

MINUTES
AIR QUALITY COUNCIL
January 17, 2008
 DEQ Multipurpose Room
 707 North Robinson
 Oklahoma City, Oklahoma

For EQB February 29, 2008
 For AQC Approved February 5, 2008

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. January 17, 2008 in the Multipurpose Room at the DEQ. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on November 2, 2007 and amended to change the date. Agendas were posted at the meeting facility and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting. 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. Mr. David Branecky, Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed.

MEMBERS PRESENT

Sharon Myers
 David Branecky
 Jim Haught
 Laura Worthen Lodes
 Bob Lynch
 Gary Martin
 Jerry Purkaple
 Rick Treeman

DEQ STAFF PRESENT

Eddie Terrill
 Beverly Botchlet-Smith
 Scott Thomas
 Cheryl Bradley
 Joyce Sheedy
 Max Price

DEQ STAFF PRESENT

Nancy Marshment
 Matt Paque
 Dawson Lasseter
 Myrna Bruce

OTHERS PRESENT

Christy Myers, Court Reporter

MEMBERS ABSENT

Don Smith

Transcripts and Attendance Sheet are attached as an official part of these Minutes

Approval of Minutes Mr. Purkaple pointed out that the July 16, 2008 meeting was omitted from the Minutes adding that the July 16 meeting would be held in Ponca City. Mr. Treeman made motion to approve as amended and Mr. Martin made the second.

Gary Martin	Yes	Rick Treeman	Yes
Jim Haught	Yes	Sharon Myers	Yes
Laura Lodes	Yes	Jerry Purkaple	Yes
Bob Lynch	Yes	David Branecky	Yes

Election of Officers Calendar Year 2008 Ms. Sharon Myers made motion to retain the two current officers for the upcoming year – David Branecky as Chair and Rick Treeman as the Vice-Chair. Mr. Purkaple made the second.

Gary Martin	Yes	Rick Treeman	Yes
Jim Haught	Yes	Sharon Myers	Yes
Laura Lodes	Yes	Jerry Purkaple	Yes
Bob Lynch	Yes	David Branecky	Yes

OAC 252:100-24 Particulate Matter Emissions from Grain, Feed or Seed Operations Ms. Cheryl Bradley, Environmental Programs Manager in the Rules and

Planning Section, advised that the Department's proposal would amend OAC 252:100-24-3 to correct references to OAC 252:100-41 and OAC 252:100-42 Control of Toxic Air Contaminants and to clarify language in OAC 252:100-24-4. Ms. Bradley explained that these references are routine in this rulemaking. With no other comments or discussion, Mr. Branecky called for a motion. Mr. Haught moved to accept the changes as proposed and forward to the Environmental Quality Board for permanent rulemaking. Ms. Myers made the second.

Gary Martin	Yes	Rick Treeman	Yes
Jim Haught	Yes	Sharon Myers	Yes
Laura Lodes	Yes	Jerry Purkaple	Yes
Bob Lynch	Yes	David Branecky	Yes

OAC 252:100-33 Control of Emission of Nitrogen Oxides Dr. Joyce Sheedy related that the Department proposed to revised subchapter 33 to resolve issues regarding emissions standards for direct-fired fuel burning equipment, turbines and equipment with technological limitations. Dr. Sheedy stated that letters of comment were received from Perry S. Friedrich, Grand River Dam Authority and Guy Donaldson of EPA Region VI. Dr. Sheedy added that staff's recommendation was to table the hearing until Council's July 16, 2008 meeting. Following Council's discussion, Mr. Branecky called for a motion to continue the rulemaking to July. Ms. Myers made that motion and Mr. Martin made the second.

Gary Martin	Yes	Rick Treeman	Yes
Jim Haught	Yes	Sharon Myers	Yes
Laura Lodes	Yes	Jerry Purkaple	Yes
Bob Lynch	Yes	David Branecky	Yes

OAC 252:100-9 Excess Emission Reporting Requirements [AMENDED] Mr. Max Price advised that the proposal would amend OAC 252:100-9 to modify excess emissions reporting requirements. Ms. Lodes and Ms. Myers related that they are participating in a workgroup on this rule and would provide an update at Council's April meeting. Ms. Lodes made motion to continue the rulemaking to the July meeting. Ms. Myers made the second.

Gary Martin	Yes	Rick Treeman	Yes
Jim Haught	Yes	Sharon Myers	Yes
Laura Lodes	Yes	Jerry Purkaple	Yes
Bob Lynch	Yes	David Branecky	Yes

OAC 252:100-44 Control of Emissions from Coal-Fired Electric Steam Generating Units Mr. Max Price advised that the Department proposed three possible options for a new subchapter 44 which limits emissions of Mercury from new and existing coal-fired electric steam generating units. The first proposed option would be to incorporate by reference the federal Clean Air Mercury Rule (CAMR). The second option would be to adopt a state rule incorporating the Maximum Achievable Control Technology (MACT) standard proposed by the EPA on January 30, 2004. And the third option would adopt the model rule issued in November 2005 by STAPPA-ALAPCO which requires greater reductions and shorter timelines than the federal version and prohibits trading of mercury credits. Oral comments requesting that the Department go with Option Three were heard from Montelle Clark, Oklahoma Sustainability Network; Esther Houser, Sierra Club; Jean McMahan with the Green Party; Jody Harlan, Department of Rehabilitation Services; and Mary Francis, private citizen. Council and staff discussed the options and addressed the public's concerns. Staff recommendation was to continue the hearing to

Council's April 16, 2008. Ms. Myers made motion to continue to April and Mr. Haught made the second.

Gary Martin	Yes	Rick Treeman	Yes
Jim Haught	Yes	Sharon Myers	Yes
Laura Lodes	Yes	Jerry Purkaple	Yes
Bob Lynch	Yes	David Branecky	Abstain

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

Ms. Nancy Marshment advised that the Department is considering increases in annual operating fees in OAC 252:100-5-2-2(b) for minor sources and for part 70 sources to cover current and anticipated staffing requirements to administer the Department's air pollution control programs. Ms. Marshment advised that comments had been received and considered. She provided Council with a letter of comments dated January 16 from Angie Burckhalter, Oklahoma Independent Petroleum Association (OIPA). Ms. Beverly Botchlet-Smith, AQD Assistant Director, provided information to the Council that had been discussed with the Council Finance Committee. She and Mr. Terrill fielded comments and questions from Council and from the public. Oral comments were received from Mr. Jim Barnett, Environmental Federal of Oklahoma; Mary Francis, private citizen; Ms. Angie Burckhalter (OIPA).

Staff pointed out that due to notice requirements, a special meeting was set for February 5, 2008, to continue the Subchapter 5 hearing. At that special meeting Council could consider both the annual operating fees and the permitting fees at the same time. Mr. Haught made motion to carry the hearing over to February 5 adding Council's direction to staff to prepare a proposal to allow modification or reduction of a fee based on other income sources that may become available. Mr. Purkaple made the second.

Gary Martin	Yes	Rick Treeman	Yes
Jim Haught	Yes	Sharon Myers	Yes
Laura Lodes	Yes	Jerry Purkaple	Yes
Bob Lynch	Yes	David Branecky	Yes

Division Director's Report – Mr. Terrill provided an update on the Climate Registry stating there would be a series of workshops and webinars. He also pointed out that the Department was in the process of re-designing the DEQ web page and asked for public feedback in that process.

New Business – None

Adjournment -- Meeting adjourned at 11:00 a.m.

Transcripts and Attendance Sheet are attached as an official part of these Minutes.

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED MEETING
OF THE AIR QUALITY
ADVISORY COUNCIL
HELD ON JANUARY 17, 2008
AT 9:00 A. M.
AT 707 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA

* * * * *

MYERS REPORTING SERVICE
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COUNCIL MEMBERS

3

DAVID BRANECKY, CHAIRMAN

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RICK TREEMAN, VICE-CHAIRMAN

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JIM HAUGHT, MEMBER

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DR. ROBERT LYNCH, MEMBER

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GARY MARTIN, MEMBER

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SHARON MYERS, MEMBER

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JERRY PURKAPLE, MEMBER

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LAURA LODES, MEMBER

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DONALD SMITH, MEMBER (ABSENT)

12

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DEQ STAFF MEMBERS

14

15

MYRNA BRUCE, SECRETARY

16

CHERYL BRADLEY, ENVIRONMENTAL PROGRAMS

17

MANAGER

18

DR. JOYCE SHEEDY, ENGINEER

19

MAX PRICE, ENVIRONMENTAL PROGRAM SPECIALIST

20

NANCY MARSHMENT, ENVIRONMENTAL PROGRAM

21

SPECIALIST

22

BEVERLY BOTCHLET-SMITH, ASSISTANT DIRECTOR

23

MATT PAQUE, LEGAL COUNSEL

24

EDDIE TERRILL, DIRECTOR OF AIR QUALITY

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DIVISION

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MEETING

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MR. BRANECKY: I'd like to call
to order the Air Quality Council Advisory
meeting.

Before we get started I might remind
those of you with cell phones, if you
wouldn't mind putting on mute or turning
them off, we'd would appreciate it.

And with that, Myrna would you call
the roll please?

MS. BRUCE: Hello.

Gary Martin.

MR. MARTIN: Here.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Here.

MS. BRUCE: Laura Lodes.

MR. LODES: Here.

MS. BRUCE: Bob Lynch.

MR. LYNCH: Here.

MS. BRUCE: Rick Treeman.

MR. TREEMAN: Here.

1 MS. BRUCE: Sharon Myers.

2 MS. MYERS: Here.

3 MS. BRUCE: Jerry Purkaple.

4 MR. PURKAPLE: Here.

5 MS. BRUCE: David Branecky.

6 MR. BRANECKY: Here.

7 MS. BRUCE: And for the record,
8 absent is Don Smith. We do have a quorum.

9 MR. BRANECKY: The first item on
10 the agenda is the approval of the minutes
11 from our October 17, 2007 meeting. Do I
12 have any discussion on the minutes?

13 MR. PURKAPLE: I have a comment.

14 MR. BRANECKY: A comment, okay go
15 ahead.

16 MR. PURKAPLE: Look at the draft
17 minutes on Page 1 at the bottom, for the
18 meeting scheduled for calendar year 2008.
19 The very last sentence, Council suggests
20 that the January meeting be in Oklahoma
21 City, the April meeting in Tulsa, and the
22 October meeting in Broken Bow, there is no
23 reference to the July meeting. Which I
24 believe we decided to be in Ponca City.

25 MR. BRANECKY: That's correct.

1 Any other comments? Do I have a
2 motion for approval?

3 MR. TREEMAN: I move we approve
4 the minutes.

5 MR. MARTIN: Second.

6 MR. PURKAPLE: And that's
7 approved as corrected, correct?]

8 MR. BRANECKY: Yes. Myrna.

9 MS. BRUCE: Gary Martin.

10 Mr. Martin: Yes.

11 MS. BRUCE: Jim Haught.

12 MR. HAUGHT: Yes.

13 MS. BRUCE: Laura Lodes.

14 MR. LODES: Yes.

15 MS. BRUCE: Bob Lynch.

16 MR. LYNCH: Yes.

17 MS. BRUCE: Rick Treeman.

18 MR. TREEMAN: Yes.

19 MS. BRUCE: Sharon Myers.

20 MS. MYERS: Yes.

21 MS. BRUCE: Jerry Purkapple.

22 MR. PURKAPLE: Yes.

23 MS. BRUCE: David Branecky.

24 MR. BRANECKY: Yes.

25 MS. BRUCE: Motion passed.

1 MR. BRANECKY: The next item on
2 the agenda is the election of officers for
3 calendar year 2008.

4 MS. MYERS: I'd like to make a
5 motion that we keep you and Rick for one
6 more year.

7 MR. PURKAPLE: I second that.

8 MR. BRANECKY: Any discussion?

9 MS. MYERS: Any dissent?

10 MR. BRANECKY: Myrna.

11 MS. BRUCE: Gary Martin.

12 MR. Martin: Yes.

13 MS. BRUCE: Jim Haught.

14 MR. HAUGHT: Yes.

15 MS. BRUCE: Laura Lodes.

16 MR. LODES: Yes.

17 MS. BRUCE: Bob Lynch.

18 MR. LYNCH: Yes.

19 MS. BRUCE: Rick Treeman.

20 MR. TREEMAN: Yes.

21 MS. BRUCE: Sharon Myers.

22 MS. MYERS: Yes.

23 MS. BRUCE: Jerry Purkaple.

24 MR. PURKAPLE: Yes.

25 MS. BRUCE: David Branecky.

1 MR. BRANECKY: Yes.

2 MS. BRUCE: Motion passed.

3 Welcome back.

4 MR. BRANECKY: Thank you.

5 With that we'll go into the public
6 rule making, or public hearing portion of
7 the meeting.

8 (End of Meeting)

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R DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED MEETING
OF THE AIR QUALITY
ADVISORY COUNCIL

ITEM 5A
HELD ON JANUARY 17, 2008
AT 9:00 A. M.
AT 707 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA

* * * * *

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COUNCIL MEMBERS

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4 DAVID BRANECKY, CHAIRMAN

5 RICK TREEMAN, VICE-CHAIRMAN

6 JIM HAUGHT, MEMBER

7 DR. ROBERT LYNCH, MEMBER

8 GARY MARTIN, MEMBER

9 SHARON MYERS, MEMBER

10 JERRY PURKAPLE, MEMBER

11 LAURA LODES, MEMBER

12 DONALD SMITH

13

DEQ STAFF MEMBERS

14 MYRNA BRUCE - DEQ

15 CHERYL BRADLEY - ENVIRONMENTAL PROGRAMS

16 MANAGER

17 DR. JOYCE SHEEDY - ENGINEER

18 MAX PRICE - ENVIRONMENTAL PROGRAM

19 SPECIALIST

20 NANCY MARSHMENT - ENVIRONMENTAL PROGRAM

21 SPECIALIST

22 BEVERLY BOTCHLET-SMITH - ASSISTANT DIRECTOR

23 MATT PAQUE - LEGAL COUNSEL

24 EDDIE TERRILL - DIRECTOR OF AIR QUALITY

25 DIVISION

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PROCEEDINGS

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MS. BOTCHLET-SMITH: Good

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morning, I am Beverly Botchlet-Smith,

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Assistant Director of the Air Quality

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Division. As such, I will service as

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Protocol Officer for today's hearings.

10

The hearings will be convened on the

11

Air Quality Council in compliance with the

12

Oklahoma Administrative Procedures Act and

13

Title 40 of the Code of Federal

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Regulations, Part 51, as well as the

15

authority of Title 27A of the Oklahoma

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Statutes, Section 2-2-201, Sections 2-5-101

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through 2-5-118.

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Notice of the January 17, 2008

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hearings were advertised in the Oklahoma

20

Register for the purpose of receiving

21

comments pertaining to the proposed OAC

22

Title 252 Chapter 100 rules as listed on

23

the agenda and will be entered into each

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record along with the Oklahoma Register

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filing. Notice of the meeting was filed

with the Secretary of State on November 2,

1 2007 and amended later to change the date.
2 The agenda was duly posted 24 hours prior
3 to the meeting at this facility, here at
4 the DEQ.

5 If you wish to make a statement, it
6 is very important that you complete the
7 form at the registration table, it looks
8 like this, and you will be called upon at
9 the appropriate time.

10 Audience members please remember to
11 come to the podium and state your name
12 before speaking.

13 At this time, we will proceed with
14 what's marked as Agenda Item Number 5A on
15 the hearing agenda, this is OAC 252:100-24
16 Particulate Matter Emissions from Grain,
17 Feed or Seed operations.

18 Ms. Cheryl Bradley will be making
19 the staff presentations.

20 MS. BRADLEY: Good morning, Mr.
21 Chairman, members of the Council, ladies
22 and gentlemen.

23 The Department is proposing
24 amendments to OAC 252:100-24, Particulate
25 Matter Emissions from Grain, Feed and Seed

1 Operations. These amendments would correct
2 a reference to the revoked Subchapter 41,
3 and change that to its replacement
4 Subchapter 42. Also they would like to
5 clarify some language in Section OAC
6 252:100-24-4(c).

7 Just this morning we received a
8 comment letter from the Region 6 offices of
9 the US EPA. A copy of this letter has been
10 distributed to the Council and is available
11 on the sign-in table.

12 EPA suggested that DEQ consider
13 revisions to a section of another
14 subchapter, OAC 252:100-25, Smoke, Visible
15 Emissions and Particulates. Section 25-4
16 is referenced in section 24-4.

17 I'll read an excerpt from EPA's
18 comments.

19 "252:100-24-4, doesn't specify a
20 type of control, level of control, or
21 require a reasonable attempt to install
22 better controls. And the modeling isn't
23 mandatory. ODEQ might consider an
24 evaluation of this language based on a
25 review of the performance of current

1 applicable control technology."

2 Subchapter 25 was not included in
3 the notice for this hearing today. It was
4 not part of our original rule proposal and
5 is therefore not open for changes at
6 today's proceedings. EPA's comments will
7 be made a part of the hearing record.

8 In light of those things, since
9 their comments do not actually affect the
10 language in Subchapter 24, which is before
11 the Council today, staff recommends that
12 the Council vote to send these amendments
13 to the Environmental Quality Board with a
14 recommendation that they be adopted as
15 permanent rules, because the changes that
16 are being proposed are really housekeeping
17 measures.

18 MS. BOTCHLET-SMITH: Do we have
19 any questions from the Council?

20 MR. BRANECKY: Does staff agree
21 with their suggestions on Subchapter 25?
22 Does that need to be looked at and
23 reopened, 25?

