 is, is that the (inaudible) energy plant in
13 Tulsa, that is not an air curtain, is it?

14 MS. DONOVAN: Not to my
15 knowledge.

16 MR. TERRILL: No.

17 MS. DONOVAN: I don't -- I'm not
18 sure.

19 MR. TERRILL: No, it's not.

20 MS. BARTON: Okay. And the other
21 question I have, I see a lot of exemptions
22 in here for medical waste and all that
23 other, that does not fall under this
24 chapter; is that correct?

25 MS. DONOVAN: A lot of the

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11

1 exemptions are covered under other --

2 MS. BARTON: That's what I'm
3 saying.

4 MS. DONOVAN: -- right.

5 MR. TERRILL: That's right.

6 MS. DONOVAN: Medical waste was
7 one that has it's own rule.

8 MS. BOTCHLETT-SMITH: Don, would
9 you please step to the podium when you
10 speak so we make sure we -- everyone can
11 hear you.

12 MR. WHITNEY: Yes. I have a
13 question about the -- Don Whitney from
14 Trinity Consultants. I have a question
15 about the implementation. If I'm reading
16 the schedule right here, the compliance
17 schedule, is they were supposed to have
18 applied by December 1st, 2003. And with
19 the rule change, I believe there is
20 existing air curtain incinerators out there
21 now that are permitted as minor sources,
22 minor facilities. So would they -- how
23 would they fit into this schedule if they
24 have existing minor sources, existing air
25 curtains and the time period to apply has

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12

1 already gone by? Thank you.

2 MR. PAQUE: Matt Paque, I'm an
3 attorney for DEQ.

4 COURT REPORTER: I'm sorry?

5 MR. PAQUE: Matt Paque. The air
6 curtain incinerators have always been
7 subject to the federal requirements and the
8 federal requirements require Title V's now,
9 so we should have already received those
10 applications. And in fact, we've received
11 one application that's already -- they've
12 already received their Title V in air
13 curtain incinerators and there are other
14 ones that have already been received. So
15 these facilities have already identified
16 this problem.

17 And also, this change is just a
18 clarity change. If you read our rules,
19 Part 70 permits were already required for
20 incinerators. So we're just making this
21 change as a clarity, so those facilities
22 should have been on notice that they were
23 required to receive Part 70 permits.

24 MS. BOTCHLETT-SMITH: Any further
25 questions or comments from the public?

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13

1 Further questions from the Council?

2 Sharon.

3 MS. MYERS: At this time, I will
4 entertain a motion.

5 MR. MARTIN: I would move
6 approval.

7 MS. MYERS: We have a motion. Do
8 we have a second?

9 MR. TREEMAN: I'll second.

10 MS. MYERS: Myrna.

11 MS. BRUCE: Joel Wilson.

12 MR. WILSON: Yes.

13 MS. BRUCE: Gary Martin.

14 MR. MARTIN: Yes.

15 MS. BRUCE: Don Smith.

16 MR. SMITH: Yes.

17 MS. BRUCE: Bob Lynch.

18 MR. LYNCH: Yes.

19 MS. BRUCE: David Branecky.

20 MR. BRANECKY: Yes.

21 MS. BRUCE: Rick Treeman.

22 MR. TREEMAN: Yes.

23 MS. BRUCE: Sharon Myers.

24 MS. MYERS: Yes.

25 MS. BRUCE: Motion passed.

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(END OF PROCEEDINGS)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS
OF THE AIR QUALITY COUNCIL

OF PUBLIC HEARING ON ITEM NO. 5D

APPENDIX E. PRIMARY AMBIENT AIR QUALITY
STANDARDS [REVOKED]

APPENDIX F. SECONDARY AMBIENT AIR QUALITY
STANDARDS [REVOKED]

APPENDIX E. PRIMARY AMBIENT AIR QUALITY
STANDARDS [NEW]

APPENDIX F. SECONDARY AMBIENT AIR QUALITY
STANDARDS [NEW]

HELD ON DECEMBER 9, 2004, AT 9:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

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REPORTED BY: Christy A. Myers, CSR

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- CHERYL BRADLEY - AQD
- LEON ASHFORD - AQD

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PROCEEDINGS

3

MS. BOTCHLETT-SMITH: The next

4

item on the agenda is Item 5D. This is

5

Appendix E, Primary Ambient Air Quality

6

Standards. Appendix F, Secondary Ambient

7

Air Quality Standards, those two being

8

revoked. And a new Appendix E and Appendix

9

F for Primary Ambient Air Quality Standards

10

and Secondary Ambient Air Quality

11

Standards. We call on Mr. Leon Ashford to

12

present.

13

MR. ASHFORD: Madame Chairman,

14

Members of the Council, ladies and

15

gentlemen, staff proposes to update

16

Appendix E, Primary Ambient Air Quality

17

Standards and Appendix F, Secondary Ambient

18

Air Quality Standards to include the PM 2.5

19

particulate standard. The primary standard

20

is identical to the secondary standard and

21

the standards are 15 micrograms per cubic

22

meter for an annual arithmetic means and 65

23

micrograms per cubic meter for a 24-hour

24

average, respectively.

25

Appendix E and F, for the term

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1 ambient air quality standards, are
2 referenced in three locations within the
3 air pollution rules. In Subchapter 3 at
4 Sections 1, 2 and 3, the rules state that
5 these appendices enumerate the primary and
6 secondary ambient air quality standards.

7 Subchapter 7, Section 15(d) contains
8 the requirement that minor source
9 construction permits shall prohibit the
10 exceedance of the ambient air quality
11 standards.

12 Subchapter 8 at Sections 35(b),
13 37(b) and 52(2) and (3) contain
14 requirements that construction permits not
15 be issued if emissions of a criteria
16 pollutant would cause or contribute to the
17 violation of the applicable ambient air
18 quality standard. The Subchapter 8
19 requirement applies to both PSD and
20 nonattainment area construction permits.

21 The National Ambient Air Quality
22 Standards or NAAQS specify the maximum
23 acceptable levels of pollutants for outdoor
24 air. The Clean Air Act requires EPA to set
25 National Ambient Air Quality Standards for

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1 pollutants considered harmful to public
2 health and the environment. NAAQS have
3 been established for six primary or
4 criteria pollutants, carbon monoxide,
5 nitrogen oxides, lead, sulfur dioxides,
6 ozone and particulates, which are divided
7 into PM 10 and PM 2.5.

8 The Clean Air Act further requires
9 separate standards for human health and for
10 other environmental risks. Accordingly,
11 there are two types of national ambient air
12 quality standards. Primary standards are
13 set -- primary standards set limits that
14 are protective of human health and
15 secondary standards protect plants and
16 animals.

17 The DEQ, as the Oklahoma agency
18 designated to administer the federal Clean
19 Air Act requires -- Clean Air Act
20 requirements in Oklahoma is subject to draw
21 up a state implementation plan that
22 includes measures to achieve acceptable air
23 quality, that is air quality that meets the
24 NAAQS.

25 The Clean Air Act further requires

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1 that the EPA periodically review and revise
2 the NAAQS. In 1997, EPA revised the NAAQS
3 for ozone and particulate matter. The PM
4 standard added an indicator for PM 2.5 to
5 strengthen protection against smaller
6 particulates.

7 In May 1999, the U.S. Supreme Court
8 of Appeals for the District of Columbia
9 Circuit remanded these standards back to
10 EPA for further consideration.

11 Subsequently, in 2002 the U.S. Circuit
12 Court of Appeals upheld the standard,
13 following a 2001 decision in which the
14 United States Supreme Court reaffirmed the
15 standards. The state of Oklahoma has
16 recommended that the entire state be
17 designated attainment for PM 2.5 standard
18 and EPA has concurred. The EPA designation
19 will be final in November 2004.

20 It has been brought to our attention
21 that in Appendix E and F -- in Appendix E
22 and F, the PM 10 24-hour standard lacks a
23 footnote to explain the form of the
24 standard. A footnote has been added to
25 provide the explanation.

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1 Staff recommends that the revised
2 Appendices E and F be forwarded to the
3 Environmental Quality Board for adoption.

4 MR. BRANECKY: As a permanent
5 rule?

6 MR. ASHFORD: Yes.

7 MS. BOTCHLETT-SMITH: Any
8 questions from the Council for Mr. Ashford?
9 Do we have any questions or comments from
10 the public?

11 Nadine, could you please step to the
12 podium and identify yourself? Thank you.

13 MS. BARTON: My name is Nadine
14 Barton with CASE, Citizens Action for a
15 Safe Environment. My questions -- I have
16 one main question and that is, by the
17 adoption of this, does this make our
18 standards that are covered by this more
19 stringent or less stringent than what we
20 already have?

21 MR. TERRILL: Neither one.
22 They're exactly the same.

23 MS. BARTON: They're exactly the
24 same.

25 MR. TERRILL: This mainly just

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1 puts everything, all of the standards, in
2 one place. And it was kind of confusing.
3 Folks could look in here and think that we
4 weren't responsible for maintaining the PM
5 2.5 or might not think about it, but that's
6 the reason we're putting it in here
7 primarily.

8 MS. BOTCHLETT-SMITH: Do we have
9 any other questions from the public?

10 MR. WILSON: Eddie, do we have
11 monitors for PM 2.5?

12 MR. TERRILL: All over the state,
13 yes, sir. And we've got maps on our
14 website if anyone is ever interested in
15 seeing where we've got monitors and what we
16 monitor for.

17 MR. BRANECKY: And there's also
18 tribal monitors?

19 MR. TERRILL: Yes.

20 MR. BRANECKY: For PM 2.5?

21 MR. TERRILL: Yes.

22 MR. BRANECKY: How does that fit
23 into the picture?

24 MR. TERRILL: Well, the tribal
25 monitors, once the data has been quality

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1 assured, goes into the national database
2 just like the state data does and they're
3 still -- they're subject to federal
4 enforcement, just like our data. If a
5 tribal monitor were to show a nonattainment
6 area for a specific pollutant, somebody
7 would have to draft a nonattainment plan of
8 some sort. How that would work, don't ask
9 me. It would be an interesting exercise.

10 MS. BOTCHLETT-SMITH: There's a
11 question in the back. Could you please
12 step to the front, please?

13 MS. WORTHEN: My name is Laura
14 Worthen and I'm with Benham. I'm reading
15 the footnotes on primary ambient air
16 quality standards and the way you have
17 standard nine, that reads as a second
18 highest high and that is traditionally the
19 PM standard. The PM 10 standard for 24
20 hours has traditionally been the sixth
21 highest high or the 98th percentile, which
22 is what footnote seven reads.

23 Will PM 2.5 now be the sixth highest
24 high with a 98th percentile, when you're
25 talking about a modeling standard? And is

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1 PM 10 now going to be a second highest
2 high?

3 MR. ASHFORD: PM 10 is the second
4 highest.

5 MS. WORTHEN: It is not currently
6 done that way.

7 MR. ASHFORD: It might not be
8 that way for modeling, but --

9 MS. WORTHEN: Okay.

10 MR. ASHFORD: -- the PM 2.5 is
11 the 98th percentile.

12 MS. WORTHEN: Okay.

13 MR. ASHFORD: (Inaudible).

14 MS. WORTHEN: It seems to me
15 they're flipped. It seems to me that the
16 98th percentile should be the PM 10 and the
17 2.5 --

18 MR. ASHFORD: I don't believe --

19 MS. WORTHEN: I didn't catch this
20 until today, so I didn't have a chance to
21 go back and look at it.

22 MR. ASHFORD: (Inaudible)
23 percentile.

24 (Multiple conversations)

25 MS. WORTHEN: That is how you

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1 demonstrate the (inaudible) 98th
2 percentile.

