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**SUMMARY OF COMMENTS AND STAFF RESPONSES  
FOR PROPOSED NEW SUBCHAPTER 42**

It should be noted that the proposed Subchapter 42 went through many changes in form from the date it was originally proposed. Because of the changes made to the rule, some of the comments and responses thereto may no longer be relevant.

**COMMENTS RECEIVED PRIOR TO OR AT THE  
JULY 21, 2004, AIR QUALITY COUNCIL MEETING**

**Written Comment**

OG&E – E-mail received from Julia Bevers dated June 17, 2004

1. **COMMENT:** Ms. Bevers was unable to find the reference “Federal Monitoring Guidelines, (EPA-450/4-87-004)” listed in 252:100-42-50(1) on the EPA home page.

**RESPONSE:** There was a typo in the reference. Section 252:100-42-50 has been renumbered 252:100-42-30 and the reference for risk assessment and monitoring methods in paragraph 252:100-42-30(d)(1) has been changed.

2. **COMMENT:** Ms. Bevers pointed out that citation of OAC 252:100-45 in 252:100-42-50(a) should be OAC 252:100-43 since the requirements in Subchapter 45 have been revoked or moved to Subchapter 43.

**RESPONSE:** Section 252:100-42-50 has been renumbered 252:100-42-30 and the reference to Subchapter 45 has been changed to Subchapter 43 in paragraph 42-30(d)(1).

3. **COMMENT:** Ms. Bevers pointed out that the reference “252:100-8-45(e)” contained in 252:100-42-50(2)(A) does not exist.

**RESPONSE:** Section 252:100-42-50 has been renumbered 252:100-42-30 and the reference in subparagraph 252:100-42-30(d)(2)(A) has been corrected to 252:100-8-35(e).

Trinity Consultants comments from letter dated July 7, 2004, signed by Donald C. Whitney, P.E., Project Manager

4. **COMMENT:** Mr. Whitney stated that “Ambient air concentration standard” or “AACS” should be defined in 252:100-42-2 and “Area of Concern” should refer to “...having exceeded an AACS.” He also stated that “Toxic Air Contaminant” would seem to be an obsolete term with the introduction of “TAP” and should be deleted.

**DRAFT**

**RESPONSE:** There have been some changes in terminology since the rule was first proposed. This was done so that the terminology in the rule will match the terminology in the Statute. “Toxic air pollutant” or “TAP” has been replaced with “toxic air contaminant” or “TAC” and “ambient air concentration standards” or “AACS” has been replaced by “maximum acceptable ambient concentration” or “MAAC”. The definition of “Area of concern” now refers to “...having exceeded a TAC MAAC.” These terms are defined in 252:100-42-2.

5. **COMMENT:** Mr. Whitney asked if the Department planned to have Appendix O completed to go through the rulemaking process at the same time as Subchapter 42.

**RESPONSE:** When Subchapter 42 was first proposed, the Department was seeking to determine if such an approach would be acceptable to industry and the public. The list for Appendix O was not included when the rule was first proposed so that the Department could receive comments on the concept and not on which substances would be on the list. The list is now available in Appendix O. The list has been compiled scientifically and is based on effect of the substance on human health. It will go through the rulemaking process at the same time as Subchapter 42.

6. **COMMENT:** Mr. Whitney asked that exemptions for small quantity “de minimis” emissions that are currently in Subchapter 41 be retained in some form in the new rule.

**RESPONSE:** Since facilities will not be required to comply with the TAC MAAC until an AOC has been designated, the Department does not see the need for a “de minimis” exemption level. The level of emissions that might be considered de minimis for one TAC may not be appropriate for other TAC, therefore, the Department has not provided an exclusion de minimis level. The compliance strategies will set emission threshold if merited (see 252:100-31(b)(1)(B)). The strategy that will apply to any stationary source or emission unit will take into account emission levels and costs, etc. in determining what control, if any, will apply to the stationary sources that impact the AOC.

7. **COMMENT:** Mr. Whitney suggested that ambient concentration levels (MAAC) should be based on a scientific evaluation of human health risk.

**RESPONSE:** The Department used EPA’s IRIS database for toxicity information for the initial TAC MAAC list in Appendix O. Future additions to the list would use this or similar information. It is the Department’s intention to use widely accepted, peer reviewed scientific based information in determining what substances to place on the TAC list and for determining the MAAC for each TAC. It is not our intent to set levels of toxicity as qualifiers for the list. The list of TAC MAAC is part of the rule as Appendix O and will undergo rulemaking

## DRAFT

and be available for comment from industry and the public. The basis for including a substance and setting its MAAC are part of the background data presented at the Council Meeting. Website addresses are available for these documents. Any modification to the list must also go through the DEQ rulemaking process. Since each TAC and MAAC will go through rulemaking, it is not necessary for the rule to contain extensive detail regarding the methods for determining if a substance is a TAC and what its MAAC will be. This information will be part of the rulemaking package.

8. **COMMENT:** Mr. Whitney stated that exemptions for facilities subject to the Federal NESHAP standards should be retained in the new rule.

**RESPONSE:** Subparagraph 252:100-42-31(a)(3) allows for the exemption of a stationary source or an emissions unit if it is subject to a final emission standard, work practice, or other requirement to control emissions of a TAC promulgated under Sections 112(d) and 129 of the Federal Clean Air Act, or OAC 252:100-17, Parts 5, 7, and 9. It is the Department's position that, in the event an AOC is designated, all units emitting the TAC for which the AOC was designated, that impact the AOC and that do not have any actual controls for that TAC (including work practice and materials substitution) should be considered in the compliance strategy phase. See response to comment 21.

9. **COMMENT:** Mr. Whitney suggested that to clarify the extent of the rule, language should be added to 252:100-42-52(a)(2) stating that exemptions stated elsewhere in OAC 252:100 shall not prevent the consideration of such sources for study and control measures.

**RESPONSE:** Paragraph 252:100-42-52(a)(2) is now 252:100-42-31(b)(1). The Department does not agree that the suggested language is necessary.

Koch Hydrocarbon LP comments from letter dated July 14, 2004, signed by Randall R. Kooiman, Plant Manager, KHLP/Medford

10. **COMMENT:** Mr. Kooiman stated that the proposed Subchapter 42 in its present form was essentially an outline of a regulatory concept, lacking specific content necessary for implementation, which limits and/or precludes industry review and comment concerning the potential impact of the proposed rule. This is especially true since Appendix O did not list the TAP and relevant AACS.

**RESPONSE:** Additional material has been added to Subchapter 42 and the TAC MAAC list is now included in Appendix O. See the Response to Comment 5.

11. **COMMENT:** Mr. Kooiman suggested that AACS should be individually defined and the procedure and background data for determining an individual AACS and the finding of "significant risk" be set forth in that definition. He also pointed out that the definition of "Area of concern" in 252:100-42-2 should refer to "...having exceeded an AACS" rather than "...having exceeded a TAP". He

## DRAFT

stated that the definition of “Toxic air pollutant” or “TAP” should reference the method and/or criteria which will be used by the DEQ to determine whether a particular substance is toxic to human health.

**RESPONSE:** See the Responses to Comments 4 and 7.

12. **COMMENT:** Mr. Kooiman asked how DEQ proposes to implement Subchapter 42 once it becomes effective and if existing sources will be granted a specified period of time to comply or will compliance be required immediately.

**RESPONSE:** The rule does not require any action from a facility until an AOC has been designated. Before a designation becomes final, the Department will publish a notice of the designation and hold a public meeting. After the designation becomes final, the Department will determine appropriate compliance strategies and notify the public of these strategies. During this strategy phase the question of how much time facilities should be allowed to comply with the strategy will be addressed.

13. **COMMENT:** Mr. Kooiman stated that Subchapter 42 should contain provisions which exempt “de minimis” sources.

**RESPONSE:** See the Response to Comment 6.

14. **COMMENT:** Mr. Kooiman requested the exemption in 252:100-42-3 be amended to exempt all TAP sources which are already adequately regulated under an existing MACT (regardless of whether the TAP emissions are subject to an equipment requirements, work practice requirement, or other requirement in the federal Standard).

**RESPONSE:** See the Response to Comment 8.

15. **COMMENT:** Mr. Kooiman asked if the new Subchapters 41 and 42 will be submitted to EPA for adoption as part of Oklahoma’s State Implementation Plan (SIP).