24 MS. BRADLEY: Due to the lateness
25 of receiving these comments, and that EPA

1 had not let us know ahead of time, I cannot
2 give you an official position at this point
3 on Subchapter 25. We have not had time to
4 evaluate it.

5 MR. BRANECKY: Thank you.

6 MS. BOTCHLET-SMITH: I haven't
7 received any notice that anyone from the
8 public wished to comment on this rule. So
9 unless there's other questions or comments
10 from the Council to Ms. Bradley.

11 MR. HAUGHT: I have a question,
12 not having Subchapter 25 here in front of
13 me, not being one I'm familiar with, is
14 there anything that this would cause a
15 conflict with if we go ahead and make these
16 changes -- I mean, I kind of agree these
17 changes don't look substantive at this
18 point, but relative to Subchapter 25, is
19 that going to create any type of problems
20 that you can perceive?

21 MS. BRADLEY: No. They will not
22 make any problems, there will be no
23 conflict as a result of going forward
24 today.

25 MR. HAUGHT: Okay. So if we do

1 address 25 at some later point, this won't
2 create a problem for us.

3 MS. BRADLEY: That is correct.

4 MR. HAUGHT: Thank you.

5 MS. MYERS: What about the other
6 comments that EPA submitted in terms of
7 specifying controls, and level of control,
8 and all that?

9 MS. BRADLEY: We have not had a
10 chance to review and to probe a little
11 deeper into their comment. On first blush,
12 their comment seems to be somewhat vague.
13 I would like to look at the -- what they're
14 specifically referencing in the current
15 applicable control technology issues. But
16 I can't provide anymore specifics at this
17 time.

18 MS. MYERS: If that is the case,
19 would we really want to pass it today, if
20 we don't know.

21 MR. PAQUE: I think they were
22 just commenting on 25, because if you read
23 it, it looks like they just read 25 and had
24 some concerns about 25. I don't think that
25 their concerns were related to 24, the way

1 I read it.

2 MR. TERRILL: We'll evaluate
3 their comments and if we need to bring 25
4 to Council, we will. And we may end up
5 telling them that.

6 MR. BRANECKY: Well, isn't it
7 true that 24 is always referenced to 25?
8 This is not a new reference, it's been like
9 that.

10 MS. BRADLEY: That's correct,
11 because we tried to consolidate the
12 visibility testing or opacity requirements
13 in one subchapter, so it's routine that we
14 reference it.

15 MR. BRANECKY: Okay.

16 MS. BRADLEY: And the
17 implications for changes in Subchapter 5
18 (sic) would go beyond changes to the feed
19 and grain rule. It would have implications
20 for nearly all types of facilities.

21 MR. BRANECKY: Any other
22 discussion from the Council? If not, I'll
23 entertain a motion.

24 MR. HAUGHT: I'll move that we
25 accept the changes proposed to Subchapter

1 24.

2 MS. MYERS: I'll second it.

3 MR. BRANECKY: Okay. We're going

4 to recommend that as a permanent rule,

5 right?

6 Myrna.

7 MS. BRUCE: Gary Martin.

8 MR. MARTIN: Yes.

9 MS. BRUCE: Jim Haught.

10 MR. HAUGHT: Yes.

11 MS. BRUCE: Laura Lodes.

12 MR. LODES: Yes.

13 MS. BRUCE: Bob Lynch.

14 MR. LYNCH: Yes.

15 MS. BRUCE: Rick Treeman.

16 MR. TREEMAN: Yes.

17 MS. BRUCE: Sharon Myers.

18 MS. MYERS: Yes.

19 MS. BRUCE: Jerry Purkaple.

20 MR. PURKAPLE: Yes.

21 MS. BRUCE: David Branecky.

22 MR. BRANECKY: Yes.

23 MS. BRUCE: Motion passed.

24 (End of Proceeding)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED MEETING

OF THE AIR QUALITY
ADVISORY COUNCIL

ITEM 5B

HELD ON JANUARY 17, 2008

AT 9:00 A. M.

AT 707 NORTH ROBINSON

OKLAHOMA CITY, OKLAHOMA

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5 JIM HAUGHT, MEMBER

6 DR. ROBERT LYNCH, MEMBER

7 GARY MARTIN, MEMBER

8 SHARON MYERS, MEMBER

9 JERRY PURKAPLE, MEMBER

10 LAURA LODES, MEMBER

11 DONALD SMITH, MEMBER (ABSENT)

12

13 DEQ STAFF MEMBERS

14 MYRNA BRUCE, SECRETARY

15 CHERYL BRADLEY, ENVIRONMENTAL PROGRAMS

16 MANAGER

17 DR. JOYCE SHEEDY, ENGINEER

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20 SPECIALIST

21 BEVERLY BOTCHLET-SMITH, ASSISTANT DIRECTOR

22 MATT PAQUE, LEGAL COUNSEL

23 EDDIE TERRILL, DIRECTOR OF AIR QUALITY

24 DIVISION

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PROCEEDINGS

4 MS. BOTCHLET-SMITH: The next item on the
5 agenda is 5B. This is OAC 252:100-33,
6 control of emissions of NOx. And Dr. Joyce
7 Sheedy will do the staff presentation.

8 DR. SHEEDY: Mr. Chairman,
9 members of the Council, ladies and
10 gentlemen, we are proposing to amend
11 Subchapter 33 to resolve issues regarding
12 NOx emissions limits for direct-fired fuel-
13 burning equipment and equipment with
14 technological limitations. We are also
15 proposing some non-substantive changes for
16 consistency with other rules in chapter 100
17 and some grammatical corrections. We are
18 proposing four substantive changes.

19 The first substantive change is to
20 OAC 252:100-33-1.1 on page 1. We proposed
21 to add definitions for direct-fired,
22 indirect-fired, and technological
23 limitation. These are new terms to
24 Subchapter 33. So we now have defined them
25 there.

1 The second substantive change is in
2 OAC 252:100-33-1.2(b) on page 1. We
3 proposed to provide a means for direct-fire
4 fuel-burning equipment to qualify for
5 exemption from the emissions limits
6 contained in Subchapter 33. To be exempt,
7 the direct-fired fuel-burning equipment
8 must be subject to the Best Available
9 Control Technology, or BACT, contained --
10 and this must be contained in a currently
11 applicable Air Quality Division permit in
12 the emissions from such equipment must not
13 cause or contribute to any exceedance of
14 any NOx National Ambient Air Quality
15 Standard or any NOx PSD increment.

16 The NOx emissions limits in OAC
17 252:100-33-2(a) became effective in 1972
18 and have not been changed since. When
19 these NOx emissions were established, the
20 definition of fuel-burning equipment did
21 not include direct-fired fuel-burning
22 equipment. However, in 1977 the definition
23 of fuel-burning equipment was changed to
24 include direct-fired processes and
25 equipment, which then became subject to all

1 of the division's rules for fuel-burning
2 equipment. We are unable to find any
3 evidence that consideration was given at
4 that time to the ability of direct-fired
5 fuel-burning equipment to meet the NOx
6 emissions limits in Subchapter 33.
7 Subchapter 33 was revised in 2003 to exempt
8 glass melting furnaces for the NOx
9 emissions limits. We are proposing to
10 create a conditional exemption that would
11 apply to all direct-fire fuel-burning
12 equipment.

13 A check of surrounding states shows
14 that Texas has NOx rules that cover
15 indirect-fired fuel-burning equipment and
16 gas production, and does not cover
17 direct-fired fuel-burning equipment.
18 Arkansas, Kansas, and Missouri do not have
19 NOx rules. Louisiana has rules for
20 facilities that emit greater than a
21 specific amount of NOx emissions in certain
22 locations. And it is unclear whether or
23 not the New Mexico's rule is intended to
24 cover direct-fired fuel-burning equipment.

25 The third substantive change is to

1 OAC 252:100-33-2(a) on page 2. We proposed
2 to add new paragraph (4) which provides a
3 formula for setting NOx emission limits for
4 equipment that burns a combination of
5 fuels. Subchapter 33 currently has no way
6 of setting NOx emission limits for
7 fuel-burning equipment that uses more than
8 one type of fuel.

9 In the fourth substantive change we
10 proposed to add Subsection (b) to OAC
11 252:100-33-2 on page 2. New Subsection (b)
12 sets requirements for fuel-burning
13 equipment that because of technological
14 limitations cannot meet the emissions
15 limits in Subchapter 33 during startup or
16 shutdown. This is being done in
17 conjunction with changes to Subchapter 9.
18 Subsection (b) allows such fuel-burning
19 equipment to comply instead with BACT for
20 startup or shutdown. The BACT must be
21 contained in a currently applicable Air
22 Quality Division permit, and the emissions
23 from its equipment must not cause or
24 contribute to an exceedance of NOx NAAQS or
25 NOx PSD increment.

1 We received comments from Perry S.
2 Friedrich of Grand River Dam Authority, via
3 e-mail on January 10, 2008. These comments
4 did not address any of the changes that we
5 proposed today. But these comments have
6 been provided to the Council and will be
7 part of the hearing record. And we will
8 respond to them in writing.

9 We received a letter of comment from
10 Guy Donaldson, of EPA Region 6, on the 16th
11 of January. They have several comments
12 about Subchapter 33, which we will give
13 consideration to and respond to.

14 Due to the shared issues between
15 Subchapter 9 in Subchapter 33 we ask that
16 the Council consider tabling the proposed
17 amendments to just Subchapter 33 until the
18 July Council meeting.

19 Ms. BOTCHLET-SMITH: Any
20 questions from the Council for Dr. Sheedy?

21 MR. PURKAPLE: Joyce, I have a
22 couple questions.

23 You defined the indirect term, yet
24 it doesn't appear any place else in the
25 revised rule.

1 DR. SHEEDY: Okay. Then that
2 perhaps should be removed. I think I
3 mainly put it there just for convenience,
4 but it isn't our usual thing to find
5 something that we have used.

6 MR. PURKAPLE: Okay. Another
7 comment, as well, then the new fuel-burning
8 equipment, the phrases altered, replaced,
9 or rebuilt, are used three times. Is that
10 the NSPS definition for reconstruction
11 modification? Is that what we're referring
12 to here?

13 DR. SHEEDY: Well, that's
14 something we didn't change this time,
15 right?

16 MR. PURKAPLE: No.

17 DR. SHEEDY: I'm not sure where
18 we -- and I'm probably the one who actually
19 did that definition. But I can't tell you
20 right now where he came from. I can check
21 into it, if you'd like.

22 MR. PURKAPLE: Okay. Well,
23 altered seems a little ambiguous in terms
24 of what's altered or not.

25 DR. SHEEDY: I don't know.

1 MR. PURKAPLE: I have a question
2 about the BACT requirement language that
3 you've added.

4 DR. SHEEDY: Uh-huh.

5 MR. PURKAPLE: If you had a
6 source that you added, say for example, a
7 control technology that would be considered
8 BACT, and that's incorporated in the
9 permit, is that what we're referring to or
10 are you talking about having gone through
11 the PSD BACT analysis, and that has gotten
12 incorporated into a PSD permit? Because I
13 can see sources of putting in control
14 technology that would be considered BACT,
15 yet they haven't gone through a BACT
16 analysis associated with PSD permit. They
17 just do it because.

18 DR. SHEEDY: Don't we sometimes
19 do a BACT, or we used to, for sources that
20 weren't PSD -- major sources that weren't
21 PSD? And I assume that if they weren't
22 PSD, we would use a similar type of
23 perceiving a process.

24 MR. PURKAPLE: Okay. It sounds
25 liked then as long as you have BACT

1 installed, even though you don't have a PSD
2 permit, and you haven't gone through the
3 PSD analysis, excuse me, the BACT analysis
4 as a part of the PSD permit. But you have
5 BACT installed nonetheless, and it is in a
6 permit and that meets what the intent is
7 here with this language.

8 MR. PAQUE: Yeah, I think that is
9 what we intended.

10 DR. SHEEDY: I think so. You'd
11 have to be able to show that it was BACT.

12 Mr. PAGUE: It didn't require the
13 PSD analysis.

14 DR. SHEEDY: Yeah, it doesn't
15 require the PSD permit.

16 MR. PURKAPLE: Okay. Then I just
17 have one final comment with respect to the
18 -- you have an exemption for the
19 direct-fires, and under certain cases in
20 252:100-33-2(b), you're giving an exemption
21 during certain cases during startup and
22 shutdown. Should the rule be -- and you
23 have the same BACT requirement there.

24 DR. SHEEDY: Uh-huh.

25 MR. PURKAPLE: Could the rule be

1 simplified by simply changing the language
2 of 252:100-33-1.2(b) by just instead of
3 referring to direct-fired fuel-burning,
4 just say fuel-burning equipment, that is
5 subject to BACT is exempt from requirements
6 of Subchapter 33?

7 DR. SHEEDY: Now where are you
8 33-2(B)?

9 MR. PURKAPLE: 33-1.2(b). You're
10 talking about only direct-fired
11 fuel-burning equipment having the exemption
12 from the rule. At the very end of the
13 rule, then you're talking about
14 fuel-burning due to technological
15 limitations is exempt during startup or
16 shutdown. Again as long as you have BACT
17 installed. Why not just say fuel-burning
18 regardless of whether it's indirect or
19 direct is exempt from this rule as long as
20 it has BACT installed?

21 DR. SHEEDY: Because we don't
22 want to exempt our fuel-burning from this
23 rule if it's not direct. This rule is
24 written for indirect fuel-burning
25 equipment. And they would be subject to

1 it, the only time that they wouldn't be is
2 if they can't meet the limit during the
3 startup or shutdown because of the
4 technological limitation. But the other
5 exemption that we are speaking of is only
6 for direct fire.

7 MR. PURKAPLE: There must be
8 something about direct-fired -- I don't
9 deal with direct-fired, but why not have
10 the same exemption just for fuel-burning
11 equipment as long as they have the BACT
12 installed?

13 DR. SHEEDY: Well, I'm assuming
14 that when the standards were set for
15 fuel-burning equipment, the indirect-fired,
16 that they were set based on the emissions
17 from the fuel alone, because that's all you
18 would have. Whereas, when you're talking
19 about direct-fired, like a cement kiln, you
20 can get emissions and then from the
21 materials that are being burned directly by
22 that fuel. So it's not just the NOx from
23 the fuel but it's been NOx from the
24 materials that are being fired.

25 MR. PURKAPLE: Okay. Well, while

1 we're in the process of developing this we
2 kind of need to give this a second thought.
3 Because this was developed in '72, and I
4 know that from the testing standpoint you
5 did stack testing and now we have
6 continuous emissions monitoring systems
7 that paint a little different picture than
8 what we assumed during stack testing time.

9 MS. BRADLEY: Mr. Purkable, I
10 have -- this is Cheryl Bradley.

11 MR. PURKABLE: I'm sorry, I've
12 heard the voice from someplace.

13 MS. BRADLEY: We did wade into
14 these changes cautiously. Because on the
15 surface they appear to be a loosening of
16 the SIP, while in fact they truly won't
17 increase emissions. The obligations that
18 EPA will impose upon us when we submit our
19 SIP, and have to justify the change might
20 be different if we make it all-inclusive to
21 all fuel-burning equipment. We'll
22 certainly take it under evaluation. But
23 that was another consideration we had and
24 we were cautious about --

25 Mr. Purkable: Okay.

1 MS. BRADLEY: -- in short of
2 partitioning off the direct-fired versus
3 indirect-fired.

4 DR. SHEEDY: And I believe in
5 most cases indirect-fired are pretty much
6 capable of meeting these rules. There may
7 be a problem with the turbine, but
8 generally the newer ones can meet it as
9 well.

10 MR. PURKAPLE: You said in
11 general comment that for some of these
12 indirect-fired sources if you're operating
13 and very very high turn down, in other
14 words you're operating at the very bottom
15 of our duty.

16 DR. SHEEDY: Okay.

17 MR. PURKAPLE: Even with the
18 latest burner technology because of how we
19 have to operate, it makes it very
20 difficult. The NOx PTO is very low but by
21 the time you factor in our new calculation
22 you end up being a very high impound BTU.

23 DR. SHEEDY: Yeah, there could be
24 times --

25 MR. PURKAPLE: It's neither

1 startup nor shutdown but it's part of
2 normal operation.

3 DR. SHEEDY: I've seen that occur
4 and that something that we're still working
5 at.

6 MR. PURKAPLE: Okay. And that is
7 the heart of my question, I guess. And why
8 not make it the same because there are
9 times in normal operation where you can't
10 just either startup or shutdown, because
11 you can't.

12 DR. SHEEDY: Because you can't
13 meet it because you're not operating at
14 your top --

15 MR. PURKAPLE: That's right.

16 DR. SHEEDY: -- at your maximum
17 heating point.

18 MR. PURKAPLE: Because when the
19 rule first came out when you did the three
20 hour test -- on stack test, you're probably
21 operating at what the state required the
22 source to operate at probably 90 percent of
23 the max.

24 DR. SHEEDY: Uh-huh.

25 MR. PURKAPLE: Well, there's no

1 problem there. You don't do a stack test
2 at the very low rate.

3 DR. SHEEDY: That's right, you
4 don't usually do that.

5 MR. PURKAPLE: I appreciate your
6 consideration.

7 DR. SHEEDY: Okay, we're still
8 looking into the appear issue.

9 MR. PURKAPLE: Okay.

10 MS. MYERS: And Joyce, I think
11 there are sources, that the materials that
12 they burn results in an inability to meet
13 this standard, so we need to take a harder
14 look at it.