3 MR. ASHFORD: It might be that
4 way now.

5 MS. WORTHEN: Okay.

6 MR. ASHFORD: But not for the
7 National Ambient Air Quality Standard.

8 MS. WORTHEN: Okay.

9 MR. ASHFORD: Not for that.

10 MR. TERRILL: Let me just
11 clarify. We're not adopting the footnotes
12 as a change to our SIP anyway. So we'll
13 check that question out and clarify that.
14 It could be a flip, but it really doesn't
15 make any difference. This is just -- the
16 only thing that's going into our SIP would
17 be the actual -- (interrupted).

18 (Inaudible conversation)

19 MR. TERRILL: Well, I stand
20 corrected. I guess we have submitted the
21 footnotes as part of the SIP at some point.
22 So anyway, we'll just hold it over. We'll
23 recommend that we hold this back and we'll
24 check it out and if there needs to be a
25 flip, we'll flip it. Because it really

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1 doesn't change anything because we're still
2 responsible for the national ambient air
3 quality and secondary standards, anyway.

4 MS. MYERS: The standards are the
5 same as the footnotes that are in question?

6 MR. TERRILL: Right.

7 MS. MYERS: Is that correct? We
8 don't have to have a motion to carry it
9 over, do we? I guess we do. Okay. So
10 based on this discussion, I guess we need
11 to have a motion for carrying it over.

12 MR. WILSON: Sharon, I would
13 favor that during a break or sometime that
14 this gets fixed or at least reviewed and
15 come back and try to pass this thing. It
16 seems to be a simple matter to me. Eddie,
17 I would agree with the commentor, that the
18 footnotes are flipped.

19 MR. BRANECKY: But there is no
20 urgency to pass it so, either way, if we
21 can't get it done today we can continue it.

22 MR. WILSON: Okay. That's fine.

23 MR. TERRILL: Leon thinks we can
24 check it pretty quickly, so we may be able
25 to do it. We've done that in the past.

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1 It's not an unusual practice for us to do
2 that. It just depends on how long the next
3 discussion goes.

4 MS. MYERS: Okay. Based on the
5 advice from staff, we need a motion to
6 carry this over to the latter part of the
7 hearing today and give them an opportunity
8 to go check it out and continue on with the
9 hearing.

10 MR. WILSON: So moved.

11 MS. MYERS: We have a motion. Do
12 we have a second?

13 MR. TREEMAN: Yes, I'll second.

14 MS. MYERS: Myrna.

15 MS. BRUCE: Joel Wilson.

16 MR. WILSON: Yes.

17 MS. BRUCE: Gary Martin.

18 MR. MARTIN: Yes.

19 MS. BRUCE: Don Smith.

20 MR. SMITH: Yes.

21 MS. BRUCE: Bob Lynch.

22 DR. LYNCH: Yes.

23 MS. BRUCE: David Branecky.

24 MR. BRANECKY: Yes.

25 MS. BRUCE: Rick Treeman.

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1 MR. TREEMAN: Yes.

2 MS. BRUCE: Sharon Myers.

3 MS. MYERS: Yes.

4 MS. BRUCE: Motion passed.

5 (Whereupon, hearing was continued to the
6 end of the agenda)

7 MS. BOTCHLETT-SMITH: Okay. We
8 would like to go back and revisit Item No.
9 5D on the agenda, this is the Appendix E
10 and F for the Primary and Secondary Ambient
11 Air Quality Standards. And Mr. Leon
12 Ashford will clarify some questions
13 previously raised in today's hearing.

14 MR. ASHFORD: To try to clear up
15 some confusion. I would like to first read
16 the footnote number nine that was added to
17 the PM 10 standard, the PM 10 24-hour
18 standard. It says the standard is attained
19 when the expected number of days per
20 calendar year both the 24-hour average
21 concentration above 150 micrograms per
22 cubic meter as determined in accordance
23 with 40 CFR 50 Appendix K is equal to or
24 less than one. If you go back to 40 CFR
25 Part 50, national ambient air quality --

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1 national primary and secondary ambient air
2 quality standards, under 50.6, national
3 primary and secondary ambient air quality
4 standards for PM 10, it says the level of
5 the national primary and secondary 24-hour
6 ambient air quality standards for
7 particulate matter is 150 micrograms per
8 cubic meter 24-hour average concentration,
9 the standards are attained when expected
10 number of days per calendar year, with a
11 24-hour average concentration above 150
12 micrograms per cubic meter, as determined
13 in accordance with Appendix K, to this
14 part, is equal to or less than one.

15 And I believe some of the questions
16 was that maybe we had this mixed up with
17 footnote seven on PM 2.5 and footnote seven
18 on PM 2.5, which addresses the 24-hour
19 average for 2.5, says the standard is
20 attained when the 98th percentile
21 concentration is equal to or less than one
22 or equal to or less than the numerical
23 standard as determined by 40 CFR 50
24 Appendix N. And the PM 2.5 24-hour
25 standard here says, the 24-hour primary and

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1 secondary PM 2.5 standards are met when the
2 98th percentile of 24-hour concentration as
3 determined in accordance with Appendix N of
4 this part is less than or equal to 65
5 micrograms per cubic meter. I believe we
6 have both of them correct. I believe some
7 of the confusion might be from the court
8 case in that at one time the PM 10 did have
9 a standard and used a 99th percentile, but
10 that PM standard was revoked by the courts.

11 MS. MYERS: So you're saying this
12 is correct as it is written?

13 MR. ASHFORD: Yes.

14 MS. MYERS: Okay.

15 MS. BOTCHLETT-SMITH: Do we have
16 any further questions from the Council or
17 the public on this proposed rule?

18 MS. MYERS: If there are no
19 further questions from the Council or the
20 public, we'll entertain a motion for the
21 rule.

22 MR. BRANECKY: I move we pass the
23 rule as presented, as a permanent rule.

24 MS. MYERS: We have a motion, do
25 we have a second?

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1 DR. LYNCH: I second it.
2 MS. MYERS: Myrna.
3 MS. BRUCE: Joel Wilson.
4 MR. WILSON: Yes.
5 MS. BRUCE: Gary Martin.
6 MR. MARTIN: Yes.
7 MS. BRUCE: Don Smith.
8 MR. SMITH: Yes.
9 MS. BRUCE: Bob Lynch.
10 DR. LYNCH: Yes.
11 MS. BRUCE: David Branecky.
12 MR. BRANECKY: Yes.
13 MS. BRUCE: Rick Treeman.
14 MR. TREEMAN: Yes.
15 MS. BRUCE: Bob Curtis.
16 MR. CURTIS: Yes.
17 MS. BRUCE: Sharon Myers.
18 MS. MYERS: Yes.
19 MS. BRUCE: Motion passed.

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(END OF PROCEEDINGS)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE AIR QUALITY COUNCIL
OF PUBLIC HEARING ON ITEM NO. 5E

OAC 252:100-41

CONTROL OF EMISSION OF HAZARDOUS AIR
POLLUTANTS AND TOXIC AIR CONTAMINANTS

[AMENDED]

OAC 252:100-42

CONTROL OF TOXIC AIR CONTAMINANTS (TAC)

[NEW]

APPENDIX O

TOXIC AIR CONTAMINANTS (TAC) MAXIMUM
ACCEPTABLE AMBIENT CONCENTRATIONS

(MAAC)[NEW]

HELD ON DECEMBER 9, 2004, AT 9:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

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REPORTED BY: Christy A. Myers, CSR

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- MAX PRICE - AQD
- BEVERLY BOTCHLET-SMITH - AQD
- CHERYL BRADLEY - AQD
- LEON ASHFORD - AQD

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CONTINUED STAFF MEMBER

BRAD COOK - AQD

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2

PROCEEDINGS

3

MS. BOTCHLETT-SMITH: Okay. The

4

next item on the agenda is Item 5E, OAC

5

252:100-41, Control of Emission of

6

Hazardous Air Pollutants and Toxics Air

7

Contaminants and OAC 252:100-42, Control of

8

Toxic Air Contaminants, Appendix O, Toxics

9

Air Contaminants Maximum Acceptable Ambient

10

Concentrations. And we'll call on Mr. Brad

11

Cook and Ms. Cheryl Bradley to give the

12

staff position on the proposed rule.

13

MR. COOK: Madame Chair, Members

14

of the Council, ladies and gentlemen, this

15

is the second hearing in which the

16

Department is proposing amendments to OAC

17

252:100-41, Control of Emission of

18

Hazardous Air Pollutants and the addition

19

of 252:100-42, Control of Toxic Air

20

Contaminants or TAC. Congress passed the

21

federal Clean Air Act in 1990, which

22

resulted in considerable progress in

23

controlling air toxics. However, EPA is

24

struggling to find an effective way to

25

access the impacts of air toxics in

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1 communities and develop control strategies.
2 EPA has funded many state and local air
3 toxics pilot projects in an effort to find
4 workable solutions. Without any answers
5 forthcoming, the EPA is encouraging states
6 to find solutions and develop programs to
7 which Oklahoma is responding. The
8 Department is proposing amendments to its
9 air pollution control, OAC 252:100-41, that
10 will divide federal and state-only
11 requirements. The federal parts 61 and 63
12 standards referred to as National Emission
13 Standards for Hazardous Air Pollutants or
14 Maximum Achievable Control Technology
15 Standards, as well as the federal
16 requirement for asbestos, will be retained
17 in OAC 252:100-41. The incorporation by
18 reference of all 40 code of federal
19 regulations citations and definitions will
20 be retained in Subchapter 41 and two
21 sections added as OAC 252:100-41-3 and 41-4
22 for conformity with existing rules. The
23 changes will also revoke maximum ambient
24 air concentration requirements and the
25 toxics classification categories A, B and

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1 C. State-only requirements will be
2 modified and moved to a new Chapter 42
3 entitled Control of Toxic Air Contaminants.
4 The new subchapter 42 addresses toxic air
5 contaminants that are likely impose a
6 threat to the health of Oklahomans and the
7 environment. The subchapter would
8 establish ambient air -- ambient
9 concentration standards for 25 substances.
10 Standards will be based on peer review and
11 nationally accepted risk or hazard
12 information such as that in EPA's
13 integrated risk information system.

14 The 25 substances selected were
15 based on the following:

16 One, they are known to be toxic.

17 Two, they are on federal and state
18 priority lists.

19 Number three, they are emitted from
20 stationary, mobile, non-road and area
21 sources in Oklahoma.

22 And four, they can be detected at or
23 below parts per billion levels using
24 established monitoring and analysis
25 methods. The rules will streamline the

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1 Department's air pollution control program
2 and reduce stationary source permitting and
3 compliance related costs, because there are
4 fewer state toxics to be considered. The
5 current rule requires consideration of over
6 2,000 substances and significant investment
7 of resources of which the effectiveness in
8 controlling toxics cannot be measured.

