

MINUTES
AIR QUALITY COUNCIL
January 19, 2005
Department of Environmental Quality
707 North Robinson
Oklahoma City Oklahoma

AQC Approved
April 20, 2005

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. January 19, 2005 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 meeting on December 4, 2004 and 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

MEMBERS ABSENT

Don Smith
Rick Treeman
Joel Wilson
Vacancy

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

DEQ STAFF PRESENT

Eddie Terrill
Beverly Botchlet-Smith
Scott Thomas
Joyce Sheedy
Pat Sullivan
Cheryl Bradley
Lisa Donovan
Kendal Stegmann
Matt Paque
Dawson Lasseter
Rhonda Jeffries
David Dyke
Myrna Bruce

Approval of Minutes Ms. Myers called for approval of the December 9, 2004 Minutes. Hearing no discussion, she called for a motion to approve the Minutes as presented. Mr. Martin made the motion with Mr. Branecky making the second.

Roll call
Sharon Myers
David Branecky
Bob Curtis

Bob Lynch
Gary Martin
Motion carried

Election of Officers Ms. Myers called for motion for election of officers for Calendar Year 2005. Mr. Branecky made motion to retain Ms. Myers as chair and Dr. Lynch as vice-chair. Mr. Curtis made the second. Hearing no objections, Ms. Bruce called roll.

Roll call
Sharon Myers
David Branecky
Bob Curtis

Bob Lynch
Gary Martin
Motion carried

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

252:100-42 Control of Toxic Air Contaminants [NEW]

252:100 Appendix O. Toxic Air Contaminants (TAC) Maximum Acceptable Ambient Concentrations (MAAC) [NEW]

Ms. Botchlet-Smith convened the hearing and called upon Ms. Lisa Donovan and Ms. Cheryl Bradley for staff presentations. Ms. Donovan provided information regarding the history of the rule and EPA's encouragement to states to develop toxic programs. The Department's proposed changes are an effort to streamline and redefine the state air toxics program. She pointed out changes proposed to Subchapter 41 and a new Subchapter 42 to address toxic air contaminants that are likely to pose a threat to the health of Oklahomans and the environment. Ms. Donovan conveyed that the new subchapter would establish ambient concentration standards for 21 substances based on whether they are known to be toxic, are on the federal and state priority lists, are emitted from stationary/mobile/non-road or area sources in Oklahoma, and can be detected at or below parts per billion levels using established monitoring and analysis methods. Ms. Donovan related that additional funding would be required for the proposed air toxics program set forth in Subchapter 42 and that should funding not be made available, the Department will maintain the toxics program as it currently exists in Subchapter 41. She voiced changes that had been proposed, addressed comments that had been received, and entered into the record comments received from OGE, OIPA, EFO and EPA.

Ms. Cheryl Bradley provided in-depth information on the 21 substances included in Appendix O and fielded questions from Council and the public. Public comments were received from OIPA; Ryan, Whaley & Coldiron; Trinity Consultants; RFS Consulting; Terra Industries; and Atlas Pipeline Mid-Continent.

Following a presentation on Subchapter 5, the Council voted to continue the hearings on Subchapters 5, 41, 42, and Appendix O to the April 20 meeting.

OAC 252:100-5 Registration, Emission Inventory and Annual Operating Fees

Ms. Joyce Sheedy and Ms. Beverly Botchlet-Smith provided funding information for the proposed toxics program. Public comments were received from RFS Consulting and Trinity Consultants. Following discussion, Mr. David Branecky made motion to continue Subchapters 5, 41, 42, and Appendix O to the Council's April 20, 2005 meeting. Second was made by Mr. Bob Curtis and roll call was taken.

Roll call
Sharon Myers
David Branecky
Bob Curtis

Bob Lynch
Gary Martin
Motion carried

Division Director's Report Mr. Eddie Terrill advised that upcoming meetings would include NSR and Regional Haze issues. He announced the Enforcement Seminar held following lunch.

NEW BUSINESS - None

ADJOURNMENT – 11:50 a.m. Next meeting scheduled for April 20, 2005 at the OSU/Tulsa.

A copy of the hearing transcript and the sign in sheet are attached and made an official part of these Minutes. Please note an addition to the transcript is a reference index.

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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. 1-5
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 [NEW]
OAC 252:100 APPENDIX O
TOXIC AIR CONTAMINANTS (TAC) MAXIMUM
ACCEPTABLE AMBIENT CONCENTRATIONS
(MAAC)[NEW]
HELD ON JANUARY 19, 2005, 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
- BOB LYNCH - VICE-CHAIR
- GARY MARTIN - MEMBER
- SHARON MYERS - CHAIR
- DON SMITH - MEMBER
- RICK TREEMAN - MEMBER
- JOEL WILSON - MEMBER

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY
- EDDIE TERRILL - DIVISION DIRECTOR
- JOYCE SHEEDY - AQD
- MATT PAQUE - LEGAL
- LISA DONOVAN - AQD
- BEVERLY BOTCHLET-SMITH - AQD
- CHERYL BRADLEY - AQD

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PROCEEDINGS

MS. MYERS: I'll call the meeting to order, please. Myrna, are you ready to call roll?

MS. BRUCE: Yes. Bob Lynch.

MR. LYNCH: Here.

MS. BRUCE: Gary Martin.

MR. MARTIN: Here.

MS. BRUCE: Bob Curtis.

MR. CURTIS: Here.

MS. BRUCE: David Branecky.

MR. BRANECKY: Here.

MS. BRUCE: Sharon Myers.

MS. MYERS: Here.

MS. BRUCE: And absent for the record are Don Smith, Rick Treeman, Joel Wilson and we have one vacancy. We do have a quorum.

MS. MYERS: The next item on the agenda is the Approval of Minutes from the December meeting.

Are there any comments from the Council?

MR. MARTIN: Move approval.

MR. BRANECKY: Second.

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1 MS. MYERS: We have a motion to
2 approve the Minutes and a second. Myrna,
3 could you call roll, please.
4 MS. BRUCE: Bob Lynch.
5 MR. LYNCH: Yes.
6 MS. BRUCE: Gary Martin.
7 MR. MARTIN: Yes.
8 MS. BRUCE: Bob Curtis.
9 MR. CURTIS: Yes.
10 MS. BRUCE: David Branecky.
11 MR. BRANECKY: Yes.
12 MS. BRUCE: Sharon Myers.
13 MS. MYERS: Yes.
14 MS. BRUCE: Motion passed.
15 MS. MYERS: The next item on the
16 agenda is the Election of Officers for
17 Calendar Year 2005.
18 MR. BRANECKY: I will jump out
19 and make a motion, if it's okay with Ms.
20 Myers and Mr. Lynch, I'll recommend or move
21 that they retain their positions for
22 another year.
23 MR. CURTIS: I second.
24 MS. MYERS: I guess we have a
25 motion and a second. Bob, are you okay

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1 with that?

2 MR. LYNCH: As long as you're
3 always going to be here.

4 MS. MYERS: Myrna.

5 MS. BRUCE: Bob Lynch.

6 MR. LYNCH: Yes.

7 MS. BRUCE: Gary Martin.

8 MR. MARTIN: Yes.

9 MS. BRUCE: Bob Curtis.

10 MR. CURTIS: Yes.

11 MS. BRUCE: David Branecky.

12 MR. BRANECKY: Yes.

13 MS. BRUCE: Sharon Myers.

14 MS. MYERS: Yes.

15 MS. BRUCE: Motion passed.

16 MS. MYERS: And now we enter into
17 the Public Rulemaking Hearing and I will
18 turn it over to Beverly.

19 MS. BOTCHLETT-SMITH: Good
20 morning. I'm Beverly Botchlett-Smith,
21 Assistant Director of the Air Quality
22 Division and as such, I'll serve as the
23 Protocol Officer for today's hearings.

24 These hearings will be convened by
25 the Air Quality Council in compliance with

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1 the Oklahoma Administrative Procedures Act
2 and Title 40 of the Code of Federal
3 Regulations, Part 51, as well as the
4 Authority of Title 27A of the Oklahoma
5 Statutes, Section 2-2-201, Sections 2-5-101
6 through 2-5-118.

7 These hearings were advertised in
8 the Oklahoma Register for the purpose of
9 receiving comments pertaining to the
10 proposed OAC Title 252, Chapter 100 Rules
11 as listed on the agenda and will be entered
12 into each record along with the Oklahoma
13 Register filing.

14 Notice of special meeting was filed
15 with the Secretary of State on December
16 10th, 2004. The agenda was duly posted 24
17 hours prior to the meeting on the doors at
18 the DEQ. If you wish to make a statement,
19 it's very important you complete the form
20 at the registration table and you'll be
21 called on at the appropriate time.

22 Audience members, please remember to come
23 to the podium, state your name at any time
24 when you make comments.

25 At this time, we'll proceed with

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1 what's marked as Agenda Item 5A on the

2 hearing agenda and that's OAC 252:100-41.
3 I'll call upon Lisa Donovan and Cheryl
4 Bradley to do the presentation. What we
5 would ask is Lisa's -- going to do the
6 presentation on 41 and 42, Cheryl is going
7 to provide information on Appendix O. We
8 would like to ask that the Council hold
9 their questions to the end of that
10 presentation and we'll handle all those
11 questions at one time, when we have both
12 Lisa and Cheryl at the podium.

13 And before we get started, I would
14 just like to remind everyone to please turn
15 off your phones and pagers. Thank you.

16 Lisa.

17 MS. DONOVAN: Madame Chair,
18 Members of the Council, ladies and
19 gentlemen, the Department is proposing
20 amendments to OAC 252:100-41, Control of
21 Emissions of Hazardous Air Pollutants and
22 Toxic Air Contaminants and the addition of
23 252:100-42, Control of Toxic Air
24 Contaminants. Congress passed the federal
25 Clean Air Act amendment in 1990, which

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1 resulted in considerable progress in

2 controlling air toxics. However, EPA is
3 struggling to find an effective way to
4 assess the impacts of air toxics in
5 communities and develop control strategies.

6 EPA has funded many state and local
7 air toxics pilot projects in an effort to
8 find workable solutions. Without any
9 answers forthcoming, EPA is encouraging
10 states to find solutions and develop
11 programs, to which Oklahoma is responding.

12 The Department is proposing to
13 redefine the state air toxics program.
14 Amendments are proposed to Subchapter 41
15 that will provide federally and state-only
16 requirements. The incorporation by
17 reference of 40 CFR citations and
18 definitions for hazardous air pollutants
19 and asbestos will be retained in Subchapter
20 41 and two sections will be added as OAC
21 252:100-41-3 and 4 for conformity with
22 existing rules.

23 The Department is not proposing
24 revocation of the state-only requirements
25 at this time, in order to ensure that the

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1 Department will not be left without a
2 toxics program at all. Language is

3 included in Subchapter 41 stating that the
4 subchapter will only remain effective if
5 Subchapter 42 does not supersede it.

6 Language is also included in Subchapter 41
7 stating that 43 will not be superseded.

8 The new Subchapter 42 addresses
9 toxic air contaminants that are likely to
10 pose a threat to the health of Oklahomans
11 and the environment. The subchapter would
12 establish ambient concentration standards
13 for 21 substances. The standards will be
14 based on peer reviewed and nationally-
15 accepted risk and hazard information, such
16 as that in EPA's integrated risk
17 information system.

18 The 21 substances selected were
19 based on the following: They are known to
20 be toxic; they are on federal and state
21 priority lists; they are emitted from
22 stationary/mobile/non-road or area sources
23 in Oklahoma; and they can be detected at or
24 below parts per billion levels using
25 established monitoring and analysis

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1 methods.