**RESPONSE:** The Department plans to submit new Subchapter 42 to EPA as a SIP change.

16. **COMMENT:** Mr. Kooiman asked what impact will Subchapter 42 have regarding existing Title V sources under Subchapter 8 that have TAP emission sources that were previously classified as either “Insignificant Activities” or “Trivial Activities”?

**RESPONSE:** Since facilities will not be subject to the TAC MAAC unless they are located in or impact a designated AOC, the rule will have no effect on Title V

**DRAFT**

permits until an AOC is designated. In the event that an AOC is designated, permit requirements will be determined during the compliance strategy phase.

17. **COMMENT:** Mr. Kooiman stated that proposed 252:100-42-52(b)(5) does not appear to be relevant or applicable as Subchapter 42 does not provide for or specifically authorize “de minimis status” and/or “permit exempt status”.

**RESPONSE:** Section 252:100-42-52 has been renumbered 252:100-42-31. Paragraph 252:100-42-31(b)(3) states that the Department may require facilities that emit the AOC TAC and that impact the AOC to obtain permits or to modify existing permits. The need for permits will be determined during the compliance strategy phase. Subchapter 7 provides for de minimis facilities and for permit exempt facilities based on emission rates. The designation of an AOC does not automatically remove facilities that impact the AOC from these two categories. Rulemaking would be required before a facility that qualifies as de minimis or permit exempt could be required to obtain a permit.

18. **COMMENT:** Mr. Kooiman requested that the Department specify in 252:100-42-52(a)(1) the basis and factors that will be considered for determining the control measures to be required (such as energy, environmental, health risk, costs, economic impacts, availability of technically feasible control, etc.).

**RESPONSE:** Paragraph 252:100-42-31(b)(4) states that as an AOC compliance strategy, the Department may propose control measures, work practice standards, control equipment requirements, material substitution requirements, or stack emissions standards and that when considering such measures the Department shall consider the impact of any emissions from mobile, non-road, or biogenic sources, and the availability, feasibility, and cost of the measures.

19. **COMMENT:** Mr. Kooiman stated that paragraph 252:100-42-52(b)(1) which specifies when facility owners/operators will be required to perform ambient air modeling and/or monitoring for a specific TAP appears to contain inconsistent provisions and asked for clarification.

**RESPONSE:** 252:100-42-31(b)(6) states that as an AOC Compliance Strategy, the Department may require owners or operators of applicable stationary sources to perform ambient air monitoring and/or modeling for the TAC of concern. The Department already has the authority to require monitoring or modeling from the owners or operators of stationary facilities located in the State.

20. **COMMENT:** Mr. Kooiman pointed out that the escalating costs of modeling and monitoring during today’s depressed economic state will likely create additional economic hardships for the regulated community and may reduce the cost competitiveness of our in-state industry in comparison to neighboring states. He suggested that the DEQ should be primarily responsible for performing

## DRAFT

necessary modeling/monitoring, and if the DEQ designates an area as an AOC, then industry would be requested to perform additional modeling/monitoring.

**RESPONSE:** Subparagraph 252:100-42-30(a)(3)(A) states that the Department is responsible for any monitoring and modeling required to designate an AOC and determine its boundaries. After an AOC has been designated, DEQ may perform monitoring or modeling to determine what type of controls will result in bringing the AOC into compliance with the MAAC, however, paragraph 252:100-42-31(b)(6) allows the Department to require facilities impacting the AOC to perform such monitoring and/or modeling, if necessary, during the compliance strategy phase. The Department already has the authority to require monitoring or modeling from the owners or operators of stationary facilities located in the State.

### Oral Comments Made at the 7/21/04 Air Quality Council Meeting

21. **COMMENT:** Ms. Julia Bevers, OG&E, asked if Subchapter 42 is intended to regulate any of the HAP?

**RESPONSE:** Some of the substances on the TAC MAAC list are also HAP. In the event an AOC is designated for a TAC that is also HAP, standards and requirements may be made for the facilities' emitting units that emit that TAC. However, if the emitting units in a facility are subject to actual requirements or standards contained in a MACT standard for that TAC, those emitting units will not be subject to Subchapter 42. It is not the Department's intent for an emitting unit to be subject to an actual requirement for a particular HAP in a MACT and also subject to the requirements of Subchapter 42 for that same substance that also happens to be a TAC.

22. **COMMENT:** Mr. Kirk Rutter, Boeing Company in Tulsa, asked that if Subchapter 42 passes, when it becomes effective would Boeing be able to immediately open and revise its Title V permit to remove onerous requirements necessitated by Part 5 of Subchapter 41.

**RESPONSE:** Although the Department has no plans to reopen all Title V permits in response to the new Subchapter 42 or the revision to Subchapter 41, Section 252:100-42-4 allows the owner or operator of a facility to request the Director to approve a modification to the facility or to the operation of the facility. Therefore, Boeing could request a modification to its Title V permit.

### WRITTEN COMMENTS RECEIVED PRIOR TO THE OCTOBER 20, 2004 AQC MEETING

OG&E comments from letter dated October 13, 2004, signed by Julia Bevers, CIH, Senior Industrial Hygienist

**DRAFT**

23. **COMMENT:** Ms. Bevers pointed out that there is no definition in this rule, or in any other Oklahoma air quality rule, for the term “ambient air concentration standard” (AACS).

**RESPONSE:** See the Responses to Comment 4.

24. **COMMENT:** Ms. Bevers stated that since the AACS will be a 24-hour ceiling limit, a concept upon which the MAAC is based, it is difficult to reconcile the short-term concept with the proposed use of lifetime risk levels to guide decisions about establishing AACS.

**RESPONSE:** The Department is basing the initial proposed MAAC on the IRIS lifetime values but is not relating them to lifetime risk.

25. **COMMENT:** Ms. Bevers expressed concern that comparing a single day of monitoring results to exposure limits based on lifetime exposure risk levels, especially for carcinogens, may result in heightened and unnecessary public fear, be harmful to property values, and increase other concerns that are disproportionate to the actual risk. She also asked that TAP concentrations measured or modeled in any geographic area be evaluated in a way that prevents designation of an AOC based upon transient ambient levels.

**RESPONSE:** It is not the Department’s intention to designate an AOC based on one 24-hour reading. 252:100-42-30(a)(3)(D)(i) states that all monitoring methods used by the Department for purposes of Subchapter 42 shall come from Volumes 1 and 2 of the US EPA Air Toxics Risk Assessment (ATRA) Reference Library. The data quality standards in the ATRA will be used to determine the exposure concentrations that will be compared to TAC MAAC.

26. **COMMENT:** Ms. Bevers asked that the rule clarify the entity that will bear the costs for monitoring and/or modeling for both establishing the boundaries of an OAC and determining controls and monitoring after the area is established.

**RESPONSE:** See the Responses to Comments 19 and 20.

27. **COMMENT:** Ms. Bevers while agreeing that public notification is important, asked that a paragraph be added to allow industry to be notified that their facility affects and/or is located in, an AOC at least 30 days prior to public notification to allow industry time to respond and/or investigate.

**RESPONSE:** The notice section is intended to provide notice of an AOC to both individuals and corporate entities in Oklahoma. The Department does not agree that the rule should contain a requirement that industry be notified of an AOC 30 days in advance of the public notice. However, the Department will consult with affected industries in determining that an AOC exists, setting the boundaries of

**DRAFT**

the AOC, and determining what facilities impact the AOC. The Department does not intend to take industry by surprise in designating an AOC.

28. **COMMENT:** Ms. Bevers asked that the applicability of control strategies should provide for exclusion of de minimis emissions and sources, and any source that is subject to a federal MACT standard but is exempt from work practice or other emission controls by the federal standard.

**RESPONSE:** See the Responses to Comments 6, 8, and 21.

29. **COMMENT:** Ms. Bevers felt the statement “impacts an AOC” in 252:100-42-51(a)(1) may not consider the significance of the level of impact of individual sources and asked that a significance level be established to assure sources with the greatest contribution bear the majority of any controls. Any sources that contribute below the significance level should be exempt.

**RESPONSE:** See the Response to Comment 6.

30. **COMMENT:** Ms. Bevers stated that industry must be allowed the opportunity to have input into the development of control strategies. They found the current language in 252:100-42-51(b) to be too subjective in allowing the Department full latitude in determining controls and suggested that the rule specify that any control strategy should be no more stringent than BACT, and should be made part of the SIP.

**RESPONSE:** Subsection 252:100-42-31(a) gives the Department the responsibility for determining AOC Compliance Strategies. While the Department feels that the determination of controls is its responsibility, we will seek industry input in making this determination. Any new requirements or standards arising from the development of the control strategy will go through the rulemaking process. We do not agree that the control strategy should be no more stringent than BACT.