9 Modeling and monitoring of TAC
10 concentrations will be used to identify
11 geographical areas in Oklahoma with
12 contaminant concentrations above the
13 standards. The Department may designate
14 these as areas of concern. The rules that
15 provide for the Department to identify the
16 bulleted sources and possible methods for
17 their control. The Department's findings
18 and other information will be made
19 available by various means, including
20 public meetings and publication on the
21 Agency website. The Department will pursue
22 additional funding to support the required
23 monitoring and modeling of air toxics.
24 This could be in the form of a air toxics
25 emission fee on stationary sources and

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1 mobile source-related -- pardon me, a
2 mobile source-related fee or other type of
3 fee.

4 Notice of the proposed rule changes
5 was published in the Oklahoma Register on
6 November 1st, 2004, and comments were
7 requested from members of the public. The
8 Department received email comments from GPA
9 and OG&E and letters of comment from OG&E,
10 OIPA, Koch Hydrocarbon, Trinity
11 Consultants, Terra Nitrogen and American
12 Airlines, copies of which have been made
13 available to the Council and will be made
14 part of the hearing record.

15 The following concerns will now be
16 addressed. The first concern cites the
17 need for clarifying what entity will bear
18 responsibility for cost of monitoring and
19 modeling and for controls and control
20 measures.

21 Staff's response is that the
22 Department will perform the monitoring and
23 modeling necessary to determine if an AOC
24 exists and to set the boundaries, but will
25 consider any monitoring data provided that

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1 meet minimum requirements. Regarding
2 controls and control measures, Subchapter
3 42 will not cause an impact on any facility
4 until an AOC is designated, after which the
5 Department will determine control
6 strategies. Subchapter 42 requires the
7 Department to consider the availability and
8 feasibility of any control measures. This
9 will include the cost of control strategy,
10 as well. The Department is required to
11 notify the public of strategies developed
12 to bring the AOC into compliance with the
13 TAC MAAC. Any new control requirements
14 will likely require rulemaking before they
15 can be implemented.

16 The second concern cites interest in
17 how industry and the public will be
18 notified in the event an AOC is designated
19 in an area in which they are located or
20 affect.

21 Staff's response is that the
22 Department will meet with potentially
23 affected industries in determining that an
24 AOC exists, setting the boundaries of the
25 AOC, and determining what facilities impact

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1 the AOC. Notification regarding the
2 designation of an AOC will be published in
3 a local newspaper, as well as statewide
4 newspapers, and will be available on the
5 DEQ website. This should adequately inform
6 those who may be affected.

7 The third concern cites the need for
8 de minimis emissions, threshold values,
9 and/or significance levels.

10 Staff's response is that the level
11 of emissions that might be considered de
12 minimis for one TAC may not be appropriate
13 for other TAC, therefore, the Department
14 has not provided an exclusion de minimis
15 level. The Department also contends that
16 significance levels may vary according to
17 the TAC of concern and the specific nature
18 of the AOC. The de minimis levels
19 established for permits is already in place
20 and can only be changed through rulemaking.
21 Subchapter 42 does not establish
22 requirements until an AOC is designated and
23 those additional requirements will be
24 established through rules. Regarding
25 threshold values, the concentrations listed

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1 in the proposed Appendix O were taken from
2 EPA's integrated Risk Information System.

3 The fourth concern cites a need to
4 clarify the process that will be used in
5 the designation of an AOC.

6 Staff's response is that the
7 Department will require monitoring data
8 that demonstrates that the MAAC for a TAC
9 is exceeded in such a way so to endanger
10 the public health, and that the boundaries
11 for the AOC will be determined by
12 monitoring, modeling or other means
13 approved by the Director. The decision to
14 monitor in an area will be based on but not
15 limited to complaints received from the
16 public, information collecting during
17 inspections, emission inventory data, or
18 EPA reports. The Director shall
19 redesignate an AOC as in compliance with
20 the TAC MAAC when compliance is
21 demonstrated through monitoring and/or
22 modeling.

23 The DEQ received email comments from
24 EPA this morning, which are supportive of
25 the proposed changes in our air toxics

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1 rule. However, staff has not had time to
2 fully review. Copies have been given to
3 the Air Quality Council. Staff suggests
4 that the Council continue the hearing on
5 these proposed rule changes to its next
6 meeting.

7 MS. BOTCHLETT-SMITH: Do we have
8 any questions from the Council for Mr.
9 Cook?

10 MR. WILSON: Yes, I've got some
11 questions. Brad, what's wrong with
12 Subchapter 41 the way it is?

13 MR. COOK: I was thinking about
14 that on the way to work this morning. I
15 think it's just too wieldy. For example,
16 there are over 2,000 substances on the list
17 now and I'm not as in touch with all the
18 problems, the permitting problems. But I
19 think there are many of those, and I think
20 it's just gotten too big.

21 MR. WILSON: I'll open the
22 question up to anybody who might --

23 MR. TERRILL: Well, it's a matter
24 of philosophy, too, because the existing
25 Subchapter 41 is mainly a paperwork

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1 exercise and we get the paperwork in, the
2 facility submits the paperwork, we do the
3 modeling, they do the modeling. At the end
4 of the day, we'll end up with a permit that
5 incorporates -- that we've looked at
6 Subchapter 41 without actually having done
7 anything. And it just -- it just creates a
8 big paperwork burden for the industry and
9 for us. We felt like we needed to have a
10 toxics rule that more reflected a rule that
11 would be proactive in protecting public
12 health, that would actually be small enough
13 but flexible enough to be expanded as the
14 needs for Oklahoma change in order for us
15 to actually have a toxics program that
16 addressed public health needs, rather than
17 going through a modeling exercise, at the
18 end of the day really didn't do anything.
19 It just didn't. As old as this rule is and
20 for what it was designed to do, it probably
21 did what it was supposed to do. But EPA's
22 view on handling toxics are moving towards
23 a more locally base and actually going in
24 and studying areas and trying to determine
25 what effects emissions from various

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1 industrial sources will have on the public
2 and addressing those if there's things of
3 concern. That's what we're trying to
4 design our program to do.

5 MR. WILSON: What is it that EPA
6 is judging this against? Do they have a
7 document or rule or -- probably a
8 guideline. But when EPA reviews this, what
9 are they reviewing it against to be able to
10 say, yes, we agree or we don't agree?

11 MS. BOTCHLETT-SMITH: Cheryl,
12 identify yourself, please.

13 MS. BRADLEY: Excuse me?

14 MS. BOTCHLETT-SMITH: Identify
15 yourself.

16 MS. BRADLEY: Cheryl Bradley, Air
17 Quality Division. The EPA has developed
18 strategies that have been sort of
19 compartmentalized. There is not truly an
20 overarching comprehensive strategy that
21 addresses all sources of air toxics in our
22 environment. The Clean Air Act targeted
23 stationary sources, and as did our
24 Subchapter 41, we focused all our efforts
25 on controls of stationary sources. In the

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1 interim, additional information has been
2 gathered and mobile sources make --
3 contribute greatly to the pollution burden.
4 So in the interim, EPA has been getting
5 additional information. They have
6 developed an urban area toxics strategy.
7 They are working on residual risks, which
8 is a review of the MACT standards to see if
9 they, through implementation of technology-
10 based standards, they have met the target.
11 And they are funding monitoring and
12 assessment projects.

13 We were recipients of funds for a
14 project in Ponca City. The monitoring
15 project continues there. So for
16 comparison, they have no recipe for
17 addressing these situations, but they have
18 partnered with us and are working to build
19 something that will work for communities.
20 The national strategy was -- well, air
21 toxics -- I think EPA has realized that one
22 strategy will not fit every community and
23 so they have supported a centralized
24 general framework to support decentralized
25 community efforts to establish priorities

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1 and make communities safer. Does that help
2 at all?

3 MR. WILSON: And it's that --
4 it's that framework and their strategy that
5 they're comparing this against?

6 MS. BRADLEY: Right. And the
7 comparison will be a comparison for
8 feasibility, technical expertise. But it
9 will not be a comparison that says, no,
10 Oklahoma cannot do it this way.

11 MR. BRANECKY: Well, 41 is -- the
12 old 41 is not part of the SIP. 42 is not
13 part of the SIP. So does EPA have any say
14 in 42? It's a state-only rule, we're doing
15 it not as a requirement of EPA. So is that
16 true, that EPA --

17 MS. BRADLEY: No. They truly do
18 not have a say as to what is approvable or
19 not approvable, since it is not currently
20 part of our SIP. We do provide the draft
21 rules for their comment. We have limited
22 resources. We can't go out and develop
23 monitoring methods, analytical methods, and
24 strategies. So we rely heavily on the
25 technical expertise that comes from EPA.

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1 So although they are not truly -- they
2 cannot be told what we're doing, we still
3 have to partner with them to a large extent
4 and rely on their technical resources. Do
5 you have anything you would like to say,
6 Eddie?

7 MR. TERRILL: No, I think that's
8 a pretty good summary and a pretty good
9 rationale for us to submit it down there.
10 The other thing that I want to make clear
11 is that EPA's policy of looking at this on
12 a community-based local level, they would
13 provide funds to whatever entity wanted to
14 look at the problem. What they don't
15 provide is the guidance to take care of the
16 problem once it's identified. They pretty
17 much leave that up to the local folks to
18 do, too. Well, the easy part is
19 identifying the problem. The hard part is
20 figuring out what you're going to do about
21 it. That's the reason we felt like we
22 needed to have a rule that would allow us
23 the flexibility and the ability to deal
24 with a problem that's identified. Because,
25 in my opinion, the worst thing you can do

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1 is identify a problem but tell the
2 community, geez, we're sorry you've got
3 this but we just don't have a way to help
4 you fix it. You know, I think it's
5 incumbent upon us to at least try to work
6 with the community, work with the industry
7 that might be causing the issue, to try to
8 have a solution that's offered up as part
9 of this, so it's a win-win situation for
10 everybody. And that's been my biggest
11 complaint with EPA and their toxic
12 philosophy, is that they don't really have
13 the guidelines or the plan in place when
14 they go in and provide these funds to fix
15 the problem once it's found. And so that's
16 what we're trying to do here.

17 MR. WILSON: Thank you.

18 MR. BRANECKY: I have some
19 comments and questions and I expressed some
20 of these before, but I want to go on
21 record. On the proposed Subchapter 42
22 under "Purpose", you state the purpose of
23 the subchapter is to protect the public and
24 the environment. Yet, the rest of the
25 subchapter only deals with protection of

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1 the public. Is there a risk of being
2 criticized for having a rule that says our
3 purpose is to protect the environment, yet
4 have nothing in the rule that addresses
5 protection of the environment?

6 MS. BRADLEY: Yes, that is a
7 legitimate concern and we are struggling
8 with the lack of definitive information to
9 establish standards that would be similar
10 to the secondary standards that Mr. Ashford
11 presented this morning. A primary standard
12 that's protective of health and then
13 perhaps a basis for a secondary standard
14 that would be protective of the
15 environment, the plants, animals and
16 property. I believe staff will do some
17 additional work in this area.

18 MR. BRANECKY: Will we have
19 something in January or is that something
20 down the road?

21 MR. TERRILL: I would think that
22 that's going to be something down the road.
23 Because one of the things that EPA has been
24 criticized for and one of the things
25 they've indicated they are going to make a

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1 commitment to try to revisit is this issue
2 of secondary standards and how they're
3 supposed to be protective of ecosystems and
4 things above and beyond public health.