15 Ms. BOTCHLET-SMITH: Do we have
16 further comments or questions from the
17 Council?

18 MR. BRANECKY: I had one
19 question, and it's a simple question.
20 We've added some new definitions in
21 Subchapter 33, are those unique to 33 or
22 should they be in Subchapter 1 with all the
23 other definitions? Are these defined
24 somewhere else in the chapter?

25 DR. SHEEDY: At this point I

1 think direct-fired and indirect-fired are
2 both defined in Subchapter 19.

3 MR. BRANECKY: The same
4 definition?

5 DR. SHEEDY: Yes. And I think
6 it's our intention to move those to
7 Subchapter 1. Right now technological
8 limitations may be defined in Subchapter 9.
9 But I'm not sure if it'll stay defined
10 there are not when Subchapter 9 has been
11 finished.

12 MR. BRANECKY: But they're the
13 same --

14 DR. SHEEDY: Yeah.

15 MR. BRANECKY: -- definitions or
16 is it identical?

17 DR. SHEEDY: I guess this is kind
18 of a holding pattern for the moment until
19 we get 9 worked out and then we may come
20 back sometime when it's open and move
21 these.

22 MR. BRANECKY: Okay.

23 MS. BRADLEY: We have changes
24 that are currently pending and we were
25 unable to open the speed definitions

1 section since it's in the process of
2 becoming effective. Will have a different
3 game plan in July for you and we will try
4 to consolidate where we can.

5 MR. BRANECKY: Okay. Thank you.

6 MS. BOTCHLET-SMITH: David, I
7 haven't gotten any notice of comment on
8 this Subchapter from the public either.

9 MR. BRANECKY: Okay.

10 MS. BOTCHLET-SMITH: If the
11 council has made all their comments, it's
12 yours.

13 MR. BRANECKY: All right. Staff
14 has recommended that we continue this
15 Subchapter to our April meeting. With that
16 I'll take a motion from the Council.

17 MS. BOTCHLET-SMITH: It's the
18 July meeting not April.

19 MR. BRANECKY: Oh, it's July,
20 okay.

21 MS. MYERS: So moved.

22 MR. MARTIN: Second.

23 MR. BRANECKY: All right, Myrna.

24 MS. BRUCE: Gary Martin.

25 Mr. Martin: Yes.

1 MS. BRUCE: Jim Haught.
2 MR. HAUGHT: Yes.
3 MS. BRUCE: Laura Lodes.
4 MR. LODES: Yes.
5 MS. BRUCE: Bob Lynch.
6 MR. LYNCH: Yes.
7 MS. BRUCE: Rick Treeman.
8 MR. TREEMAN: Yes.
9 MS. BRUCE: Sharon Myers.
10 MS. MYERS: Yes.
11 MS. BRUCE: Jerry Purkaple.
12 MR. PURKAPLE: Yes.
13 MS. BRUCE: David Branecky.
14 MR. BRANECKY: Yes.
15 MS. BRUCE: Motion passed.

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(End of Proceeding)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED MEETING
OF THE AIR QUALITY
ADVISORY COUNCIL

ITEM 5C

HELD ON JANUARY 17, 2008

AT 9:00 A. M.

AT 707 NORTH ROBINSON

OKLAHOMA CITY, OKLAHOMA

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MATT PAQUE, LEGAL COUNSEL

EDDIE TERRILL, DIRECTOR OF AIR QUALITY

DIVISION

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PROCEEDINGS

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MS. BOTCHLET-SMITH: The next item on the agenda is 5C, OAC 252:100-9, Excess Emission Reporting Requirements.

Mr. Max Price will give the staff presentation.

MR. PRICE: Mr. Chairman, Members of the Council, ladies and gentlemen, the Department is proposing changes to OAC 252:100-9.

If adopted, these changes will make the rule consistent with the current interpretation of the EPA guidelines on excess emissions.

At the previous meeting of the Air Quality Advisory Council, on October 17, 2007, staff requested comments from the public.

In addition, the Department hosted an informal meeting of interested parties on November 26, 2007, and a more formal meeting of a select group of interested parties on January 9, 2008.

1 At the January 9th meeting it was
2 decided that staff would ask the Council to
3 table these proposals to give the committee
4 time to make their recommendations.

5 So, at this time we ask the Council
6 to table this proposal until the July Air
7 Quality Advisory Council meeting.

8 Thank you.

9 MS. BOTCHLET-SMITH: Do we have
10 any questions from the Council for Mr.
11 Price?

12 MR. BRANECKY: Is it the plan to
13 have a proposal for us to vote on in July?

14 MR. PRICE: As I understand it,
15 yes, sir.

16 MR. BRANECKY: Okay.

17 MS. LODES: David, Sharon and I
18 were both on that select workgroup. To
19 kind of give an update to the Council, we
20 went through the rule and we're looking at
21 some various options, but we felt like that
22 if we tried to bring something before the
23 Council in April, it would be too hurried
24 to do a good evaluation. So we're looking
25 at having something ready for the July

1 meeting, and hope to have something out for
2 review for more than just the 30 days ahead
3 of time, so that everybody can comment on
4 it.

5 Some of the options that we're
6 looking at are the possibility of portable
7 quantities for some kind of a threshold
8 determination for what events truly might
9 affect human health in the environment and
10 which ones don't. We will be having future
11 work committees and we'll continue to
12 update on the progress.

13 MR. BRANECKY: Okay, thank you.

14 MS. BOTCHLET-SMITH: I've
15 received no notice of public comment for
16 this subchapter, so unless the Council has
17 further questions, you can move on it.

18 MR. BRANECKY: Okay. Staff has
19 requested that we table this until July.
20 Is that different from what we just did on
21 33? We continued it until July. If we
22 table it, is that different? Should we
23 have tabled the other one?

24 MR. PAQUE: You can continue it
25 to July. Just announce that the next time

1 it will be brought up will be in July. You
2 continued it to April, the last one.

3 MR. BRANECKY: We continued the
4 last one until July.

5 MR. PAQUE: That's right.

6 MR. BRANECKY: So what's the
7 difference between continuing it and
8 tabling it until July?

9 MR. PAQUE: Well, tabling, you
10 just wouldn't bring it up again in April.
11 But you can continue a matter on to July,
12 you know, just announcing it, it will be
13 brought forward on the agenda in July.

14 MR. BRANECKY: So, 33 will have
15 to be on the agenda in April, even though
16 we won't do anything because we continued
17 it?

18 MR. PAQUE: No. Because you
19 continued it, it wouldn't have to be on the
20 agenda in April.

21 MR. HAUGHT: But we do expect
22 that this one -- that Subchapter 9, there
23 will be some presentation in April -- I
24 mean do we need to just look at it then?

25 MR. PAQUE: I guess that somebody

1 from the workgroup could give an update on
2 it.

3 MS. LODES: Either Sharon or I
4 will give an update at the April meeting on
5 the status of the rule.

6 MR. TERRILL: One of the reasons
7 -- another reason we would like to put this
8 off until July, is in order to address some
9 of the more difficult issues that came out
10 of the Colorado negotiations with OWECA in
11 Region 9, which kind of form the basis for
12 the original changes we made to our rule.

13 We felt like we needed to involve
14 EPA to some extent in this. So we have a
15 representative from the OWECA office whose
16 expertise in high priority violations is
17 needed because we are going to try to
18 figure out a way to mesh the HPV policy
19 with this so that we don't put things on
20 the HPV list that really don't need to be
21 there. So we would need buy-off from them
22 in order to do that.

23 And also we've got a representative
24 from Region 6, because at the end of the
25 day our rule will be reviewed by not only

1 the program side of Region 6 but also the
2 OWECA side. We would also like to have a
3 rule that comes out of here that could be a
4 model for the rest of the country, and
5 addresses some of these issues.

6 It just takes a little while to make
7 sure that we get all those people involved
8 and that way by doing that up-front, we
9 don't run the risk of folks doing a lot of
10 work and having expectations that it'll be
11 approved by EPA and then find out we've got
12 a problem.

13 I really think we can get to a lot
14 of these issues to everyone's satisfaction.
15 That's another reason we'd like to put this
16 off and give interaction with them a little
17 bit more time than we might need if we were
18 just working with it in-house.

19 MR. HAUGHT: Well, my concern was
20 because it is such an expensive overhaul or
21 rewrite, and because of the wide variety of
22 permit holders that it impacts, I think
23 that the sentiment was there. We prefer
24 not to see it for the first time right
25 before we are asked to vote on it.

1 If that's when it needs to be, to be
2 presented when we'll have some more answers
3 and think that we have -- or closer to that
4 side, if that's when we think we'd like to
5 get it passed in July, we would probably
6 like to have an interim update in April.

7 MR. TERRILL: I think -- and I'm
8 not going to speak for the committee but
9 I'm assuming that really that what their
10 intent was to have their work completed in
11 a rule for review not only by the Council
12 in July but also to -- we had a larger
13 workgroup that convened and gave some
14 comments. And then we whittled that down
15 to a smaller group so that we could really
16 get at these issues, rather than trying
17 (inaudible) in front of a large number of
18 people. We'll probably take that back to
19 that larger group sometime before July, to
20 make sure that we kind of hit the mark on
21 some of the issues that folks had problems
22 with. But I don't know that we have to
23 pass this rule in July. I think we'd like
24 to get it done, you know, the sooner the
25 better because there's some things we'd

1 like to see changed in that. So, I don't
2 see anything wrong with having some sort of
3 an informal update in April, especially if
4 we run into issues that we're not going to
5 be able to resolve or if we are able to
6 resolve, here's the path it looks like
7 we're going to go down, so that folks can
8 react to it. I just didn't want to -- I
9 think it would probably be premature to
10 have expectation that will have a rule
11 ready for Council's initial reaction in
12 April. That's probably not going to happen
13 until July.

14 But if the committee does a good
15 enough job, the rule will be so perfect
16 that you'll be able to pass it in July.

17 MR. HAUGHT: Well, we would
18 appreciate an update in April, if we could
19 just get a status report then.

20 Thank you.

21 MR. BRANECKY: So if we want to
22 have a report at our April Council meeting,
23 do we need to continue this to our April
24 meeting, and have it on our Agenda?

25 MR. PAQUE: You can continue it.

1 If you continue something, you just have to
2 announce when it will next be brought up.
3 So you can continue in and it would be
4 brought up at the July Council meeting.

5 MR. BRANECKY: But if we are
6 going to have a report in April from the --

7 MR. PAQUE: For the rulemaking
8 part of it, on the agenda we can put -- add
9 an agenda item that we will have a report,
10 without having to continue it.

11 MR. BRANECKY: Okay.

12 MS. BOTCHLET-SMITH: We've got
13 probably a situation where we need to
14 reread the motion, and then if the motion
15 is not acceptable it can be withdrawn or
16 you can vote on an amendment.

17 MR. BRANECKY: Did we have a
18 motion?

19 MS. BOTCHLET-SMITH: I believe
20 you had a motion and a second -- motion to
21 table it.

22 MR. BRANECKY: Who did that?

23 MS. BOTCHLET-SMITH: Sharon made
24 a motion.

25 MR. BRANECKY: Do you want to

1 restate that motion, Sharon?

2 (Discussion about motion not being made)

3 MR. BRANECKY: All right, I need
4 someone to give me a motion. What are we
5 going to do with this?

6 MS. LODES: I move that we
7 continue the rule to the July meeting.

8 MS. MYERS: I second that.

9 MR. BRANECKY: All right. I have
10 a motion and a second.

11 Myrna.

12 MS. BRUCE: Gary Martin.

13 MR. MARTIN: Yes.

14 MS. BRUCE: Jim Haught.

15 MR. HAUGHT: Yes.

16 MS. BRUCE: Laura Lodes.

17 MR. LODES: Yes.

18 MS. BRUCE: Bob Lynch.

19 DR. LYNCH: Yes.

20 MS. BRUCE: Rick Treeman.

21 MR. TREEMAN: Yes.

22 MS. BRUCE: Sharon Myers.

23 MS. MYERS: Yes.

24 MS. BRUCE: Jerry Purkaple.

25 MR. PURKAPLE: Yes.

1 MS. BRUCE: David Branecky.

2 MR. BRANECKY: Yes.

3 MS. BRUCE: Motion passed.

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5 (Agenda Item 5C concluded)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED MEETING
OF THE AIR QUALITY
ADVISORY COUNCIL

ITEM 5D

HELD ON JANUARY 17, 2008

AT 9:00 A. M.

AT 707 NORTH ROBINSON

IN OKLAHOMA CITY, OKLAHOMA

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MS. BOTCHLET-SMITH: The next item on the Agenda is 5D OAC 252:100-44. This is Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units. And again Mr. Max Price will give the staff presentation.

MR. PRICE: Thank you.

Mr. Chairman, Members of the Council, ladies and gentlemen.

At the July 18, 2007 Meeting of the Air Quality Advisory Council, members voted to table this proposal until this meeting.

The Council also requested the staff prepare other options for the Council's consideration concerning this issue.

In response, staff has prepared the following three written options for the Council to consider.

The first is the previously proposed, OAC 252:100-44, Control of Mercury Emissions from Coal-Fired Electric

1 Steam Generation Units which incorporates
2 by reference the EPA's Clean Air Mercury
3 Rule or CAMR.

4 The core of the CAMR rule is a cap
5 and trade program for mercury emissions
6 from coal-fired power plants.

7 The CAMR rule was published in the
8 Federal Register on March 15, 2005.

9 The second option is a draft state
10 rule based on EPA's original MACT standards
11 published in the Federal Register on
12 January 30, 2004.

13 This option relies on new mercury
14 emissions standards rather than the CAMR's
15 cap and trade to achieve reductions.

16 The third option is a draft of a
17 state rule modeled after the National
18 Association of Clean Air Agencies model
19 rule, which was posted on the internet
20 November 14, 2005, which establishes
21 emission reduction goals of 90 percent
22 across the spectrum by establishing Mercury
23 Emissions Standards for the industry.

24 Again, no cap and trade is allowed
25 under this draft option.

1 In addition to these three options,
2 the Council may choose to consider two
3 additional options.

4 One, the state could adopt a
5 compromised Mercury Emissions Standard rule
6 which is more stringent than the 2004 MACT
7 standards, first proposed by EPA, but
8 possibly less stringent than the NACAA
9 rule.

10 This compromise rule could also be
11 crafted to allow or disallow facilities
12 from participating in the CAMR cap and
13 trade.

14 Two, the Council could opt to do
15 nothing at this time and allow time for the
16 courts to decide the fate of CAMR.

17 Since the state's allocations are
18 already approved, this option should result
19 in no real penalties for the state.

20 So to recap these five options for
21 the Council:

22 One, incorporate by reference to
23 CAMR.

24 Two, develop a state rule based on
25 the 2004 MACT proposal.

1 Three, develop a state rule based on
2 the NACAA model rule.

3 Four, develop a compromised state
4 rule which may or may not allow trading.

5 Or five, wait and do nothing and see
6 what the courts have to say about CAMR.

7 I must also note that the Council's
8 packet contained your summary of comments
9 and responses and it was somewhat
10 incomplete. I apologize for this
11 oversight.

12 A complete summary of comments and
13 responses is now available on our website
14 and I believe the Council has received a
15 revised copy of that now in your packet.

16 We also have received comments in
17 addition to those contained in the Council
18 packet and these comments will be made part
19 of the hearing record. Basically, it's the
20 same comments over and over again.

21 In addition, several interested
22 parties submitted documents they wish the
23 Council to consider.

24 We have downloaded these into CDs
25 for the Council's convenience.

1 Thank you.

2 MR. TERRILL: I hope I remembered
3 everything that I was going to mention
4 here. I had it sketched out, but in all
5 this mess of paperwork, I can't find it.

6 So, anyway, when we asked the
7 Council to table this, I really thought the
8 Appeal's Court was going to make a decision
9 relative to what was going to happen with
10 the federal CAMR rule. And that hasn't
11 happened yet.

12 They had oral arguments that were
13 held on December 6, and the excerpts I've
14 seen leads me to believe what I felt all
15 along, that I think there's a very strong
16 likelihood that the Court is going to
17 remand this back to EPA to take another
18 look at mercury.

19 This is the same group that sent
20 back, I think, the Plywood MACT rule. And
21 the questions that they asked were all very
22 much hostile to the CAMR proposal and the
23 way EPA went about it.

24 We felt like we needed to bring
25 something back to you all because that is

1 what you had directed us to do. So we
2 primarily brought back what you had seen a
3 year or so ago, along with the MACT
4 standard that could be what -- if EPA has
5 to go back and look at this as a MACT-type
6 proposal, what they come back with could be
7 something similar to this.

8 But what we'd like to do is, I feel
9 pretty certain that they're going to make a
10 decision relative to the federal rule,
11 between now and the April meeting.

12 If they don't, or if they were to
13 rule in favor of EPA, and allow that to
14 move forward, we need to make a decision on
15 this. It's not fair for people to come in
16 from the public expecting a decision on
17 this and we've waited long enough.

18 So I'd like to wait until April, but
19 in April I'd like to come back to you all
20 with a couple of proposals.

21 For those that are here that want us
22 to do something stricter than CAMR, what we
23 really want to see, and what we're really
24 going to focus on are hot spot studies, and
25 the latest epidemiological studies relative

1 to the cost benefits of reducing mercury
2 down to the 90 percent level. Because
3 that's really what we're talking about
4 here. Do we go with the CAMR or do we go
5 that extra little bit, that some of the
6 other states have gone to. But I really
7 think that -- and that would be the easiest
8 thing for us to do as an Agency, because
9 any way you look at this, mercury is a
10 dangerous toxin and even a little bit is
11 probably not acceptable. But there are
12 other factors I think need to be presented
13 for the Council's analysis, relative to
14 cost benefit and some of these other
15 things.