31. **COMMENT:** Ms. Bevers suggested that the use of the term “this Subchapter 42” is redundant and should be changed to “this Subchapter”.

**RESPONSE:** This change has been made.

32. **COMMENT:** Ms. Bevers stated that the term “The Department” is used in several places throughout the rule and in most instances should be replaced by “the Director”.

**RESPONSE:** We believe we have used Director when appropriate and Department when appropriate in Subchapter 42.

**DRAFT**

33. **COMMENT:** Ms. Bevers expressed concern that although Section 252:100-42-4 requires retention of previously taken measures for TAP control unless a modification is approved, it is not clear that this can also include removal of controls.

**RESPONSE:** A modification can include the removal of control equipment; therefore, there is no need to modify Section 252:100-42-4.

34. **COMMENT:** Ms. Bevers felt that paragraph 252:100-42-20(b) seems to specify how the Council and Board are to make their decision on adding or deleting substances from Appendix O and suggested that the first sentence begin with “The Director may recommend substances to be added or removed from the TAP AACS based on...”

**RESPONSE:** This change has been made.

35. **COMMENT:** Ms. Bevers felt the word “acceptable” as used in 252:100-42-20(b)(2) and (4) is too subjective and suggested that it be changed.

**RESPONSE:** Appendix O will establish the acceptable TAC levels and Appendix O will go through rulemaking. This should greatly reduce any subjectivity.

36. **COMMENT:** Regarding 252:100-42-50(a), Ms. Bevers suggested the AOC be first proposed, and then become a final designated area following the 30 day comment/public meeting time period.

**RESPONSE:** This has been done. See 252:100-42-30(a)(1) and (4).

37. **COMMENT:** Regarding 252:100-42-50(b) Ms. Bevers found it unclear how the public will learn the boundaries of an AOC and suggested that it would be helpful to the public to publish the boundaries in the initial legal notice, and include the information on the department website. She suggested wording to accomplish this.

**RESPONSE:** Subsection 252:100-42-30(b) requires the Department to publish notice of the proposed AOC designation. The notice shall include the boundaries and other information associated with the AOC. It also requires that the publication identify locations where information may be reviewed and give the date, time, and place for a public meeting.

38. **COMMENT:** Ms. Bevers stated that while the term “feasibility” is included in paragraph 252:100-42-51(b)(1), the concept of cost and relative contribution of any one contributing stationary source should also be addressed. She suggested the words “including costs” be added.

**DRAFT**

**RESPONSE:** See the Response to Comment 18.

39. **COMMENT:** Regarding subsection 252:1000-42-51(d), Ms. Bevers stated that public notification should be required after a re-designation of an AOC is made.

**RESPONSE:** Subsection 252:100-42-32(b) requires the Department to notify the public after the re-designation of an AOC.

OIPA comments from letter dated October 15, 2004, signed by Angie Burckhalter, Director of Regulatory Affairs

- .40 **COMMENT:** Ms. Burckhalter stated that they were told that ODEQ needed this rule to be able to respond to citizen complaints and asked if the State already had authority to address these types of issues. Title 27A O.S. § 2-5-107.B.2. allows the department to investigate citizen's complaints. Ms. Burckhalter asked for a better understanding of the State's issues, and the need for a State toxic air emission program that is more stringent than the federal requirements. For example, is the state currently experiencing enforcement problems?

**RESPONSE:** The Department needs the authority to address special toxics concerns throughout the State. The proposed rule provides the Department the necessary tools to address toxics concerns while at the same time it reduces regulatory burdens on industry.

41. **COMMENT:** Ms. Burckhalter stated that the term ambient air concentration standard (AACS) needs to be defined in 252:100-41-2.

**RESPONSE:** See the Response to Comment 4.

42. **COMMENT:** Regarding 252:100-42-20(b), Ms. Burckhalter asked how ODEQ will determine the toxicity of a TAP and what data would be used.

**RESPONSE:** See the response to comment 7.

43. **COMMENT:** Ms. Burckhalter asked that the cost of the monitoring requirements be considered if industry is required to conduct monitoring.

**RESPONSE:** See the Responses to Comments 19 and 20.

44. **COMMENT:** Ms. Burckhalter asked that since the decision to add or remove a substance from the TAP list is based on the quantity of substance emitted in Oklahoma, how a threshold quantity would be established for each TAP?

**RESPONSE:** The Department has no plans to set threshold quantities. See the Response to Comment 6.

**DRAFT**

45. **COMMENT:** Ms. Burckhalter stated that the information for determining TAC and MAAC needs to be based on sound science.

**RESPONSE:** See Response to Comment 7.

46. **COMMENT:** Ms. Burckhalter asked that the notice of the designation of an AOC be published in newspapers with state-wide circulation i.e. both the Tulsa and Oklahoma City newspapers since the oil and gas operators of the emission sources that could be impacted by the designation of an AOC may not reside in the in local area.

**RESPONSE:** Paragraph 252:100-42-30(b)(1) has been modified to require that the notice be published on the Department website, in two newspapers circulated statewide, and in one newspaper local to the AOC.

47. **COMMENT:** Ms. Burckhalter noted that the cost impacts to the small business owners of the emission sources should be a consideration in determining control measures, stating that small businesses do not have the resources to implement costly emission control strategies. This would have a great impact on an owner of a “marginal” oil or gas well that operates at the edge of profitability. Ms. Burckhalter recommended that a method whereby Industry could appeal the ODEQ specified control technologies be added to the rule in 252:100-42-51(b) (1).

**RESPONSE:** Subchapter 42 will not cause an impact on any facility until an AOC is designated. After an AOC is designated the Department will determine compliance strategies. Paragraph 252:100-42-31(b)(4) requires the Department to consider the availability, feasibility, and cost of any control measures. The Department is required by subsection 252:100-42-31(c) to notify the public of strategies developed to bring the AOC into compliance with the TAC MAAC. If new standards or requirements are necessary there will be additional rulemaking. This will serve as a method for industry to protest any new control requirements.

48. **COMMENT:** In January 2004, the Air Quality Council approved the “permit exempt facility” rule. Ms. Burckhalter expressed concern that a “permit exempt” facility located within or contributing to an AOC could be pulled back into the permit system contrary to the intent of the permit exempt rule. She also asked that the rule be written to allow small businesses to easily determine if they are subject to the rule and how to comply with it.

**RESPONSE:** See the Response to Comment 17.

49. **COMMENT:** Ms. Burckhalter stated that it appears that ODEQ is considering more stringent toxic air emission standards than it is currently using and asked for the scientific basis for this.

## DRAFT

**RESPONSE:** The new TAC MAAC are lower than the previous ones, but they are not “emission standards”. This is a completely different approach to air toxic regulation so they are not more stringent. The new rule is more focused on problem areas and has fewer statewide applications than the previous rule. The TAC MAAC action levels in Appendix O are based on scientific data and risk factors and are justified in the background data that is part of the formal rulemaking

50. **COMMENT:** Ms. Burckhalter asked how the substances were selected to be placed on the TAC MAAC list in Appendix O and what thresholds were used.

**RESPONSE:** The substances proposed for the initial Appendix O came from several lists, mainly EPA’s Urban Air Toxic list. 252:100-42-20(b)(1) states that the Director may recommend substances to be added to Appendix O based on toxicity of the substance, availability of methods for monitoring the substance at levels deemed acceptable for human health, quantity emitted in Oklahoma, and information indicating that anthropogenic emissions of the substance cause ambient air concentrations to exceed those that have been determined to be acceptable based on health risks. No thresholds were proposed or used.

51. **COMMENT:** Ms. Burckhalter stated that some of the 2002 emission inventories for each substance in Appendix O show zero emissions and asked if this were a rounding error and if not why were these substances placed on the list.

**RESPONSE:** Not all emissions reported on the inventory are broken down into individual substances (e.g. VOC). Therefore, some of the substances on the TAC MAAC list may be zero on past inventories, but the Department’s knowledge of the type of sources in the State leads the Department to believe this is not the case. Some of the substances are also emitted by mobile sources and non-road sources that are not required to submit inventories to the Department.

### Oral Comments at the 10/20/04 Informational Meeting

52. **COMMENT:** Angie Burckhalter, OIPA, expressed the following concerns and questions at the informational meeting.
- A. Is there a time frame for re-evaluating an AOC?
  - B. How long will monitors be in place before an AOC is designated?
  - C. What are the criteria for holding a public meeting?