2 The rules will streamline the

3 Department's air pollution control program
4 and reduce stationary source permitting and
5 compliance-related cost because there are
6 fewer state toxics to be considered. The
7 Department's current toxics program
8 detailed in Subchapter 41 requires
9 consideration of over 2,000 substances, and
10 a significant investment of resources, of
11 which the effectiveness in controlling
12 toxics cannot be measured.

13 Modeling and monitoring of TAC
14 concentrations will be used to identify
15 geographical areas in Oklahoma with
16 contaminant concentrations above the
17 standards. The Department may designate
18 these as "Areas of Concern."

19 The rules then provide for the
20 Department to identify the pollutant
21 sources and possible methods for their
22 control. The Department's findings and
23 other information will be made available
24 through various means, including public
25 meetings and publication on the Agency

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1 website.

2 Additional funding will be required

3 in order for the proposed air toxics
4 program set forth in Subchapter 42 to be
5 implemented. If Subchapter 42 is not
6 approved, or if new funding is not
7 provided, the Department will maintain the
8 toxics program as it currently exists in
9 Subchapter 41.

10 The proposed Subchapter 42 has an
11 effective date of October 1, 2005. If
12 Subchapter 42 is not funded, then the
13 Department will ask that the subchapter be
14 revoked before it goes into effect.
15 Language is included in Subchapter 42,
16 stating that when effective, Subchapter 42
17 supersedes all of Subchapter 41, except for
18 Part 3.

19 Several changes and clarifications
20 have been made to Subchapter 42 since the
21 December Council meeting. The following
22 changes are reflected in the rule provided
23 in the Council packet. The "Effective
24 Date" has been added in 42-1.1. 42-20(b),
25 Protocol has been restructured for clarity.

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1 In 42-30(b) and (c), the requirements for
2 public notification and public meeting have

3 been expanded to include the publication in
4 two statewide newspapers and the
5 requirements for the Department to hold a
6 public meeting. The requirement for
7 monitoring and modeling have been
8 elaborated on for clarity in 42-30, 31 and
9 32. In 42-31(a)(2), "on-site" has been
10 changed to "within the boundaries of their
11 facilities". In 42-31(b)(1), the phrase
12 "cost of control" has been added for
13 clarity to the list of considerations when
14 developing the compliance strategy. And in
15 42-31(b)(2), it has been rewritten for
16 clarity.

17 Notice of the proposed rule changes
18 was published in the Oklahoma Register on
19 December 15, 2004, and comments were
20 requested from members of the public.

21 Since the December Council meeting,
22 the Department has received written
23 comments from OGE, OIPA, EFO and EPA,
24 copies of which have been made available to
25 the Council and will be entered into the

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1 record.

2 The Department received a letter

3 from EPA on January 7, 2005. The letter,
4 which was included in the Council packet,
5 supported development of the Oklahoma state
6 air toxics program and stated that the
7 proposed revisions are consistent with
8 EPA's goals for federal and state air
9 toxics programs. A second letter was
10 received on January 12, 2005, which stated
11 that EPA had no further comments at this
12 time.

13 Other comments received are as
14 follows: Several typos in 42-30 were
15 brought to our attention and have been
16 corrected. One commenter requested a de
17 minimis emission level be established for
18 TAC.

19 Staff does not believe a de minimis
20 level is appropriate for this rule. The
21 Department contends that the significant
22 levels may vary according to the TAC of
23 concern and the specific nature of AOC.
24 The de minimis levels established for
25 permits are already in place and can only

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1 be changed through rulemaking. Subchapter
2 42 does not establish emission limits until

3 an AOC is finalized and any additional
4 requirements will be established through
5 rules.

6 Two commenters requested
7 clarification of public notification for
8 the AOC and affected sources.

9 The Director will designate an AOC
10 following monitoring and data analysis.
11 The AOC will then be presented at a public
12 meeting and a 30-day comment period will
13 follow. At the end of that 30 days, the
14 AOC will then become final. A requirement
15 for official notification of sources
16 affecting the AOC prior to the notification
17 of the public will not be included in the
18 rule. However, staff anticipates that
19 affected sources will know they are
20 included in the AOC as a result of the
21 information gathering that will take place
22 prior to the designation of the AOC.

23 One commenter requested language to
24 be added in 42-31(a)(2) to describe that a
25 TAC MAAC exceedance will only be evaluated

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1 where public health is a concern.

2 Staff believes this is already

3 addressed in 42-30(a), however, we will
4 consider the additional language in 42-31.

5 One commenter requested
6 clarification on whether permitting,
7 monitoring and modeling requirements that
8 were a part of a compliance plan would have
9 to go to rulemaking before being required
10 of an affected facility.

11 If a rule is not already in place
12 that can be used to address the AOC, the
13 Department may propose new rules in order
14 to bring that AOC back into compliance with
15 the MAAC. Such a rule could include, but
16 would not be limited to requirements for
17 permits, monitoring and modeling.

18 Several comments were received
19 regarding the methods that would be used to
20 conduct the monitoring that would establish
21 the AOC. Concerns were raised over whether
22 a single exceedance would result in the
23 designation of an AOC, and how many
24 readings would be taken in an area under
25 observation. The Department will use

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1 methods established in the EPA's Air Toxics
2 Risk Assessment Library, Volumes One and

3 Two, for all risk assessment, monitoring,
4 modeling, and data analysis. The methods
5 establish statistical standards by which
6 staff will conduct analysis. Staff does
7 not include specific limits within the rule
8 in order to allow the Director flexibility
9 when designating an AOC. Language has been
10 added to 42-30(d)(1) that will clarify that
11 the Department intends to use the risk
12 assessment, monitoring, modeling and data
13 analysis methods established by ATRA.
14 Cheryl Bradley will now present Appendix O,
15 and answer questions.

16 MS. BRADLEY: Good morning.
17 Madame Chair, Members of the Council,
18 ladies and gentlemen, when we last met,
19 Appendix O included different
20 concentrations for different risk levels.
21 With this Council meeting, we are
22 considering recommendations by the
23 Department to establish concentrations and
24 with that, we will also be making some
25 decisions about the appropriate risk level

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1 for each substance proposed.

2 The Council received packets for the

3 December meeting that were pretty meaty.
4 Over half of the packet was supporting
5 information for the substances proposed.
6 Since that meeting, we have sieved through
7 some of those substances and we came up
8 with a list of 22 upon this proposal.

9 We took the key information from the
10 various resources that were included in the
11 previous packet and prepared what we
12 referred to as MAAC substance summaries.
13 And you will find those in the section --
14 towards the end of the section on the
15 rules.

16 These MAAC substance summaries
17 contain a CAS number for each substance,
18 synonyms for those substances, also a
19 description: Does it have an odor; is it a
20 solid; is it a liquid; is it a gas, the
21 molecular formula. The carcinogen status
22 based on IRIS. IRIS is EPA's Integrated
23 Risk Information System. The proposed MAAC
24 and it's basis, where did the number come
25 from, what are we basing it on? In

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1 addition, we also list where we would
2 expect that pollutant to come from. Is it

3 a combustion, product of combustion? Is it
4 a manufacturing emission? Is it mobile
5 source emission? Many of them are both
6 mobile and stationary source.

7 The health effects. Why is this
8 important to include the substance on the
9 list? What will the exposure -- what
10 health effect will the exposure cause in
11 human beings? And then also, the
12 monitoring method. We are proposing some
13 standards that have very low detection
14 limits and we wanted to ensure that we
15 could monitor for it and have a method
16 detection limit that would allow us to
17 quantify to the level that we need to.

18 When published, the Appendix O
19 included 22 substances. This has been an
20 evolving process and we haven't had one key
21 resource to go to, to identify all the
22 answers we need. As we went through this
23 process, it was determined that Hydrozene
24 does not have a reliable method or
25 analysis, therefore, we are removing it

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1 from the proposal for Appendix O.

2 Now, what remains? Well, IRIS

3 classifies carcinogens as known human
4 carcinogens; probable human carcinogens;
5 possible human carcinogens; not
6 classifiable, meaning they really --
7 there's no evidence one way or the other,
8 and then those for which there is no
9 evidence, those are non-carcinogens. We
10 have only proposed for inclusion the known,
11 probable, and possible human carcinogens,
12 or those that are categorized in that
13 manner.

14 For known human carcinogens, we have
15 established the 10 to the minus 6 risk
16 level or that's an increased lifetime risk
17 of one in a million of developing cancer
18 from exposure to the particular substance.

19 The known human carcinogens that are
20 included in Appendix O are Arsenic
21 compounds, Benzene, 1,3-butadiene,
22 Hexavalent Chromium and Vinyl Chloride.

23 For the possible or probable
24 carcinogens, we have established or we're
25 recommending a 10 to the minus 4 risk level

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1 or one in ten thousand. The evidence that
2 these substances are carcinogens is not

3 quite as strong as those which have been
4 categorized as known carcinogens.

5 The possible human carcinogens
6 included were Acetaldehyde, Acrylonitrile,
7 Cadmium compounds, Carbon Tetrachloride,
8 Chloroform, Ethylene Dischloride,
9 Formaldehyde, Methylene Chloride, and
10 1,1,2,2-Tetrachloroethane.

11 But there are a couple that I didn't
12 mention that were in the possible or
13 probable category, you're right. Beryllium
14 compounds and Nickel compounds, we did not
15 propose the 10 to the minus 4 risk levels
16 for Beryllium and Nickel compounds, but we
17 are re-proposing the Subchapter 41 MAAC
18 level because it's slightly more stringent.

19 Why did we do that. The lower MAAC
20 is slightly more stringent. It's less than
21 an order of magnitude, smaller than the
22 MAAT or then the NOAEL -- or actually than
23 the risk concentration at level 4.

24 The MAAC under Subchapter 41, has
25 been in place for over 10 years, some of

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1 these as long as 17 years. Air pollution
2 controls have been in place for about that

3 period of time and they were designed to
4 meet these lower levels. Also, the basis
5 for the probable and possible carcinogen
6 concentrations is the 10 to the minus 4
7 level. We're not as comfortable with that,
8 as saying this is a safe level as we are to
9 10 to the minus 6 or one in a million. So
10 it's not an accepted risk concentration.
11 We are re-proposing it to prevent
12 backsliding toward progress already taken
13 to where it's a safe ambient level for
14 these substances.

15 Non-carcinogens. Manganese and
16 Mercury compounds. Manganese compounds,
17 MAAC is based on the lowest observable
18 adverse effect level converted to a human
19 equivalent concentration. I've looked at
20 other states, our state proposal is
21 consistent with what's -- what are on the
22 books for other states at present, those
23 that are based on risk levels.

24 And the same is true for Mercury
25 compounds. However, Mercury compounds are

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1 based on the reference concentration.

2 For the remaining non-carcinogens,

3 Ammonia, Ethylbenzene and Toluene, we are
4 re-proposing the current Subchapter 41
5 concentrations or MAACs for very similar
6 reasons for the decision to re-propose for
7 the carcinogens. They're only slightly
8 lower than the no observable adverse effect
9 level when converted to human equivalent
10 concentration. And the NOAEL HEC, short
11 for the No Observable Adverse Effect Level
12 Human Equivalent Concentration, is not as
13 safe a level as the reference
14 concentration.

15 Ms. Donovan mentioned how we were to
16 approach sampling and data analysis for
17 this program and that's been a big concern.
18 I have a copy of the ATRA guidance on the
19 table there, the one with the printed cover
20 is the ATRA guidance. The Chapter 10 and
21 Appendix I in that guidance, deal with how
22 sample -- how do you figure out where you
23 want to sample, how do you take the samples
24 and the data, what do you do with the data
25 and how do you analyze that data.