16 So, that's really what we're going
17 to be looking at. I would suspect that
18 we'll come back with CAMR and then some
19 other proposal that's stricter than that,
20 but at the end of the day I really think we
21 need to propose something that we think
22 really has -- is something that's right for
23 Oklahoma. And it may not be 90 percent
24 reduction, but it might be, too. I just
25 don't know yet. But anyway, that's kind of

1 where we are today.

2 MS. BOTCHLET-SMITH: Eddie wanted
3 to help with the presentation, but now we
4 will take questions from the Council.

5 MS. MYERS: What's the downside
6 to adopting or incorporating by reference
7 at this point, so that at least the
8 industries will know what they're going to
9 be faced with, and with the understanding
10 of the federal rule, what does it hurt to
11 adopt or incorporate by reference?

12 MR. TERRILL: Well, for one
13 thing, I don't think that there's any
14 expectation from EPA based on the fact that
15 -- what should have happened by now is we
16 should have received a notice that they are
17 going to -- what is that notice; a one --

18 MR. PAQUE: The federal 111d
19 Plan.

20 MR. TERRILL: Yeah, we should
21 have been FIP by now.

22 I've got a little bit of jet lag, I
23 didn't get in until late, so I apologize.

24 We should have been FIP by them by
25 now. In fact, it should have happened over

1 a year ago, and they have not done that.
2 And I got a sense that they believe this
3 rule is going to be kicked back as well,
4 and even if it is not, I think they're
5 going to be taking some steps to look at
6 mercury holistically along with other
7 pollutants.

8 There's a lot of things going on.
9 There is going to be a change in
10 administrations, a change in EPA, they're
11 looking at climate change, they are looking
12 at probably lowering the ozone standard,
13 and pushing care -- what they're calling
14 western care, and there's a lot of support
15 right now for looking at multi-pollutant-
16 type strategies for not only utilities, but
17 also other sectors as well.

18 And the fact that they have not
19 FIP'd us, tells me that they think that
20 this whole paradigm is going to shift in
21 the way they're looking at this, and I just
22 think it would be real premature for us to
23 do that, especially, in light of all the
24 interest that we have had from citizens
25 that would like for us to go beyond that.

1 And I really think that we need to have an
2 opportunity to have some dialogue from us.

3 If we don't make that proposal of a
4 stricter rule, then everyone here deserves
5 to know why we're not going to do that; or
6 if we are, they deserve to know that too.
7 I really think that we're going to be back
8 at square one. I think it would be
9 premature to do anything today. We haven't
10 done it in a year and a half, so why not
11 wait another three months.

12 And my understanding is it won't --
13 the industry will be able to react if we
14 waited another three months anyway. So, I
15 don't think there's any harm in waiting
16 from what I've heard. And I don't think
17 it's fair for those folks that have come on
18 numerous times to express their interest in
19 dropping the standards, or these
20 requirements, more than what CAMR does, to
21 have a dialogue from as if we don't believe
22 that's right, or if we do believe it's
23 right, as to why that is and what we can
24 expect the cost to be in the benefits.

25 MR. PURKAPLE: Eddie, just to

1 make sure I heard you're correctly then,
2 between now and April what you're going to
3 do is some hot spot studies.

4 MR. TERRILL: Well, we're going
5 to take a look at -- and we've been doing
6 this all along, and we're just really not
7 seeing a lot of studies out there, other
8 than there have been some studies that were
9 done in the upper Midwest and the eastern,
10 using anthracite coal. But we're really
11 wanting to hone in on whether or not this
12 hot spot issue is really an issue or not.
13 And some of the others -- there's been some
14 new epidemiology studies that have been
15 done relative to the effects of mercury,
16 and we think we need that to be laid out
17 for the Council to consider if they're
18 going to go to a 90 percent or something
19 less than CAMR. They need to understand
20 what's out there, what the latest is.

21 We also are just now starting to get
22 some of our lake studies back. We're
23 behind by about nine months on that. And
24 we're not seeing much yet, we've only had a
25 couple of lake samples, but we're not

1 seeing any unusual values in the fish. We
2 got our second round of data in from the
3 sampling networks that we've got out.
4 Although, we're still showing some elevated
5 values, they did drop from what was seen
6 two years ago. So, we still think we don't
7 have enough statistical data to say whether
8 we've got an issue with those monitors or
9 not.

10 So if EPA loses this case and it
11 remands mercury back, then there is no
12 federal mercury rule. And at that point
13 the Council could direct us to prepare a
14 state rule, which we would be stand alone,
15 if you will. Or we could wait at that
16 point for the feds to come back and propose
17 something else, which I think they will
18 probably do as part of a bigger pollution
19 control packet as a P3 or P4, or possibly
20 even a P5. So, I'd just like to wait.
21 They're so close to making a decision on
22 this that I would kind of like to see what
23 EPA is going to do. And if they say move
24 forward, and if they happen to win the
25 case, then we'll have to make a decision

1 whether we go with CAMR or something
2 stricter than that, and give our industry
3 time to react to that.

4 DR. LYNCH: Eddie, I have a
5 question. Has any other states adopted the
6 rule?

7 MR. TERRILL: It's been all over
8 the board. You've got some states that
9 have gone beyond CAMR, you've got some
10 states that have adopted CAMR, and then
11 you've got some states like us that have
12 done nothing yet. There's such a dialogue
13 about this, and a lot of it comes down to
14 direction from Legislatures. A lot of
15 times, State Legislatures would dictate
16 what they want done, and that's the way a
17 lot of the decisions have been made. We
18 haven't gotten any direction one way or the
19 other.

20 DR. LYNCH: Do you have any
21 notion that 10 percent of the states have
22 done something?

23 MR. TERRILL: The best that I can
24 remember from what I've seen, there's
25 probably 15 to 20 that have done something

1 different than CAMR, it's probably about a
2 third, third, and third. I think we're
3 probably in the -- well, we are in the
4 third that hasn't done anything. And
5 that's about how it falls out.

6 DR. LYNCH: So, some states have
7 adopted something stricter; a third of the
8 states have adopted --

9 MR. TERRILL: CAMR, yes. About a
10 third of the states have adopted something
11 stricter, about a third, probably a little
12 less than a third have adopted the CAMR
13 rule, and then there's just a lot of states
14 that haven't done anything. They are
15 saying they'll let EPA deal with it.

16 MS. BOTCHLET-SMITH: I've got a
17 number of people from the public that wish
18 to comment on this rule. So we'll start
19 taking those comments at this time.

20 Montelle Clark with the Oklahoma
21 Sustainability Network.

22 MR. CLARK: I had to go first
23 last time, and I don't appreciate this.

24 Actually, I have a few questions.
25 And I'm not really sure if I should ask the

1 questions now or after the public comment
2 period or if you guys are going to have
3 some more discussion, it might affect some
4 of the questions I ask you. If you would
5 give me some guidance on that, is this the
6 appropriate time to ask question?

7 MS. BOTCHLET-SMITH: Yes, ask any
8 questions you might have, or if you have
9 additional information you wanted to
10 present, this would be your time.

11 And I apologize Montelle, for you
12 going first but I take them as they come
13 in.

14 MR. CLARK: No, I was just
15 kidding, I'm just kidding.

16 My first question would be about
17 Option 2. I believe the numbers that are
18 in there about the amount of mercury that
19 would be allowed, et cetera, and based on
20 two types of coal, et cetera.

21 It's been along time since I went to
22 college so I have a hard time with some of
23 that stuff.

24 I looked at the appendix, and it
25 made my head hurt. So, if you can give me

1 some idea of roughly what percentage of the
2 mercury we could capture under Option 2, it
3 would help me. Because we've been talking
4 about 70 percent, 90 percent, those kinds
5 of numbers all along. Does anybody have
6 any idea of what percentage we're talking
7 about an Option 2?

8 MS. BOTCHLET-SMITH: Max, if you
9 want to come to the front row, where you've
10 got a microphone.

11 MR. PRICE: We've been doing some
12 preliminary calculations, and I want to
13 emphasize preliminary. But the 2004 MACT
14 standards, we estimated they control to the
15 best that we can expect would be about 36
16 percent. We are going to capture about 36
17 percent of the mercury going up the stack.

18 MR. CLARK: With the second
19 option?

20 MR. PRICE: With the second
21 option, the MACT test.

22 MR. CLARK: That's after final
23 implementation, once you're up to the
24 highest level of implementation?

25 MR. PRICE: That's correct.

1 MR. CLARK: Okay, thank you.

2 I guess my other question would be,
3 have you heard from any of the utilities
4 that they are in the process of trying to
5 plan upgrades on their generators, and as
6 part of that upgrade it would be much more
7 efficient and practical for them to go
8 ahead and install the mercury controls
9 right away.

10 In other words, I'm wondering about
11 what sort of time pressure there is to have
12 these mercury controls in place if an
13 upgrade is planned anytime soon.

14 MR. PRICE: I really can't give
15 you any plant-specific information about
16 that, all of my data is based on national
17 trends and general information we have
18 about all the plants in the state. So I
19 can't tell you plant-specific, I have no
20 idea. That would be a permit question.

21 MR. TERRILL: Well, I don't think
22 we've got anything in-house that indicates
23 that there's any upgrades planned.

24 I'm not really sure what you are
25 talking about.

1 I'm assuming you mean additional
2 boilers or --

3 MR. CLARK: Are there any other
4 controls for NOx or SOx or anything like
5 that would facilitate --

6 MR. TERRILL: You mean like
7 regional haze?

8 MR. CLARK: Sure.

9 MR. TERRILL: Those are at least
10 five years down the road. We have not
11 submitted our regional haze plan yet, we
12 anticipate doing that in the next month or
13 so. But at that point EPA will have to
14 approve it, and then it's five years from
15 the date of EPA approval before the
16 regional haze controls are installed. So
17 there's quite a bit of planning out time to
18 be had. We're under a time constraint to
19 get that done around this rule.

20 MR. CLARK: Okay. Even though
21 without a decision on the federal lawsuit,
22 whichever way it goes, what is the risk in
23 going ahead with something stricter?
24 Because if EPA wins on that and CAMR is
25 upheld, we're still allowed to go with

1 stricter standards for Oklahoma as the 15
2 or 20 states that have done, and if EPA
3 loses on the lawsuit, then presumably they
4 would have to write something stricter
5 anyway, go back to the MACT standard or
6 something along those lines. What's
7 preventing us from going ahead and doing
8 that now? Would we not be ahead of the
9 game for example, if we wrote something
10 that did not include cap and trade, which
11 presumably would be one of the things that
12 EPA would have to do. Is there any reason
13 that we can't go ahead with that right now
14 and be ahead of the game or -- I'm trying
15 to understand whether there are practical
16 reasons or -- I don't want to create extra
17 work for DEQ staff. But is there a reason
18 we couldn't just go ahead with that, where
19 is your limit, because we don't know how
20 long this court case is going to take,
21 hopefully it will be over soon. But then
22 if they do send it back and EPA does have
23 to rewrite the rules, I don't know how long
24 that could take, but the government moves
25 slowly sometimes. I'm concerned that we

1 could end up with another year or two down
2 the road before we even get the rules, and
3 then the states have to incorporate the
4 rules or implement the rules and we could
5 be two, three, or four years down the road,
6 that's the way government works. In the
7 meantime we have no controls on mercury
8 anywhere. And so it's kind of a -- what's
9 the downside to going ahead with something
10 now?

11 MR. TERRILL: I don't know if
12 there's a downside but there's a practical
13 side to this though. The way this works,
14 once the Council makes the decision and
15 proposes a rule, it goes to the Board, and
16 then from the Board it goes to the
17 Legislature.

18 I can tell you that without a good
19 public health reason and a cost benefit
20 analysis reason, you'll lose that rule over
21 at the Legislature. And that's the reason
22 that I would like to wait until at least
23 April, we've waited this long, and come
24 back and give the Council some options to
25 go both ways with the best data that we've

1 got. Because I think it misleads folks to
2 think that if it goes to the Council and
3 then it goes to the Board, then it's going
4 to happen, because that Legislative step --
5 when they look at it, they are going to
6 want to know why is Oklahoma going out in
7 front of everybody else. And that's where
8 if the folks that really want to go beyond
9 that, they are going to have to talk to
10 their Legislator and say we want to do this
11 for Oklahoma, and we are willing to pay for
12 that through higher utility rates. Because
13 that's where it gets passed along to the
14 consumer. And that's really where the
15 rubber meets the road, if you really want
16 to try to do something beyond what the feds
17 are going to do, especially if you think
18 that they are -- like I do, that they are
19 going to address other pollutants besides
20 mercury, in order to address other
21 environmental issues then you've got a cost
22 that's got to be borne by the ratepayers.
23 And I'm willing to pay that, but again,
24 that's not the folks that are having a hard
25 time meeting their monthly bills, with

1 everything else going up, they are the ones
2 that are going to have to share that burden
3 and whether or not the data is out there,
4 to say that if we go beyond and go to 90
5 percent, is that really going to make a
6 difference in our state. I don't know. It
7 definitely does reduce the global pool and
8 that's probably where this needs to be
9 addressed. But that's not likely to
10 happen, like you said, anytime soon. So
11 the fact that you all have raised this
12 issue, and a lot of people have raised the
13 issue, that's the reason I think we need to
14 bring this to a close in April with some
15 sort of a proposal, to be discussed by the
16 Council. Which is stricter and what are
17 the pros and cons, and the cost of CAMR.
18 You know if the Council wants to go ahead
19 with something, if the feds are going to
20 start over from scratch -- because you're
21 exactly right if this is kicked back to
22 EPA, it will probably be a minimum of two
23 years before anything comes back out as a
24 proposal. Because they're not done do
25 anything until the new administrator gets

1 there, and that's about a year from now,
2 then you can probably tack on another year
3 from that, so you're exactly right it would
4 be at least two years or more before EPA
5 actually addressed mercury through
6 additional rulemaking.

7 MR. CLARK: Okay, thank you. I
8 appreciate you answering my questions.

9 Good morning, Montelle Clark,
10 representing the OSN Board of Directors,
11 that the Oklahoma Sustainability Network.
12 Thank you for your time today and for
13 working on this intricate issue. I would
14 also like to thank the AQD staff for their
15 work on this.

16 A couple of mercury related news
17 items have caught my attention recently.

18 On December 11th, the Wyoming
19 Department of Health and their Game and
20 Fish Department issued an advisory for
21 state residents over mercury levels in
22 their fish. Wyoming thereby completed the
23 map of the 48 contiguous states that have
24 issued a mercury warning.

25 And on January 11th, this year,

1 South Carolina health officials announced a
2 comprehensive review of mercury and its
3 effect on people after a recent report
4 found that almost half of the people tested
5 who eat fish from the state's rivers and
6 lakes have elevated levels of mercury.
7 Some had levels eight times the amount
8 considered safe by the EPA.

9 Oklahoma also has fish consumption
10 warnings, of course, and it can be argued
11 that these are sufficient to protect our
12 citizens. But fishermen routinely miss
13 warnings on rivers and lakes, and food
14 shoppers miss the warnings over the fish
15 they consume. In one study, people
16 diagnosed with levels of blood mercury
17 greater than the EPA safety threshold had
18 no idea that their high consumption of fish
19 was responsible for this toxicity.

20 Recently our review the transcripts
21 of last year's Council meetings and all the
22 very good information on mercury and its
23 health effects that has been submitted to
24 the DEQ. I don't think there's any
25 reasonable person who disputes that mercury

1 is a dangerous pollutant. The argument is
2 over the severity of our mercury
3 contamination in Oklahoma and whether
4 controlling mercury from coal-fired plants
5 will make any difference in Oklahoma
6 deposition and bio-accumulation.

7 To that point, I am alarmed by
8 reports from the U.S. Geological Survey in
9 the National Atmospheric Deposition
10 Program. Their weekly rainwater sampling
11 data show that Oklahoma has one of the
12 highest mercury deposition rates per square
13 meter in the United States, a rate that's
14 higher than at least 40 other states, with
15 the highest amounts found in the
16 northeastern part of the state. The
17 mercury concentration rate for Oklahoma in
18 2006 is one of the three highest in the
19 U.S.

20 I'm not a scientist, and it's
21 difficult for me to deeply assess these
22 studies; I don't know whether these high
23 deposition rates lead to high mercury
24 concentrations in fish, but this data is
25 from respected organizations, including our

1 own DEQ. I urge you to look at these
2 reports and maps, which I have submitted
3 for the record, they look like this if you
4 don't have them in color. The best ones
5 I've found are 2005 and 2006, you can just
6 see in orange, Oklahoma -- the northeast
7 corner of Oklahoma is listed as one of the
8 hottest spots -- I shouldn't say hot spot -
9 - it's one of the highest concentrations
10 from the rainwater sampling data. It
11 should be in your record.

12 The cost of installing mercury
13 controls on our Oklahoma power plants is
14 often cited as a reason for staying with
15 the CAMR, but I would like to mention the
16 state of Pennsylvania. It's a large
17 coal-producing state, with 73 coal-fired
18 electric generating units, and their power
19 plants are the third largest mercury
20 emitters in the country. And yet they are
21 requiring 90 percent reductions in mercury
22 pollution from their generators, and they
23 have decided not to participate in the EPA
24 managed cap and trade program.

25 Another rationale that's often cited

1 for not going to stricter controls in some
2 states is the undeniably alarming quantity
3 of mercury being emitted in Asia,
4 especially China. This global pool
5 argument often overlooks the fact that the
6 per capita production of air pollution in
7 China is estimated at one-sixth of the
8 average Americans. China has also closed
9 numerous older coal units and they have
10 established a 16 percent renewable energy
11 standard by 2020.