**RESPONSE:**

- A. There is no specific time frame. The time frame for re-evaluation of an AOC will depend on the specific AOC Compliance Strategy and the time required to enact the strategy. It will also depend on monitored data showing that the area is in compliance. The issue of re-evaluation will be addressed during the compliance strategy phase.

**DRAFT**

- B. There is no specific time frame. It depends upon magnitude of values monitored and available funding.
- C. Subsection 252:100-42-30(c) states that the Department shall schedule and hold a public meeting.

53. **COMMENT:** Kirk Rutter, Boeing, expressed the following concerns and questions.

- A. The rule should state the reason for monitoring an area or what triggers a priority area.
- B. Paragraph 252:100-42-31(a)(3) regarding applicability needs clarification, especially regarding specialty coatings. Boeing has specialty coatings that do not have standards under the aerospace NESHAP. Will the chrome from specialty coatings be subject to Subchapter 42?

**RESPONSE:**

- A. Reasons for monitoring an area have been added to the rule. Paragraph 252:100-42-30(a)(3)(B) states that the decision to monitor in an area will be based on, but not limited to, complaints received from the public, information collected during compliance evaluations, emission inventory data, and EPA reports.
- B. The chromium listed in Appendix O has been limited to hexavalent chromium. If the coating process is not covered by the aerospace NESHAP, the hexavalent chromium emissions from the specialty coatings may be subject to Subchapter 42. This decision will need to be made on a case-by-case basis considering all factors involved.

54. **COMMENT:** Jim Haught, OIPA, expressed the following concerns and questions.

- A. Cost should be addressed in consideration of control measures.
- B. If the only MACT requirement for a source or emitting unit is to keep a record of size, would the source or emitting unit be exempt from Subchapter 42?

**RESPONSE:**

- A. See response to comment 18.
- B. The unit would not be exempt.

55. **COMMENT:** Laura Worther, Benham, expressed the following concerns and questions.

- A. The rule should be modified to clarify requirements after designation of an AOC and before control strategies are in place.
- B. Can controls that were required by Subchapter 41 be removed after Subchapter 42 comes into effect?
- C. How will Subchapter 42 affect 2-cycle lean burn engines that are not subject to MACT, but which may create a formaldehyde problem?

**DRAFT**

**RESPONSE:**

- A. The Department does not foresee any requirements after designation of an AOC and before the compliance strategy is developed. The compliance strategy will set the requirements and the time frame for complying with the requirements. Any new standards or modifications of existing standards will require rulemaking.
- B. Section 252:100-42-4 states that any work practice, material substitution, or control equipment required by the Department prior to June 11, 2004, to control a TAC, shall be retained unless a modification is approved by the Director.
- C. They will be handled the same as any other source. If they impact an AOC for formaldehyde, they will be considered in the compliance strategy.

56. **COMMENT:** Julia Bevers, OG&E, expressed the following concerns and questions.

- A. What impact will the rule have on stationary sources if mobile sources are the main cause of an exceedance of the TAC MAAC?
- B. Paragraph 252:100-42-51(a)(3) applies if the facility is not subject to final emission standard, work practice, or other requirement to control emissions of a TAC promulgated under Sections 112(d) and 129 of the Federal Clean Air Act.
- C. When will the substances be listed on Appendix O? It would good to include the basis for including substances and for setting limits in Appendix O.

**RESPONSE:**

- A. It is impossible to answer this since the impact will vary from one AOC to another. The impact of mobile sources will be investigated, but this does not mean that stationary sources will be allowed to take no action, if control methods are feasible, available and economical.
- B. See Responses to Comments 8 and 21.
- C. Substances and their MAAC have been placed on Appendix O. See the Response to Comment 7.

57. **COMMENT:** Kim Wahree, Benham, asked what the effect would be on the emission inventory and if information about emissions of TAC would need to be reported.

**RESPONSE:** If a facility is required to submit an emissions inventory, the emissions of each TAC emitted by the facility should be reported on the emissions inventory regardless of whether an AOC has been designated.

58. **COMMENT:** David Canning, CHZMHILL/Tinker AFB, expressed the following concerns and questions.

- A. Why are there different levels of standards in Appendix O and when will the rule be finalized?

## DRAFT

B. How will Subchapter 42 mesh with the aerospace MACT?

### RESPONSE:

- A. The different levels were originally included in Appendix O in an attempt to garner comments from the public and industry regarding preferences. It was not intended that two sets of MAAC would remain in the Appendix. The current Appendix O has only one MAAC per TAC.
- B. If a stationary source or an emitting facility is covered by the aerospace MACT and subject to actual requirements (emission standards, work practice standards, control requirements, etc.), it will not be subject to Subchapter 42 if an AOC is designated.

## WRITTEN AND ORAL COMMENTS RECEIVED PRIOR TO AND AT THE DECEMBER 9, 2004 AQC MEETING

### Written Comments

GPA comments from letter dated November 2, 2004, signed by Johnny Dreyer, GPA Director of Industry Affairs

59. **COMMENT:** Mr. Dreyer (representing the Oil and Gas Industry in Oklahoma) expressed his belief that the proposed revisions are an improvement to the existing program as currently promulgated under 252:100-41 and expressed strong support for use of the  $10^{-4}$  risk levels to determine acceptable Ambient Air Concentration Standards (AACS) for Toxic Air Pollutants (TAP). He also suggested there should be some provision or mechanism provided in the rule so that applicable AACS can be updated to reflect the most accurate information available on a timely basis.

**RESPONSE:** The Department is using the current IRIS values to set the initial proposed standards, but those standards are not pegged to the IRIS value. A mechanism for updating the MAAC already exists. The MAAC can be modified through the rulemaking process. The Department may initiate such change or any citizen/entity of the State can file a petition for rulemaking with the Air Quality Council.

60. **COMMENT:** Mr. Dreyer recommends that the DEQ adopt the changes set forth in the OG&E letter of comments dated October 13, 2004.

**RESPONSE:** The Department's response to the comments in the OG&E letter dated October 13, 2004, can be found elsewhere in this document.

61. **COMMENT:** Mr. Dreyer recommended that the process for designating AOC be further defined in the rule so that the process is specifically clear and not open to interpretation.

**DRAFT**

**RESPONSE:** Subsection 252:100-42-30(a)(1)(A) states that before an AOC can be designated, monitoring must demonstrate that the MAAC for a TAC is exceeded in such a way so to endanger the public health. Subsection 252:100-42-30(a)(2)(A) states that the boundaries of an AOC will be determined by monitoring, modeling, or other means approved by the Director and 42-30(a)(2)(B) states that the impact of TAC emissions from stationary, mobile, and biogenic sources shall be considered in determining the boundaries for an AOC.

62. **COMMENT:** Mr. Dreyer asked what triggers monitoring for a pollutant.

**RESPONSE:** A new subparagraph 252:100-42-30(a)(3)(B) has been added which states that the decision to monitor in an area will be based on but not limited to: complaints received from the public; information collected during compliance evaluations; emission inventory data; and EPA reports.

63. **COMMENT:** Mr. Dreyer asked how DEQ will demonstrate that an AACS has been exceeded.

**RESPONSE:** Subparagraph 252:100-42-30(a)(1)(A) states that monitored data will be required to demonstrate that the MAAC for a TAC has been exceeded.

64. **COMMENT:** Mr. Dreyer asked how the boundaries of an AOC will be determined.

**RESPONSE:** Subparagraph 252:100-42-30(a)(2)(A) states that the boundaries of an AOC will be determined by monitoring, modeling, or other means approved by the Director. Political and authority boundaries may also be considered.

65. **COMMENT:** Mr. Dreyer asked how DEQ will demonstrate that an AOC is back in compliance with the AACS?

**RESPONSE:** 252:100-42-32(a) requires the Director to re-designate an AOC as in compliance with the TAC MAAC when compliance is demonstrated through monitoring and/or modeling.

American Airlines comments from letter dated December 2, 2004, signed by Thelma Norman, Senior Engineer

66. **COMMENT:** Ms. Norman stated that all operations subject to any NESHAP incorporated by reference at OAC 252:100-41-15 should be completely exempted from all requirements found at proposed 252:100-42-31.

**RESPONSE:** See the Responses to Comments 8 and 21.

**DRAFT**

67. **COMMENT:** Ms. Norman suggested that the proposed group of chromium compounds MAAC standard should be modified to only address hexavalent chromium compounds.