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1 We are proposing to sample once
2 every six days, if we have adequate funding

3 or if it is warranted, we might increase
4 that to one -- once every three days. That
5 means we will not be sampling just week
6 days, just weekends, or on any one day of
7 the week.

8 The sampling locations, this is a
9 community air toxics control program.
10 We're proposing that we're going to sample
11 where people live. We're going to analyze
12 the samples in accordance with the
13 prescribed methods from EPA and we are also
14 going to analyze the data that we've
15 collected according to the techniques in
16 the ATRA guides. We're going to take
17 enough samples to allow for the statistical
18 analysis and identification of a 95 percent
19 upper confidence limit. That number will
20 then be compared to the standard.

21 And I mentioned detection limits.
22 We have continued our review of available
23 methods to collect samples and to analyze
24 those samples. Staff has identified that
25 methods are available and that we can

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1 analyze to the detection limit necessary to
2 ensure that these standards are verified.

3 We have limited experience in the
4 area of air toxics. At this point, staff
5 has conducted a modeling exercise or
6 project and also done some monitoring in
7 Ponca City. The Ponca -- and we received
8 one commenter who found a discrepancy in
9 how our conclusion posed the modeling
10 assessment versus the monitoring, which
11 compared to our new numbers, might raise a
12 concern.

13 Well, to give you an idea, the
14 modeling exercise or project was done prior
15 to the monitoring project, and we found
16 that there was no significant impact as a
17 result of the modeling or the predicted
18 values. We only considered stationary
19 sources in that modeling. We did not have
20 a means for reviewing the contributions
21 from mobile sources. So our predictions
22 are lower than actually the concentrations
23 that we are currently observing in our
24 monitoring data. This was all completed,
25 finished, report done. We were doing some

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1 monitoring at the time but we did not have
2 an adequate number of samples. We have

3 completed phase one of the sampling and
4 analysis and some of the concentrations
5 would be in excess of the concentrations
6 that are specified in Appendix O. But
7 these values we'll take into consideration
8 with mobile contributions, which were not
9 accounted for in the original assessment.

10 MS. BOTCHLETT-SMITH: At this
11 time, I'll take questions from the Council
12 for -- on Subchapter 41, 42 and Appendix O.

13 MR. BRANECKY: I have a question
14 on 41. The title on 41 is Control of
15 Emissions of Hazardous Air Pollutants. You
16 have Part 3 labeled as Hazardous Air
17 Contaminants. Can you explain to me the
18 difference?

19 MS. BRADLEY: At this point,
20 there is no difference. If we retain --
21 well, we will be retaining Subchapter 41
22 and Hazardous Air Contaminants still
23 utilized in that. If Subchapter 42 is
24 passed, the necessity or the need to retain
25 that language would no longer be there and

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1 we could clean it up in future rulemaking.

2 MS. MYERS: I have a question.

3 It may be an oversight on my part, because
4 I haven't gone through this as thoroughly
5 as I should. Is there a response to the
6 comments that were submitted in December,
7 as well as the comments that were submitted
8 this time? Is there a staff response to
9 those concerns that are raised in those
10 comments anywhere? Is that available?

11 MS. DONOVAN: Written?

12 MS. MYERS: Written, yes.

13 MS. DONOVAN: I believe we're
14 working on that; is that right, Joyce?
15 We're in the process of it, but we don't
16 have one right now.

17 MS. BRADLEY: The response to
18 comments was being revised on a daily
19 basis. We received additional comments on
20 Friday and the response to comments and --
21 is a portion of the Executive Summary, so
22 the finalized version will go to the Board.

23 MR. TERRILL: And we've also
24 received comments today, too, that we
25 haven't had time --

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1 MS. MYERS: Well, the written
2 response from the staff to the specific

3 comments made by people helps me
4 tremendously in understanding where you're
5 coming from, as well as the potential
6 impact on them. So I would like to see
7 them.

8 MS. BOTCHLETT-SMITH: Other
9 questions from the Council today?

10 MR. BRANECKY: I'd like to hear
11 what the public has to say.

12 MS. BOTCHLET-SMITH: We asked
13 earlier in the hearing to please fill out
14 one of these forms, if you wish to speak.
15 I'm going to start with these. If anyone,
16 after hearing the presentation, has decided
17 they want to make a comment, we would ask
18 for you to fill one of these out and we'll
19 get to you in that order.

20 The first person is Angie
21 Burckhalter with OIPA.

22 MS. BURCKHALTER: My name is
23 Angie Burckhalter and I represent the
24 Oklahoma Independent Petroleum Association.
25 I think generally our comments really focus

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1 on the clarity of the rule in that Appendix
2 O.

3 One of the other issues that was
4 just discussed here, it appears to me that
5 there is some -- that staff has responded
6 to some of the comments that were submitted
7 by various industrial groups, but I guess
8 from our perspective, we're not quite clear
9 as to where staff is going with some of
10 these recommendations. I'm a little bit
11 confused of what is agreed to, what is not.
12 So from my perspective, I have a little bit
13 of concerns as to how these are going to be
14 resolved.

15 But I would specifically like to
16 comment on some of the issues and concerns
17 that we have. One of the things, over the
18 past few months we have made numerous
19 comments on this rule. And some of these
20 comments that I'm going to provide today
21 are reiterations of these comments.

22 One of the issues that I think is of
23 great concern to our members is that the
24 rule requires that all stationary sources
25 that emit a toxic air contaminant will be

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1 subject to this rule. And that doesn't --
2 it includes any source that has even a very

3 minute amount of hazardous air pollutants.
4 So from our perspective, I think it's going
5 to be quite onerous and costly for owners
6 of these very, very small emission sources
7 to try to comply. And also, I think it's
8 going to be onerous on DEQ to try to track
9 and trace all these very, very small
10 emissions.

11 The next item is in 252:100-42-30,
12 which is focused on area of concerns. Back
13 a few months ago, DEQ staff provided a flow
14 chart to industry during a public meeting.
15 And this appeared to try to clarify the
16 whole process and procedure. I think one
17 of the concerns that I have with this
18 rulemaking is that the language doesn't
19 adhere to what the flow chart is showing.
20 I think over the past few months, there's
21 been a lot of comments made and I don't see
22 the language lining up with the flow chart
23 and how the process should work.

24 Another comment that we have is
25 related to 252, 100-42-31(a)(2), and this

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1 is related to where the monitoring or the
2 sampling would occur. I think staff

3 addressed this but I'm not quite sure
4 exactly where this monitoring is going to
5 occur. I think staff said public -- where
6 the public lives or resides, but I'm not
7 quite sure. That's a concern for us as to
8 where this will be -- where the substance
9 or the MAAC threshold will be applied.

10 Finally, I have quite a few concerns
11 about Appendix O. I mean, we agree that
12 public health should be protected, there is
13 no doubt about that. But I guess one of
14 our concerns is related to how -- why the
15 MAACs are currently being proposed more
16 stringent. I mean, I feel like we still
17 don't have a good understanding of why the
18 proposed MAAC standards are not -- are
19 being superseded by the proposed rules. We
20 don't have any -- I don't think -- we're
21 not aware of any studies that show that the
22 existing MAAC standards have caused a
23 problem or have failed in any way.

24 We still have concerns with
25 thresholds in comparing a single day of

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1 monitoring results to lifetime exposure
2 risks, which we think inappropriately

3 provides a perception of increased risk.
4 The staff referred to the Ponca City study.
5 We still have concerns with that study and
6 how that relates to what the proposed rule
7 is today.

8 Finally, I think -- I believe staff
9 was trying to reconcile some of the
10 information on how samples would be
11 collected, where those samples would be
12 collected, depending on funding and things
13 like that. But as I said, it's still not
14 clear to me exactly where that would occur,
15 how that sampling would be done. We would
16 like to see some kind of designation or
17 something on Appendix O that references a
18 plan or something that gives industry a
19 better idea of how the process or how the
20 sampling is going to work.

21 Just to conclude, the way the
22 current rules are written right now, OIPA
23 cannot accept -- support those rules as
24 they are. We would greatly welcome
25 revisions, we would like to review those

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1 revisions and have more time to look at the
2 rule. Thank you.

3 MS. BOTCHLETT-SMITH: Bud Ground
4 from EFO, or representing EFO.

5 MR. GROUND: Ms. Chairman,
6 Members of the Council, I appreciate this
7 opportunity to come here and represent
8 Environmental Federation of Oklahoma. We
9 have a few comments on this proposed
10 Subchapter 42 and Appendix O. And again,
11 it really falls along the same lines that
12 Ms. Burckhalter was talking, it's really
13 the intent. I believe staff, DEQ, has come
14 a long way in getting this regulation --
15 they're very close to something that's very
16 workable for the industry. We know that
17 the past Subchapter 41 has been very
18 onerous, very difficult for the DEQ, as
19 well as industry, just very difficult to
20 work with.

21 So as I went through this the last
22 time, and we get a lot of questions in from
23 our members of EFO and a lot of it has to
24 do with, you know, like Ms. Burckhalter
25 said, how exactly is this going to be

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1 implemented, when you read the actual words
2 and you see -- and then you hear the intent

3 from staff, sometimes it doesn't always
4 seem like it says the same thing. So we
5 really want to make sure we're clear. And
6 I will say, mainly because when we get into
7 the field and we have our facilities, we
8 want to make sure that the people that come
9 out from the DEQ have the same
10 understanding of that regulation as what we
11 had when we were sitting in this meeting
12 room. And so my comments are around that
13 and I appreciate the opportunity.

14 I will start saying, it sounds like
15 the method of monitoring is being addressed
16 by staff, from what Ms. Donovan said. I
17 haven't seen the actual words, but it
18 looked like where it talked about
19 monitoring and demonstration, that that
20 would be further outlined to show that it's
21 not just a one 24-hour period of monitoring
22 at a meter that will lead to a
23 demonstration of an area of concern, that
24 there will be further analysis that go with
25 that. And that was our concern, that it

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1 wasn't going to be just a single point or a
2 single meter episode that could cause the

3 Director to initiate an area of concern.

4 And so it sounds like that the staff is
5 working on that.

6 And another question is really how
7 the MAAC limit is used in that
8 demonstration of area of concern. As I
9 read and then as I listen to Ms. Bradley,
10 it almost sounds like there are -- there is
11 a difference in what I understand. The way
12 I understand it is the MAAC is -- it's not
13 a set area -- it's not actually a
14 concentration limit, but it's an action
15 level. They will monitor, and if it hits
16 to a certain action level of this
17 concentration, then it will go into further
18 studies and analysis to where, as the DEQ,
19 they couldn't come out and say -- this is
20 my understanding -- they wouldn't go to the
21 public and say there is no place in the
22 state that the limit of this chemical is
23 above this MAAC limit, that it could be
24 above this MAAC limit if there wasn't any
25 public harm. If it was not demonstrated

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1 that there was public health involvement.

2 I want to make sure that correlation is met

3 in there, that the MAAC limit doesn't
4 necessarily mean area of concern, if that
5 limit is broken, that there will be further
6 analysis in there. There could be areas
7 where that MAAC limit could be exceeded.
8 So to me, it really isn't a limit, it is an
9 action level. And just reading plain
10 words, if it were listed as an action
11 level, that to me would alleviate a lot of
12 concerns or questions I have with this
13 whole proposed regulation.