12 Nonetheless, I am very worried about
13 the emissions from China, but using them as
14 an excuse is like me pointing to my
15 neighbors excess trash as a reason for not
16 recycling my aluminum cans. After all, I
17 already recycle my steel, my newspapers, my
18 plastic, that ought to be good enough,
19 right?

20 So is a 90 percent reduction of
21 mercury significantly better than a 70
22 percent reduction or 36 percent reduction?
23 With something as toxic as mercury, I think
24 we have to make a maximum effort, and not
25 just say, that's good enough.

1 What about here in the United
2 States? What if some of our mercury is
3 coming down in Kansas, or in South
4 Carolina, where they're testing their
5 citizens? What if it's coming down in EPA
6 Region 1?

7 Stephen Perkins, Region One's
8 Director of the Office of Ecosystems,
9 recently stated that the New England states
10 and New York are well on their way to
11 reaching their short-term mercury reduction
12 goals, but to quote, "Beyond 2010, it
13 depends on what they do in the rest of the
14 country."

15 Lee Dunbar, of the Connecticut
16 Department of Environmental Protection,
17 said Northeast states are proof that
18 individually and collectively, states can
19 cut levels of a dangerous pollutant. But
20 to take it to the next level, other states
21 have to do the same kind of pollution
22 reduction. "We don't feel they go far
23 enough," he said.

24 And what about us, here in Oklahoma?
25 Some people state that we don't have enough

1 proof of hotspots here when burning powder
2 river coal. Whether or not hotspots are an
3 issue, we do have a widespread mercury
4 contamination issue, at least in our
5 rainwater. And in the absence of
6 conclusive data on hotspots, we are still
7 left with a considerable amount of
8 suspicion that local emissions might play a
9 substantial role in local deposition. With
10 a less toxic substance, a reasonable person
11 might be willing to continue running the
12 risk of local deposition until further
13 evidence is gathered. But mercury is far
14 too dangerous for us to be taking chances.
15 Again, we argue to err on the side of
16 caution and prudence.

17 Texas has a couple plants that
18 produce more mercury individually than all
19 the plants in Oklahoma combined. I'm sure
20 that some of that mercury must be falling
21 on Oklahoma. But Texas decided that the
22 CAMR was good enough for them. With our
23 prevailing winds, for all of our sakes, I
24 wish they had adopted a stricter standard,
25 in Texas.

1 A well-known phrase for the green
2 movement is, we're all downstream. I ask
3 you to remember that when you make your
4 decision, and I urge you to vote for Option
5 3 for Oklahoma.

6 Thank you for your time.

7 MS. BOTCHLET-SMITH: Council, I'd
8 like to mention that Mr. Clark provided a
9 large amount of data for your review.
10 There is one printed copy on the table,
11 that includes his maps. But we have
12 provided a CD in your packets that includes
13 all of that. It was in excess of 300
14 pages; is that correct?

15 UNKNOWN: Yes, that's
16 approximately correct.

17 MS. BOTCHLET-SMITH: In interest
18 of not printing reams and reams of paper,
19 we did make CDs with that information, and
20 I believe we can make that available if
21 there's someone else here that needs it.
22 We'll make that available or perhaps you
23 have it in another location?

24 MR. CLARK: Before you all glare
25 at me, I don't think I submitted 300 pages

1 of data, that may be Jeff Edwards from
2 Sequayah County, I think he submitted the
3 Harvard health data on mercury and autism.
4 I wouldn't imposed 300 pages on you guys, I
5 think I only submitted about 10 pages.
6 Most of what I sent was one or two-page
7 documents. So don't yell at me, please.

8 MS. BOTCHLET-SMITH: Okay. I
9 guess the main point that I wanted to make
10 is that if you're looking for those maps
11 they are on that CD.

12 The next commenter is Esther Houser
13 with the Sierra Club.

14 MS. HOUSER: Good morning. Thank
15 you Mr. Chair for the opportunity to speak,
16 Members of the Council, staff.

17 Please consider these comments as
18 the official position and public comments
19 of the Oklahoma Chapter of the Sierra Club
20 on the new subchapter 44, to control
21 mercury emissions from coal-fired power
22 plants.

23 On behalf of more than 3,000 Sierra
24 Club members from all parts of Oklahoma, we
25 urge you to proceed with adoption of the

1 model rules recommended by the National
2 Association of Clean Air Agencies, what you
3 refer to as Option 3. Mercury emissions
4 from coal-fired electric power generating
5 facilities pose a serious threat to public
6 health and the environment and we believe
7 it is imperative to move aggressively to
8 control them to the lowest levels feasible
9 in the shortest time possible. In
10 selecting the options within this proposed
11 rule, we argue to follow these two
12 guidelines; achieve the lowest emission
13 levels feasible in the shortest time
14 possible.

15 The facts about mercury's effects
16 are indisputable. It is a potent
17 neurotoxin that targets children and
18 pregnant women. The primary exposure
19 pathway moves from air emissions to
20 deposition on land and water, and
21 concentration through the food chain to
22 people eating fish. Prevention and
23 reduction of air emissions is the only real
24 solution.

25 Some will say this rule costs too

1 much. We say, tell that to the mother of
2 the developmentally disabled child affected
3 by mercury pollution. The truth is, every
4 legitimate cost benefit analysis has shown
5 conclusively that the benefits of strict
6 and quick mercury controls far outweigh the
7 costs. Prevention simply cost less than
8 dealing with the serious consequences of
9 mercury pollution.

10 Some will say that we don't have any
11 mercury problems here in Oklahoma. We say
12 that is nothing but naive wishful thinking
13 on the part of the people with their heads
14 in the sand. If there is no problem, why
15 do we have a statewide fish consumption
16 advisory issued by the Department of
17 Environmental Quality, for pregnant or
18 nursing women, women of childbearing age
19 and children younger than 15 years old due
20 to mercury in fish? Mercury has been found
21 to be a serious problem in virtually every
22 place we have looked all around the
23 country. The only reason no mercury
24 hotspots have been located by the DEQ in
25 Oklahoma is that we haven't looked yet.

1 But the Cherokee nation has. At a
2 monitoring site near Stillwell, mercury in
3 rainfall was measured at 15.4 nanograms per
4 liter.

5 That's more than double the national
6 average of mercury in rain. The levels
7 measured near Stillwell are the highest in
8 the entire country, except for one other
9 location. We can't say for sure what
10 caused this sky-high reading, but we do
11 know that there are four coal-fired power
12 plants in the vicinity of Stillwell. We
13 ask that you connect the dots.

14 Mercury is a serious problem that
15 must be dealt with in a serious manner.
16 The other two options before you, are not
17 up to the job. We agree whole-heartedly
18 with Mr. Eddie Terrill's comment upon
19 release of the STAPPA/ALAPCO, now NACAA,
20 model rule. "We believe our plan is a much
21 better way to go. EPA's approach would
22 allow too much mercury for too long. The
23 STAPPA/ALAPCO model rule gives state and
24 local authority a better option as they
25 move forward on this issue."

1 We urge that you to move forward
2 with this better option. We, in the Sierra
3 Club, believe high pollution coal-fired
4 power plants must be required to reduce
5 their mercury emissions as much as feasible
6 in the shortest time possible. We call
7 upon the Oklahoma Department of
8 Environmental Quality to support clean air
9 by placing stringent controls on this
10 dangerous pollutant that especially
11 threatens women and children. We ask you
12 to protect Oklahoma's health and
13 environment for our families and for our
14 future.

15 Thank you.

16 MS. BOTCHLET-SMITH: The next
17 commenter is Jean McMahan with the Green
18 Party.

19 MS. McMAHAN: Hi, I'm dressed as
20 a polar bear to represent all the innocent
21 animals and humans, that are harmed by our
22 unsustainable way of living.

23 The Green Party of Oklahoma hopes
24 that you vote and will take the third
25 option to reduce the mercury emissions as

1 quickly as possible, and with the highest
2 standards possible.

3 Polar bears and indigent people have
4 high levels of mercury and toxins. And how
5 did those toxins get there?

6 We are doing serious, serious things
7 to this planet, to this state, especially
8 poor people and Native people. Around
9 (inaudible) where we live, people fish in
10 the North Canadian River. We have a
11 neighbor who is poor, but his freezer is
12 stocked with fish. He has teenage girls
13 that have been pregnant recently, and they
14 don't really believe us when we say there
15 are warnings, because they don't hear it on
16 television, or the newspapers. We've had
17 dinner with them, fish dinners with them,
18 they taste great, and that's what they
19 think. They think how can it be wrong,
20 nobody's telling us. So, I think we should
21 act locally and think globally, because we
22 have a planet in danger.

23 Thank you.

24 MS. BOTCHLET-SMITH: The next
25 person to comment is Jody Harlan.

1 MS. HARLAN: Good morning, thank
2 you for hearing my comments today. I'm
3 here as a citizen, a mother, and hopefully
4 a grandmother someday. And I think you all
5 heard that testimony, you know that
6 coal-fired power plants are the largest
7 single manmade source of mercury pollution
8 according to EPA. And the largest
9 unregulated source of mercury in the U.S.
10 You know it's toxic and dangerous to unborn
11 children, babies, and adults. And it needs
12 to be kept out of the air and water in
13 Oklahoma. Many other states have taken
14 action to enact tough mercury emissions
15 standards. And it will achieve the results
16 that we are looking for, and protect people
17 that couldn't be here today to talk to you
18 about concerns that they may not even
19 realize could affect them in the long-term.
20 I work for the State Department of
21 Rehabilitation Services, I'm here on annual
22 leave. Our agency serves people with
23 disabilities, primarily unemployment
24 programs. We see the results of
25 developmental disabilities and they are

1 very expensive in the long run. And it's
2 much easier to avoid the problems that can
3 be the caused by developmental
4 disabilities, and you have that opportunity
5 today. I too, think that you should choose
6 the third option which requires greater
7 reductions in shorter time lines than the
8 federal version, and prohibits trading of
9 mercury credit. And I hope that you all do
10 that at the first opportunity. Thank you.

11 MS. BOTCHLET-SMITH: That's the
12 last commenter from the public. Are there
13 any other questions? I'm sorry. I'm sorry
14 it just must not be here. Go ahead and
15 take the podium. Tell me your name again.

16 MS. FRANCIS: My name is Mary
17 Francis.

18 MS. BOTCHLET-SMITH: Oh, my
19 mistake, I'm sorry. Go right ahead.

20 MS. FRANCIS: Good morning, I'm
21 Mary Francis from Norman, Oklahoma. I
22 thank you for this opportunity to address
23 the Council.

24 I wanted to speak to you about CAMR
25 which allows the cap and trade. I'm afraid

1 this would make Oklahoma a target for the
2 location of power plants that pollute the
3 most, since other states, as you know, have
4 adopted more stringent standards. It would
5 make Oklahoma at risk for becoming a
6 greater hotspot than it already is. Most
7 mercury in Oklahoma is by air pollution, as
8 you know, and air deposition and our own
9 high mercury level in fish is reason
10 enough, I believe to reject the lenient
11 regs of the CAMR option.

12 My children and grandchildren, I
13 have seven, and as a former teacher of
14 elementary children, that would include a
15 concern about your children and the unborn
16 as well. These children deserve to be
17 protected from neurotoxins such as mercury.
18 These children and indeed all of our
19 citizens have serious problems already,
20 other serious problems such as the effects
21 of global warming, fuel shortages, water
22 scarcity, to name just a few. This Council
23 can help alleviate at least one of these
24 problems, the neurotoxic effects of
25 mercury. We need to swiftly implement a

1 stringent mercury emission control.

2 Option 3 is better for Oklahoma
3 citizens as well as those who live
4 downwind. Please select Option 3. Thank
5 you.

6 MS. BOTCHLET-SMITH: All right,
7 that was the last commenter from the
8 public. I don't see anybody else with
9 their hand up. So, David, if you have any
10 other questions from the Council, comments?

11 DR. LYNCH: I had one, it seems
12 in all this, and it seems at some point
13 that if I was a legislator, God forbid, or
14 citizens having to make up my mind about
15 what to do, clearly, no matter what
16 standard we adopt it's going to cost money,
17 right?

18 So what I would like to see is for
19 us to have as honest of a discussion as we
20 can have. Because if we adopt a 95
21 percent, or 70 percent, or 30 percent,
22 haven't laid out very clear to everyone how
23 much that will cost. So if you pay \$100 a
24 month for electricity and we take a 95
25 percent increase in reduction or decrease

1 in deduction, how much more am I going to
2 pay than \$100? If it's going to be \$101, I
3 don't care, but if it's going to be \$200, I
4 might care. But I think for to have an
5 honest discussion we need to have that very
6 very clear.

7 I know that's what any legislator
8 would want to know, basically they want to
9 know how many dollars this is going to cost
10 people. And I have no notions and I don't
11 know that anyone does. I think with any of
12 these I would want to see, at least,
13 estimates of how much that's going to cost
14 us. Personally, I think if we could reduce
15 mercury 100 percent, that would be great,
16 but I don't think I can afford a \$1,000 a
17 month electricity bill.

18 So I don't know what's reasonable,
19 but I think we need to have that laid out
20 on the table for us to make a good
21 decision.

22 MR. TERRILL: I agree and that's
23 what we had planned on doing along with a
24 discussion about the control technology and
25 the feasibility. There is a lot of

1 discussion about whether or not the
2 existing technology can actually get 90
3 percent, or whether it's something less
4 than that, that needs to be a component as
5 well as both sides of the epidemiology
6 issues as best we know it. I think really
7 that's the three issues, the cost, the
8 science on the existing health studies, and
9 then the actual equipment itself, and then
10 you all can make an informed decision based
11 on that.

12 MS. LODES: Eddie, I have a
13 question. In some of this you see really
14 tiny numbers in here, and you start talking
15 about 90 percent reduction, when we are
16 talking ounces to begin with, and what is
17 the technological feasibility of you being
18 able to test to those lower numbers in a
19 large airstream? I don't want to pass a
20 rule where the electric utilities have no
21 way to prove that they are meeting it.
22 Does that mean that they're continuously in
23 noncompliance?

24 I mean, maybe they're really getting
25 a 90 percent reduction, but there's no test

1 method to prove it, where does that leave
2 everybody, have we really done anything?

3 MR. TERRILL: That's part of the
4 -- that's the other piece of where the
5 technology is discussed, you are exactly
6 right. There needs to be some way, if we
7 are going to go that strict, some way to be
8 certain that there's not this
9 ambiguousness, because of the lack of
10 ability to measure that low. So you're
11 right, that would also be a part of it.
12 Because that is an issue. I think the
13 technology is getting better, but there are
14 some concerns out there both from states
15 that have gone with stricter rules and with
16 industry as to their ability to actually
17 determine whether or not they are anywhere
18 near that.

19 And then 70 to 90 percent doesn't
20 sound -- or sounds like a lot, but when you
21 are getting down to these smaller numbers,
22 you may not be able to detect it. You may
23 not be able to know if you've really gone
24 from 70 to 90, so that's the other part of
25 what I think we need to lay out in the

1 options next time.

2 MR. HAUGHT: Eddie, in that
3 national association standard with the 90
4 percent setting the target, I'm not
5 familiar enough to know if that -- one of
6 the other things that came up was not only
7 the amount of reduction in the target, but
8 the timing. Does that include a timing
9 schedule also? Or is that something that
10 would be in the NACAA rule?

11 MR. TERRILL: In the NACAA rule?

12 MR. HAUGHT: Yes, in the NACAA
13 rule.

14 MR. TERRILL: Yes, it had an
15 accelerated schedule. Let me tell you,
16 because I was the President of the
17 Association when they developed that, and
18 there were a lot of states, us included,
19 that didn't think that EPA put out a very
20 good rule. They really did not follow
21 their own requirements under the act when
22 they did this and to me that was a little
23 bit disingenuous of them.

24 If they really thought that the way
25 they went about it was correct, they should

1 have had a lot more dialogue and lot more
2 information to the public about why they
3 went down that route, which they didn't do.
4 That is really what precipitated a push-
5 back from a number of states to try to come
6 up with an alternative that would be quite
7 a bit stricter. They try to base it on
8 what they thought was the best science at
9 the time relative to what controlled the
10 equipment that was out there and available,
11 and what the science was relative to how
12 they could be measured and that sort of
13 thing.

14 I think the staff probably overshot
15 the mark a little bit. Because I don't
16 think that they really could to some of
17 those levels that they were talking about
18 at the time they drafted that rule.

19 Ever since then, the market has
20 changed and the climate has changed a
21 little bit and they are starting to move --
22 the industry is starting to move toward
23 being able to do things that get down to
24 those levels. I don't know that they are
25 at that level yet. I'm going to be in D.C.

1 next week for the final report of the CAAC,
2 Clean Coal Technology Committee, they've
3 been working on I guess the state of the
4 industry relative to a number of
5 pollutants, and this is going to be their
6 recommendation to EPA about how EPA should
7 move forward relative to coal and its
8 future as far as an energy source here in
9 the United States.

10 And they're looking at SOx, NOx, PM,
11 mercury, what's out there, it's a committee
12 of both industry and environmental state
13 representatives. So I'm interested in
14 seeing what comes from that, and we will
15 bring some of that back as part of what we
16 will bring back in April. But that's kind
17 of a little bit of a history.