5 So I think what we've got to
6 remember is that this document is a dynamic
7 document that can be changed as EPA
8 provides more data. Because the kind of
9 studies and the kind of concerns you raised
10 are ones that -- it's difficult enough to
11 deal with a public health, the actual human
12 impact of these things, but to try to
13 assess the effect on plant life and animal
14 life and all the other systems that really
15 the secondary standards and the toxics are
16 designed to look at, that's beyond our
17 scope.

18 However, I think the goal should be
19 there and that's kind of what -- it's
20 stated as that should be our goal and we'll
21 continue to work towards that. But we'll
22 have to rely heavily on EPA to be able to
23 provide us the information that we would
24 need to do something like that. But in the
25 event that we were to identify areas where

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1 entities other than human health was
2 effected, we would still want to retain the
3 ability to try to look at that. But again,
4 that would be a much more intensive effort
5 with the local community and the folks
6 effected by it. Because then you're
7 talking about aesthetics and values and
8 other things that go into quality of life
9 for that area, and that's really more of a
10 local issue than even public health is.

11 So I would like to leave it like
12 that. But I don't know that we're going to
13 have a definitive answer on that by
14 January. It's something that we would
15 develop as this rule develops.

16 MR. BRANECKY: Well, I guess
17 another option would be to take it out
18 until such time that we're ready to deal
19 with it.

20 MR. TERRILL: We could do that,
21 but I would rather leave it in as a goal,
22 if you will. I would rather take the
23 criticism for having it in there than not
24 having it. Because I still think it keeps
25 in our mind that that should be a goal of

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1 what this rule is all about.

2 MR. BRANECKY: I had some
3 additional comments. On page two, under
4 Section 42-30, Areas of Concern. In A2,
5 actually, we list A, B, C, D and we have
6 the -- after C it says emission inventory
7 data and EPA reports. That implies that in
8 order to make the decision to monitor, we
9 must meet all four of those criteria and
10 I'm not sure that's the intent of the DEQ.

11 MS. BRADLEY: It is not the
12 intent and we will change the word, "and"
13 to "or".

14 MR. BRANECKY: Okay.

15 MS. BRADLEY: That will allow
16 additional flexibility in establishing
17 areas for review or targeting.

18 MR. BRANECKY: Further down in
19 that same section under C, Public Meeting,
20 it talks about the Department receiving a
21 timely request. I think that probably
22 ought to be clarified. I assume you're
23 meaning within the 30 day opportunity
24 referenced in Paragraph B above.

25 MS. BRADLEY: That is correct and

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1 staff agrees that it should be clarified.

2 MR. BRANECKY: Over on page
3 three, under 42-31, A, Applicability. I
4 guess I need some clarification. The way I
5 read this section is if a -- especially,
6 under C. If a facility is subject --
7 they're not subject to a final emission
8 standard of work practice or other
9 requirements to control emissions, then it
10 will be subject to compliance strategies.
11 So if it is subject to a final emissions
12 standard of work practice or requirement,
13 or other requirement to control emissions
14 under Section 112 or 129, then compliance
15 strategies will not -- it will not be
16 subject to compliance strategies?

17 MS. BRADLEY: That is correct.
18 And the basis for that is the authorities
19 granted the Agency under the Oklahoma Clean
20 Air Act.

21 MR. BRANECKY: Okay. I want to
22 make sure. Sometimes a facility can be
23 subject to a rule but not have any
24 requirements under a rule. Is that as long
25 as the facility is subject to the rule;

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1 does that relieve it from the compliance
2 strategy?

3 MS. BRADLEY: If it is not
4 subject to a work practice standard,
5 emission standard or a specific
6 requirement, it still will be subject to
7 review under Subchapter 42 and could be
8 part of a control strategy developed for
9 that area. I will ask for concurrence from
10 Matt Paque.

11 MR. BRANECKY: Okay.

12 MS. BRADLEY: That was the
13 intent.

14 MR. BRANECKY: Okay. Page four,
15 under 42-32, Redesignation. We talk about
16 the Director shall redesignate an area as
17 in compliance. What does it take to
18 redesignate an area in compliance; a 24-
19 hour reading in a monitor or how do we --
20 what kind of data do you need to
21 redesignate an area?

22 MS. BRADLEY: It will be
23 essentially the process in reverse for
24 designating the area. One reading below
25 the standard would not result in a

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1 redesignation. What we will -- we'll
2 utilize a quality assurance plan developed
3 for that monitoring project initially.
4 When we have values that show that the
5 concentrations at that site or in those --
6 at those sites are below the standard, it
7 will be considered for redesignation. So
8 we'll have to have a number of values that
9 indicate that it's below.

10 I asked our statistician if he could
11 give me a minimum number of values
12 necessary for a designation or
13 redesignation. He could not definitively
14 state that but we will use established
15 guidelines that are currently being used in
16 our criteria pollutant monitoring programs.

17 MR. BRANECKY: I guess I would
18 encourage, you know, to be as specific as
19 we can in the requirements of the rule.
20 And we can all sit here and agree today but
21 we're all not going to be here tomorrow and
22 it's helpful to industry to know, have it
23 spelled out as much as we can, while still
24 giving DEQ some flexibility. But we would
25 like to know what we have to deal with,

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1 industry likes to know what they have to
2 deal with and know that it won't change
3 when personnel at DEQ changes, which it
4 can. So I would just like to see it as
5 much detail, as much spelled out as we can.

6 One final comment and then I'll be
7 quiet. You stated that you're going to
8 bring a fee proposal to the Council in
9 January. And my question is, and this is
10 in a memo to the Council, you talked about
11 possibly increasing the fees on HAPS that
12 are regulated under Section 112, also TACs
13 and VOCs. Why do we need to raise fees on
14 anything besides what's going to be
15 controlled by Subchapter 42?

16 The intent of 42 is to control the
17 emissions of what's listed in Appendix O.
18 Are we going to increase fees on other
19 substances that are not specifically
20 controlled by Appendix O or 42? Why do we
21 need to do that?

22 MR. TERRILL: I don't know that
23 we've made a decision exactly on how we're
24 going to propose the fee. We've got
25 several scenarios that we're kicking around

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1 and what we'll do is, when we do our fee
2 case in January, we'll kind of present to
3 the Council what we went through to try to
4 determine that and why we did that. The
5 big reason is, if we did it the way you're
6 proposing, it's my understanding that we
7 would end up with two or three facilities
8 footing most of the bill and we didn't feel
9 like that was fair.

10 There is also some emissions
11 inventory questions with some of these
12 proposals that we've kicked around. We
13 looked at five or six different scenarios
14 on how to do this. Obviously the
15 preferable scenario to me is to work with
16 my boss, Steve Thompson, over at the
17 Legislature to get a mobile source type
18 fee. And that's one of the things that he
19 wanted me to bring back to you all today,
20 is that he has found a Senate and House
21 sponsor for the rental car fee that would
22 fund this.

23 And also, if it generates more money
24 than we need for the toxics program, which
25 we believe it will, given our data, could

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1 even allow us to hold the line or possibly
2 even reduce our Title V fees, because I
3 don't need any more money than I need for
4 my budget. And if I've got an excess in
5 that, there's no sense in me charging you
6 all, the fee payers, in excess because I
7 can't do anything with that money anyway.
8 It just would go into the general fund or
9 probably back to the Legislature.

10 So he's asked me to convey to you
11 all that he has found a sponsor for that
12 bill, but if it's Steve Thompson leading
13 the charge over at the Legislature, it
14 won't fly. It's got to have the support of
15 the industrial fee payers in order to have
16 a chance for that bill to move forward and
17 for us to not have to do this, because I
18 truly don't want to do a toxics fee. It's
19 painful for me, it's painful for the
20 Council, it's painful for the regulated
21 community, but I feel like it's incumbent
22 for us to have a method to pay for the work
23 that we think is going to be necessary
24 under this rule. That's what we'll bring
25 to you in January, is an outline of what

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1 we're proposing and some of the other
2 things we've looked at and why we rejected
3 those. We look forward to a spirited
4 dialogue.

5 MS. BRADLEY: And if the Council
6 prefers, first I had prepared some
7 information on Appendix O. Scott Thomas
8 asked that I provide an overview of
9 Appendix O, its content. I know we
10 provided a lot of information, a lot of
11 technical information to the Council, and
12 this overview might make it a little easier
13 to understand why we included the pieces of
14 information that we did.

15 Also, the information, printed forms
16 was not made available in hard copy to the
17 public, but we have a list of websites that
18 can be accessed. That list is back on the
19 -- on this back table. And so if the
20 Council doesn't mind, I'll provide this
21 overview. Is that agreeable? Okay.

22 Appendix O, Toxics Air Contaminants,
23 Maximum Acceptable Ambient Concentrations
24 or TAC MAACs, is part of the current
25 rulemaking action before the Council today.

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1 The Department is proposing to establish
2 ambient concentrations standards for 25
3 substances. Brad has already mentioned
4 these, but the reasons for including those
5 substances on this list, I think, bears
6 repeating.

7 We selected these substances because
8 we have information that demonstrates they
9 are toxic to humans. They are also on
10 state and federal priorities lists. They
11 are emitted by sources in Oklahoma. And by
12 sources, I am taking a more expansive look
13 at that word, we're talking about mobile
14 biogenic stationary sources, non-road
15 mobile, all types of sources. And we have
16 demonstrated monitoring and analysis
17 methods that can be used to gather
18 information on them.

19 The majority of the substances are
20 known, probable or possible carcinogens.
21 The remainder are non-carcinogens that can
22 cause other serious health effects, such as
23 damage to your central nervous system.

24 I would first like to address
25 carcinogens. The draft Appendix O includes

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1 ambient concentrations that correlate with
2 10 to the minus 4, 10 to the minus 5, and
3 10 to the minus 6 risk levels. What do
4 these mean and where do they come from?

5 The disease process for cancer
6 occurs over many years so the probability
7 or risk is presented as an increase in the
8 likelihood of developing cancer from
9 continuous inhalation, exposure to a
10 specific concentration over the entire
11 lifetime of an individual. A 10 to the
12 minus 4 risk or one in 10,000 risk level is
13 the concentration of a substance that is
14 likely to result in one additional cancer
15 per 10,000 people. The 10 to the minus 5
16 would mean an increase of one in 100,000.
17 10 to the minus 6, one in a 1,000,000.

18 The Appendix O as included in the
19 packet is not truly what would be proposed
20 as a standard. We provided the range for
21 comparison to the standard that we
22 currently have in Subchapter 41, which is a
23 quasi-health based standard to show what
24 the difference would be, how much more
25 stringent the standard would be if we

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1 established it at 10 to the minus 4 and 10
2 to the minus 5 and 10 to the minus 6, and
3 also to stimulate discussion. We need to
4 decide what is the appropriate risk level
5 to be utilized in this rule to protect
6 Oklahoma and Oklahomans. What is the
7 source of the risk level that we included
8 in Appendix O? We used EPA's Integrated
9 Risk Information System or IRIS to obtain
10 the human health risk assessment
11 information. Now, IRIS is used across
12 EPA's programs and before a substance can
13 be added to that database, it undergoes a
14 comprehensive toxicity review, internal and
15 external to the agency. And sometimes, I
16 get really frustrated between the
17 announcement of the preliminary information
18 and when it actually goes in IRIS. It does
19 take a while. But it also ensures that the
20 information is defensible, reliable
21 information.