14 And then the third thing is on the
15 Appendix O, and what I said is that -- in
16 here is that we felt that the standard
17 should be set at the 10 to the minus 4
18 level on substances in Appendix O. And
19 what we feel, again, from our understanding
20 and from listening to staff discussions is
21 that once this limit is set, it will be
22 very difficult to change it if it is too
23 stringent. And since it is an action
24 level, I don't see that there would be a
25 problem setting it less stringent to where

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1 it's just -- it's just a limit you're
2 looking at for an action level, not a

3 specific limit in the ambient air
4 concentration.

5 And as Ms. Bradley describes today,
6 you're looking at some substances that you
7 don't want them backsliding on these
8 substances, and so I think that would be
9 set across the board. If it's set too
10 stringent now, it will not be changed,
11 there will not be any room for further
12 discussion on these issues. So we want to
13 make sure that they're not too stringent to
14 begin with, since it's -- it will be used
15 just in a demonstration of an area of
16 concern and not as an actual ambient
17 concentration.

18 And then I guess I didn't even
19 understand some of the issues involving the
20 Ponca City study. I don't -- I don't
21 really still understand exactly what was
22 said about the differences between the
23 current MAAC standards and how those were
24 applied to that Ponca City study, so I'll
25 be very interested to see exactly what that

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1 means. And that's all the comments I have.
2 I don't know if you have any questions for
3 EFO companies, but I appreciate this

4 opportunity.

5 MS. BOTCHLET-SMITH: Mike Peters.

6 MR. PETERS: Good morning. My
7 name is Mike Peters, I'm with Ryan, Whaley
8 and Coldiron. I've got a few questions.
9 I've think they've been identified by the
10 previous commenters, as well as Ms. Myers.
11 One of the things, being an attorney, I
12 sometimes have clients that call me and ask
13 for interpretation on the rules. Sometimes
14 we do have to go back to the promulgation
15 history of the rule to see exactly what the
16 staff's intent was in developing the rule
17 or trying to figure out what their intent
18 was. If there's no response to comments,
19 we sometimes have a difficult time in
20 trying to interpret the rule if it's
21 unclear. And so one of the things I would
22 suggest is that the staff prepare a
23 response to comments so they can be
24 evaluated by members of the public before
25 the rule, proposed rule, is submitted to

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1 the Board.

2 And one of the other items that I

3 have is, I noticed that Subchapter 41 is

4 being revised to reflect the adoption of
5 Subchapter 42. And in Ms. Donovan's
6 presentation this morning, she said that
7 Part 3, which is the hazardous air
8 contaminants purpose section, will not be
9 superseded if Subchapter 42 is not
10 promulgated or if there's no funding. The
11 question I have is, in Subchapter 41
12 currently, in 41-1, there is a purpose
13 section that's stated. In that purpose
14 section, it identifies that the purpose of
15 Subchapter 41 is to regulate routine
16 emissions, not accidental or catastrophic
17 emissions. If 41 is passed by the Council
18 and 42 is passed by the Council, it's my
19 understanding that the purpose section in
20 41-1 will remain in effect in Subchapter 41
21 to exclude the accidental or catastrophic
22 releases.

23 Following up on that comment,
24 Subchapter 42 does not exempt accidental or
25 catastrophic releases at this time, as

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1 currently proposed. Since 41 does, and I
2 haven't seen a response to comments, I know
3 there has been a previous comment

4 specifically on this issue, I would like to
5 know what the Agency or staff's position is
6 regarding not exempting accidental or
7 catastrophic releases from Subchapter 42,
8 as well, as it previously was exempted from
9 Subchapter 41. Thank you.

10 MS. BOTCHLETT-SMITH: Don Whitney
11 from Trinity Consultants.

12 MR. WHITNEY: I would like to
13 save my comments until the next agenda item
14 on Chapter 5, fees.

15 MS. BOTCHLETT-SMITH: Okay.
16 Thank you. Ron Sober, RFS Consulting.

17 MR. SOBER: I'm Ron Sober, with
18 RFS Consulting. Many of my questions and
19 concerns with Subchapter 41 and Subchapter
20 42 and Appendix O have been addressed by
21 previous comments. However, a few remain.

22 First, with respect to Subchapter
23 41, I would appreciate seeing the entire
24 context of Subchapter 41 as it's proposed
25 with additional language, as well as

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1 existing language, so it's clear to me what
2 is going to be removed and what is going to
3 remain.

4 It appears that we also have in the
5 proposed language for Subchapter 41, a
6 reference to Subchapter 42. By passage of
7 the rule with this language, we're
8 referring to a rule that does not exist.
9 Subchapter 41 and Subchapter 42 are
10 separate entities and one is presently not
11 on the books. So we're passing language
12 that references something that is not
13 there. A simple fix to that would be to
14 simply change some language without a
15 direct reference to Subchapter 42.

16 I would also propose that if we need
17 a rule that pertains to MAAT standards,
18 federal standards, that we adopt a rule
19 with that sole purpose separate, completely
20 separate, from a state rule or regulation
21 dealing with air toxics at a state level.
22 The two should be completely subrogated and
23 stand on their own merits and approved
24 separately. Either they're needed or
25 they're not. But we have what appears to

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1 be a conditional approval, if we approve
2 one, then we, you know, it's tied to the
3 approval of another, which seems to be

4 awkward.

5 With respect to Subchapter 42, I see
6 a lot of good in, at least, what appears to
7 be strategy of Subchapter 42, but there's a
8 lot of vague areas of uncertainty. For
9 example, if an area of concern is
10 designated, will it always remain an area
11 of concern? Is there a procedure for
12 removing it as an area of concern? If an
13 area of concern can be identified through
14 or at least the monitoring for an area of
15 concern identified through a citizens
16 complaint, does it require only one citizen
17 to make a complaint? Compliance
18 strategies, in our designating an area of
19 concern, we're looking at mobile,
20 stationary, non-road biogenic sources.
21 Once an area of concern has been
22 established, do compliance strategies take
23 into account emission reductions from
24 mobile and biogenic sources? Will it be
25 the stationary sources solely responsible

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1 for carrying the compliance burden once an
2 area of concern has been established?

3 These are just some examples of some

4 of the areas of uncertainty and vagueness
5 in the rules. Thank you.

6 MS. BOTCHLETT-SMITH: Jim
7 Schellhorn, from Terra Industries.

8 MR. SCHELLHORN: Thank you. Jim
9 Schellhorn, with Terra Industries. For the
10 most part, we're in favor of the changes to
11 Subchapter 41 and the new Subchapter 42,
12 with the exception of one very significant
13 issue. And that issue is the lack of
14 exclusion in the new Subchapter 42 for
15 accidental and catastrophic releases. That
16 exclusion, as Mike Peters pointed out
17 earlier, is included in the existing
18 Subchapter 41. And as the comments that we
19 have submitted this morning, and the
20 comments that Terra submitted on December
21 2nd pointed out, was included in Subchapter
22 41, previously, after thoughtful
23 consideration by the Council and the
24 Department and industry workgroups. And
25 it's there for a very good reason, and we

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1 believe it needs to be in this version of
2 Subchapter 42 for the same reason.

3 The kinds of releases that we're

4 talking about, that our industry is
5 familiar with, are primarily releases from
6 pressure safety relief valves. These are
7 not releases that are routine. They are
8 releases that occur due to upsets,
9 accidents that occur in our facilities that
10 are not predictable, and they are pressure
11 safety relief devices that are operating to
12 protect storage tanks and process vessels
13 to keep them from catastrophically failing.
14 And when they do relieve, they vent the
15 atmosphere normally. Those types of
16 releases are already regulated, they're
17 regulated by other types of regulations
18 under CERCLA, under IMPRA, under the
19 Accidental Accident Prevention Provisions
20 of the Clean Air Act. In other words, they
21 are already regulated under very stringent
22 types of regulations. They are reported
23 immediately, so -- and they're covered
24 under the types of regulations that are
25 appropriate for those types of releases.

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1 They're not properly -- it's not proper to
2 regulate those kinds of releases under this
3 kind of regulation. So that was recognized

4 in the original Subchapter 41 and I believe
5 it's important to recognize that as the
6 Council considers this revised Subchapter
7 42 regulation.

8 And we haven't heard anything from
9 staff in response to our comment to that
10 effect that was submitted on December 2nd.
11 We submitted comments again this morning
12 reiterating that comment. So I would
13 appreciate your consideration of that
14 comment. Thank you, very much.

15 MS. BOTCHLETT-SMITH: Andrew
16 Williams with Atlas Pipeline, Mid-
17 Continent. Are you wanting to comment on
18 41, 42 or Subchapter 5?

19 MR. WILLIAMS: 41, please.

20 MS. BOTCHLETT-SMITH: Okay.

21 Thank you.

22 MR. WILLIAMS: Good morning. As
23 stated before, my name is Andrew Williams
24 and I represent Atlas Pipeline, Mid-
25 Continent. We're a new company in Tulsa.

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1 I apologize, I'm a little new to the
2 environmental field here in Oklahoma, but I
3 have a couple of questions.

4 I agree with Terra's comments, as
5 with a few of the other ones made this
6 morning. Atlas would like to see further
7 designation of how catastrophic events and
8 accidental releases from such equipment as
9 relief valves or something of that nature
10 would be handled under this subchapter.
11 They're definitely a concern of ours.

12 The other one I have is that, kind
13 of going along with the last commenter and
14 how a designation of an AOC would be
15 handled, once an AOC is set, how, if a
16 company goes through the process and
17 designs a way to reduce the emissions in
18 that said problem, then how would that AOC
19 be redefined once the company makes -- puts
20 up the capital to reduce the emissions from
21 their facility, if that's the nature of any
22 source there? Thank you, for the
23 opportunity.

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

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1 David.

2 MR. BRANECKY: I guess I would
3 agree that before I would be ready to vote

4 on any motion, that I need some information
5 from DEQ on how these questions were
6 addressed or the comments were addressed.
7 I'm hesitant at this point to pursue this
8 any further without seeing how -- and we
9 have several pages of written comments in
10 our packet, but I have not seen anything
11 addressing these issues or comments. I
12 think I need that before we pursue it any
13 further.

14 I guess a question I've got -- let
15 me go back a little bit. If the Ponca City
16 study shows a problem, how would DEQ
17 address that today? How would you -- do
18 you -- I guess the basic question is, do
19 you have any authority under today's rule
20 to address that?

21 MS. BRADLEY: We would be looking
22 for voluntary reductions, for the most
23 part. We will enforce any requirements
24 that are currently on the books, but we
25 would not be able to require anything

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1 beyond currently what we have in the rules.

2 MR. BRANECKY: 41, currently?

3 MS. BRADLEY: Correct. 41 and

4 the MAAT standards, themselves. And even
5 within Subchapter 42, we have some
6 limitations on -- so if a source is and a
7 pollutant is regulated under a MAAT
8 standard, we're not able to seek additional
9 reductions.

10 MR. BRANECKY: Do you have any --
11 say 41 is not there and 42 is not there, do
12 you have any authority under federal
13 NESHAPS or any existing DEQ rules to
14 address things like that?

15 MS. BRADLEY: Well, just
16 basically what we normally have and that
17 you're familiar with, permit, the MAAC
18 standard. And beyond that it would be
19 public information and voluntary
20 reductions.

21 MR. TERRILL: David, there's just
22 no way to focus in on this issue without
23 having a state rule that just addresses
24 that particular situation. I mean, you
25 could hodgepodge, you could patchwork it

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1 and try to address it, but it won't work.
2 In practicality, it just won't work unless
3 you've got a rule that's outlined to some

4 degree on how you would deal with it.