**RESPONSE:** Appendix O has been modified and for chromium addresses only hexavalent chromium compounds.

68. **COMMENT:** Ms. Norman asked that proposed OAC 252:100-42-31(b) be modified to require rulemaking during each AOC compliance strategy event.

**RESPONSE:** 252:100-42-31(b)(2) states that any new requirements or standards developed for an AOC Compliance Strategy shall be developed in accordance with the rulemaking procedures of the Department.

Terra Nitrogen, Limited Partnership, comments from letter dated December 2, 2004, signed by Jim Schellhorn, Director of Environmental, Health & Safety

69. **COMMENT:** Mr. Schellhorn suggested that emissions of TAC from accidental/catastrophic release be exempted from Subchapter 42. If they are not exempted he asked at what point during the release would an applicable MAAC for an AOC be exceeded and if the facility would be required to determine whether to terminate the release (potentially exposing plant personnel to immediate physical harm and/or damage to the facility) or knowingly and willfully violate an applicable standard established for the AOC. Mr. Schellhorn also asked what would happen if it were impossible to determine the specific emission point at which an accidental or catastrophic release occurred or if there is no available control technology to control the release.

**RESPONSE:** See Response to Comment 107.

70. **COMMENT:** Mr. Schellhorn stated that as currently proposed, 252:100-42-20(b) specifies the factors upon which the Director of the Air Quality Division may recommend substances be added or removed from the TAC MAAC list and asked if to the extend each of the four identified factors are not mutually exclusive, are all four of the identified factors required to be met before a recommendation is made by the Director of the Air Quality Division?

**RESPONSE:** Paragraph 252:100-42-20(b)(1) has been revised to indicate that a substance must meet all the factors in the paragraph before the Director will recommend that the substance be added to the TAC MAAC list in Appendix O.

71. **COMMENT:** Mr. Schellhorn pointed out that the factors applicable to the Director recommending a substance be added versus removed from the TAC MAAC list are different.

**DRAFT**

**RESPONSE:** Section 252:100-42-20(b) has been revised to separate the reasons for recommending a substance be added to the TAC MAC list from the reasons for recommending a substance be removed from the TAC MAC list.

72. **COMMENT:** Mr. Schellhorn stated that as currently proposed 252:100-42-20(c) does not clearly specify whether the initial adoption and subsequent modification and revision of the TAC MAAC list will be subject to formal rulemaking, presented to the Air Quality Council and subject to public review and comment. The commenter recommended that all additions and removals from the TAC MAAC list go through formal rulemaking procedures and recommended language to accomplish this.

**RESPONSE:** See the Responses to Comments 5 and 7.

73. **COMMENT:** Mr. Schellhorn pointed out that with few exceptions, the 24-hour average concentrations for specific carcinogens and Reference Concentration (RfC) in the Appendix O that was attached to the proposed November 1, 2004 Subchapter 42, are significantly below the corresponding MAAC standard currently specified under Subchapter 41. Mr. Schellhorn asked what the basis and/or rationale was for reducing the existing MAAC Standards pursuant to Subchapter 42. He also noted that certain of the potential TAC MAAC standards specified in Appendix O may be unachievable based on existing control technologies and could result in a number of facilities reducing and/or ceasing ongoing operations which have in the past been compliant with the existing Subchapter 41 MAAC Standards. Accordingly, Mr. Schellhorn suggested that Appendix O (as currently drafted) not be included at this time for review and consideration by the Air Quality Council for adoption with Subchapter 42.

**RESPONSE:** See the Response to Comment 49 regarding stringency of the proposed TAC MAAC compared to the current MAAC under Subchapter 41. We do not feel that the Appendix O can be separated from Subchapter 42 for rulemaking purposes.

74. **COMMENT:** Mr. Schellhorn stated that the Director's designation of an AOC pursuant to 252:100-42-30(a) and the DEQ's determination of AOC Compliance Strategies pursuant to 252:100-42-31 should be subject to formal rulemaking presented to the Air Quality Council and subject to public review and comment. Further, the Department's consideration of AOC Compliance Strategies should specifically include economic feasibility as applicable to individual stationary sources.

**RESPONSE:** The Department does not agree that the designation of an AOC should go through formal rulemaking. However, any new standards or requirements stemming from the compliance strategy will go through the formal rulemaking procedures. Although the Department feels that feasibility includes

**DRAFT**

cost, paragraph 252:100-42-31(b)(4) states that cost will be considered in developing the AOC Compliance Strategy.

75. **COMMENT:** Regarding 252:100-42-31(a)(1)(C) Mr. Schellhorn stated that stationary sources or emissions units that are subject to or included within a source category addressed under regulations promulgated pursuant to Sections 112(d) and 129 of the Federal Clean Air Act should not be subject to Subchapter 42 whether or not they are subject to specific requirements.

**RESPONSE:** See responses to comments 8 and 21.

OIPA comments from letter dated December 3, 2004, signed by Angie Burckhalter, Director of Regulatory Affairs

76. **COMMENT:** Ms. Burckhalter stated that although the flow chart states that the toxic air pollutant will be monitored by DEQ, it is not clear in the proposed language under 252:100-42-30(a)(1) who will conduct the initial monitoring.

**RESPONSE:** See the Responses to Comments 19, and 20.

77. **COMMENT:** Ms. Burckhalter repeated her comment regarding public notice. See Comment 46.

**RESPONSE:** See the Response to Comment 46.

78. **COMMENT:** Mrs. Burckhalter found the proposed rule to be unclear as to who would conduct the monitoring, modeling or other means to delineate the boundaries of the AOC. She stated that the AQD should propose the boundaries based on the data it collects and analyzes.

**RESPONSE:** See the Response to Comment 20.

79. **COMMENT:** Ms. Burckhalter stated that the compliance strategies pursuant to 252:100-42-31(a)(1) that will apply to “any” stationary source or emission unit, would be very onerous and costly for small business owners of sources that had very low emissions, and for the DEQ. She recommended that language be added to include the development of de minimis limits for a TAC in an AOC at which additional requirements would not be applicable to such small sources.

**RESPONSE:** 252:100-31(b)(1)(B) states that de minimis emission levels, if appropriate for a particular TAC and a particular AOC, will be determined during the AOC Compliance Strategy phase.

80. **COMMENT:** 252:100-42-31(a)(2) states that operators of facilities located in an AOC are not required to meet the TAC MAAC on site. Ms. Burckhalter asked where the MAAC is required to be met and stated that there should be a defined

**DRAFT**

point or at least a general description of where this is located; otherwise, this is a moving target for industry.

**RESPONSE:** Paragraph 252:100-42-31(b)(5) has been added and states that owners or operators of facilities located in an AOC shall not be required to demonstrate compliance with the TAC MAAC within the boundaries of their facilities. .

81. **COMMENT:** Ms. Burckhalter stated that the proposed language in 252:100-42-31(b) “may” allow implementation of control strategies without a rulemaking and expressed concern that onerous and costly control strategies could be implemented by the DEQ without proper notice to industry and an opportunity to provide input. She requested that DEQ add language to clarify this issue.

**RESPONSE:** See Responses to Comments 30, 47, and 68.

82. **COMMENT:** Ms. Burckhalter stated that the cost of control measures is very important to a small business owner or an owner of a source with very low emissions. Costly control measures would greatly impact an owner of a marginal oil or natural gas well. These types of wells operate at the lower edge of profitability. She recommend that 252:100-42-31(b)(1) be changed to include cost.

**RESPONSE:** See the Responses to Comments 18 and 47.

83. **COMMENT:** Ms. Burckhalter stated that 252:100-42-31(b)(2) allows the AQD to permit TAC sources for which the AOC was designated and adds that it will be especially onerous and costly on small businesses and owners of marginal wells to permit applicable sources with very low emissions. She recommended that a de minimis limit be established at which a permit is not required. The de minimis level exemption should be written to allow small businesses to easily determine if they are subject to the rule and how to comply with it without hiring a consultant to make that determination.

**RESPONSE:** See the Responses to Comments 6 and 17.

84. **COMMENT:** Ms. Burckhalter recommended that any monitoring or modeling be included with the proposed compliance strategy and go through the rulemaking process to allow owners or operators of stationary sources an opportunity to provide input into the process.

**RESPONSE:** This change has not been made. DEQ currently has the authority to require monitoring and modeling and does not think the compliance strategy should go through the rulemaking process. Any new standard or requirement not already in existing AQD rules would have to undergo formal rulemaking process.