22 For non-carcinogens, there is no
23 risk level, no 10 to the minus 4, 10 to the
24 minus 6 level. Instead, there is a
25 reference concentration. The reference

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1 concentration is the estimate of the
2 continuous inhalation exposure to the human
3 population including sensitive subgroups
4 like children and the elderly that is
5 likely to be without an appreciable risk of
6 deleterious or adverse effects during a
7 lifetime.

8 In addition, we have provided the
9 human equivalent concentration. It is
10 unethical to test substances on human
11 beings, so most of the data is an
12 extrapolation from tests that are done on
13 animals. There is a prescribed procedure
14 from taking that dosage and information
15 that was put together for animals and
16 applying it to human beings.

17 Also, we included the no observable
18 adverse effect level or the lowest
19 observable adverse effect level. The
20 reference concentration is the most
21 protective. It is derived from those no
22 observable or lowest observable adverse
23 effect levels. Again, we used IRIS for
24 that information. We have provided the
25 reference concentration, the human

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1 equivalent concentration, and the NOAEL or
2 LOAEL to aid in our discussions so that we
3 can select the right standard.

4 And I noticed the Council Members
5 were looking at the packet. We provided
6 technical information to show where we
7 pulled these numbers or how we derived the
8 numbers. And the first thing we included
9 was a fact sheet, which actually appears on
10 the last page of the rule section, the
11 proposed rule section. The EPA has
12 recently put together the air toxics risk
13 assessment library. It is available
14 online, Volumes One and Two. The community
15 level assessment portion is not yet
16 available. And this fact sheet is
17 available online, the list of email
18 addresses on -- the list provided on the
19 table will allow anyone to access this
20 information.

21 We have incorporated by reference
22 EPA's methodology for risk assessment for
23 monitoring for quality assurance that is in
24 the air toxics risk assessment library.
25 The residual risk report is the next

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1 section. EPA was required by Congress to
2 report on progress towards assessing any
3 remaining unacceptable risk after
4 implementation of the MACT standards.

5 The most important sheet of paper in
6 this section is the very last page. The
7 heading of this is Exhibit 4 and it's on
8 page 23 of the report. And it starts out
9 with the screening of risk assessment and
10 based on whether you have a carcinogen or
11 non-carcinogen, you have a value, a hazard
12 value or a risk value that will put you in
13 the safe zone, which would be 10 to the
14 minus 6 or less risk or in the middle, 10
15 to the minus 6 to 10 to the minus 4, which
16 is a medium priority; or a 10 to the minus
17 4. The 10 to the minus 4 risk, let's say
18 you have a one in 100 risk. If you assess
19 that the risk associated with exposure is
20 one in 1,000 or one in 100, you have a high
21 priority and the Agency would need to act.
22 We have in the 10 to the minus 6 and 10 to
23 the minus 4 level, there -- it's not as
24 definitive what our prescribed course of
25 action would be or at least under EPA's

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1 framework. But that sort of gives you an
2 idea of why the 10 to the minus 4 and 10 to
3 the minus 6 levels were included.
4 The next section are actually summaries of
5 information from IRIS for each of the
6 substances, what type of expected health
7 outcomes are associated with the exposure
8 and what concentrations caused those. And
9 also, there's some discussion about the
10 uncertainties associated with the numbers.
11 We have it for both carcinogens and non-
12 carcinogens.

13 Also, we've mentioned the national
14 air toxics assessment. I can provide an
15 update. The most recent notice says that
16 EPA will make available the 1999 data,
17 hopefully in January or let's say by early
18 spring. I have included a summary document
19 taken from the 1996 assessment which lists
20 a substance and also identifies where we
21 would expect that substance to come from.

22 Acetaldehyde, it's an intermediate
23 in the synthesis of other chemicals. It's
24 also formed as a product of incomplete wood
25 combustion in fireplaces and woodstoves,

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1 forest fires and wild fires. It also comes
2 from stationary internal combustion engines
3 and turbines, vehicle exhaust and
4 wastewater processing. So that provides a
5 nice overview and goes across stationary
6 sources and mobile sources.

7 And the last two sections are what I
8 refer to as the plain english guides as to
9 hazard. And for the most part, these were
10 taken from publications of the Agency for
11 Toxic Substance and Disease Registry and I
12 think they provide information in a much
13 more understandable format. In the absence
14 of that information, I have substituted the
15 New Jersey Department of Health hazardous
16 substance fact sheets because they were the
17 most user friendly and understandable bits
18 of information. These are also available
19 online. And that completes my overview.
20 Do you have any questions?

21 MR. CURTIS: Yes, I do. First, I
22 would like to apologize to the Council for
23 being tardy this morning and I would like
24 to ask you a few questions.

25 MS. BRADLEY: Certainly.

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1 MR. CURTIS: I notice that in the
2 proposed Appendix O, we listed some as
3 compounds, cadmium compounds. I guess the
4 area that I'm concerned in that is
5 involving chrome. We listed it as chrome
6 compound and I think you recognize that
7 there's a lot of naturally occurring
8 materials, not only just chrome but more
9 hazardous ones of chrome, certainly
10 hexavalent chrome and then to some degree
11 maybe trivalent chrome. How does the staff
12 look at that difference, I guess?

13 MS. BRADLEY: The Appendix O
14 proposed standard will be revised because
15 we have determined that hexavalent chrome
16 is our concern. The standard that is
17 currently -- the level that is proposed
18 will be applicable to hexavalent component
19 in any chrome emissions. And you add --
20 and with regards to compounds, we will --
21 we compare that to the chrome portion of
22 any mixture of hexavalent chrome compounds
23 that are measured. So for comparison, it
24 will be the chrome faction or fraction of
25 whatever is collected that will be compared

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1 against the standard, not the other
2 molecules that are in combination with the
3 hexavalent chrome.

4 MR. CURTIS: So you will be --
5 what you're suggesting is that you will
6 focus on the hexavalent chrome?

7 MS. BRADLEY: We'll focus on
8 hexavalent chrome and the standard will be
9 applicable to the portion at -- reported as
10 chrome.

11 MR. CURTIS: I'm not aware of any
12 other compounds listed in there that have a
13 similar scenario, but I think that's the
14 only one that is of that nature.

15 MR. BRANECKY: So are you saying
16 that the next revision will have only
17 hexavalent chrome in the list?

18 MS. BRADLEY: Correct.

19 MR. BRANECKY: Okay.

20 MR. CURTIS: The other question I
21 would have in regards to them is the
22 methodology that would be used to measure
23 down to those maybe proposed limits. Is
24 the methodology there today to measure to
25 that degree?

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1 MS. BRADLEY: It is for all
2 substances except for acrolein. We've
3 received recent information that the method
4 that is prescribed for acrolium an acetal -
5 - or an aldehyde and ketone method that is
6 not reliable. We are proposing a removal
7 of acrolein until such time as we have a
8 better method.

9 MR. CURTIS: Okay. Let me make
10 sure I understand then. As far as the
11 methodologies that are available, are
12 acceptable in the ambient air concentration
13 monitoring?

14 MS. BRADLEY: Yes, they are. We
15 currently have utilized the methodologies
16 for a project in Ponca City for volatile
17 organic compounds for the VOCs. We have
18 done research with the contractor and EPA
19 to determine if we had reliable methods for
20 collecting the samples and for analyzing
21 them. And in every case, we have been able
22 to -- or would be able to analyze to the
23 level that we need to.

24 MR. CURTIS: So does the staff
25 propose at some point of issuing those

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1 monitoring requirements, the methodology
2 associated with collecting the data?

3 MS. BRADLEY: We have referenced
4 EPA's air toxics risk assessment library,
5 which includes those. We do not develop
6 separate methods and I believe, without
7 exception, have utilized EPA-approved
8 methods for monitoring and those are
9 available online.

10 MR. CURTIS: Okay.

11 MS. BRADLEY: Specifically, they
12 are available on the technology transfer
13 network component of EPA's website under
14 AMTIC, which is, I believe, the air
15 Monitoring Technology Information
16 Clearinghouse.

17 MR. CURTIS: Okay. And going
18 back to the rule, the proposed rule just a
19 little bit. I would like to follow up on
20 Dave's earlier question in regards to
21 applicability, which is in Section 42-31.
22 And we talk about that the -- that emission
23 source units that are not subject to final
24 emission standards, work practices or other
25 requirements to control emissions. Under

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1 the NESHAP standards, a MACT standard for
2 that may have evaluated surrogant
3 chemicals. And to my understanding, meant
4 that they would consider those and are
5 controlled by the primary emission compound
6 that is identified within the MACT
7 standard. So if a surrogant chemical is
8 associated with that, would that then be
9 excluded?

10 MS. BRADLEY: It could be. There
11 will not be an automatic exemption or
12 exclusion. We will take that into
13 consideration when we look at the emissions
14 from that source. We have not been able to
15 -- it will require another level of review
16 to ensure that the substances were
17 evaluated as part of the MACT development.
18 And we have been reluctant to provide, sort
19 of an automatic exclusion, even if an
20 emission standard is not established
21 because of our experience with the
22 stationary reciprocating internal
23 combustion engine, MACT. Formaldehyde is
24 an emission -- I see you shaking your head
25 -- that the MACT didn't address a pollutant

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1 that is of a concern to us. In all
2 likelihood, the source that is, in fact,
3 controlling the pollutant but measuring a
4 surrogate for record keeping, reporting and
5 compliance purposes, will not be subject to
6 additional requirements because it would be
7 defensible that, in fact, they had
8 controlled the pollutant. We have not
9 found a way of writing that necessarily
10 into the rule at this point so that we have
11 an automatic exemption. It would require a
12 review. Eddie, do you wish to talk about
13 it?

14 MR. TERRILL: That's pretty
15 close. That's exactly what we're --

16 MS. BRADLEY: Okay.

17 MR. TERRILL: -- struggling with.

18 And we felt like this rule is designed for
19 us to use in the unlikely event that there
20 is a public health exposure that EPA didn't
21 address. And again, this is an Oklahoma
22 rule and that's the reason that we worded
23 it like we did or left it like we did.

24 MR. CURTIS: One other question
25 in regards to the ruling. We talk about

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1 the control measures and we use the word an
2 "availability" and "feasibility" of the
3 measures, but yet I didn't see anything
4 that really identifies "feasibility".

5 MS. BRADLEY: We have discussed
6 this extensively. The current draft of the
7 rule that has not been released has
8 expanded our -- let's see -- and clarified
9 what we meant by feasibility. So we are
10 planning to add the word cost to that list
11 of criteria. Our feasibility determination
12 has always included a cost component, but
13 when we went to the dictionary and went to
14 available sources for the definition of
15 feasibility, we realized that it was not as
16 clear as we thought it was.

17 MR. CURTIS: So would this be
18 something akin to a RACT determination,
19 Reasonable Available Control Technology,
20 which does incorporate cost?

21 MS. BRADLEY: Yes. It will be
22 similar. However, the critical cost points
23 for comparison for toxics are not as
24 defined, that depending on the toxicity of
25 the substance, EPA has made determinations

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1 that the cost of a quarter of a million
2 dollars per ton of removal of certain
3 highly toxic materials was feasible. So
4 unlike the existing practice where you have
5 a narrow range of acceptable cost, control
6 costs, we will not -- I do not expect a
7 narrow range and one that we can truly
8 define with any endpoint, it will be done
9 more on a case-by-case, truly case-by-case
10 basis.