5 MS. BOTCHLETT-SMITH: Mr. Curtis.

6 MR. CURTIS: Yes. I would like -
7 - I'm still a little confused on how the
8 catastrophic release or emergency release,
9 the lack of having some language in there
10 to exclude those, is a major concern. I'm
11 struggling with the concept that unless
12 we're -- there is actually monitoring going
13 on, those releases would not be detected.

14 MS. SHEEDY: Could I try to
15 respond? This is Joyce Sheedy.

16 MR. CURTIS: Please do.

17 MS. SHEEDY: Well, one reason we
18 didn't exclude them is that when we're
19 going to designate an AOC, the way we
20 designate is by actual monitoring. Our
21 rule says that we have to have monitored
22 and see an exceedance that is such that it
23 will effect human health, so not just an
24 exceedance anywhere, but the rule says it's
25 got to have a detrimental effect to human

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1 health and we're going to monitor that.
2 Well, how are we going to exclude
3 catastrophic and accidental release from

4 our monitoring? How are we going to
5 identify it? So I don't think we can
6 exclude it from the rule. Now, when it
7 comes down to modeling and when it comes
8 down to the compliance strategy, then
9 that's a different subject. But I don't
10 see how we can just leave it out of the
11 rule.

12 MR. BRANECKY: Wouldn't you know
13 when a catastrophic event occurred?

14 MS. SHEEDY: Yes.

15 MR. BRANECKY: Isn't that
16 reported under CERCLA, normally?

17 MS. SHEEDY: They are supposed to
18 report them, yes. And --

19 MR. BRANECKY: So you know the
20 day that it happened.

21 MS. SHEEDY: We could know the
22 day that it happened, but are we going to
23 know exactly how much of the -- that
24 monitor picks up is from that to exclude
25 it?

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1 MR. TERRILL: I guess another
2 concern I would have, and we talked about
3 this a little bit, we're not going to base

4 any kind of designation on one monitoring
5 event.

6 MS. SHEEDY: That's right.

7 MR. TERRILL: In fact, we're
8 going to give more detail, because it's
9 pretty evident we're not going to pass this
10 rule today. But we're going to give more
11 detail on what that would entail. But I
12 can tell you that if we pick up emissions
13 from a catastrophic, however you want to
14 term it, release that's occurring on a
15 fairly regular basis, that's not a
16 catastrophic release. That's a routine
17 release that needs to be factored in, into
18 what those citizens are being exposed to.
19 So I don't really understand why that would
20 need to be in this particular rule. There
21 is other ways to deal with it and if it's
22 occurring often enough to where it shows up
23 in multiple sampling events, that is not a
24 catastrophic release, that's something that
25 needs to be dealt with by the facility.

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1 But it's something that we need to discuss
2 and everybody needs to understand, because
3 I don't think it's our intent to penalize

4 folks through this rule (inaudible) in the
5 past.

6 MS. BRADLEY: I think Eddie
7 touched on the issue of what constitutes a
8 catastrophic release, a recurring
9 malfunction or failure to do maintenance,
10 those are issues that we struggle with
11 defining what is truly a catastrophic
12 release. Also, I think it might be helpful
13 to talk a little bit about how the
14 information comes in and what we will have
15 available to us and what the public will
16 have available and industry. There are
17 provisions for industry to report excess
18 emissions and to explain why those occur.
19 We will have that information. That
20 information supplements what we are
21 collecting at our monitors. We do not have
22 instantaneous readings on monitors. It
23 usually takes four to six weeks for us to
24 get any sample data back. So there's not a
25 critical timeline for explaining a high

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1 value. Now, that may change in the future
2 if we suddenly get a lot more money and
3 science moves along and we're able to do

4 continuous monitoring and analysis. But at
5 this point, there is a lag time of at least
6 a month and we've seen as much as two
7 months, and there's ample time for industry
8 to send in a report and explain what
9 happened.

10

11 MR. LYNCH: If I can, Cheryl,
12 make a quick comment. I think even I was
13 confused, too, on the way that the rule is
14 written that if it's saying there is a 24-
15 hour average, I think the general
16 perception that you go out and monitor 24
17 hours and you exceed that, you're in
18 trouble. I know it's complex, but if there
19 is some way to incorporate in the rule, not
20 pin you down too much, but be of further
21 guidance rather than just refer you to the
22 federal guidance about how you determine
23 that. Give people some notion about how
24 many samples would have to -- for example,
25 somebody would have to exceed such and

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1 such, so that people would be clear. And I
2 know you can't describe every situation or
3 this rule would be -- you would need a

4 truck to carry it, but maybe a
5 clarification of how that works
6 (inaudible).

7 MS. MYERS: Eddie, I've got a
8 question for you, since you've been around
9 longer than I have. Why don't you review a
10 little bit of the history of Subchapter 41,
11 why we have it, why we have some of the
12 numbers that we do. It's my understanding,
13 at the time part of that was developed,
14 there weren't necessarily standards and
15 guidelines. Some of the numbers that were
16 selected were somewhat arbitrary; is that
17 correct or not correct?

18 MR. TERRILL: I don't know about
19 that and I don't think I've been around
20 quite that long to go back and give a
21 history. I'll give a little bit and then
22 Joyce or Cheryl can chime in here, because
23 they have probably been more involved with
24 41 than I have.

25 What is this rule, this goes back to

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1 Nancy Coleman.

2 MS. BRADLEY: 1987.

3 MR. TERRILL: 1987. And it was

4 originally designed, the best I remember,
5 to at least give a start on trying to
6 develop a state toxics program. Cheryl,
7 was there other factors that go into that
8 besides that?

9 MS. BRADLEY: We have the Part 61
10 standards, which were risk-based standards
11 and EPA had only been able to promulgate a
12 handful. And because EPA was not making
13 any progress on the federal front, they
14 decided to fund three grants, state
15 initiatives, to do something until they got
16 something on the books. And Nancy's --
17 Nancy spearheaded Oklahoma's initial air
18 toxics program to fill those gaps.

19 MR. TERRILL: That's the reason I
20 have staff here that actually know why we
21 do some of these things.

22 MS. BRADLEY: So until the
23 federal Clean Air Act amendments, which
24 provided for Title 3 and Section 112
25 requirements identifying which pollutants

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1 were of concern, which source categories
2 were going to be addressed, and that we
3 were going to start with the technology-

4 based system for adopting -- for
5 establishing standards, we didn't get off
6 the mark and that's what happened.

7 MR. TERRILL: And it was a good
8 idea, it just mushroomed and it really
9 didn't have any, I guess, a goal of
10 actually doing something. We did a lot of
11 work and required the industry to do a lot
12 of work, but at the end of the day it
13 didn't really do much to control toxic
14 emissions, it just mainly categorized it.
15 It would have been great if someone had to
16 do an emergency response and that
17 information was available as to what might
18 be there in the event of a fire. But
19 beyond that it really didn't do much to
20 address control of toxics exposure by the
21 public to true concerns beyond the modeling
22 and then that's really not, you know,
23 models are just that. I mean, monitoring
24 data really works. You really determined
25 what the public exposure is and that's the

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1 reason that we just feel like it's time to
2 move on from that antiquated rule to
3 something that's more streamlined and more

4 workable.

5 MS. MYERS: That being said, do
6 we really -- 41, if you have NESHAPS and
7 you have the MAAC rules for all of the
8 industries, you have Title V, we have
9 Section 112, do we really need 41?

10 MR. TERRILL: Well, we won't have
11 41 once we -- as it exists now, we'll have
12 it replaced by the 42; is that your
13 question?

14 MS. MYERS: Kind of, sort of.

15 MR. TERRILL: If your other
16 question is, why don't we just get rid of
17 that and then worry about developing the
18 other rule later, it's real simple.
19 There's an incentive for folks to get rid
20 of 41 because it is -- it's a burden on
21 them, it's a burden on us. But that
22 incentive -- I think it's needed, because
23 once you -- it's just human nature. Once
24 you get rid of a problem, it's very
25 difficult to try to put something in its

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1 place and the whole idea here is to have a
2 workable state toxics rule that we slide in
3 place of even a bad rule, because I think

4 without that we just don't have that
5 incentive and I'm just not willing to risk
6 us giving up something without something to
7 take its place, even if we don't think 41
8 does what we would like for it to do. I
9 mean, that's just the truth of the matter.

10 MR. BRANECKY: I would like to
11 clarify what I said earlier. I'm not
12 opposed to controlling toxics in the state.
13 And I guess I was around in '87 when they
14 developed 41 and, at the time, we thought
15 41 was real good and then we found out it's
16 not workable. It's not an easy issue. I
17 want to make sure that 42 doesn't turn out
18 like 41 in another year, we're back to the
19 same spot. I guess my question was, can we
20 (inaudible) control the toxics in the state
21 under the existing federal guidelines and
22 rules and not complicate it any further
23 with additional rules. If we can, do we
24 need 41 and 42. If we can't, then we need
25 to take our time and get 42, make sure 42

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1 is as workable as we can, because we don't
2 want another 41 a year from now.

3 MR. TERRILL: Let me respond to

4 that. No, I don't think we can. I really
5 think that we need a state rule for -- one
6 of the reasons that we haven't talked about
7 is what I've been saying all along, is that
8 the EPA is really moving towards locally-
9 based solutions for a lot of different
10 pollutants, but especially toxics. And if
11 you don't have a program that addresses
12 that or attempts to address that, you're
13 not going to have a place at the table as
14 they develop these regulations and you're
15 going to open up the door for other folks
16 who have programs at a local level to get
17 grants and develop programs that they might
18 want to put in place for Tulsa or Oklahoma
19 City or for Ponca City or whatever.
20 Because there's nothing that prevents other
21 entities from getting these grants and
22 doing those programs and I just don't think
23 that's good for Oklahoma. I think we need
24 to have a rule that goes through the
25 process, just like we're doing here, that

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1 addresses protection of the citizens in all
2 parts of the state, not just the
3 metropolitan areas. Because that's really

4 what -- this is not just a metropolitan
5 rule, this is a statewide rule and it
6 really -- it focuses in on the process that
7 we're going to use to make that
8 determination. And for those reasons, I
9 don't think that we can rely on what's out
10 there because I really don't think it will
11 address those problems that may be
12 complaint-driven or may be driven by other
13 factors beyond what the feds do in their
14 other programs.

15 MR. SCHELLHORN: Eddie.

16 MR. TERRILL: Yes.

17 MR. SCHELLHORN: I just wanted to
18 point out a situation.

19 MS. BOTCHLETT-SMITH: Mr.
20 Schellhorn, would you identify yourself
21 again?

22 MR. SCHELLHORN: Yes. Jim
23 Schellhorn with Terra. A situation that's
24 very feasible in a facility that could be
25 an issue and why it's important that

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1 accidental releases not be covered under
2 Subchapter 42. If you've got a relief
3 valve on a storage tank that is a high

4 capacity relief valve on an ammonia storage
5 tank, it could lift, due to an accidental
6 event at a facility. If you vent enough
7 ammonia close enough to the property line
8 for a short duration, that you would have a
9 high enough ammonia concentration off
10 property, to exceed the MAAC, even a 24-
11 hour average exceedance, that could happen
12 on a large ammonia storage tank. Our
13 facility could be in violation of
14 Subchapter 42. That's a situation that we
15 would like to avoid, would not be something
16 we would have any control over, to take
17 steps to prevent that from happening would
18 be to risk catastrophic failure of the
19 storage tank, which would put the public in
20 tremendous danger by causing a larger
21 release of ammonia that would be something
22 that the public would not want to be
23 exposed to. Our tanks are designed that
24 way intentionally, that's API and in the
25 engineering codes and standards, are

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1 intended to design them that way. That's
2 the safety protections that are put in
3 place for those tanks. So if these kinds

4 of releases are subject to Subchapter 42,
5 we're put in the position of having a
6 violation of a state standard, state
7 regulation, that we have absolutely no
8 control over, that doesn't protect the
9 public health.