## DRAFT

85. **COMMENT:** Ms. Burckhalter expressed concerned that the MAAC standards in Appendix O are more stringent than those currently in place and asked for the scientific basis or need for this. She also expressed agreement with OG&E's comments submitted on October 13, 2004 that state that the comparison of a single day of monitoring results as compared to lifetime exposure risk levels will result in heightened and unnecessary public fear, be harmful to property values, and increase concerns that are disproportionate to the actual risk. She recommended that the existing standards for the listed substances be utilized until the AQD has data in hand that suggests these standards should be lowered.

**RESPONSE:** See the Responses to Comments 24, 25, 52.(B) and 49. The Department has the data in hand to justify the proposed TAC MAAC and, therefore, sees no necessity to delay these standards.

EPA comments from letter dated December 9, 2004, signed by Thomas H. Diggs, Chief, Air Planning Section

- 86 **COMMENT:** Mr. Diggs stated that EPA had no adverse comments on proposed new Appendix O which contains the TAC MAAC list.

### Oral Comments

87. **COMMENT:** Ms. Thelma Norman, American Airlines. Ms. Norman expressed support for the new Subchapter 42, particularly streamlining the rule, making the TAC list part of the rule, and targeting compounds that are a risk to Oklahoma instead of the list of 2000+ compounds.
- 88 **COMMENT:** Ms. Nadine Barton with CASE. Ms. Barton expressed appreciation for the work that the staff had done, but had the following questions and comments.
- A. How were the toxics on the list selected?
  - B. It is difficult for the general public to know the procedures to take in wanting to have a toxic substance added to the TAC MAAC list, let alone doing research regarding risk assessments, etc. People may be out of town when the notice is published in the newspaper and miss that notice. Therefore, I would like to recommend that the State Health Department, the city and county health departments, INCOG and ACOG have a link to the DEQ air quality website that addresses these air issues.
  - C. Do the risk assessments on these toxics take into consideration all areas of the public including children, the elderly, and the sick?
  - D. Can the rule be modified?
  - E. What mobile sources, other than automobiles are there?
  - F. What about mobile burners that travel around on site and burn things?
  - G. When looking at mobile sources did you take into consideration the RCRA available for burning of soils and other stuff that's mobile.

**DRAFT**

- H. I am concerned about the public's access to information. I would like to see on the DEQ website links for the public to be able to access information regarding risk assessment. I would also like to see a copy of the Council packet on the website.
- I. If you leave the word environment in the purpose statement, it is assumed that the environment has been considered in setting the TAC MAAC. I would like to see some kind of amendment to establish the fact that the environment toxins will be addressed by the Council at some future date.

**RESPONSE:**

- A. The process for selection of the 25 candidates for inclusion in Appendix O began with the emissions inventories. In addition we looked at the national air toxics assessment for 1996, consulted with our permitting staff and our enforcement staff, and looked at EPA's urban air toxics list and the HAP list. Then we looked at available information for specific substances to discover if there was a reliable risk number for carcinogens or a reference concentration for noncarcinogens and if there were reliable methodologies for detecting the substance at the MAAC levels.
  - B. DEQ has no objection to any of these agencies adding a link on their website to connect to ours.
  - C. Yes they do.
  - D. Yes, using the Department's rulemaking procedures.
  - E. It is our intent that we would include any fueled vehicle in some fashion: cars, trucks, heavy equipment, buses, and airplanes.
  - F. There have been some in conjunction with RCRA or CERCLA activities. These go through a stringent review under the CERCLA requirements.
  - G. The TAC MAAC is an ambient standard, so it would apply in areas regardless of the source of the emission, provided it's not an act of nature. We will include all sources in the collection of data and apportionment of the emissions;
  - H. The Department makes its best effort to accommodate the public's need and desire for information. All information discussed is available to the public.
  - I. The Department is examining the impacts of making such determinations.
89. **COMMENT:** Jim Schellhorn with Terra Nitrogen stated that Terra Nitrogen favored the creation of Subchapter 42 and its changes to the State air toxic rule, but had the following questions and concerns.
- A. Does the Department plan in the revised version of Subchapter 42 to propose the MAAC standards they would like the Council to consider when they bring this back at the next meeting or will there still be these three options in the appendix?
  - B. Will we have an opportunity to comment on these proposed MAAC standards?
  - C. Some of the proposed TAC MAAC, especially ammonia, are too low. In the case of ammonia, naturally occurring ammonia in the air would exceed the TAC MAAC.

**DRAFT**

**RESPONSE:**

- A. The version of the rule for the January 19, 2005 Air Quality Council meeting will have one recommended standard for each substance.
- B. Yes, you will have an opportunity to comment. There will be a 30 day comment period after the publication of the notice of the January meeting and you may also make comments at the meeting.
- C. DEQ is reviewing available scientific information including monitoring data and actively reevaluating the present stringency levels in appendix O.

90. **COMMENT:** Mr. Steve Moyer with Sinclair Oil

- A. In 252:100-42-31(b)(1), what does the phrase “account for the impacts of any sources” mean, especially when looking at control strategies?
- B. Regarding permits, in a place where there is no AOC, but it is close to an AOC, are there permitting issues in relation to a facility filing for a permit that may impact a potential AOC?
- C. If there is an AOC, how will it affect the time required to receive a permit?
- D. If there is no AOC, there is no impact on permitting, is that right?

**RESPONSE:**

- A. Paragraph 252:100-42-31(b)(1) has been rewritten for clarity. The term “account for” is no longer used in the rule. In developing an AOC Compliance Strategy, the Department will attribute the portion of the pollution load for that pollutant to the appropriate source. As for how reductions will be decided, that involves cost, feasibility, and availability. If in fact it would be cost effective to get some reductions that might be disproportionately greater for industry but that met our cost and feasibility test, we might go to industry to get those reductions.
- B. If a source is outside an AOC, we would have to determine if it impacts the AOC. This would probably be done during the designation phase.
- C. Just because there is an AOC doesn’t mean a permit has to cover or needs to cover that particular toxic. That would be decided during the compliance strategy phase.
- D. That is correct.

**COMMENTS RECEIVED PRIOR TO AND AT THE  
JANUARY 19, 2005 AQC MEETING  
Written Comments**

EPA comments from letter dated January 7, 2005, signed by Carl E. Edlund, P.E., Director, Multimedia Planning and Permitting Division

- 91. **COMMENT:** Mr. Edlund stated that EPA Region 6 had reviewed the proposed Subchapter 42 and expressed support for proposed changes to the State’s air toxics program. He stated that EPA’s strategic plan, which includes a specific objective for reduced risk from toxic air pollutants, calls for working with state

## DRAFT

and local partners to reduce air toxics emissions and implement area-specific approaches to reduce the risk to public health and the environment from these emissions. He further stated that EPA supports states in developing strategies for making local decisions to reduce these risks and that Region 6 found the proposed changes to the State's air toxic program to be consistent with EPA's goals for federal and state air toxics programs.

OG&E comments from letter dated January 12, 2005, signed by Julia Bevers, CIH, Senior Industrial Hygienist

92. **COMMENT:** While agreeing that the public health should be protected by the implementation of control or other strategies to reduce any TAC to levels protective of public health, Ms. Bevers expressed concern about the level of the proposed MAAC for known and/or probable carcinogens.
- A. Ms. Bevers stated that the rationale for the proposed MAAC does not appear to be consistent for all the listed substances and requested that the Department develop a guidance document that includes a written explanation of a rationale that is consistent for the proposed MAAC for carcinogens and non-carcinogens. Ms. Bevers stated that it appears that the proposed MAAC in Appendix O were set at  $10^{-4}$  and  $10^{-6}$  for probably carcinogens and known carcinogens respectively, but the MAAC for nickel is not set on either of those risk levels, and appears to be more stringent than the MAAC for other carcinogens. She stated that the same is true for beryllium compounds. Ms. Bevers pointed out what appears to be inconsistent rationale for non-carcinogens and stated that ammonia, ethylbenzene and toluene were left at the current MAAC levels which are lower than either the respective reference concentration (RfC) or the human equivalent concentration (HEC) while manganese and mercury compounds MAAC were proposed at the HEC and RfC levels, respectively.
- B. Ms. Bevers stated that to equate MAAC based upon air concentrations of carcinogens that are measured over 24-hour time periods with the assumptions made by EPA risk assessors in determining risk levels of carcinogens is unrealistic and over-estimates risk of exposure to the public since EPA cancer risk assessments are based upon lifetime cumulative exposure assuming no threshold effect. She expressed concern that such an over-estimation could have a serious negative impact on the public including unnecessary fear and anxiety, lowered property and investment values, and increased costs for products while also causing harm to the public image of a source which may be assumed out of compliance when, in fact, that is not the case. She proposed that the rule contain language to assure an AOC is not designated unless there is evidence that the TAC will be present at levels that exceed the MAAC on a continuous basis throughout the year and that for emissions that are not continuous the 24-hour average concentration be annualized. Alternatively, she proposed the use of an "action limit. The action limit would be the 24-hour concentration at which investigations of a proposed AOC may commence, but public notification

**DRAFT**

and the remainder of the requirements of 252:100-42 would not go into effect unless the annualized level was exceeded.