11 MR. CURTIS: Okay. Thank you.

12 MS. BOTCHLETT-SMITH: Other
13 questions from the Council today?

14 MR. WILSON: Maybe it was
15 mentioned, but what is the -- what is the
16 state's position with regards to dealing
17 with releases during catastrophic events?

18 MS. BRADLEY: Catastrophic events
19 or accidental releases are addressed under
20 EPA's 112 program for which we are not
21 delegated and we would not anticipate that
22 with regards to Subchapter 42 that the
23 criteria for -- or let's say, that would
24 trigger an area of concern because unless
25 it's repeated event and hopefully a

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1 catastrophic event will not be a repeated
2 event, you would not have the number of
3 values for comparison. There is also a
4 question of malfunction. Our rules have a
5 provision for reporting of excess
6 emissions. We will hopefully have the
7 excess emission reports much earlier than
8 we will get monitoring data for comparison.
9 That will be part of the protocol to
10 compare data reported by facilities against
11 what has been monitored. And that -- and I
12 encourage facilities to exercise their
13 right under Subchapter 9 to disclose why a
14 malfunction occurred and why it was beyond
15 the control of the facility to prevent the
16 emissions.

17 MR. WILSON: Okay.

18 MS. BRADLEY: Did that help at
19 all, Joel?

20 MS. BOTCHLETT-SMITH: Okay. I
21 have received two notices for oral
22 comments. The first is Thelma Norman of
23 American Airlines. Do you still wish to
24 comment?

25 MS. NORMAN: Hi, good morning. I

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1 think basically Cheryl may have answered my
2 questions, but I do want to, as a citizen,
3 thank the Council and the DEQ for proposing
4 a clearer concise rule that allows for
5 public input. It doesn't seem to be very
6 onerous for public participation, yet it
7 keeps the public accountable. And also, I
8 wanted to -- I appreciate the Council for
9 targeting compounds that are a risk to
10 Oklahomans versus the list of 2,000.

11 Also, as an industry representative
12 we appreciate the streamlined rules and the
13 practical compliance strategies. My
14 comments earlier were going to address the
15 NESHAP-governed facilities, but I think
16 that Cheryl has pretty much addressed that
17 in response to Mr. Curtis' questions.

18 And secondly, I had a comment also
19 about the hexavalent chrome, which I think
20 you also addressed, so thank you.

21 MS. BOTCHLETT-SMITH: The next
22 commentor, Nadine Barton of CASE.

23 MS. BARTON: Nadine Barton with
24 CASE. And with all due respect to Thelma,
25 who I've known for years, being an activist

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1 for almost 30 years now, I -- first of all
2 I want to say, I do appreciate the work
3 that staff has done. This is, you know, to
4 get it down to this is -- you're to be
5 congratulated. But there are some issues
6 that I do have with, first of all, in how
7 the actual selection of these 23 toxics
8 came about. And I'm going to just -- going
9 through my head about some of the things
10 that I would think -- did you go through
11 actual permits to look at the amount of
12 emissions that have been established
13 already in specific areas of the state or
14 did you just look at EPA lists and say
15 these are, you know, apply to us because we
16 have the industry there or exactly what was
17 the criteria of selection of these 23 over
18 those others that were the remainder of the
19 2,000?

20 MS. BRADLEY: The process for
21 selection of the 25 candidates for
22 inclusion in Appendix O began with the
23 emissions inventories. And we looked at
24 what substances were truly incorporated in
25 Oklahoma. In addition, we looked at the

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1 national air toxics assessment for 1996 and
2 looked at the areas of -- that were
3 displayed on that as having higher risks,
4 where did that risk come from and identify
5 those substances. We looked at -- we
6 consulted with our permitting staff. We
7 consulted with our enforcement staff. They
8 provided recommendations. We looked at
9 EPA's urban air toxics list and the HAPS
10 list. We then went to look at available
11 information for specific substances. Did
12 we have a reliable risk number for
13 carcinogens, did we have a reference
14 concentration for a non-carcinogen and then
15 we looked at, well, is the substance
16 emitted anymore. Some of the substances
17 that were still being tracked are not
18 available. We eliminated some because the
19 concentrations usually in the case of
20 pesticides, some of the pesticides made
21 EPA's list and made some national
22 priorities lists. We do not currently have
23 reliable methodology for detecting them at
24 the levels that we would need to establish
25 as a standard. So they could not qualify

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1 for inclusion on the list, it was parts per
2 trillion and we don't have reliable
3 methodology. I look for this list to
4 change over time as additional information
5 is available on the substances that are
6 included and as we gain additional
7 information on the substances that are
8 present in the air in Oklahoma, we will not
9 be limited to monitoring just for the
10 substances on the list.

11 And in fact, as resources allow, we
12 will monitor and have analysis or data
13 available for a number of air toxics that
14 may be VOC compatible. I would refer
15 people to the Ponca City study which showed
16 some of the information that we -- the
17 different substances that we monitored for
18 that we are not proposing standards for at
19 this time. If, in fact, values are
20 significant for other substances based on
21 the monitoring, we'll add additional
22 standards.

23 MS. BARTON: You will.

24 MS. BRADLEY: Yes, we will.

25 DR. LYNCH: Cheryl, is there a

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1 mechanism for the public or someone else to
2 petition the Agency to have something put
3 on the list?

4 MS. BRADLEY: Yes, there is. It
5 is under our Chapter 4 procedures and it's
6 similar to some of the petitions that have
7 been before the Council in the past.

8 DR. LYNCH: Because this one
9 might be different in terms -- and it
10 probably doesn't spell out the adequacy of
11 information that would need to be present
12 to -- like having a reference dose or those
13 sorts of thing.

14 MS. BRADLEY: No, it does not and
15 I -- we need to look at that. We
16 anticipated that we would receive requests
17 for adding substances to the list and due
18 to our novice standing in doing it
19 ourselves, it's been difficult to lay out
20 the exact protocol that we would expect of
21 someone else. Also, the standard that we
22 would apply to an individual, would it be
23 the highest standard of how are we -- how
24 would the Agency be involved in providing
25 technical information necessary to support

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1 the petition. And I don't know if Eddie
2 wants to --

3 MR. TERRILL: Well, that's a good
4 question and it kind of goes to the need to
5 have a specialized section, if you will, or
6 a specialized group of folks within a
7 section that looks at this. Because I
8 would expect that we would be very
9 proactive in trying to gather the
10 information necessary to make our own
11 determination as to whether or not the
12 concern is valid or whether or not it's
13 related to some other issue that someone
14 might bring to us. And I think if this
15 thing, it's such a controversial and highly
16 passionate issue with folks, I think it's
17 kind of incumbent on us, if we have a
18 toxics program that does the things that I
19 envision it would do, that we would be a
20 lot more proactive in working with citizens
21 to determine through monitoring whether or
22 not the issue is there and then it would
23 probably be incumbent upon us to make the
24 decision whether or not we would want to
25 bring to the Council. I think what we

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1 would be looking for is identification that
2 a problem exists and then it -- you could
3 do it either way. I mean, the public could
4 develop their own data. That would be very
5 difficult, I think, for them to do. And to
6 me, it's more of if we get a complaint or
7 if we get a concern that's been raised and
8 we take a look at it and make our own
9 determination, then that becomes something
10 that we have to live with and that we
11 should be able to defend. But if it
12 indicates a problem, then we should have
13 the capabilities, the technical expertise
14 to bring that to the Council and make a
15 case as to why another chemical should be
16 added and what the level should be and that
17 sort of thing. It's a -- it puts a lot of
18 pressure on the Council, but I don't know
19 of another better way to do it because we
20 really need to be able to defend this in a
21 scientific manner.

22 MS. BRADLEY: And one of the
23 resources that we all have that we
24 currently have only a limited basis
25 provided the program is funded and the

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1 monitoring can be accomplished. That
2 information will be published through our
3 website. We may have some limitations if
4 it's too extensive, but we will put on the
5 values so that the public can see what the
6 readings are, very similar to what the
7 ozone readings are now. We almost -- we
8 have virtually a real-time reporting for
9 that, but that will empower the public and
10 also make -- it does enable our agency to
11 be more proactive in proposing additional
12 standards or more protective standards.

13 MS. BARTON: Thank you. That was
14 another item that I wanted to bring up, was
15 the public participation because, you know,
16 unless you've been in the activist group
17 for a period of years, that the general
18 public has a hard time just expressing
19 themselves, let alone knowing the
20 procedures to take in wanting to have a
21 toxic added to any list or finding out
22 research about the risk assessments done
23 and all of this. And that's where I want
24 to possibly suggest on your website an
25 actual procedure that addresses these

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1 toxics. Because usually the public does
2 not get involved unless they're sick. By
3 the time that they're sick, they either
4 don't have insurance or they don't have the
5 education, they have to find somebody to
6 represent them so they are dependent on the
7 state and DEQ to help them through this. I
8 realize that this can be a compromising
9 position for DEQ because after all,
10 industry is your biggest client and that's
11 where you receive the fees for your budget
12 in order to have a job. But I value the
13 wisdom of Eddie and the other division
14 managers to be able to really address what
15 the public issues are. That 30 day notice
16 in the newspaper about a proposed hearing,
17 people and myself included can be out of
18 town and miss that notice. What I would
19 like to recommend is that the State Health
20 Department and the city and county health
21 departments, if they have a website, have a
22 link to the DEQ air quality website that
23 addresses these air issues. Also, for all
24 the COG's, INCOG, ACOG, that might be
25 available so that it will give the public a

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1 better way to be notified when there's
2 going to be a meeting other than just
3 publishing.

4 The other comment that I had, I did
5 hear Cheryl talk about the EPA's risk
6 evaluation or risk assessment on these
7 toxics and I did hear her say that they did
8 take into consideration all areas of the
9 public instead of the 30-year old strapping
10 white male, that it does take into
11 consideration, if I understand, children
12 and the elderly and the sick because they
13 have avoided that issue before. So that is
14 true; is that correct?

15 MS. BRADLEY: Yes, it is.

16 MS. BARTON: I think Eddie
17 addressed this issue. If other toxics come
18 up other than complaints, like through
19 permitting or through emissions, that you
20 would have a capability if you see a rise
21 in some toxics that is not on this 25
22 toxics list, to be able to bring that
23 before the Council for consideration; is
24 that correct?

25 MR. TERRILL: Yes.

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1 MS. BARTON: The mobile sources,
2 what other mobile sources does that include
3 besides automobiles?

4 MS. BRADLEY: The manner in which
5 you compartmentalize sometimes shifts.
6 Airplanes over to one side and not -- it is
7 our intent that we would include any fueled
8 vehicle in some fashion, cars, trucks, we
9 also mentioned on-road, that's heavy
10 equipment. Cars, buses, airplanes,
11 anything that is related to the activities
12 of man in addition, the biogenic sources,
13 we are also going to take into effect the
14 naturally occurring -- trees will be a
15 contributor in some areas, so -- but we're
16 not limiting our scope.

17 MS. BARTON: What about the
18 mobile burners that they have, you know,
19 that they have traveled around on site and
20 burn things, don't we have some of those in
21 the state that are operating?