10 MS. SHEEDY: Could I -- this is
11 Joyce Sheedy.

12 MR. SCHELLHORN: And it's not
13 just our facility if, excuse me, Joyce, but
14 let me just continue.

15 MS. SHEEDY: Okay, because I
16 wanted to ask you a question.

17 MR. SCHELLHORN: There are many
18 retail ammonia facilities in the state that
19 have bullet tanks that have relief valves
20 that are close to property lines where you
21 would have the potential for the same kind
22 of situation and if you're going to apply
23 this rule fairly across the state, that
24 very same situation could occur at those
25 facilities.

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1 MS. SHEEDY: I'm not sure if
2 there's a misunderstanding. This rule --
3 you won't have to comply with those MAAC

4 standards unless there is an AOC
5 designated. So until an AOC is designated,
6 there is nothing for you to comply with.

7 MR. SCHELLHORN: If we have
8 knowledge that we're exceeding the MAAC
9 standard off our property, that doesn't
10 constitute an exceedence?

11 MS. SHEEDY: No. No, not unless
12 it's an AOC.

13 MR. TERRILL: And I think there's
14 a lot of confusion about how we would apply
15 this and I go back to what Bob said, I
16 think we need to try to, where we can,
17 clarify that. But we are not going to
18 write a rule that is going to contemplate
19 every scenario. It wouldn't be fair to you
20 all, especially, and it boxes us in a
21 corner. But I don't think you would have
22 any concerns at all. But I can understand
23 how you would -- it's good to raise that
24 issue, because I don't think what you
25 described is our intent to cover in this

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1 rule.

2 MR. SCHELLHORN: Do you see where
3 our concern is?

4 MR. TERRILL: I see where your
5 concern is, yes.

6 MR. SCHELLHORN: Currently, we
7 have a codified permit that includes
8 ammonia limits that are based on compliance
9 with the MAAC at the same level that the
10 proposed MAAC is set at.

11 MS. SHEEDY: Jim, it's almost
12 like there is no MAAC until there is an
13 AOC, in a sense.

14 MR. TERRILL: Yes, and I think
15 the challenge is going to be how we can
16 clarify that without trying to go into
17 every permutation that we could have. And
18 that's something we can work on, because
19 your scenario is not something --

20 MR. SCHELLHORN: Maybe we've been
21 thinking about it from a little different
22 perspective --

23 MS. SHEEDY: I think so.

24 MR. SCHELLHORN: -- and it's been
25 more of a concern --

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1 MR. TERRILL: And that's the
2 whole purpose of having this dialogue, to
3 bring those exact scenarios up, because

4 that's not what we want to do.

5 MR. SCHELLHORN: Okay.

6 MR. TERRILL: And that goes to
7 what David said, we don't want to do
8 something that ends up with unintended
9 consequences. But, you know, if they do,
10 we'll fix those. But we do need to do some
11 work to clarify that and your point is well
12 taken.

13 MS. SHEEDY: Yes.

14 MR. SCHELLHORN: Thank you.

15 MR. CURTIS: And may I ask yet
16 another question? Even if you had an AOI -
17 - that if you had an emergency release,
18 would you at that point even know that you
19 exceeded a MAAC standard, unless there was
20 active monitoring going on?

21 MR. TERRILL: Unless there just
22 happened to be monitoring going on by
23 coincidence, yes.

24 MR. CURTIS: So it would have to
25 have a sequence of things to even verify

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1 that that standard was --

2 MR. TERRILL: A sequence of
3 recurring things --

4 MR. CURTIS: Right.

5 MR. TERRILL: -- that recur on a
6 fairly routine basis. But just because you
7 had a release that could possibly exceed
8 the standard at the property line, that
9 doesn't do anything because I would think
10 that most of those releases are not going
11 to affect anybody, anyway, that doesn't
12 work at that facility and that's covered by
13 other rules and regulations.

14 MR. CURTIS: I said AOI, I meant
15 AOC.

16 MS. SHEEDY: That's another thing
17 about an AOC. It has -- somebody has to be
18 affected.

19 MR. TERRILL: And we left some of
20 this kind of vague, because we didn't --
21 when we tried to put in an explanation, it
22 just led to more and more and more and the
23 first thing you know, we've got, you know,
24 we just can't do it without having a very
25 prescriptive rule, which that's not the

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1 purpose of this, either. So I think we
2 would like feedback from the regulated
3 community on specific areas that they would

4 like to have clarified, but not without
5 examples. I mean, if there's a way that
6 you -- we would welcome that help, but I
7 just don't think we can cover everything
8 because if we try to do that, then we're
9 going to leave something out or whatever,
10 so.

11 MR: direction for addressing in
12 the future?

13 MR. TERRILL: Well, I was going
14 to wait and do this after, because we've
15 got another presentation that I'm sure a
16 lot of folks are here for and that's the
17 funding issue. The whole reason that we
18 really -- and I'm the one that did this,
19 I'm the one that pushed to try to get this
20 done at this meeting or at the February
21 one, was to try to get folks who were going
22 to be -- have their fees affected, to work
23 with us over at the Legislature to get a
24 mobile source fee. And that's -- beyond
25 that, there is no reason why we would have

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1 to do this today. But I just feel like
2 we're slowly missing opportunities that we
3 may not get again to get a mobile source

4 fee that addresses how we fund a lot of
5 these issues that right now the Title V fee
6 payers are paying for and the minor source
7 fees. So, you know, we can continue this
8 to April, it's not that big a deal. I do
9 have some urgings, I guess, as part of the
10 presentation that Beverly's going to do on
11 how we're going to propose to pay for this
12 on what folks can do once the Legislature
13 starts, who's going to be sponsoring the
14 bill that we've got to do that and I was
15 going to hit that later as part of that.

16 MS. MYERS: I would suggest that
17 we take about a 10 minute break and give
18 everybody time to get up and stretch a
19 little bit before we get into the
20 presentation on fees.

21

22 (END OF PROCEEDINGS)

23 C E R T I F I C A T E

24

25 STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA) ss:

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I, CHRISTY A. MYERS, Certified
Shorthand Reporter in and for the State of
Oklahoma, do hereby certify that the above

4 proceedings are the truth, the whole truth,
5 and nothing but the truth, in the case
6 aforesaid; that the foregoing proceedings
7 were tape recorded and taken down in
8 shorthand thereafter transcribed under my
9 direction; that said interviews were taken
10 over several different days; and that I am
11 neither attorney for nor relative of any of
12 said parties, nor otherwise interested in
13 said action.

14
15 IN WITNESS WHEREOF, I have hereunto
16 set my hand and official seal on this, the
17 3rd day of March, 2005.

18
19 _____
20 CHRISTY A. MYERS, C.S.R.
21 Certificate No. 00310
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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. 6

OAC 252:100-5

REGISTRATION, EMISSION INVENTORY AND ANNUAL

OPERATING FEES [AMENDED]

HELD ON JANUARY 19, 2005, AT 9:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

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- CHERYL BRADLEY - AQD

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2 MS. BOTCHLETT-SMITH: The next
3 item on our agenda is OAC 252:100-5, this
4 is the Registration, Emissions Inventory
5 and Annual Operating Fees. Doctor Joyce
6 Sheedy will be presenting this portion of
7 the rule. Following her presentation, I
8 will give a brief power point that -- with
9 the help of Matt Paque, we're going to
10 cover some information about the fees and
11 also the timing issues. And again, we
12 would ask that all questions be held until
13 after all of those presentations are
14 completed. Dr. Sheedy. Hopefully, those
15 of you on this side of the room can see
16 this screen and then we have the screen set
17 up over there for the remainder of the
18 audience. If you need to move around when
19 we get to the presentation, we'll take a
20 quick break so you can kind of move to see.
21 Dr. Sheedy.

22 DR. SHEEDY: Madame Chair,
23 Members of the Council, ladies and
24 gentlemen, the Department is proposing
25 revisions to Subchapter 5, Registration,

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1 Emission Inventory and Annual Operating
2 Fees, in conjunction with the proposed

3 revision to Subchapter 41 and the proposed
4 new Subchapter 42.

5 The proposed revision to Subchapter
6 5 will increase the annual operating fees
7 for stationary sources that emit hazardous
8 air pollutants, that emit toxic air
9 contaminants, and that emit volatile
10 organic compounds. The increased fees will
11 provide funds for the air toxics program
12 proposed in new Subchapter 42. These
13 changes are to Sections 5-1.1, Definitions,
14 and 5-2.2, Annual Operating Fees.

15 In Section 5-1.1, we propose to
16 revise the definition of regulated air
17 pollutant to include toxic air contaminants
18 as defined and regulated under Subchapter
19 42. We also propose to add two new
20 definitions defining Group I regulated air
21 pollutants and Group II regulated air
22 pollutants. These two new definitions are
23 for fee purposes only. Basically, group
24 two regulated air pollutants includes HAPs,
25 TAPs and VOCs, while Group I includes all

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1 the other regulated air pollutants for
2 which we charge fees.

3 In Section 5-2.2, we propose to add
4 a new Paragraph (a)(3), stating that if the
5 particular substance can be classified as
6 more than one type of regulated air
7 pollutant, only one classification shall be
8 assigned to that substance for fee purposes
9 and that if a substance can be classified
10 as both a Group I and a Group II regulated
11 air pollutant, it shall be classified as
12 group two regulated air pollutant.

13 We propose to modify Subparagraph 5-
14 2.2(B)(1) by deleting the words "no more
15 than" prior to \$22.28 and we propose to add
16 new Subparagraph (C) that sets annual
17 operating fees for minor sources for Group
18 I regulated air pollutants at \$22.28 per
19 ton of emissions and Group II regulated air
20 pollutants at \$40.00 per ton of emissions.

21 We propose to modify Subparagraph 5-
22 2.2(b)(2)(C), to delete the words "no more
23 than" prior to \$22.28 and to add a new
24 Subparagraph 5-2.2(b)(2)(D) that says
25 annual operating fees for Part 70 sources

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1 at \$23.36 per ton of emissions plus any
2 adjustment necessitated by the appropriate

3 Consumer Price Index in Group I regulated
4 air pollutants and that \$40.00 per ton of
5 emissions for Group II regulated air
6 pollutants.

7 Now, Ms. Botchlett-Smith will
8 present the fee demonstration with Mr.
9 Paque.

10 MS. BOTCHLETT-SMITH: If any of
11 you need to move, this would be a good
12 time.

13 I have a couple of comments --
14 notice of comment sheets that have been
15 filled out for Subchapter 5. If anyone
16 else is wanting to make any comments on
17 this subchapter, this would be a good time
18 to fill out these comment sheets while we
19 work out our technical problems.

20 Okay. We apologize for our
21 technical problems. Apparently, this is
22 not something we're going to be able to
23 resolve in the next couple of minutes. I
24 believe everyone got a copy of the slides
25 that was made available as a handout on the

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1 registration table. So we're just going to
2 kind of talk our way through that and we'll

3 give our full presentation -- we'll make
4 that available on the website so that you
5 can go back and review it in a little bit
6 larger format.