18 MR. HAUGHT: Okay, thank you.

19 MR. PURKAPLE: I have a follow-up
20 to Laura's comment because I simply can't
21 get my arms around this, I just don't know.
22 But if we are talking about ounces of
23 mercury per year, that's what kind of
24 magnitude we are talking about right now,
25 and if we reduce that at 90 to 95 percent,

1 given the size of the gas streams, are we
2 down to the low part per million level or
3 are we at the high part per billion level,
4 in terms of detectability in demonstrating
5 compliance, does anybody have a feel for
6 that?

7 MS. LODES: When I've looked into
8 it, yes, we seem to be at the detection
9 limit and if we say -- if we pass a rule
10 that says they need to meet a 90 percent
11 reduction, but really you get down to only
12 30 percent reduction is where the
13 detectable levels are, have we really
14 accomplish anything, I guess is my concern
15 with that because the levels are so low
16 that from what I've looked at, I can't tell
17 that on all facilities that you are going
18 to have a detection level on up, when I
19 tried looking at the test methods.

20 MR. PURKAPLE: What is the
21 detection limit?

22 MS. LODES: I'm trying to
23 remember exactly what it was, because we've
24 got these pounds per megawatts, and some of
25 those when I was looking through them. I

1 mean it was low, but we are hitting the
2 threshold for some of these facilities, as
3 to what we -- they are inlet to even be at
4 the detection level, much less a 90 percent
5 reduction.

6 MS. BOTCHLET-SMITH: do we have
7 any further comments or questions from the
8 Council?

9 MS. MYERS: I am just curious for
10 my own information, are there continuous
11 monitors for mercury?

12 MR. BRANECKY: There are tests.

13 MR. CLARK: We are not talking
14 about ounces are we, we are talking about
15 pounds, because I think the total estimated
16 amount of mercury coming out of Oklahoma is
17 600 to 700 pounds or something like that;
18 is that correct, Eddie?

19 Mr. Terrill: I think that's
20 right.

21 MR. CLARK: In that range. We
22 are not just talking about ounces we are
23 talking about pounds versus a state like
24 Texas where they are talking about
25 thousands of pounds, but we are not talking

1 about just a few ounces here. Also, given
2 the fact that mercury is toxic in even
3 amounts in a gram range, we have to bear
4 that in mind and talk about this, I realize
5 that some of these are really tiny amounts,
6 but this stuff is extremely toxic.

7 I wanted to address, I believe it
8 was your point, sir, and I'm sorry I don't
9 -- Mr. Lynch, I'm sorry, you brought up the
10 issue of the cost for installing these
11 mercury controls, and it's a very relevant
12 question and it's one OSN Board of
13 Directors discussed extensively, because
14 one our -- what we call our three "E's" is
15 the equity component of green values.

16 We seriously discussed whether
17 pushing this could really seriously raise
18 utility bills, especially on people that
19 are poor, and that is something we did not
20 want to do.

21 We gathered the best information we
22 could find on that, there is one study
23 maybe two, and I submitted one for the
24 record, I believe at the April meeting of
25 last year and it's the best one that I

1 could find and again I'm not a scientist so
2 I can't analyze it, but it looked like a
3 very well done empirical study. And it
4 found at that time, it was based on I think
5 probably 2004/2005 prices, that adding
6 mercury controls -- they looked at mercury
7 controls that had already been added in a
8 number of states burning different types of
9 coal; lignite, anthracite by (inaudible),
10 they looked at the different plants that
11 had installed this equipment and were
12 achieving 90 percent reduction or close to
13 it, and they looked at the cost of this
14 technology at that time, and their rough
15 estimate, forgive me, I don't remember
16 exactly, but I believe it was in the three
17 dollar per month range for somebody who has
18 an average \$100 per month electric bill.
19 Again, it might be within a few cents, but
20 I'm within a dollar of what it was. It was
21 in the three -- three something range.
22 They had a caveat with that, they said that
23 the price could be affected by a couple of
24 things. It could go down because the
25 technology is improving, that the market is

1 very competitive, and that new equipment
2 was coming out on a regular basis.

3 Number two, they said the price on
4 the other hand could possibly go up, if
5 there was a sudden rush to install all
6 these mercury controlled equipment, and it
7 suddenly became highly competitive to have
8 that stuff.

9 But that's the best I can say on
10 that, but it was very very important to the
11 OSN Board as well. Nothing in the data
12 that we looked at indicated that it would
13 cause a precipitous increase in the cost,
14 and maybe if you could go look in the
15 record, you might find that one study from
16 -- I think I submitted it in April of last
17 year. Thank you.

18 MR. PURKAPLE: To follow up. I
19 might have undershot the phrase ounces but
20 I wasn't thinking statewide, I was thinking
21 of on a per source basis and the difficulty
22 of demonstrating compliance for a single
23 source not statewide.

24 MR. BRANECKY: I think the issue
25 is over a period of time we're in pounds,

1 but instantaneously when you're trying to
2 measure it you're talking ounces at that
3 point in time.

4 MR. PURKAPLE: Yes, and that's
5 the way I think in terms of demonstrating
6 compliance.

7 MR. LODES: That's what I meant,
8 Jerry, that for any one source at any point
9 in time, you are measuring on very tiny
10 level. That's what I want to make sure
11 that we can even detect to see if they're
12 really getting a reduction like they're
13 supposed to.

14 MR. BRANECKY: All right, I think
15 we're ready for a motion with the wishes of
16 the Council, we have several options in
17 front of us. I don't know if I can repeat
18 them all, so I'm open for a motion from the
19 Council what they'd like to do with this.

20 MS. MYERS: Based on all of the
21 discussion from staff and Council and the
22 public, I make a motion that we continue
23 this to the April meeting.

24 MR. BRANECKY: I have a motion,
25 do I have a second?

1 MR. PURKAPLE: I'll second it.

2 MR. BRANECKY: Did you get that,

3 Myrna?

4 Myrna, please?

5 MS. BRUCE: Gary Martin.

6 MR. MARTIN: Yes.

7 MS. BRUCE: Jim Haught.

8 MR. HAUGHT: Yes.

9 MS. BRUCE: Laura Lodes.

10 MR. LODES: Yes.

11 MS. BRUCE: Bob Lynch.

12 DR. LYNCH: Yes.

13 MS. BRUCE: Rick Treeman.

14 MR. TREEMAN: Yes.

15 MS. BRUCE: Sharon Myers.

16 MS. MYERS: Yes.

17 MS. BRUCE: Jerry Purkaple.

18 MR. PURKAPLE: Yes.

19 MS. BRUCE: David Branecky.

20 MR. BRANECKY: Abstain.

21 MS. BRUCE: Motion passed.

22

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24 (Item 5D Concluded)

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED MEETING
OF THE AIR QUALITY
ADVISORY COUNCIL

ITEM 5E

HELD ON JANUARY 17, 2008

AT 9:00 A. M.

AT 707 NORTH ROBINSON

OKLAHOMA CITY, OKLAHOMA

* * * * *

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RICK TREEMAN, VICE-CHAIRMAN

JIM HAUGHT, MEMBER

DR. ROBERT LYNCH, MEMBER

GARY MARTIN, MEMBER

SHARON MYERS, MEMBER

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LAURA LODES, MEMBER

DONALD SMITH, MEMBER (ABSENT)

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SPECIALIST

BEVERLY BOTCHLET-SMITH, ASSISTANT DIRECTOR

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EDDIE TERRILL, DIRECTOR OF AIR QUALITY
DIVISION

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PROCEEDINGS

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MS. BOTCHLET-SMITH: The next item on the Agenda is OAC 252:100-5 Registration, Emissions Inventory and Annual Operating Fees.

Ms. Nancy Marshment will be giving the presentation.

Ms. Marshment.

MS. MARSHMENT: Good morning Mr. Chairman, members of the Council, ladies and gentlemen.

The Department is proposing to amend the Oklahoma Administrative Code Title 252, Chapter 100, Subchapter 5, Section 2.2, to increase annual operating fees for both minor facilities and Part 70 sources. Additional income resulting from a fee increase is needed to cover current and anticipated staffing requirements in administering the Department's Air Quality programs.

Fees for both minor facilities and

1 Part 70 sources would be adjusted
2 automatically each year using the Consumer
3 Price Index. At the present time, only
4 Part 70 source fees are calculated in this
5 manner.

6 Staff received some comments
7 relating to the proposed rule, a copy of
8 the summary of comments and staff responses
9 is included in your folders, and they have
10 been posted on the DEQ website. Yesterday,
11 we receive comments from Angie Burckhalter
12 of the Oklahoma Independent Petroleum
13 Association. Copies of Ms. Burckhalter's
14 letter are in the Council Members folders
15 and on the materials table. We will
16 provide responses to her comments.

17 This is the third time this proposal
18 has been brought before the Council. Staff
19 request that Council Members carry over the
20 proposal to the February 5 meeting so that
21 the Council may consider both the annual
22 operating fee and permit fee increases at
23 the same time.

24 Air Quality Division Assistant
25 Director, Beverly Botchlet-Smith, will now

1 provide additional details for this
2 proposed rule.

3 Thank you.

4 MS. BOTCHLET-SMITH: Thank you
5 Nancy.

6 If you recall at the last meeting,
7 the October Council meeting, we discussed
8 that we needed to have a finance committee
9 meeting, and we were directed to pull some
10 additional information for that meeting;
11 and we met with the finance committee,
12 that's David Branecky, Sharon Myers, and
13 Rick Freeman on November 13th, I believe,
14 and we had asked our Administrative
15 Services Division, the finance section, to
16 provide some additional financial
17 information for that meeting, which we
18 presented to the finance committee. A copy
19 of that has been provided to the Council
20 Members.

21 The spreadsheet that we provided at
22 that time looked at what our FY 09 full
23 program needs would be, and part of this
24 we've discussed before -- but based on
25 anticipated cuts to our 105 grant from EPA,

1 as well as the elimination of our grant for
2 our PM 2.5 monitoring program; and some
3 additional costs that we will incur, and
4 have incurred already, from the mandated
5 raises from the Legislature in which they
6 did not provide ample funds for us to
7 completely fund, increases in our fringes
8 insurance, retirement percentages, et
9 cetera.

10 When we looked at the bottom-line
11 number on this, our shortfall was actually
12 greater than what we had originally
13 anticipated, and what we brought to the
14 Council in the meeting in July that was
15 held in Ponca City.

16 Based on the information provided to
17 us by our finance group, NASD, we're
18 looking at a 2.3 million shortfall in
19 FY 09.

20 Based on those numbers we looked at
21 the number of tons of both Title V and
22 Non-Title V that we billed for the calendar
23 year 2005. This is the same number of tons
24 that we've used as a basis for our study on
25 what we would need, recognizing the fact

1 that 2006 tons may be a little more or
2 little less, but we're certainly trending
3 downward. But we chose rather to stick
4 with the '05 numbers, which could actually
5 hurt us if the emissions go down, but
6 result in the bottom-line request for the
7 per ton fee to be less than what we might
8 need, which I don't think there's going to
9 be that much of a difference.

10 Initially, we had proposed a \$6.84
11 increase for Title V, but with the
12 increased shortfall, that we were made
13 aware of, we're now looking at needing
14 \$7.18 per ton.

15 I've also provided to the Council a
16 two-page -- it says Fee Case 2007 Finance
17 Committee Meeting. It's just a two-pager
18 in kind of a PowerPoint that lays out what
19 our original request was at the July
20 meeting, which was the \$6.84 per ton and
21 the \$2.84 per ton for Non-Title V; and then
22 on Page 2, what the new revenue proposal
23 would be.

24 One of the things that have come up
25 in previous meetings is that emissions

1 continue to trend downward, have we
2 considered other sources of funding?

3 In the new revenue proposal we have
4 looked at another source in an attempt to
5 make up the difference for part of that
6 shortfall based on what we previously
7 thought we were short, to what we now
8 believe we are short, which was a little
9 over \$500,000.

10 While we are not bringing this to
11 you today in a rule presentation, we are
12 looking at a potential increase in permit
13 fees, which we'll bring to you in February,
14 which would generate the majority of that
15 \$500,000.

16 Would anyone on the finance
17 committee like to offer a report of that
18 meeting, a summary from your perspective?

19 I guess not. Okay.

20 So, we come to you today requesting
21 additional money over what we had in the
22 past, by a few cents.

23 Eddie, would you like to make some
24 comments?

25 MR. TERRILL: Yeah, just briefly.

1 I realize that nobody wants to pay
2 more fees. I mean, it's a tough issue for
3 us to have to come and ask for, and it's a
4 tougher issue for the fee payers to write
5 the check.

6 But the reality of it is that for
7 the last several years the Title V Program
8 hasn't paid for itself. And we've been
9 successful and our fee payers have been
10 successful in going to Legislature and
11 getting appropriations to keep -- to keep
12 within the laws we are going to have to
13 raise these fees beyond what the CPI was
14 raising them.

15 But if you go back and look, which
16 we've done, it just hasn't paid for itself.
17 And we really need to address that. We
18 need to address it through increasing the
19 Title V fees so that it pays for itself, or
20 again we can try to look for additional
21 sources of income. But we're at the point
22 now when we try to true-up our billing
23 periods, if you will, so that we're billing
24 and collecting in the same year, we're not
25 able to mask that -- and we were able to do

1 that because we were actually borrowing
2 from Peter to pay Paul. Because we were
3 collecting money in one year, and they were
4 anticipating that we would collect it
5 again, because we billed across fiscal
6 years and it was creating an artificial
7 windfall, which we really didn't have.

8 And I think by going to this
9 billing, which we're committed to do, we're
10 committed to bill close to the end of one
11 fiscal year so that we don't collect any
12 money until the start of the next fiscal
13 year. Or actual billing in the same fiscal
14 year and collecting, that way we can
15 towards the end of the year true-up where
16 we really are with our budget; so that if
17 we've got a shortfall or a carryover, then
18 we'll be able to let the finance committee
19 know that, and adjust our Title V fees
20 accordingly.

21 Because we didn't offer the language
22 as part of what we presented today. But we
23 do have language that would allow us to, if
24 the Council wants to consider it, to go up
25 to a certain point that can be adjusted if

1 we are able to obtain other sources of
2 income.

3 We were asked the last couple of
4 days, in the comments that we've received,
5 to take a look at a lot of other ways to
6 fund this, and we've done this and we've
7 done that.

8 One thing that we were asked about
9 were efficiencies, are we working
10 efficiently? And that's a legitimate
11 question. It would be more so legitimate
12 if we were asking for additional FTEs,
13 which we're not. We continually look for
14 ways to be more efficient because EPA
15 continually gives us things to do that we
16 don't come and asked for money, when we get
17 them. We generally try to figure out how
18 to do that. In order to do it we've got to
19 work more efficiently. We participate in
20 regional studies relative to how we do
21 permits, and how we can do a better job
22 writing permits, and that's part of what we
23 do through our CenSARA organization on a
24 regular basis, is try to get more efficient
25 in the way we do things.

1 But the reality of it is, someone
2 mentioned at the last Council meeting that,
3 you know, in the time of -- a lot of
4 pressure on industry reduced their
5 emissions and at the same time we want the
6 ability to not lose that revenue stream.
7 Because the work that we're being asked to
8 do is not going down, and that really
9 creates a real problem for the fee payers.
10 You're spending money to reduce fees and
11 then we turn right around and ask you to
12 raise them because your emissions aren't as
13 high.

14 This really needs to be something
15 that we address with EPA, and that's what
16 we're committed to do with the new
17 administrator, is to push them and we think
18 that the fee payers need to push as well
19 through their trade associations, for EPA
20 to take a short and long term look at how
21 they're funding the air program in this
22 country.

23 Because what they're doing is
24 they're shoving it right back on the fee
25 payers. Because they do things and they

1 don't provide any money for it, then we're
2 asked to either do it or let them do it.
3 And that's really frankly where we are
4 right now. The Council can choose to say
5 that they don't want to fund EPA's
6 requirements anymore and we're not going to
7 raise our fees, and we'll respect that.
8 But what we'll also have to do is, I'll
9 have to send a letter to EPA telling them
10 that we're not going to accept anymore
11 programs from EPA. And that includes
12 climate change, that includes minor source,
13 MSR, that includes MACT standards, all that
14 stuff that they're doing we just can't do.

15 But I think we need to have a
16 dialogue with them regardless even if the
17 Council does say that we want to address
18 this now. I still think we need to have
19 that dialogue with them because this is
20 going to be a continuing problem. We have
21 got to start looking outside-the-box ways
22 of funding the program so that we don't
23 continually come to the fee payers and ask
24 them to not only reduce your emissions but
25 up-handing in what you're paying us for the

1 program as well.

2 So, short-term, I don't know how we
3 fix that; but long-term is something we're
4 going to have to deal with.

5 MR. BRANECKY: There was, as I
6 understand, a potential additional 400,000
7 from the UST fund to be given to the Air
8 Quality, is that taken into account in this
9 fee proposal?

10 MR. MERRILL: Yes.

11 MS. BOTCHLET-SMITH: When we
12 prepared our spreadsheet in how we
13 determined what our shortfall was going to
14 be, we did include in our budget for
15 available monies, \$400,000 that would come
16 from the UST fund. So, that's rolled into
17 that original spreadsheet as income, along
18 with our grant, our fees, our state
19 appropriation. So, we have already taken
20 that into consideration.

21 We have recently learned that there
22 is some excess money in the UST fund that
23 is available as "a one-time only" to us
24 this year, which we believe that will get
25 us through the remainder of this year. And

1 because of our delayed billing, instead of
2 billing in April the way we have in the
3 past, our plan is to bill in July. Of
4 course, our fiscal year starts in July.
5 Federal Grants aren't awarded or really
6 decided upon until October so that will
7 leave us a little of operating capital
8 there at the beginning of the year.