**RESPONSE:**

**A.** DEQ is actively reevaluating the present stringency levels in appendix O.

**B.** DEQ is actively reevaluating the present stringency levels in appendix O.

93. **COMMENT:** Ms. Bevers stated that it very difficult to ascertain by reading 252:100-42-30(a)(1) and 252:100-42-30(b) of the proposed rule which activities occur before and after the public meeting. She is concerned that industry may suffer harm if it is identified as a contributing source to an AOC for which, following more complete analysis, it is determined that the source is not a significant contributor. She proposed the use of the term “proposed area of concern” until final designation.

**RESPONSE:** The language in 252:100-42-30(a)(1)(A) and 252:100-42-30(a)(4) has been changed to reflect that the AOC is proposed until 30 days following the public meeting required in 252:100-42-30(c).

94. **COMMENT:** Ms. Bevers pointed out that the bullet in 252:100-42-30(a)(2)(D) should end with a period and not a semi-colon.

**RESPONSE:** This error has been corrected.

95. **COMMENT:** Ms. Bevers proposed that language be added to the rule requiring that sources that are suspected to be contributing sources should be notified in writing 30 days prior to the public meeting for the AOC so that they will have time to respond to the allegation that they are contributing to an AOC, negotiate control strategies with the Department, etc.

**RESPONSE:** One objective of this rule is to provide the public with information about toxics to which they may be exposed. Staff doesn’t feel notification of an affected facility prior to notification of the public of a potential AOC is in the best interest of the public. Therefore, a requirement for official notification of sources affecting the AOC prior to notification of the public will not be included in the rule. However, staff anticipates that affected sources will know they are included in the AOC as a result of the information gathering that will take place prior to the designation of an AOC.

96. **COMMENT:** Ms. Bevers stated that 252:100-42-31(c) is unnecessary since the strategies will be presented in the public notification and meeting.

**RESPONSE:** The Department does not necessarily anticipate that a final AOC Compliance Strategy will be proposed at the public meeting held regarding the finalization of an AOC. The AOC Compliance Strategy, especially if it requires

**DRAFT**

rulemaking, could be developed after that meeting. Additional rulemaking for an AOC Compliance Strategy will be in accord with the rulemaking procedures of the Department.

OIPA comments from letter dated January 14, 2005, signed by Angie Burckhalter, V.P., Regulatory & Environmental Affairs

97. **COMMENT:** Ms. Burckhalter reiterated her concern that the rule applies to all stationary sources that emit a toxic air contaminant (see Comment 79). She asked that the rule clarify how and when the DEQ will notify emission source owners in the proposed AOC.

**RESPONSE:** See the Response to Comments 79 and 27.

98. **COMMENT:** Ms. Burckhalter recommended that the Department include general language to describe that a TAC MAAC exceedance will be evaluated where citizens are located and where public health is a concern.

**RESPONSE:** Paragraph 252:100-42-30(a)(1) states that the Director may designate an AOC for a TAC when it is demonstrated by monitoring that the MAAC for that TAC is exceeded in such a way as to endanger the public health. 252:100-42-(a)(3)(C) has been added and states that monitors will not be placed in areas where human health will not be endangered.

99. **COMMENT:** Ms. Burckhalter stated that she assumed from the proposed language that permits, and monitoring and modeling requirements would be part of the compliance strategies which would go through the rulemaking process before they would be placed on an operator, but added that if this is not the case, it should be.

**RESPONSE:** The Department already has the authority to require sources to monitor and model emissions, however, any new requirements or standards will go through the rulemaking process. See the Response to Comment 30.

100. **COMMENT:** Ms. Burckhalter stated that while OIPA agrees that public health should be protected, they have significant concerns regarding the proposed MAAC for each substance. She asked if the Department has specific instances where the current standards have failed or caused problems.

**RESPONSE:** The staff finds the current rule very cumbersome to use for both the Department and industry due to the more than 2000 TAC standards on the list.

101. **COMMENT:** Ms. Burckhalter stated that the comparison of a single day of monitoring results as compared to lifetime exposure risk levels is not appropriate and is vastly disproportionate to the actual risk and cites the Ponca City study as an example. The Ponca City benzene sample results exceeded the proposed

**DRAFT**

benzene MAAC by 2 to 10 times, yet the DEQ concluded that "...there is no significant increased lifetime cancer risk from VOC air toxics in the Ponca City area." Ms. Burckhalter stated that if the proposed toxic rules were in place today, Ponca City would be designated as an AOC.

**RESPONSE:** See Response to Comment 92.B.

102. **COMMENT:** Ms. Burckhalter asked that the Department include general language at the bottom of Appendix O to clarify the number of samples collected over the 24 hour time frame as well as stating that an appropriate number of samples will be collected from a location in order to conduct a statistical analysis of the data set.

**RESPONSE:** See the Response to Comment 25.

The Environmental Federation of Oklahoma comments from letter dated January 14, 2005, signed by Howard Ground, Chairman, EFO Air Committee

103. **COMMENT:** Mr. Ground stated that the current wording in 252:100-42-30(a)(1) seems to imply that a meter (monitor) could show an exceedance of a MAAC standard for any chemical in Appendix O over a 24 hour period and that could demonstrate the need to designate the area as an AOC. The definition of MAAC helps to lead a person to this understanding.

**RESPONSE:** The definition of MAAC in 252:100-42-2 has been revised to indicate that the MAAC is an action level. For number of samples used to determine if a TAC MAAC has been exceeded see the Response to Comment 25.

104. **COMMENT:** Mr. Ground expressed concern that the current wording of the rule would require the Director to designate an area as an AOC even if further studies and risk assessments show that the concentrations do not endanger public health and cited the Ponca City study as a case in point.

**RESPONSE:** 252:100-42-30(a)(1) states that the Director may propose designation of an AOC. After that a public meeting will be held and comments at that meeting taken into consideration in determining whether to finalize the AOC (see 252:100-42-30(a)(4)).

105. **COMMENT:** Mr. Ground expressed concern that the standards in Appendix O are too stringent and are inconsistent with earlier studies conducted by the AQD and in some cases may be too low to monitor accurately. He proposed that the standards should be set at a  $10^{-4}$  level on all substances in Appendix O to give the AQD some latitude in designating AOC.

**RESPONSE:** DEQ is actively reevaluating the present stringency levels in appendix O.

## DRAFT

106. **COMMENT:** Mr. Ground suggested that redefining MAAC to be “Maximum Ambient Action Concentration” would be a better description and better fits the use of the term in this regulation.

**RESPONSE:** Because maximum acceptable ambient concentration (MAAC) is statutory language, it cannot be changed. However, the definition of MAAC has been revised to state that MAAC means the action levels and averaging times contained in Appendix O.

Terra Nitrogen, Limited Partnership, comments from letter dated January 18, 2005, signed by Jim Schellhorn, Director of Environmental, Health & Safety

107. **COMMENT:** Mr. Schellhorn expressed concern that Subchapter 42 does not exempt and/or specifically address emissions of toxic air contaminants resulting from accidental/catastrophic releases.

**RESPONSE:** Subparagraph 252:100-42-30(a)(1)(B) has been added which states that excess emissions caused by malfunctions shall not form the basis for an AOC designation. Subparagraph 252:100-42-31(b)(1)(C) states that the Department will advise, consult and cooperate with other agencies of the State, towns, cities, counties, industries, other states and the federal government in developing an AOC Compliance Strategy.

108. **COMMENT:** Mr. Schellhorn stated that the language in the Notice for the January 19, 2005 Air Quality Council Meeting was unclear concerning the replacement of certain sections of Subchapter 41 with the proposed new Subchapter 42, especially regarding accidental and catastrophic releases. He asked if the provisions currently in Subchapter 41 or the provisions proposed at the January 19, 2005 Council meeting would be applicable if Subchapter 42 is not approved or if it is revoked due to inadequate funding. He asked if emissions associated with accidental and catastrophic releases would continue to be exempt.