7
8 (Presentation by Beverly Botchlett-Smith
9 & Matt Paque from the power point slides)

10 CONTINUED PROCEEDINGS

11 MS. BOTCHLETT-SMITH: We would
12 entertain any questions.

13 MR. BRANECKY: I guess I have --
14 and I'm not used to dealing with
15 legislators, but to me if we pass this and
16 then try to go to the Legislature and they
17 say, well, you've already got the mechanism
18 for funding, you're not going to get any
19 money, you don't need any money, you've
20 already got the mechanism, is that not a
21 concern?

22 MR. TERRILL: A bigger concern is
23 if -- we are not going to be able to do
24 this ourselves as an agency. The DEQ does
25 not have the political clout to influence

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1 the Legislature to pass fees. That has to
2 come from the citizens and most importantly

3 our fee payers. And the thought that I had
4 was that we have a mechanism in place where
5 we identify a way to fund this through fees
6 and that will provide an incentive for
7 those regulated industries to work with us
8 and contact the sponsoring legislators to
9 encourage them to fund this through other
10 means other than fees. You don't know
11 what's best to do, David, you're exactly
12 right. If it would be best to show funding
13 now and risk them saying that or not having
14 any funding and then -- I don't know what
15 the best -- this is our best guess as to
16 how best to handle this. It's pretty
17 obvious that we're not going to pass this
18 today for a lot of reasons, but I talked to
19 Steve yesterday about the effect that would
20 have if we put this off even to April and
21 his -- what he told me, pretty much
22 verbatim, was that it really won't make
23 that much difference as long as -- if you
24 all really want this funded through another
25 means, that you contact either -- what's

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1 his last -- Senator Johnny Crutchfield,
2 who's handling this legislation on the

3 Senate side or Representative Greg Piatt,
4 and let them know that you're supportive of
5 funding this, the toxics program, and not
6 just the toxics program. If we're able to
7 get monies beyond what we need for the
8 program, then that would go towards us
9 funding other things that right now are
10 coming out of Title V and minor source
11 fees. Because at the end of the day, it
12 really doesn't make any difference where
13 the funding comes from, we've got a job
14 that we've got to get done and we do the
15 best we can to allocate the resources where
16 they're supposed to be, but I would be
17 lying to you if I said that all the Title V
18 fees were being used for all the Title V
19 purposes. I mean, we just don't have
20 enough non-Title V fees to get the planning
21 stuff that goes into SIP works, do the
22 modeling work, do all the other stuff
23 theoretically Title V is not supposed to
24 pay for. So that's really what the message
25 I needed to take to you all today, is if

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1 you want -- if you really want some other
2 legislative method to pay for this, you

3 really need to contact these two folks and
4 let them know you're supportive of that,
5 because Steve's going to be checking back
6 with them. And if they haven't been
7 contacted by anybody by February -- I don't
8 know what his deadline is, they're probably
9 not going to want to spend the political
10 capital to push this along, because there
11 is big competition over there. We've got -
12 - half of them are new folks and it's just
13 going to be -- they're going to have to
14 know that you're supportive of this in
15 order for them to take the time and the
16 effort to push it along.

17 So one thing I did want to talk just
18 a little bit about, and Matt brought this
19 up, when we looked at what we thought we
20 would need for this program, this truly is
21 a guess because not only am I looking at
22 what I think we're going to need for the
23 state toxics, which is the real unknown,
24 but what I'm also looking for is a way to
25 fund the federal side of the toxics

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1 program, as well. Right now we only have
2 about a quarter -- about a half to three-

3 quarters of an FTE devoted to our entire
4 toxics program. We've got, what, 41 MAAC
5 standards that are going to be proposed
6 after January 1st of this year. It looks
7 like we've got 12 in 2005, 20 in 2006 and
8 nine in 2007. If we don't get any better
9 guidance and interpretations of the MAAC
10 standard than we've got with the other
11 rules, it's your guess is as good as mine
12 as to how these rules are supposed to be
13 implemented. So I would like to have a
14 part of an FTE or a full FTE devoted to
15 looking at these federal standards, working
16 with EPA and trying to develop some
17 guidance for our regulated sources and our
18 folks that are trying to interpret this and
19 get them into your permits on how these
20 things are supposed to be interpreted,
21 because we get zero guidance from EPA on
22 this. We just don't get any, so it's up to
23 us to figure out what they meant and how we
24 should implement it. I think it's
25 important that we do that.

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1 Now that EPA has had some of these
2 MAAC standards on the books for a number of

3 years, now they're looking at enforcing the
4 MAAC and they're either looking to us to do
5 it or they're going to be doing it
6 themselves if we don't have the ability to
7 do that. And one of the things I'm going
8 to have to be gauging as we look at these
9 other MAAC standards is, do I have enough
10 resources to take on that responsibility.
11 Because if I don't, I'm not accepting
12 delegation for the MAACs, because we don't
13 have to do that. And to accept it and not
14 have the ability to deal with them
15 effectively, I don't think that's fair to
16 our regulated sources or the citizens who
17 believe that if we accept that delegation
18 that we're going to be able to do that
19 work. So we've got about 200 new sources
20 that would be effected by these MAAC
21 standards that are coming out over the next
22 two and a half, three years. And that
23 doesn't count if EPA does residual risk or
24 some of the other things that they're
25 looking at. So not only am I looking at

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1 what we're going to need for the state
2 toxics, I'm looking also at what we think

3 we're going to need for the federal toxics
4 and their requirements. And so that's the
5 reason that we have so many FTEs. I don't
6 know how we'll allocate them up, I don't
7 know if we'll have one in rules and one in
8 Cheryl's group or two or three in Cheryl's
9 group, I just don't know how we'll allocate
10 that up. It just depends on where the
11 workload is. And it was asked of me a day
12 or two ago whether or not we would ramp up
13 into this, that's fine, too. I don't think
14 we could spend \$800,000 if we truly needed
15 that to get this program when it's fully
16 implemented. We could spend that in the
17 next year or two, anyway. So if it's the
18 Council's wish and we want to try to fund
19 this through a fee, a ramp-up mode is fine,
20 too, as long as we're able to get a minimum
21 number of folks on board to start learning
22 what we want to do with the toxics rule,
23 both federally and state and getting some
24 experience. So it will take a while for us
25 to develop the expertise we need to do

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1 this. So that's just a little bit of
2 background on what we looked at when we

3 were trying to develop this fee case.

4 MR. BRANECKY: And I guess I
5 would, you know, the language the way it's
6 currently written, even though I trust you,
7 Eddie, doesn't make me very comfortable
8 with the language, shall be no more than
9 \$40 a ton. I would prefer a ramp-up
10 process, because you're not going to be
11 able -- you don't need to do any monitoring
12 right off the bat. Analyses will come down
13 the road. You won't need the \$800,000 the
14 first year, you'll need a portion of that.
15 I would be more comfortable setting that as
16 a lower number and then having DEQ come
17 back and justify any additional increases
18 that you have.

19 MR. TERRILL: Another thing that
20 we would do, since this is not a
21 traditional part of our budget, is that we
22 have a finance committee that we take our
23 budget to every year and we're supposedly
24 supposed to have periodic meetings on how
25 we're spending your money and we sort of do

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1 that the best we can. But anyway, I
2 wouldn't at all have a problem in splitting

3 this out and having that go to the finance
4 committee, go through that and then make
5 that presentation to the full Council and
6 to you all, let you know how we're spending
7 that portion of our money, since it's
8 really not tied -- it's a special program
9 that we're trying to ramp up, and I don't
10 think there's anything wrong at all. I
11 think that's kind of fair to do that, to
12 let you all know -- it's just whatever the
13 Council's pleasure is, but I wouldn't have
14 a problem at all in doing that if we get
15 this thing off the ground, especially. But
16 again, this is not my preference, is to
17 fund this through a fee. I really, truly
18 believe that we need a mobile source fee to
19 offset some of these costs and also, we're
20 maxed out on our Title V revenues. We had
21 to adjust, do some paper adjustments this
22 last year when we submitted the 2005
23 budget, in order to not have a shortfall in
24 our Title V program. So we've been able to
25 give some raises to staff and some other

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1 things, costs have gone up, and so we're
2 maxed out. So I don't have any money to

3 shift around to pay for this, either,
4 because we looked at that. We looked at
5 whether or not the freeing up the
6 engineer's time would be enough to fund
7 this without asking for an additional fee
8 and if you look at the statistics I get on
9 the permits that we've got in-house and
10 what we're expecting to get with the Title
11 V renewals, we hope we're able to shift the
12 work to the folks or the engineers that are
13 working on this rule to get permits out the
14 door. So we looked to a lot of different
15 things and we just felt like this was a
16 totally kind of a new program for us and it
17 deserved new funding.

18 MR. BRANECKY: The rental car fee
19 is not the fairest way to go, in my
20 opinion. The fairest way is everybody that
21 drives a car or utilizes fuel that emits
22 into the environment contributes to the
23 problem. And I realize we've tried it
24 before, but is that a dead issue, of trying
25 tags or gasoline tax?

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1 MR. TERRILL: It's not a dead
2 issue if some group or group regulated --

3 the group would probably need to be the
4 regulated source that did this. Because
5 Steve tried this last year and sort of
6 tried it the year before, we couldn't even
7 get a sponsor for that. And there's -- you
8 know, there's always a myriad of reasons.
9 Last year they were going into an election
10 year and term limits was kicking in and
11 they just weren't comfortable doing that.
12 But we're going to have that every year.
13 Now that term limits are here, we're going
14 to have -- the Legislature, a certain
15 amount of them are going to turn over every
16 time we have an election cycle and it
17 really comes down to whether or not that's
18 something that the Legislature feels like
19 the people ought to be paying for as
20 opposed to it coming out of general
21 revenues. The state of Colorado has \$1.50
22 per car tag fee and they fund their
23 monitoring program, their planning program,
24 and their -- all their SIP work out of
25 that. They totally fund it out of mobile

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1 source fees. And if we had the similar
2 thing, we could probably do the same thing.

3 I mean, we could probably fund -- a good
4 chunk of our program would be funded by
5 those fees. But -- and we would be
6 supportive of that, we just -- it just
7 doesn't do any good for us to raise that
8 issue and try to find a sponsor. If there
9 would be enough support, I would be
10 surprised that Senator Crutchfield and
11 Representative Piatt wouldn't be willing to
12 make that change, but that's going to be a
13 tough fight, because a lot of folks that
14 were elected were probably elected on the
15 promise there would be no new fees and no
16 new taxes and that sort of thing. So it
17 would be an uphill fight. I think that the
18 thought was when we looked at this rental
19 car, was that it's a soft target, if you
20 will. I don't know how soft they're going
21 to be once we get over there at the
22 Legislature, because they've got a lot of
23 clout and they make some good arguments.
24 But it is a mobile source fee and it is
25 sort of spread out among -- and it also has

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1 some appeal that we get a lot of out of
2 state folks that would be paying the fee,

3 as well. We have a lot of in state folks
4 who would be paying it, as well. I agree
5 with David, I would support a car tag fee,
6 because that's more equitable, but it
7 wasn't my call.

8 MS. BOTCHLETT-SMITH: Other
9 questions from the Council?

10 MR. LYNCH: Eddie, if I could --
11 I want to make sure something is clear to
12 me and to the public, that as it stands
13 right now, for some -- if you had a
14 compelling reason, I think that there was a
15 problem somewhere with air toxics, you
16 don't have the ability currently to be able
17 to go out and address that?