22 MR. TERRILL: Not that I'm aware
23 of.

24 MS. BARTON: Okay.

25 MR. TERRILL: If you know of

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1 some, I would kind of like to know it.

2 MS. BRADLEY: There have been
3 some, they have been in conjunction with
4 RCRA or CERCLA activities --

5 MR. TERRILL: That's right.

6 MS. BRADLEY: -- stabilizing
7 soils and they go through a stringent
8 review under the CERCLA requirements.

9 MS. BARTON: (Inaudible).

10 MS. MYERS: Excuse me, Nadine,
11 you need to speak into the microphone so
12 that everybody can hear, please.

13 MS. BARTON: I'm sorry. Mainly
14 for mobile sources, you took emissions
15 standards for automobiles, trucks and that
16 kind of thing, is that right? You didn't
17 take into consideration the RCRA available
18 for burning of soils and other stuff that's
19 mobile, correct?

20 MS. BRADLEY: The standard will
21 be -- is an ambient standard, so it would
22 apply in areas regardless of the source of
23 the emission, provided it's not a volcano
24 or one of the catastrophic naturally
25 occurring events. So unlike our previous

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1 rule, we applied to only a sector of the
2 emitting sources. We are not disqualifying
3 any from review under the AOC. We will
4 have inherent limitations as to bringing
5 about reductions for all those sectors, but
6 we are going to include them in the
7 collection of data and apportionment of the
8 emissions from those different areas.

9 MS. BARTON: Finally, I just want
10 to say that my main concern is for the
11 public's access to risk assessment
12 information to understand what their risks
13 are for some of these toxics that are
14 there, to have actually on your website
15 links for the public to be able to access
16 that information to understand what their
17 risks are, if they want to have that
18 information, because it's very hard for the
19 general public at times to understand this.

20 Another thing that I would like to
21 see is that the Council's notebook or their
22 agenda, with these additional supportive
23 items that we've talked about today that
24 the public did not have access to, to be
25 able to access those online so that people

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1 that are here can understand a little bit
2 more thoroughly and completely the values
3 that you have established.

4 Other than that, the deal about the
5 environment that David brought up, you
6 know, when it's the public health, that's
7 when you can go onto the Health
8 Department's website and establish a link
9 to concerns about air issues or the general
10 public. But if you leave the word
11 "environment" in and you have a whole list
12 of toxins that effect the environment, it
13 is assumed and it is assumptive unless you
14 have been at this meeting and read the
15 notes of this meeting, that that has been
16 taken care of, even though it has not been
17 addressed and will be addressed some time
18 in the future. So I would like to see you
19 at least make some kind of amendment to
20 establish the fact that the environment
21 toxic toxins will be addressed by the
22 Council at some future date. Thank you,
23 very much, and I realize the work that you
24 all have done. Thank you.

25 MS. BOTCHLETT-SMITH: Please step

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1 to the podium.

2 MR. SHELLHORN: I'm Jim Shellhorn
3 with Terra Nitrogen. I don't have any
4 prepared comments. I just have a question
5 first and then a couple of things I would
6 like to say. My question is, does the
7 Department plan, in the revised version of
8 Subchapter 42 to propose the MACT standards
9 that they would like the Council to
10 consider when they bring this back at the
11 next meeting or will there still be these
12 three options in the appendix?

13 MS. BRADLEY: Our plan will be
14 for one.

15 MR. SHELLHORN: At the next
16 meeting?

17 MS. BRADLEY: At the next
18 meeting.

19 MR. BRANECKY: Cheryl, will that
20 be published and go out on the web 30 days
21 ahead of the next Council meeting? The
22 next revision will contain that one
23 recommendation; is that right?

24 MS. BRADLEY: Yes. The next
25 version of the rule to be published and

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1 available next Wednesday will have one
2 recommended standard and that's really the
3 only way the program can work. We'll have
4 one definitive standard recommended for
5 each. At present, we have only received
6 one clear recommendation as to a level and
7 that was to establish it at the 10 of the
8 minus 4, or comment, written comment
9 regarding the level. There was some
10 concern regarding the stringency of -- the
11 appearance of a much more stringent
12 standard when compared to what we currently
13 have on the books for Subchapter 41. And
14 those were the only comments we've truly
15 received.

16 MR. TERRILL: And that was our
17 whole purpose of having the three different
18 standards. We hoped we would get some
19 dialogue and comments that would kind of
20 help us, other than our own opinion, set
21 that. But so far we've been successful,
22 but we will have a recommendation.

23 MR. SHELLHORN: Well, I think
24 there may have been a little bit of
25 misunderstanding, at least there was on our

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1 part, Eddie, about that, the way it was
2 presented. We were under the impression
3 that there was going to be a separate
4 rulemaking for those substances in the
5 establishment of those standards, not --
6 because it wasn't clear what was being
7 proposed for standards. So --

8 MR. TERRILL: And there will be,
9 but I know what you're saying, you thought
10 that we would have that, that Appendix O
11 would be a separate rulemaking from the
12 rule itself.

13 MR. SHELLHORN: Right.

14 MR. TERRILL: And only the
15 updates of what we originally proposed,
16 which you'll see next week, will have these
17 chemicals compounds in there along with the
18 proposed standard.

19 MR. SHELLHORN: So we'll have an
20 opportunity to --

21 MR. TERRILL: Yes.

22 MR. SHELLHORN: -- comment on the
23 proposed MACT standards?

24 MR. TERRILL: Right.

25 MR. SHELLHORN: This next 30

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1 days, okay. Well, the one other thing that
2 I want to say, I guess two things. First
3 of all, Terra Nitrogen, who I represent --
4 we've resubmitted some written comments
5 already and I appreciate the Council's
6 consideration of those comments. We favor
7 the changes to Subchapter 42. I think the
8 concept is certainly good. If it's done
9 right, I think there is an opportunity to
10 improve the regulation. But one of the
11 things I will caution, the use of reference
12 concentrations as an ambient standard is
13 not necessarily appropriate for all
14 substances and ammonia, in particular,
15 which is the substance that I'm familiar
16 with, because that's what we make as our
17 business.

18 And as an example of that, the
19 reference concentration that's listed here
20 on the table, ammonia is present in the
21 ambient air in many places in the state of
22 Oklahoma at concentrations several orders
23 of magnitude higher than this concentration
24 because of biogenic sources, naturally
25 occurring ammonia because of metabolic

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1 processes that naturally occur. And in
2 fact, ammonia is present in the air, in the
3 breath that you and I exhale, everyone in
4 this room, at concentrations several orders
5 of magnitude higher than this
6 concentration. So it's very obvious that
7 this would not be a standard that would be
8 appropriate for an ambient air standard.
9 So just something that I wanted to point
10 out as you're considering the appropriate
11 standard for ammonia. I don't know about
12 these other substances, but I do know
13 something about ammonia. So, anyway, thank
14 you, very much, for the opportunity to
15 speak.

16 MR. WILSON: Can I ask the
17 gentleman a question? I think you
18 expressed that Terra Nitrogen is pleased
19 with what the state's doing with this
20 toxics program. Do you not like Subchapter
21 41?

22 MR. SHELLHORN: Well, I wouldn't
23 say that I don't like it. I think it's a
24 bit ill-defined, the fact that the universe
25 of regulated substances under Subchapter 41

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1 is ill-defined.

2 MR. WILSON: So you're looking
3 for 42 to provide clarification?

4 MR. SHELLHORN: Absolutely. I
5 like the fact that it's going to be a list
6 of substances, that those substances are
7 there because they are -- that the toxicity
8 of those substances is defined, the
9 standards are based on science, and there's
10 a good reason for them to be on the list.

11 MR. WILSON: Thank you.

12 MS. BRADLEY: I tarried at the
13 microphone because I mis-spoke. Scott
14 Thomas corrected me. The publication of
15 the rules will be next -- not this --
16 tomorrow, but a week from Friday.

17 MS. BOTCHLETT-SMITH: Do we have
18 anyone else from the public that wishes to
19 comment today? Steve.

20 MR. MOYER: Steve Moyer with
21 Sinclair Oil. Just a couple of quick
22 questions and clarifications, I guess. In
23 252:42-31, Item B1, you use the phrase the
24 Department shall account for the impact of
25 any sources -- any emissions from mobile

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1 biogenic sources. And I'm curious what the
2 -- what that statement means, what do you
3 mean by account for, as far as when you're
4 looking at control strategies? If you
5 figure out that load sources are 50
6 percent, does that mean that the industry
7 will have less stringent control
8 requirements, because you're now going to
9 address the mobile sources or what does
10 that phrase really mean in the practical
11 sense?

12 MS. BRADLEY: I think you went --
13 as to account, we will define -- we will
14 attribute the portion of the pollution load
15 for that pollutant to the appropriate
16 source. As to how the -- how the
17 reductions will come about, that's where we
18 get back to the cost or feasibility and
19 availability. There -- and I don't think
20 we have a definitive answer, because we do
21 have limitations on getting some type of
22 reduction from mobile sources or sectors
23 that are beyond the control of our agency.
24 And I will defer to Eddie, if you have any
25 -- do you have any -- it's a difficult

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1 situation. We will look to -- there is a
2 possibility, I think we'll have to be frank
3 in this, if in fact it would be cost
4 effective to get some reductions that might
5 be disproportionately greater for industry
6 but it met our cost and feasibility test,
7 we might go to industry to get those
8 reductions, correct?

9 MR. TERRILL: Yes. And this is a
10 pretty good reason as to why this is such a
11 tough issue and why we put this off as long
12 as we could. And frankly, it would be a
13 lot easier not to have a toxics rule at all
14 because these are tough questions. But
15 that's not what our responsibility is. Our
16 responsibility is to be protective of
17 public health. So, you know, this would be
18 something that we would work with the
19 effected industries. We would work with
20 the community. We would work with the
21 citizens effected to try to come up with
22 strategies that everyone can live with.
23 And frankly, you know, I can see situations
24 occurring where there is just no way that
25 you can address corrective measures without

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1 either driving the facility out of business
2 or not doing anything and making the
3 citizens aware of that. So, you know, it's
4 a tough situation. It's a tough issue when
5 you're dealing with toxics and that's the
6 reason that a collaborative process that
7 involves all of the effected parties is the
8 only way to deal with this and being honest
9 with the community and it could be some
10 situation we actually leave it up to the
11 community to determine whether or not -- if
12 we can't address this in a cost effective
13 manner, people at least are aware that
14 they're being exposed to these things and
15 can hopefully adjust their lifestyle
16 accordingly or whatever. I'm hoping we
17 don't get into that, but I can tell you
18 that given EPA's decision to look at this
19 on a local level, that if we don't do it,
20 other folks will and there won't be that
21 opportunity for us to work with all the
22 effected parties to come up with solutions.
23 It will be identification of a problem and
24 then it will get dumped on us after that to
25 figure it out and that's a little bit late

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1 in the day. So you bring up a good point,
2 Steve and I don't know that there is any
3 way to adequately address that, other than
4 our processes have always been to be as
5 collaborative as possible and to bring all
6 the effected parties into a discussion.
7 But at the end of the day, we will be the,
8 I guess the bad guy, if you will, and have
9 to make the decision based on all the
10 factors that are available to us, including
11 cost and including exposure to the public.