**RESPONSE:** If Subchapter 42 is not promulgated or if the Department requests that it be revoked because adequate funding is not available, the changes to Subchapter 41 that are proposed in conjunction with the new Subchapter 42 would be null and void and Subchapter 41 would be the same as it was prior to the proposal of Subchapter 42. The accidental and catastrophic releases will remain exempt from Subchapter 41.

### Oral Comments

109. **COMMENT:** Ms. Angie Burckhalter, Oklahoma Independent Petroleum Association (OIPA) read a prepared statement that included the following questions and concerns.

**DRAFT**

- A. OIPA remains concerned that there is no threshold or de minimis level for sources subject to Subchapter 42.
- B. Ms. Burckhalter was concerned that 252:100-42-30 of the proposed rule does not match a flow chart that DEQ provided some months previously.
- C. Ms. Burckhalter was unable to determine from 252:100-42-31(a)(2) where monitoring and sampling would occur. Would it be where the public resides?
- D. Ms. Burckhalter expressed concern that the TAC MAAC proposed in Appendix O are more stringent than those currently in place under Subchapter 41 and stated that she is unaware of any studies that show that the existing MAAC standards have caused a problem or failed in any way. Ms. Burckhalter stated that she remains concerned about the appropriateness of comparing a single day of monitoring results to lifetime exposure risks stating that this inappropriately provides a perception of increased risk.

**RESPONSE:**

- A. See the Response to Comment 6.
  - B. The proposed rule has had many changes in response to public comments since the flow chart was generated.
  - C. See the Response to Comment 98.
  - D. The Subchapter 41 standards were derived, for the most part, from 1986-87 occupation exposure values (OEL) that are established to protect healthy workers. The proposed TAC MAAC in Appendix O are based on current and more complete information from EPA's Integrated Risk Information System (IRIS). IRIS provides health assessment information on chemical substances that is applicable to the general U.S. population including sensitive subgroups and that has undergone comprehensive review by U.S. EPA health scientists from several program offices.
  - E. See the Response to Comment 24.
110. **COMMENT:** Mr. Howard Ground, Environmental Federation of Oklahoma (EFO) stated that the members of EFO have questions of how exactly Subchapter 42 would be implemented. They felt that the intent of the rule as expressed by the DEQ does not always match the actual words in the rule and EFO wants to be certain that they are clear on the meaning of the rule. Mr. Ground had the following statements, questions and concerns.
- A. It appears the staff is addressing the problem of monitoring to make clear that an AOC would not be designated based on just a one 24-hour period of monitoring. This was one of our concerns.
  - B. How will the MAAC limit be used in the demonstration of an AOC? Listening to the presentations by the DEQ staff to the Air Quality Council, it seems that the MAAC is not actually a concentration limit, but an action level. The DEQ will monitor it and if the concentration reaches a certain action level, the DEQ will go into further studies and analyses. However, if there is no endangerment to public health, the MAAC could be exceeded without the DEQ taking any further action. Listing the MAAC as an action level would alleviate a lot of concerns from EFO.

**DRAFT**

- C. In reference to Appendix O, EFO feels that the standards should be set at the  $10^{-4}$  level. An action level does not need to be as stringent as an actual ambient air concentration limit or standard.

**RESPONSE:**

- A. This has been done with the addition 252:100-42-30(a)(3)(D)(i)(II).
- B. See the Response to Comment 106.
- C. DEQ is actively reevaluating the present stringency levels in appendix O.

111. **COMMENT:** Mr. Mike Peters, Ryan, Whaley and Coldiron expressed the following concerns.

- A. Mr. Peters suggested that the DEQ staff prepare a response to comments so they can be evaluated by the public before the proposed rule is submitted to the Board.
- B. In Subchapter 41 there is a purpose section that states that the purpose of Subchapter 41 is to regulated routine emissions, not accidental or catastrophic emissions. If 41 is passed by the Council and 42 is passed by the Council, it's my understanding that the purpose statement in 41-1 will remain in effect in Subchapter 41 to exclude accidental catastrophic releases. Subchapter 42 does not exempt accidental or catastrophic releases at this time. What is the Agency position regarding not exempting accidental or catastrophic releases from Subchapter 42.

**RESPONSE:**

- A. This has been done.
- B. See the Response to Comment 107.

112. **COMMENT:** Mr. Ron Sober, RSF Consultants expressed the following concerns.

- A. Mr. Sober stated that he would like to see the entire context of Subchapter 41 as it's proposed with additional language, as well as existing language, so it's clear what is going to be removed and what is going to remain.
- B. He was concerned about the reference to Subchapter 42 in Subchapter 41 since it is referring to a rule that doesn't exist and suggests changing the language in Subchapter 41 so there isn't a direct reference to Subchapter 42.
- C. He stated that there was a need for a rule that pertains to MACT standards and proposed that the DEQ adopt a rule with that sole purpose that is completely separate from a state rule dealing with air toxics at a state level. Each of these rules would stand on their own merits and be approved separately and not tied together as is the case for Subchapter 41 and 42.
- D. Mr. Sober stated that there are a lot of vague areas of uncertainty in Subchapter 42 and asked if an area of concern is designated will it always remain an area of concern? He asked if there is a procedure for removing an AOC.
- E. Mr. Sober asked how many citizens complaints would be required before the Department decided to monitor for an AOC.

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- F. He asked that if once an AOC has been established, do compliance strategies take into account emissions reductions from mobile and biogenic sources or will stationary sources be solely responsible for carrying the compliance burden once an AOC has been established.

**RESPONSE:**

- A. Staff will consider this suggestion for future rulemaking activities.
- B. The reference is necessary to ensure that the State continues to have an air toxics program. Language is included in Subchapter 42 stating that when effective, Subchapter 42 supersedes all of Subchapter 41 except for Part 3. Language is included in Subchapter 41 stating that the Subchapter will only remain effective if Subchapter 42 does not supersede it.
- C This is what the Department is attempting to accomplish with Subchapters 41 and 42. The Department does not intend to leave the possibility open that the State would have no State air toxics program. Once Subchapter 42 is promulgated it will no longer be tied to Subchapter 41.
- D An AOC will not necessarily remain an AOC. There are provisions in 252:100-42-32 for re-designation of an AOC as being in compliance.
- E There is no specific number, however, the Department investigates and responds to all complaints received, and will take all air toxics related complaints into consideration..
- F All sources of emissions including mobile and biogenic will be considered in determining the feasibility of compliance strategies.

- 113. **COMMENT:** Mr. Jim Schellhorn with Terra Industries stated that for the most part Terra Industries is in favor of the changes to Subchapter 41 and the new Subchapter 42, except for the lack of exclusion in the new Subchapter 42 for accidental and catastrophic releases. These types of releases are already regulated under CERCLA and under the Accidental Accident Prevention Provision of the Clean Air Act and it is not proper to regulate them under a regulation like Subchapter 42.

**RESPONSE:** See the Response to Comment 107.

- 114. **COMMENT:** Mr. Andrew Williams with Atlas Pipeline Mid-Continent had the following questions regarding proposed new Subchapter 42.
  - A. Mr. Williams stated that Atlas would like to see further designation of how catastrophic events and accidental releases from equipment such as relief valves would be handled under Subchapter 42.
  - B. Mr. Williams asked how an AOC would be redefined once a company has complied with the compliance strategy.

**RESPONSE:**

- A. See the Response to Comment 107.
- B. See the Response to 112.D.

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115. **COMMENT:** Mr. Jim Schellhorn with Terra Industries pointed out that ammonia storage tanks have high capacity relief valves and could vent enough ammonia during an accidental event at the facility to cause an exceedance of the MAAC off property and the facility would be in violation of Subchapter 42. The only way to avoid this type of venting would be to risk catastrophic failure of the storage tank which would put the public in tremendous danger by causing a larger release of ammonia. If accidental and catastrophic emissions are not excluded from Subchapter 42, we could be put in the position of having a violation of a state standard that we have absolutely no control over.

**RESPONSE:** See the Response to Comment 107.

**COMMENTS RECEIVED PRIOR TO THE  
April 20, 2005, AQC MEETING  
Written Comments**

EPA comments from letter dated April 12, 2005, signed by Thomas H. Diggs, Chief, Air Planning Section

116. Mr. Diggs stated that he had no adverse comments and referred to previous EPA comments from Mr. Carl E. Edlund in a letter dated January 7, 2005. See Comment 91.