18 MR. TERRILL: Well, the funding
19 and approving of the issue would be the
20 first hurdle you would have to -- the first
21 hurdle you would have to overcome, because
22 let's say we got a complaint that was more
23 than one or two, we verify that, yes, it
24 was a legitimate public health complaint.
25 The first thing we would do is obviously

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1 identify the source that we believe the
2 complaint was coming from and try to make

3 the determination as to whether or not they
4 were in compliance with their permit. And
5 even if they were in compliance with their
6 permit, there could be some instances where
7 something would happen within the plant.
8 There's any one of numerous things that
9 could happen, where that there could be
10 things happening downwind from them that
11 would be impacting those people that were
12 making the complaint or had the concerns
13 about. And so we would have to have a
14 mechanism of verifying that we, indeed, did
15 have an off-site problem and that's an
16 expensive proposition in and of itself that
17 we don't have the money in our budget for.
18 I could ask Steve if he had money in his --
19 in the fine account for that, but to answer
20 -- the bottom line to your question is, no,
21 we really don't have an adequate way to
22 address that with our existing resources.
23 Cheryl, do you want to add to that?

24 MS. BRADLEY: Yes, I wanted to
25 address the tool that we have available

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1 right now in Subchapter 41. It prescribes
2 how we assess the toxicity of a substance

3 and how we establish an ambient
4 concentration. We've looked at those
5 concentrations and they are not -- we do
6 not feel that they are protective of the
7 public health using the prescribed
8 methodology in the rule. The numbers are
9 one, two, three, four orders of magnitude
10 at times greater than what we are
11 recommending at this point. And Eddie went
12 on to say, in absence of that, then
13 statutorily we are charged with protecting
14 public health. Our case is a little -- is
15 a lot shakier in that we would have to base
16 that on risk. And there are no cut or no
17 defined divisions that an assessed risk
18 based on a model, which is what we would
19 have to use -- it's the most cost-
20 effective, would prescribe this action in
21 order to get a reduction. So what we have
22 would be a very broad tool.

23 MS. MYERS: Just out of
24 curiosity, where's the division line
25 between what we as air quality people do,

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1 where's the division line between that and
2 the public health department, if you have a

3 public health issue, is the public health
4 department not involved?

5 MR. LYNCH: My answer to that.
6 The health departments have zero capacity
7 to do any of this.

8 MR. TERRILL: And we try to
9 partner with them when it makes sense to
10 try to get cancer data and other
11 morbidity/mortality-type data and, in fact,
12 we're currently working with them in
13 utilizing a federal grant to try to
14 correlate the emissions that -- the
15 historical emissions that we've got with
16 public health data. And I think that's got
17 some real promise to help us with this rule
18 and to identify areas where we might have a
19 public health impact and try to tie that
20 back to historical emissions data. So
21 that's something that's ongoing right now
22 that we've got folks working on, along with
23 Judy Duncan spearheading that out of our
24 Customer Services Department with the
25 Health Department. But Dr. Lynch is right,

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1 we don't -- they don't really have the same
2 charge that we do. And I can think of an

3 instance right now, we've got an issue
4 going on in a community where if we had an
5 up and running toxics program, it would
6 have been invaluable for expertise and
7 sample expertise and those sort of things
8 to address. So we really don't have a way
9 to get at the toxics issue in a very
10 expeditious fashion. It's very much
11 prescriptive and very much open to the --
12 what the other facility is really -- what
13 we believe the facility in question is
14 willing to do without us having to take
15 other enforcement-type actions that can get
16 dragged out for months and sometimes years,
17 depending on, you know, the arguments that
18 both sides have, so.

19 MS. BOTCHLETT-SMITH: Do we have
20 any other questions from the Council? I've
21 got a couple of oral comments. Ron Sober.

22 MR. SOBER: Thank you. I'm Ron
23 Sober with RFS Consulting. I have a few
24 brief comments. First and foremost, I
25 don't see singling out VOCs for such a

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1 significant rate increase comparable to a
2 HAP. Not all VOCs are HAPs and not all

3 HAPs are VOCs. ODEQ has stated 97 percent
4 of the toxics are VOCs, but has neglected
5 to say how much of the VOCs are actually
6 toxics. I'm confident that the percentage
7 is dramatically smaller.

8 So numerous sources would be
9 penalized for VOC emissions as if they were
10 HAPs. If ODEQ feels compelled to assess
11 larger fees for HAP emissions, I can agree.
12 Such increases discourage HAP emissions in
13 pollution prevention projects, which all
14 benefit health. If -- that's a good thing.
15 But as it's proposed, across the board
16 doubling of fees for VOCs, I cannot support
17 that.

18 MS. BOTCHLETT-SMITH: Don Whitney
19 from Trinity.

20 MR. WHITNEY: Don Whitney with
21 Trinity Consultants. I have some questions
22 about the estimated cost that I think could
23 help to make a stronger case if some of
24 these points were addressed here. I think
25 perhaps the strongest baseline used to

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1 estimate the cost of this program might be
2 the Ponca City study that's been done over

3 the past year or so on toxics in Ponca
4 City. And I think we heard that that was
5 done with the current staff, which is about
6 one-half or three-quarters of FTE
7 equivalent person to do that one study and
8 I think we also heard that we'll be talking
9 in the future about maybe six studies a
10 year under the new program. So wouldn't
11 that be a staff of about three or four
12 required to do that, if you used the same
13 ratio, first Ponca City at one-half or
14 three-quarters of a person, scale that up
15 to six studies, it would be three or four.

16 Secondly, also addressed was the
17 fact that there would be some offset of FTE
18 people working in the permits and
19 compliance section that I know a good share
20 of time is devoted to permits and
21 compliance, evaluating state toxics rule
22 and some of that would be offset by this
23 new program, when state toxics would not be
24 considered by permits and compliance unless
25 there was an area of concern and, more

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1 importantly, more action done beyond that.

2 And finally, I think another data

3 point might be the cost of that Ponca City
4 study. Can you tell me how much -- that
5 was an EPA grant, I believe. How much was
6 paid for that by EPA?

7 MS. BOTCHLETT-SMITH: I don't
8 have that information with me. We did
9 receive a special grant. It was -- it
10 would not be the same magnitude as what we
11 would consider for a statewide program. If
12 you do one in six sampling, that's like 61
13 days a year. So if you were to do it, you
14 know, a year-long study, you know, that
15 would be one site. We could not -- the
16 Ponca City study was a short-term project.
17 Cheryl can probably speak more to the
18 technical aspects of that. I don't believe
19 that just taking that information and the
20 cost of that grant would give us a fair
21 evaluation of what a statewide program
22 would need.

23 MR. TERRILL: Because EPA did a
24 lot of the work, too, on that, because it
25 was designed to help us build our capacity

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1 or understand what we would need to build
2 our capacity if we had our own program. So

3 we would have to factor in the time that
4 EPA spent on it, because they did a lot of
5 the modeling work down there in Dallas that
6 we didn't do. But anyway --

7 MS. BRADLEY: And three-quarters
8 of a person, I think maybe it wasn't as
9 clear -- Eddie has approximately three-
10 quarters of a FTE involved in toxics
11 activities on an ongoing basis. On the
12 Ponca City project, we had eight to 10
13 staff people involved in the project from
14 all aspects of the program. I'm sure our
15 staff time or charge time for the hours
16 spent exceeded what was allocated under the
17 grant. So it's not -- I would assume we
18 had two to three people involved and FTEs
19 involved in a very intensive fashion, not
20 the whole year but in an intensive fashion
21 to get the reports out and analyze the
22 data. Eddie also pointed out on the
23 assessment, we couldn't have done it
24 without EPA's help. They had three people,
25 sometimes four, who were working on the

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1 other side of the program. We had an
2 engineer who helped us with emission

3 factors. We had a modeler and technical
4 person from their RCRA group help us run
5 the model and helped our staff. We also
6 had a project coordinator, as well as a
7 grants person. So there were a lot of
8 people needed just to do that assessment.

9 As to the modeling, I mean the
10 monitoring, what we have done in Ponca City
11 was for VOCs only. We are proposing
12 standards for particulates. That's a
13 separate monitoring system, separate
14 analyses cost, it should be on the same
15 schedule. We would like to have the VOC
16 monitoring and our particulate monitoring
17 on the same schedule, plus we're proposing
18 ammonia, which is an additional cost. We
19 would have to look back and see exactly
20 what the FTE number would be for the Ponca
21 City project and that was a very simplistic
22 project, being only stationary sources,
23 large stationary sources. We didn't
24 develop an area source inventory and we
25 didn't account for mobile sources and those

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1 would be large -- those would be resource-
2 intensive areas in developing a compliance

3 strategy.

4 MR. WHITNEY: I think those are
5 all great answers. I would suggest that
6 when it comes to justifying an estimated
7 cost of a program, that it's real good to
8 be able to point to something physical like
9 that, some real world experience, and that
10 could provide a solid basis for cost of
11 proposals in the future and that's -- I
12 guess that's what I'm recommending, that's
13 our best data point and we could use that
14 logic if those numbers bear up.

15 MS. BOTCHLETT-SMITH: Thank you,
16 Don. I don't have any other notice of
17 public comment. So if the Council has any
18 other questions of staff or of Eddie.

19 MS. MYERS: If there's no further
20 questions or comments, then I'll entertain
21 a motion.

22 MR. BRANECKY: I guess -- I know
23 we tentatively have a special meeting
24 scheduled for February 4th. I just don't
25 think that's enough time to address the

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1 questions that we have here today to hold
2 that meeting.

3 MR. TERRILL: I agree.

4 MR. BRANECKY: I would suggest
5 that we continue, I don't know if I need to
6 do this individual? Can I do it all
7 together?

8 MR. PAQUE: I believe there is a
9 scheduled meeting in April.

10 MR. BRANECKY: Can we continue to
11 -- do I have to address each subchapter or
12 continue all of it?

13 MR. PAQUE: Yes.

14 MR. BRANECKY: I would recommend
15 we just continue Subchapters 5, 41 and 42
16 until our April meeting.

17 MS. BOTCHLETT-SMITH: And
18 Appendix O?

19 MR. BRANECKY: And Appendix O.
20 That's a motion.

21 MS. MYERS: We have a motion. Do
22 we have a second?

23 MR. CURTIS: Second.

24 MS. MYERS: Myrna, call roll,
25 please.

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1 MS. BRUCE: Bob Lynch.

2 MR. LYNCH: Yes.

3 MS. BRUCE: Gary Martin.
4 MR. MARTIN: Yes.
5 MS. BRUCE: Bob Curtis.
6 MR. CURTIS: Yes.
7 MS. BRUCE: David Branecky.
8 MR. BRANECKY: Yes.
9 MS. BRUCE: Sharon Myers.
10 MS. MYERS: Yes.
11 MS. BRUCE: Motion passed.
12 MS. BOTCHLETT-SMITH: That
13 concludes the hearing portion, Sharon.

14

15 (END OF PROCEEDINGS)

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24 C E R T I F I C A T E

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STATE OF OKLAHOMA)

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1) ss:

2 COUNTY OF OKLAHOMA)

3 I, CHRISTY A. MYERS, Certified
4 Shorthand Reporter in and for the State of
5 Oklahoma, do hereby certify that the above
6 proceedings are the truth, the whole truth,
7 and nothing but the truth, in the case
8 aforesaid; that the foregoing proceedings
9 were tape recorded and taken down in
10 shorthand and thereafter transcribed under
11 my direction; that said interviews were
12 taken over several different days; and that
13 I am neither attorney for nor relative of
14 any of said parties, nor otherwise
15 interested in said action.

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand and official seal on this, the
18 3rd day of March, 2005.

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CHRISTY A. MYERS, C.S.R.
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