12 MR. MOYER: And I appreciate
13 that. And I didn't expect (inaudible).

14 MR. TERRILL: But it is a good
15 question. It is a good question.

16 MR. MOYER: I guess one possible
17 suggestion out of this, similar to the
18 clarification issue that was raised earlier
19 is, is there a possibility and maybe
20 there's not, but is there a possibility for
21 more clarification of the rule once you
22 actually are complying with the phrase
23 accounting for, when you're talking about
24 control strategies? I know it's a very
25 nebulous phrase, because it will be very

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1 case specific, but maybe even some examples
2 of what that may encompass.

3 And then the other question, one
4 I've raised before in relation to
5 permitting, and what are the -- and I'm
6 going to kind of direct this a little at
7 Dawson, what the expected impacts in a
8 couple of cases. One, in a place that is
9 not an area of concern but is close, are
10 there permitting issues in relation to a
11 facility filing for a permit that may
12 impact a potential AOC. And then the other
13 question is, if there is an AOC and a
14 facility is filing for a permit, what are
15 the permitting implications as far as the
16 timeliness of being able to get permits
17 back?

18 MR. LASSETTER: Dawson Lassetter
19 with Air Quality. The second one first.
20 As far as when there's an AOC, the way I
21 see this is that just because there's an
22 AOC doesn't mean a permit has to cover or
23 needs to cover that particular toxic. That
24 may be part of a strategy. If it comes
25 about that it looks like there are -- there

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1 is a need to limit stationary sources
2 through a permit, then we would do that and
3 in a new facility coming in, they of course
4 would have to abide by whatever that
5 strategy was, you know, or a modification,
6 I guess is what you're talking about.

7 As far as if you're outside the AOC,
8 I think the way the rule is written right
9 now, we talked about facilities that may
10 effect an AOC. And my guess is that we
11 would have to do something in our analysis
12 very similar to what we do for areas that
13 are class one areas, where perhaps there is
14 a range beyond which you don't have to do
15 modeling to see whether you're effecting.
16 EPA says it doesn't have a number on that,
17 generally speaking, 100 kilometers out,
18 consider that you don't have. That would
19 have to be something that would have to
20 also, I think, be defined in the strategy
21 to clean up the AOC.

22 MS. MYERS: How are the
23 boundaries of the AOC going to be defined?

24 MR. LASSETTER: That's not a
25 permit issue.

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1 MS. MYERS: It's a real concern
2 for some of us and that might want
3 (inaudible).

4 MR. LASSETTER: Sure, it's a
5 concern. Yes, I didn't mean to be flip.
6 But I don't want, you know, the way it's
7 proposed right now, the new Subchapter 42
8 is not permit driven. Subchapter 41 is
9 permit driven and I think probably doesn't
10 accomplish anything like it was supposed to
11 accomplish, other than giving some people
12 warm fuzzies. The new rule is not permit
13 driven. So the need for the permitting
14 system to get into it, I think would have
15 to be part of the strategy once there's an
16 AOC.

17 MR. TERRILL: That's exactly
18 right. The permit is the least, in my
19 opinion, important part of this. The
20 important part is the identification of the
21 problem and the development of a solution.
22 And the permitting would be a part of that
23 but, you know, I just don't think that's
24 going to be a big component of this whole
25 issue.

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1 MR. MOYER: And I guess it's not
2 -- my questions isn't necessarily in the
3 importance of the permitting and timeliness
4 of being able to -- are permits going to be
5 getting tied up as part of the process
6 where we have to go through extensive
7 modeling and debates about what is
8 acceptable, what could it impact, what
9 couldn't it impact.

10 MR. TERRILL: You mean once we've
11 got an AOC and you've got a permit that
12 wants to --

13 MR. MOYER: I guess one question
14 -- I guess one clarification I want to make
15 is if there's not an AOC, there is no
16 impact on permitting, period, is my
17 understand, right?

18 MR. TERRILL: Right.

19 MR. MOYER: Okay. I guess I want
20 to -- because if your model -- if your
21 monitors show you're close, that's where I
22 was getting to with the close. If you're
23 monitoring shows you're close, you're
24 putting in a facility that's going to emit
25 that toxic, is there -- there is no

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1 indication that your permit will be limited
2 based on that, it would just be that if you
3 built that and if it has requirements and
4 then all the monitors went up, then they
5 would develop control strategies and all
6 the permits would have to be changed at
7 some point in the future.

8 MR. TERRILL: All of that would
9 be part of the negotiated outcome from the
10 negotiated strategy that -- to correct the
11 problem. And, you know, I think maybe
12 there's a miscommunication or
13 misunderstanding about we're not going to
14 have this extensive network of toxics
15 monitors scattered all over the state.
16 They're way too expensive for that. These
17 are going to be complaint driven for the
18 most part, as far as our investigations,
19 but also our only in-house analysis of
20 parts of the state and what we think -- I
21 don't think that your issue is going to
22 come up very often. In fact, I can't --

23 MR. MOYER: Potentially for us.

24 MR. TERRILL: -- maybe, but I
25 don't know. It's just -- I mean, we looked

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1 at -- you know, we looked at Ponca City and
2 we didn't have those same issues and they
3 were the same proximity as you all are, so
4 I'm hopeful that we won't have those
5 issues. But you are right to bring it up.
6 You're right to bring it up.

7 MR. MOYER: I just don't want to
8 get into a situation -- I guess I want to
9 be sure that when we're dealing with this,
10 that we're not going to slow down in an
11 already tedious permitting process for this
12 facility.

13 MR. TERRILL: Yes, I agree.

14 MR. MOYER: Thank you, very much.
15 And I appreciate it, you guys have done an
16 excellent job and this is a very difficult
17 rule to try to (inaudible).

18 MS. BOTCHLETT-SMITH: Any other
19 comments? Any other questions from the
20 Council?

21 MS. MYERS: If there is no other
22 questions from the Council or the public,
23 I'll entertain a motion on this rule,
24 please.

25 MR. BRANECKY: I guess we're

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1 requesting a motion to continue to the
2 January 19th meeting, I so move that.

3 MS. MYERS: Do we have a second?

4 MR. TREEMAN: I'll second it.

5 MS. MYERS: Myrna.

6 MS. BRUCE: Joel Wilson.

7 MR. WILSON: Yes.

8 MS. BRUCE: Gary Martin.

9 MR. MARTIN: Yes.

10 MS. BRUCE: Don Smith.

11 MR. SMITH: Yes.

12 MS. BRUCE: Bob Lynch.

13 MR. LYNCH: Yes.

14 MS. BRUCE: David Branecky.

15 MR. BRANECKY: Yes.

16 MS. BRUCE: Rick Treeman.

17 MR. TREEMAN: Yes.

18 MS. BRUCE: Bob Curtis.

19 MR. CURTIS: Yes.

20 MS. BRUCE: Sharon Myers.

21 MS. MYERS: Yes.

22 MS. BRUCE: Motion passed.

23 MS. BOTCHLETT-SMITH: This
24 concludes the hearing portion of today's
25 meeting. Next on the agenda is Division

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1 Director's Report.

2 MR. TERRILL: I'll keep this real
3 brief. I just want to make a quick
4 announcement. Several months ago or now
5 it's been several months, I had agreed with
6 several folks that we would have a
7 compliance enforcement-type seminar, if you
8 will, similar to what we did four or five
9 years ago, where we would talk about our
10 policies for compliance and enforcement and
11 take questions from the regulated community
12 and citizens that wish to attend. And we
13 set a date for that and I don't know if
14 this is a good or bad thing, but we're
15 going to try to do it in the afternoon of
16 January the 19th, the same day that we're
17 continuing our toxics discussion, too. So
18 it will be a full day of noncontroversial
19 issues. We'll talk about funding in the
20 morning and enforcement in the afternoon.
21 But it was suggested by the folks that we
22 have been working with on putting this
23 agenda together that a lot of people would
24 be in town anyway for the Council meeting,
25 so why not do this in the afternoon. So

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1 hopefully, if we can get our toxics work
2 done in the morning, we'll start about 1:00
3 and go to as late as we need to, but
4 hopefully no later than 5:00. I will --
5 I'm supplying a final -- well, we're going
6 to be pretty loose, because this is a
7 question and answer session, is really what
8 it's designed to do. Everything's on the
9 table, but we're going to have a list of
10 topics that are going to include our HVP
11 policy, the state level one and two lists,
12 our compliance monitoring strategy, which
13 is our inspection strategy and how we come
14 up with that and why some of you folks see
15 us more than once per year. Our penalty
16 policy, self-disclosure policy, and then
17 we're going to talk about -- a little bit
18 about excess emission malfunctions and some
19 concerns I've got that I want to relate to
20 the group and then I'll talk a little bit
21 about EPA's framework for ensuring that
22 enforcements are done consistently across
23 the country that we're a pilot in. So
24 those are the topics, but everything's on
25 the table.

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1 What I would ask is I'm going to
2 make this agenda available to EFO, to the
3 MOGA and OIPA to send out to their members
4 and I also will put it on our website. But
5 if you all have questions that you don't
6 think hit this, if you expect to get an
7 answer from us that day, you need to ask it
8 ahead of time because we may have to have
9 some time to think. I may tell you what I
10 think, but you won't get a policy answer
11 that day unless we know about it ahead of
12 time. So anything -- we hope anybody that
13 has an interest will come, you can ask
14 anything you want to, and you'll probably
15 get a pretty frank answer because this is
16 very informal. I really want to hear your
17 concerns about our program and hopefully
18 some good things you like about it. But
19 everything's on the table, so I'll look
20 forward to seeing everybody on the 19th for
21 toxics in the morning and enforcement in
22 the afternoon.

23 MS. BARTON: I have a question,
24 Eddie. Is that going to be recorded, that
25 afternoon session?

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1 MR. TERRILL: No. Because it's
2 not rulemaking, it's just -- and to be
3 frank about it, the chances of us changing
4 our policies are pretty slim to none unless
5 I hear a real concern that -- I shouldn't
6 say that. We've already identified a
7 couple of areas that we agree that we're
8 going to change, like we may make our
9 inspection reports once they're done
10 available. We may start sending them out
11 as a matter of course, they're public
12 documents anyway, so the regulated
13 facilities should have that. So we're
14 going to be doing that, so that's one thing
15 we're going to start doing. Like I said,
16 everything's up for discussion, but the
17 chances of us changing it, you better have
18 a real onerous story that breaks my heart
19 before we change it.

20 But anyway, I think it's a good
21 thing for us to do because we do want to be
22 responsive to the concerns and want to be
23 up front about why we do things, how we do
24 it and why we do it. That's all I've got.
25 I appreciate everybody's attendance today

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1 and I would like to welcome our new member,
2 Mr. Don Smith, he's -- this is the first
3 time he's been able to attend, so we're
4 glad to have him and we look forward to
5 more participation.

6 MR. SMITH: Thank you.

7 MR. TERRILL: Anything else, any
8 questions from anybody about what we're
9 doing? NSR will probably come to the
10 Council as a special meeting sometime March
11 or April. We haven't decided yet whether
12 or not we're going to form a workgroup.
13 Probably what we'll do is we'll roll out
14 our own thoughts and then let you all look
15 at them and decide among yourselves whether
16 or not we'll need one. Thank you all.

17 (END OF PROCEEDINGS)

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