9 So those "one-time" monies that are
10 being made available to us this year, in
11 addition to the \$400,000, will be what gets
12 us through that first month, until we start
13 collecting the fees that are being billed
14 in July.

15 MR. TERRILL: We have also heard
16 that there maybe some interest in
17 approaching the Legislature this session
18 with a proposal to look at other sources of
19 funding to get at the mobile source issue,
20 that's been an ongoing sticky point that
21 we've tried to address in the past, and
22 that is how do we get at that mobile source
23 component that is about a third of our
24 overall statewide emissions. They really
25 don't pay anything towards that.

1 Obviously, we're supportive of that
2 but Steve has been very adamant, and he's
3 right, they don't listen to him over the
4 Legislature, when this type issue comes up.
5 It has to be the fee payers that are over
6 there with him saying that this is
7 something that needs to be addressed and
8 whatever mechanism you go about doing it,
9 there's broad-based support across the
10 various industry sectors for doing that.

11 And like I said we have prepared --
12 we didn't do a presentation on the
13 language, but we have brought with us
14 language that we could ask the Council to
15 consider that would set the fee of what
16 we've asked for; but have language in there
17 that we would reduce that by an amount
18 equal to, or greater than, whatever we're
19 able to get at the Legislature this
20 session. I think we can do that because of
21 the fact that we're not going to bill until
22 the session is over with anyway. So, we'll
23 know what our budget is and we may have
24 some money to carry over this year, I don't
25 know. We haven't gotten that far. I don't

1 think we will because we were running a
2 shortfall to start with. But if we did,
3 then we would have the ability to adjust
4 our fee downward, because we found an extra
5 source of income where we didn't spend all
6 the money that we collected in a particular
7 year or in the next year rather.

8 MR. BRANECKY: Does that really
9 gain us anything, we've passed that
10 language and the Legislature sees it and
11 says well, you already got your money
12 whether we give you any or not. Why do we
13 need to give you any more?

14 MR. TERRILL: That is a danger
15 that you would run into by doing it. But
16 it does allow us -- at the end of the day
17 we really don't want to carry a balance
18 into the legislative session. So, let's
19 say for some reason that we weren't able to
20 fill all of our positions -- let's say for
21 an example that you agreed that we are
22 going to fund this program fully, like
23 we've asked for, and then at the end of
24 next year because of for some reason we
25 weren't able to fill all of our positions,

1 we were able -- we had a balance in excess
2 of three or four hundred thousand dollars.
3 There's no need for us to carry that over
4 and build the same amount again. We would
5 reduce it, if we had language in there that
6 would give us that authority by that
7 amount, because I don't need more than I
8 need to run my program.

9 And the reality of it is the vast
10 majority of what we're spending our money
11 on are our salaries and benefits, staff.
12 We have very little, we've cut out
13 everything we could possibly cut out
14 relative to what we spend money on, you
15 know, in the way of equipment and that sort
16 of thing. There's certain things we have
17 to do every year, but we don't have any
18 fluff in there anymore for cutting that
19 down.

20 The bulk of what we're asking for
21 here is the increases that we've had on
22 personnel issues. So, I think that
23 language needs to be in there so that -- I
24 don't want to bill more than I have to
25 either, if we have an excess.

1 MS. BOTCHLET-SMITH: David, that
2 would also give us the ability to reduce
3 it. Say we didn't receive the cut in the
4 grant, but, of course, we got an increase
5 in the grant. But we based the case on the
6 fact that about a \$500,000 shortfall or a
7 little over, was the result of grants going
8 away.

9 So, if we get lucky with the Feds
10 and some of that money does come back to
11 us, that would be a couple of dollars a ton
12 difference. That's a very rough figure, I
13 didn't calculate that.

14 MR. TERRILL: I think we can
15 present reports towards the end of the year
16 to the finance committee to give them an
17 ideal of where were at and what we think we
18 can carry over. And that way that gives
19 them and the regulated community an idea of
20 what we're going to end up with as the fee,
21 before gets there.

22 MS. MYERS: If we don't pass
23 anything before the July meeting then the
24 Legislature doesn't have anything to work
25 on, and maybe they'll give us some more

1 money.

2 MR. TERRILL: But if they don't
3 then we've got a two and a half million
4 dollar shortfall. And at that point we're
5 probably going to have to lay off staff.
6 Again, if that's what the Council chooses
7 to do that's fine, but we'll end up with a
8 shortfall. And EPA has told us -- and to
9 me this is a hollow threat, but one of the
10 failures to not fund the Title V Program to
11 the extent that the information says it
12 should be, is they can take over the Title
13 V Program. That's what's supposed to
14 happen. I don't think they'll do that, but
15 you know, they could.

16 I'm not kidding you one bit, if we
17 don't get the funding for this, I will send
18 a letter and we will not accept anymore
19 delegations for any of those federal
20 programs. We may send some of them back,
21 because I can't continue to run, to do
22 things, without a way to pay for them.
23 And, you know, if that's what the Council
24 wants, that's fine, we'll figure out how to
25 make it work. But we will not do it, I'm

1 just as serious as I can be about that.

2 MR. PURKAPLE: Eddie, at the
3 October meeting, I think you said that
4 there was a Region 6, Air Directors'
5 Meeting that you were going to attend and I
6 think the Minutes said that you were going
7 to look for any news about any federal
8 funding or grants available. I assume that
9 nothing came out of that.

10 MR. TERRILL: No, and what we did
11 say was, in the past EPA has taken money
12 off of the top of our 105 Grant to fund
13 projects that are nice to do that we
14 compete -- we compete for our own money
15 actually. In the past it's really been a
16 good thing, we've got some of it in the
17 past to do some things that we wanted to
18 do, that we got more money than what we
19 would have got because we've got some other
20 states 105 money. You know, Ponca City
21 toxic study was one we did with that kind
22 of grant. But the Air Directors directed
23 EPA this time not to do that, not to
24 competitively bid any of our grant money,
25 that we wanted it all to be divvied up

1 among the state according to the
2 appropriation formula so that we could --
3 because all the states are looking at
4 budget issues and we felt like that it
5 wasn't the time to continue that practice
6 of competitively bidding some of our grant
7 money.

8 But we did have a discussion at that
9 meeting and is part of what I'll be taking
10 to the National Association of Clean Air
11 Agencies, week after next, is we're going
12 to start -- we voted for our Board Member,
13 who is from New Mexico this time, to lobby
14 with the National Organization to start
15 putting together now an agenda of topics
16 that we feel are important to get in with
17 the next administrator within he or she's
18 first month in office, and funding is a big
19 deal.

20 I am really very serious about
21 trying to figure out with EPA how we move
22 forward on this, because I think we're
23 rapidly reaching a point where the fee
24 payers across the country are just going to
25 say we can't continue to do this. And you

1 need to figure out how you want us to fund
2 these programs.

3 MR. BRANECKY: My thoughts are
4 that we need to somehow send that signal to
5 the Legislature and to EPA, enough is
6 enough, industries are tired -- we want a
7 good program, we're willing to pay our fair
8 share but when mobile sources are a third
9 of the problem and don't carry any of the
10 burden for supporting the program, then
11 that's not fair to the rest of us.
12 Somehow, I think, I'd like to send that
13 signal.

14 MR. TERRILL: And we are willing
15 to do that with you, we agree with you.
16 And not only that, I really think that this
17 whole issue needs to be addressed
18 nationally so that we start thinking about
19 this before it becomes a crisis.

20 Because I still believe they're
21 going to drop the ozone standard and if
22 they do that then they're going to be
23 looking at additional emission cuts. And
24 if nothing else they're going to push care
25 to the west which will include Oklahoma at

1 that point and you continue to drop
2 emissions, but they're not pulling anything
3 off the table.

4 There's got to be a way to fund
5 that. If environmental protection is that
6 important then Congress can figure out a
7 way to fund the program, and that's really
8 what they've done.

9 What they've done is exactly what
10 David has said that their fear is what our
11 Legislature will do, because of Title V
12 it's a lot easier to cut EPA's budget and
13 say let the states pay for it through their
14 fee payers, than to address it at the
15 national level and fund those things that
16 they need to fund.

17 If they were to fund the
18 requirements that they make upon us to the
19 level that they should be, I wouldn't need
20 a fee increase. In fact, I could probably
21 reduce your fees.

22 At one point about three years ago,
23 we did a study and it was like a 450
24 million dollar shortfall to the states from
25 what EPA requires and what we get. And for

1 our share of that, it would probably be
2 three, four, or five million dollars. So
3 we would need that and I think that's the
4 message that needs to be sent. And that's
5 what we're going to urge at our Board
6 meeting that, we, as an association through
7 the fee payers in those states, come and
8 say collectively, EPA we've got to figure
9 this out because we can't continue to do
10 that. It sends the wrong message.

11 MR. PURKAPLE: I haven't
12 completely digested all the information
13 here. You may have stated it and I missed
14 it. When you compare minor sources versus
15 Title V, funding the program; do the minor
16 sources contribute in a disproportionate
17 amount relative to their overall
18 contribution to the emissions?
19 Effectively, are they subsidizing the Title
20 V part of it?

21 MR. TERRILL: Yes, they are. But
22 we also -- you got to remember we did the
23 40 ton rule in order to cut a lot of those
24 folks out. And we think that has
25 benefitted them. And there's a lot of

1 things that are coming up that are going to
2 affect minor sources, the minor source NSR
3 rule is something we're going to have to
4 deal with.

5 The EPA has been very -- well, not
6 real vocal but they've let us know that
7 they don't think that the 40 ton rule --
8 even though they participated in the
9 rulemaking, now that it has come time to
10 approve it as part of our SIP, they've got
11 some concerns about that. So, we're going
12 to continue to fight that battle because I
13 really think it's the right thing to do.

14 But at the end of the day, you know,
15 I'm trying to put a budget together and I
16 really don't care if it's minor sources,
17 major sources, grant money, you know begged
18 money, whatever it takes for us to get it
19 done, that's fine with me.

20 And if the minor sources -- that's
21 something they need to take up with the
22 Legislature, with the other fee payers, to
23 discuss how they structure that equitably,
24 because at the end of the day you've got to
25 remember that we fund -- the major sources

1 funded the minor sources for a while. So,
2 it probably, over the long-term, is pretty
3 much balanced out. But it's come time we
4 really need to address our shortfall on our
5 Title V side, and whether that comes from
6 increasing mobile source fees or whatever,
7 that's fine with me. I don't care. I've
8 not been able to find anything from EPA
9 that says we can't do that, that we can't
10 get other sources of income, that the Title
11 V Program has to fund itself. What they
12 say is if you don't find it, then they're
13 theoretically supposed to step in and take
14 the program, if it's not funding itself and
15 you're not able to do the work.

16 MS. BOTCHLET-SMITH: Any other
17 comments from the Council, or questions?

18 I've got a couple from the public
19 that wanted to comment on this rule.

20 Jim Barnett from EFO.

21 MR. BARNETT: Good morning.
22 First let me apologize for being so late in
23 getting our comments to you, but I
24 understand from the staff's comments you
25 will be delaying this matter over for a

1 month and obviously we'd be more than happy
2 to visit with staff about our concerns and,
3 hopefully, if there are some issues that
4 can be resolved, we would be happy to try
5 to do that.

6 Our concerns really are limited to
7 primarily the Title V fees. And in that
8 regard, we have two majors -- they are
9 really two-fold. We have two major issues
10 that we'd like to talk to the Council
11 about.

12 First, under Oklahoma law there's a
13 requirement to do a persuasive presentation
14 that is needed. The way I read the
15 statute, we were talking about something
16 similar to what was done when that statute
17 was first passed back in the early '90s,
18 where there was a workload evaluation and a
19 justification, and a per tonnage fee was
20 arrived at.

21 I acknowledge that there are a lot
22 of people that did not necessarily agree
23 with the results of that study, and that's
24 neither here nor there at the current time,
25 but the reality is that the study was done

1 and that was the basis for the original \$10
2 per ton fee that we started with.

3 Since that time, of course, there's
4 been a CPI every year. There's been at
5 least two bumps in the base fee, neither of
6 which the Environmental Federation opposed.
7 So, it's hard for me to accept that any
8 argument regarding inflationary causes
9 could possibly be because of a shortfall at
10 this stage. Things such as increase in
11 insurance, those other things, surely
12 should have been accounted for by the CPI
13 plus the two basis. If they're not, then
14 there needs to be a new justification
15 document prepared that demonstrates that
16 this is really the case.

17 I attended a Water Quality Council
18 meeting yesterday. One of the things that
19 they had in their rule was that, basically,
20 there would be such a workload evaluation
21 for the personnel to demonstrate that there
22 was a need for the additional funding. I
23 thought that was a great idea. And I think
24 the regulated community appreciated the
25 fact that the Department had gone through

1 that drill to document the actual need for
2 the funding.

3 But more importantly than that, the
4 second reason is the one that has been
5 alluded to already, and Mr. Terrill talked
6 about at some length, and that's the fact
7 that I believe that -- my members feel like
8 they are bearing an inordinate share
9 proportion of the burden for running the
10 program here at the Air Quality Division.

11 I think they think it's time for the
12 mobile sources to step up to the plate. I
13 understand very well that there's been
14 several attempts to address the issue
15 legislatively over the past few years. But
16 I do believe it's time to try again and I
17 have been authorized by my Board to assure
18 you and pledge to the Council that the
19 Environmental Federation of Oklahoma would
20 do everything they could to work with the
21 Department to obtain some more equity in
22 the funding out at the state Legislature.

23 I would not be necessarily totally
24 negative toward that possibility occurring.
25 I think that it's like anything else, you

1 knock on the door often enough, after a
2 while somebody might open it up. And I
3 think that maybe there might be some people
4 willing to listen to the issues now. The
5 bottom line is, we think that, at least,
6 stationary source fees should be held off
7 on until these two activities are resolved.

8 One, being that there be a more
9 thorough and complete justification for
10 fees. And two, that the mobile sources
11 catch up to the stationary sources and pay
12 their fair share. I'd be happy to try and
13 answer any questions, and again I would be
14 happy to work with staff, and our Board
15 would be happy to work with the staff on
16 these issues over the next month and see if
17 there's some other resolution possible.
18 Thank you.

19 MS. BOTCHLET-SMITH: Next
20 commenter is Mary Francis.

21 MS. FRANCIS: Hi. I'm Mary
22 Francis of Norman, Oklahoma. I'm a private
23 citizen. I have a question and a comment.

24 My question is, I'm not quite sure
25 who minor sources refers to. How will El

1 Paso and Chesapeake be impacted? Are they
2 included in the definition of minor
3 sources?

4 MR. TERRILL: Those companies
5 would probably have both major and minor
6 sources. It really has to do with the
7 amount of emissions that come from a
8 particular facility. I'm sure they would
9 be included either as a major or minor
10 source.

11 MS. FRANCIS: Okay. First of all
12 I am philosophically opposed to funding
13 agencies by fee increases. That is, in my
14 opinion, made necessary by the Legislature
15 which foolishly, in my opinion, set such a
16 high standard for revenue increases. I
17 think it would be advisable to put some
18 more pressure on the Legislature to reverse
19 themselves concerning that, so that fee
20 increases won't be necessary for the DEQ to
21 get its adequate funding. That's a poor
22 way to go about it.

23 However, given the current situation
24 and the Legislature having not changed in
25 its mind, I want the DEQ to have adequate

1 funding; the funding that it needs to
2 operate.

3 I see the DEQ as the average
4 citizen's friend and protector and they
5 need to be adequately funded. Therefore,
6 even if it means fewer dollars in my
7 royalty checks from Chesapeake or El Paso,
8 I am in favor of adequate funding. If fees
9 are the only way this Board can go about
10 getting their funding, then I'm for it.

11 Hopefully, we will get an
12 environmentally friendlier Congress in
13 January of 2009, and perhaps something can
14 be done at the federal level, as well, for
15 your funding. I might note that the
16 companies that send me a check every month,
17 have recorded the highest profits ever.
18 They are not hurting. DEQ needs its
19 funding. Thank you.

20 MS. BOTCHLET-SMITH: Angie, did
21 you wish to comment?

22 MS. BURCKHALTER: Yes.

23 MS. BOTCHLET-SMITH: Could you
24 please come to the podium?

25 MS. BURCKHALTER: My name is

1 Angie Burckhalter, and I represent the
2 Independent Petroleum Association. On
3 behalf of our membership, I appreciate the
4 opportunity to give my comments DEQ's
5 proposed fee increase. And as you know, I
6 have submitted my comments to you in
7 writing.

8 Over the past two fiscal years, our
9 industries provided over two billion
10 dollars to the state through gross
11 production tax alone. This does not
12 include any of the additional taxes that go
13 along with corporate or other taxes that
14 individuals may pay that are associated
15 with those companies.

16 We understand the Agency's funding
17 needs, however we see DEQ's fee increase as
18 an additional tax on our industry, when we
19 feel like that we are already paying a
20 significant portion of the state's budget.

21 In specific, we're very concerned
22 about the proposed fee increases for the
23 minor sources, as well as the automatic
24 increase based on the Consumer Price Index.

25 I don't have a clear understanding

1 of how much it takes the Air Quality
2 Division to manage minor sources. But we
3 feel like these are less complex sources
4 and, therefore, should take less time to
5 manage.

6 In regard to the proposed automatic
7 fee increase associated with the CPI, I
8 don't see how that takes into consideration
9 any type of future technologies, whether it
10 be IT, or other things, or other
11 efficiencies that the Air Quality Division
12 might enact, that would make managing the
13 sources more effective.

14 We urge the Council to carefully
15 evaluate the true cost to manage minor air
16 sources, where DEQ's minor source proposed
17 fee increases are appropriate, and if all
18 the opportunities for the funding sources
19 have been evaluated, pursued, and
20 exhausted.

21 With that being said, though, you
22 know, I will go back to our management and
23 see if there are any opportunities to
24 potentially help try to seek funding out at
25 the Legislature. You know, I think there

1 are some areas that we might be able to
2 work on that we might be able to help.
3 Again, think you for your time.

4 MS. BOTCHLET-SMITH: I don't have
5 any other comment forms and I don't see
6 anyone's hands up, David.

7 One thing I might want to just
8 mention, though, we've had a lot of
9 questions about the CPI and the concerns
10 about it being an automatic increase. We
11 rely on information from the Bureau of
12 Labor Statistics, they're the ones that
13 justify what that increase would be. We've
14 already looked at what that increase would
15 be for the bills that would go out in July,
16 and it's a two percent increase. I don't
17 have the historical values with me, but
18 over the last five or six years, I feel
19 pretty confident saying we haven't had
20 years when it's been much over three
21 percent.

22 I've got to say that when we
23 calculated it or when we looked at what the
24 BLS calculated as the CPI for this past
25 year that we would apply, we were surprised

1 that it was only two percent. Actually,
2 it's 1.97 percent. But even in this time
3 of good economy, a two percent increase
4 does not keep pace with the 25 percent
5 increase we've had in our mobile costs; our
6 travel, our fuel, for getting out and doing
7 business. And it hasn't kept pace with our
8 increases for insurance and our increases
9 for retirement, and those are mandated
10 increases from the Legislature that have
11 not been fully funded. So, there is a
12 little bit of an inequity there.

13 We presented information at a
14 previous meeting regarding the actual
15 percent increases, and if you all need to
16 see that again, we can pull that out for
17 you.

18 MR. TERRILL: Let me just briefly
19 comment on the two commenters. I'm not
20 sure what we're going to be able to
21 provide, even next month to address EFO's
22 comment about showing the reasonableness of
23 operating a permit program. We already
24 have our time and effort data that shows
25 the amount of time we're spending on Title

1 V sources and the imbalance of what we're
2 spending relative to Title V and Non-Title
3 V. We've also got the data that shows that
4 the increases that we are asking for can be
5 directly tied back to other cuts.

6 So, from looking at going back and
7 doing the same type of study that was done
8 when Title V was enacted, we can do that
9 but that's going to take some money and
10 it's going to take a while to do it. I
11 hope that everybody understands that you
12 may not like what you find. You may find
13 out that you've had a bargain for the last
14 ten years and the fee should be \$40 a ton.
15 And if we're going to go down that road,
16 I'm willing to live with it but I hope you
17 all are, too. But that's still not going
18 to address our short-term. I mean we
19 really do have a shortfall that we're going
20 to have to deal with. And if we -- going
21 in with the hope that we're going to get it
22 from the Legislature, that's fine. I mean,
23 if that's what the Council wants to do, we
24 will do the best we can to make that work.
25 And then we'll take whatever budget we have

1 to deal with coming out the other end and
2 make it work for year, but I'm telling you
3 right now I will be sending a letter to EPA
4 if we cannot fund our program to the level
5 that we need to retain our staff. We're
6 not going to accept anymore delegations of
7 any more programs, and that's just the way
8 it is. I mean, that's not a threat, that's
9 just what's going to have to happen.

10 Because EPA needs to understand that we're
11 not going to accept any more work. And we
12 may have to send some things back, I don't
13 know. It's just real hard to say where we
14 would be with so many unknowns in the
15 session, so I want to make it clear that
16 we're not at all opposed to addressing the
17 issues that's raised by EFO, but we are not
18 going to be able to do that between now and
19 February, if we continue this to February.

20 The other thing that Angie raises,
21 is that is the issue that I was talking
22 about that at some point needs to be
23 addressed, because we've gone from the
24 Title V sources funding more than their
25 fair share to now the other way around to

1 where the Non-Title V sources are funding
2 more than they probably ought to.

3 Again, I don't know how you deal
4 with that other than just say it's just got
5 to be based on how we code our time.
6 Because what you all feel like may be
7 important to be done, may not be what we
8 think is important to be done. At the end
9 of the day, we've got to meet our
10 obligations to our citizens and to our
11 grant on what we need to be done. And
12 however we get that money, there's no way I
13 can balance that and make it equitable.
14 It's always going to be somebody's going to
15 have to bear an unfair share until there's
16 another way to figure out how to fund this
17 or we fund it totally through
18 appropriations and get away from fees
19 altogether.

20 But that is a discussion that I
21 don't think we can have before we have to
22 make a decision for the budget year coming
23 up. But it is something I think we need to
24 have. And one thing that I was going to
25 suggest, and I think someone made a

1 suggestion at looking at outside-the-box
2 ways to fund our program long-term.

3 I think we do need to take a look at
4 that and maybe have an informal discussion
5 with the Council, maybe in Broken Bow, as
6 to how we would look at this and maybe a
7 philosophical way to go about doing this
8 long-term and into the future. But short-
9 term, we are not going to be able to
10 address that. And I've got a real
11 shortfall that we are going to have to deal
12 with, one way or the other, and that's what
13 we will do.

14 Also, I'd really prefer not to, if
15 we continue this to February, not to look
16 at raising permit fees on this particular
17 round, I'd really like to save that until
18 we've had an opportunity to look at that
19 part of the overall holistic picture of
20 funding. But if the Council wants us to do
21 that, we can, but I really prefer just to
22 deal with this in the context of minor and
23 major source operating fees and then we can
24 look at that when we've had time to look at
25 it a little bit more in-depth rather than

1 just across-the-board raising them. But
2 that's just my preference. Obviously,
3 we'll do whatever you all dictate for us to
4 do.

5 MS. BOTCHLET-SMITH: Any other
6 questions from the Council?

7 MR. BRANECKY: I had one other
8 point, and it's a procedural point that I
9 needed to get clarified.

10 There's a comment submitted on
11 5-2.2 and the Department said that it was
12 not -- it's outside the scope of the
13 proposal. But wasn't 5-2.2 noticed as
14 being up for consideration, and so that
15 whole -- even though that didn't have
16 anything to do specifically with fee
17 increases, that whole section was open for
18 consideration?

19 In our packet we have this section
20 that the comment was referring to. I want
21 to try to understand so that next time
22 that's --

23 MR. PAQUE: That section is
24 noticed.

25 MR. BRANECKY: So it's open for

1 comments?

2 MR. PAQUE: Well, I think it's a
3 question of the noticed language. You have
4 to describe what the rulemaking matter
5 entails and was there enough notice that
6 that provision of rule is being changed.
7 In the section it was noticed that it was
8 opened for comment, but in the rule
9 description it was a little vague about --
10 increasing the annual operating fees, I
11 don't know if it gets too much more
12 detailed than that, the language part of it
13 anyway.

14 MR. BRANECKY: So, even if you
15 noticed it, 5-2.2 is open for comment,
16 you're only allowed to comment on what DEQ
17 is proposing to change?

18 MR. PAQUE: Yeah, the public has
19 to have notice of what the proposal is and
20 I think some of those comments were a
21 little bit off for just increasing the
22 annual operating fee.

23 MR. BRANECKY: Right. But they
24 were within 5-2.2.

25 MR. PAQUE: They were in that

1 section, yes.

2 MS. BRADLEY: I think David, in
3 this particular case, normally, we have
4 three months before we bring it back to the
5 Council for consideration, because we have
6 the February meeting and the notice was
7 already published and the proposed rule was
8 already out for review. We did question
9 whether the notice would be sufficient to
10 expand the scope to include something that
11 was not specifically listed in the notice
12 itself, and for which the public would not
13 have had 30 days time to comment. So, it
14 really is the back-to-back meeting
15 situation that made us -- well, let's not
16 say made us, but we felt was prudent at
17 this time so that we wouldn't call and
18 question any of the changes that might be
19 approved by the Council. Under normal
20 circumstances, we would have come back to
21 the Council with a different proposal, and
22 a different time schedule.

23 MS. MYERS: I guess I thought
24 that once the rule was open for a section,
25 if it was open at all, that it was open for

1 discussion.

2 MR. BRANECKY: We can make
3 changes today, can't we?

4 MR. PAQUE: You can't make
5 changes. You have to read the notice and
6 make a decision of whether or not the
7 notice described to the public what was
8 being changed. So, you'll just have to
9 read the notice that's in the packet --
10 read it and make a decision, did the notice
11 contemplate that change. I mean, you can
12 say the section is open but you still have
13 to describe to the public, 30 days ahead of
14 time, what you're going to do.

15 MR. BRANECKY: Okay. Any other
16 discussion from the Council on this?

17 MR. HAUGHT: I've got a question.
18 Beverly, either you or Eddie, made a
19 comment about preferring not to address the
20 change in the permitting fees as part of
21 this increase. Can you address how you, I
22 guess, plan to -- where you include the
23 permitting priority-wise in these fee
24 expenditures for Title V and Non-Title V's.
25 I mean, things are tight. I mean, one of

1 the concerns is where those dollars are
2 going.

3 The longer the permits take to
4 process and -- from the industries'
5 standpoint it creates some loss of business
6 opportunity waiting on those things. So,
7 there is a significant interest in that
8 split between permitting -- with allocation
9 goes permitting and then compliance and
10 enforcement and the other services that are
11 there. So, where do we stand, and if we
12 don't address the permitting fees, is the
13 permitting section likely to get
14 shortchanged in this?

15 MR. TERRILL: Oh, I see. I
16 couldn't follow your question. I see your
17 question now. I really didn't see where
18 you were going till the end.

19 No, it's really a matter of trying
20 to figure out what is fair. Because I
21 think the plus we've had in the past was
22 that we were trying to keep our actual
23 permitting fees down as low as possible to
24 encourage folks to come in and make changes
25 and new businesses come in while they were

1 getting started. And we really fund the
2 program through grants, and Title V, and
3 minor source, and then other sources from
4 the Legislature. But as far as what we --
5 the way that the money is allocated, it's
6 really allocated toward our staff. That's
7 where the bulk of what we're asking for --
8 in fact, all of what we're asking for is
9 directed towards what we're paying our
10 folks and the staff that we hire.
11 Beverly's got here it's a 90/10 split; 90
12 percent goes towards personnel, and 10
13 percent to the rest of it. So, it's really
14 a matter of whether or not -- you're issue
15 would be whether or not we were able to
16 retain and keep good permit engineers in
17 order to get the work turned around and out
18 the door.

19 MR. HAUGHT: You're talking about
20 carrying a certain amount of vacancies as
21 one of the things you do for the budget.
22 Well, you have discretion over which
23 departments those vacancies may be in.

24 MR. TERRILL: Actually, that's --
25 the reason we carry them, we can't fill

1 them. We did that this year deliberately
2 because we knew we were going to have a
3 shortfall and we had to rely on not filling
4 some of those positions. But, really,
5 right now we're running, at least in the
6 permitting section, that's not where we got
7 our biggest issues. We've got a couple
8 openings there, but we are really able to
9 get our --the work, we don't seem to have
10 an indication that we're not getting the
11 work turned around in the time frame that
12 is acceptable. I mean, there may be some
13 instances where things come up that they
14 don't get out quite as quickly but overall
15 we're meeting and exceeding our targets.

16 I don't see us shifting around
17 resources, unless we have to make some
18 decisions about if we really do have a
19 shortfall that we don't address, and we
20 have to look at personnel, then we'll have
21 to go through the process that we would
22 normally go through as a state agency to
23 look at RIF's or whatever we would have to
24 do, and then we would adjust personnel at
25 that point to get the things done that I

1 think are the priority items within the
2 Division.

3 And at that point, we could shift
4 permit engineers around doing other things.
5 But I don't see that as happening. I don't
6 think that is an issue right now. And
7 really it's not going to impact whether or
8 not we look at increasing permit fees or
9 not.

10 My only thought about the permit
11 fees were that we really -- if we're going
12 to do this, why not just do 100 percent
13 across-the-board increase. We ought to
14 think about why is this important to raise
15 and what do we want to get out of it. And
16 maybe we should look at other things, such
17 as a permit inspection fee. To get at what
18 Angie was saying, maybe we need to start
19 looking at a way that we start feeling
20 industry for the amount of time that we
21 spend with them.

22 You know, I don't know but there
23 would be a lot of -- there's a lot of
24 things you have to think about going into
25 that.

1 Just like we've had some suggestions
2 in the past that we should charge so much
3 money per hour -- from our engineers
4 charging per hour-type rate. Well, we've
5 got some engineers that can crank out the
6 same amount of work in an hour that might
7 take one of our younger folks or less
8 skilled people, it might take them four
9 hours. And who is to say who gets that
10 person that can do the same amount in one
11 hour as four of them.

12 But we try to fix that through our
13 process where we evaluate our staff and
14 require minimum standards from them. But
15 at the end of the day, it's just like any
16 other business, you're going to have some
17 folks that do a better job than others.
18 And how do you see where those resources
19 are allocated, who gets to use those slower
20 folks and who doesn't?

21 So, really your question is not --
22 there's no real concern about the permit
23 folks not getting their money if we don't
24 do that. It's just a matter of us taking a
25 look at it and having a better way to make

1 the proposal that we're going to be able to
2 put together in the next month.

3 And that would be what I would think
4 we would do informally over the next nine
5 months is to start looking at a variety of
6 things, and just have an informal
7 discussion with you all about scenarios and
8 looking out into the future about how we
9 deal with an unfunded program.

10 MR. BRANECKY: I think we've come
11 to a point where we need to make a decision
12 on what we want to do. I guess, what I see
13 our options are, someone can make a motion
14 to reject this, we can make a motion to
15 accept it as proposed, or we can continue
16 this until our next special meeting which
17 is scheduled for February 5th and address
18 it then.

19 MR. PURKAPLE: Is it still
20 staff's recommendations to carry it over to
21 February?

22 MR. BRANECKY: Staff recommended
23 February 5th.

24 MR. HAUGHT: If you do carry over
25 --

1 MR. PAQUE: One point I'd make is
2 that you can't propose a fee increase, the
3 Board can't consider fee increases unless
4 the Legislative Session is ongoing. And
5 the only Board meeting during the session
6 is February 29th. And February 5th is the
7 last day we can consider rulemaking to take
8 to the Board.

9 MR. BRANECKY: Okay. The last
10 chance.

11 MR. TERRILL: And if you are
12 going to carry it over, it will be helpful
13 if we had some direction as to anything
14 else that you wanted to see, and
15 specifically, if you want us to continue
16 and bring back the issue with raising the
17 permit fees across-the-board. We're fine
18 with that if that's what you want to do. I
19 would prefer not but if that's what you
20 want, we'll be glad to do that. I just
21 want some direction so that we'll be
22 prepared.

23 MR. BRANECKY: So, we're at that
24 point.

25 MR. HAUGHT: I'll move that we

1 carry this over to the February 5th Council
2 Meeting.

3 MR. BRANECKY: Any special
4 directions for DEQ to bring back to us at
5 the 5th meeting, would you like to see
6 anything beyond what we had before us
7 today?

8 MR. TERRILL: Specifically, let
9 me ask if you all would like to see -- we
10 had language prepared that we were going to
11 circulate if we needed to, that would allow
12 us to take the fee up to a certain point so
13 that we could look at and also reduce it,
14 so that we can look at other funding that
15 might become available during legislative
16 sessions. We can bring that language so
17 you guys can consider it. And it would
18 kind of go to what EFO has said. If you
19 all were able to give us a certain amount
20 of money but then the legislative session,
21 the mobile sources avenue was to be
22 successful, then we may have more money
23 coming in than we would want at that point
24 and we wouldn't have the ability to reduce
25 it. So, we probably need to have that

1 language so you all can see it so we can
2 reduce that amount by whatever we get
3 either from a federal source, or from a
4 state source, or whatever. Because, again,
5 I don't want to carry a balance over into
6 the legislative session the next year. So,
7 we probably need the ability to do that and
8 I think that makes it a little more
9 palpable to the fee payers if they see
10 there is a mechanism in there where there
11 can be a lower fee than what is specified
12 by rule.

13 MR. BRANECKY: Okay. Do you want
14 to amend your motion? Restate your motion?

15 MR. HAUGHT: Yes. I'll restate
16 the motion to carry this over to the
17 February 5th meeting and request that DEQ
18 bring a proposal to allow modification or
19 reduction of a fee, based on other income
20 sources that may become available.

21 MR. PURKAPLE: Second.

22 MR. BRANECKY: Any further
23 discussion from the Council? Was there any
24 desire for a permit application fee
25 increase to be brought to us in February,

1 that was discussed today?

2

3

(Discussion)

4

MR. BRANECKY: I've got a motion

5

and a second.

6

Myrna.

7

MS. BRUCE: Gary Martin.

8

MR. MARTIN: Yes.

9

MS. BRUCE: Jim Haught.

10

MR. HAUGHT: Yes.

11

MS. BRUCE: Laura Lodes.

12

MR. LODES: Yes.

13

MS. BRUCE: Bob Lynch.

14

DR. LYNCH: Yes.

15

MS. BRUCE: Rick Treeman.

16

MR. TREEMAN: Yes.

17

MS. BRUCE: Sharon Myers.

18

MS. MYERS: Yes.

19

MS. BRUCE: Jerry Purkaple.

20

MR. PURKAPLE: Yes.

21

MS. BRUCE: David Branecky.

22

MR. BRANECKY: Yes.

23

MS. BRUCE: Motion passed.

24

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1 (Discussion of the time and place of the
2 February 5th meeting)

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4 (Item 5E Concluded)

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