

Comments received on the proposed changes to Subchapter 41, 42 & Appendix O include:

June 17, 2004	E-mail from Julia Bevers of OGE
July 7, 2004	Letter from Donald C. Whitney of Trinity Consultants
July 14, 2004	Letter from Randall R. Kooiman of Koch Hydrocarbon LP
October 13, 2004	Letter from Julia Bevers of OGE
October 15, 2004	Letter from Angie Burckhalter of OIPA
November 2, 2004	Letter from Johnny Dreyer of Gas Processors Association
December 2, 2004	Letter from Thelma Norman of American Airlines
December 2, 2004	Letter from Jim Schellhorn of Terra Industries
December 3, 2004	Letter from Angie Burckhalter of OIPA
December 9, 2004	Letter from Thomas Diggs of EPA

Updated: December 13, 2004

Thomas, Scott

From: Bevers, Julia [BeversJO@oge.com]
Sent: Thursday, June 17, 2004 3:43 PM
To: Thomas, Scott
Cc: Branecky, David
Subject: SC 42

Scott,

As we discussed on the phone today, here are a few possible errors I noticed upon initial review, in the proposed draft of SC 42 dated June 10, 2004:

- *252:100-42-50(1) Monitoring. "... Federal Monitoring Guidelines, (EPA-450/4-87-004)..."*
I attempted a search from the EPA web home page for "Federal Monitoring Guidelines", and received two hits that had something to do with wildfires. And, when I searched for "EPA-450/4-87/004", I received no hits. Perhaps the actual CFR, or other, reference for the federal guidelines could be included instead.
- *252:100-42-50(1) "...and State requirements in OAC 252:100-45."*
Please check this reference, requirements in SC 45 have been revoked or moved to SC 43.
- *252:100-42-50(2)(A) "... OAC 252:100-8-45(e)."*
252:100-8-45(e) must be a typo, it does not exist.

We will probably prepare formal comments after the rule is more fully developed.

Thank you,
Julia

July 7, 2004

Mr. Eddie Terrill
Air Quality Division Director
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Re: *Comments on Proposed Rulemaking*
OAC 252:100-7 and OAC 252:100-41/42



Dear Mr. Terrill:

This letter is to comment on proposed rule changes scheduled to be presented at the Air Quality Council (AQC) meeting on July 21, 2004. Trinity believes that it is certainly appropriate to update and clarify the toxic rules in light of the significant changes that have occurred in Federal rules covering the same area. However, we are concerned about the vague nature of the proposals for this subchapter thus far. Our specific concerns with the proposed rule changes and our suggestions for changes are as follows:

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

The concept of "Permit Exempt Facility" was a major positive addition to air quality rules in the past year. Further changes are now proposed for Subchapter 7 to clarify the coverage of the "De Minimis Facility" category. An additional change is needed to restore the concept of a "De Minimis Activity" to the rules for minor sources.

Prior to the recent rule change, de minimis activities were in practice excluded from consideration at a facility which otherwise had a minor source permit. Such an exclusion is available for major sources in the definition of "insignificant activities" which excludes activities with less than 5 tons per year (TPY) of any one criteria pollutant. Under the concept of the "permit continuum" an exemption available to major sources should also be available to minor sources. The exemption level in terms of TPY is debatable but should be in the range of 1 to 5 TPY.

Comment: Recommend addition of the following Section as paragraph 7-2(b)(3)

(3) **Permit exempt activity.** A facility which holds a valid minor source permit may exclude from consideration the air emissions which are the result of permit exempt activities. Permit exempt activities include those listed in OAC 252:100, Appendix H and those activities which have actual emissions of less than ___ TPY of any regulated pollutant. Toxic emissions from a permit

exempt activity must also be less than the de minimis levels established in OAC 252:100. To qualify, such an activity must not be subject to an emission standard, equipment standard, or work practice standard in the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63). Air emissions from qualified permit exempt activities are not subject to annual inventory reporting or to payment of annual emission fees. Holders of minor source permits which have permit exempt activities at the same facility shall, upon request of DEQ, provide documentation that such activities meet the criteria.

SUBCHAPTER 41. CONTROL OF HAZARDOUS AIR POLLUTANTS

Organizational changes to the air toxic section have been proposed to separate the rules into two Subchapters. Subchapter 41 would be for adoption by reference of the Federal NESHAP Standards of 40 CFR Parts 61 and 63.

Comment 1: Consistent use of term “adopt by reference” or “incorporate by reference”

Paragraph 41-4(a) uses the term “incorporated by reference”

Paragraph 41-15 uses the term “adopted by reference”

Paragraph 41-16 uses the term “adopted by reference”

Paragraph 4-3(a) uses the term “incorporated by reference”

Paragraph 4-5 uses the term “incorporated by reference”

Since “incorporated by reference” seems to be the preferred term, recommend changing paragraph 41-15 (two places) and 41-16 to “incorporated by reference.”

Comment 2: Paragraph 41-4(b) has a minor typo in that the letters “CFR” are not all capitalized.

SUBCHAPTER 42. CONTROL OF TOXIC AIR POLLUTANTS

Organizational changes to the air toxic section have been proposed to separate the rules into two Subchapters. Subchapter 42 would be for the state-only toxic rules. However, the proposed Subchapter 42 in its present form is essentially a shell of a rule with little content.

Comment 1: Paragraph 42-2, Definitions, needs the following changes:

“Ambient Air Concentration Standard” or “AACS” should have its own definition rather than just being included within the definition of a TAP.

“Area of Concern” should refer to “...having exceeded an AACS.”

“Toxic Air Contaminant” would seem to be an obsolete term with the introduction of TAP and should be deleted.

Comment 2: If Subchapter 42 were adopted without the AACS list, Appendix O, would the current state-only toxic rules effectively cease to exist? Or is DEQ planning to have Appendix O completed to go through the rule making process at the same time as the new Subchapter 42 is proposed for approval?

Comment 3: Exemptions for small quantity “de minimis” emissions in the current toxics rule are significant and should be retained in some form in the new rule. The lack of such exemptions would put an undue burden on the regulated industry as well as for DEQ to evaluate and regulate small quantities of emissions without significant impact to the environment. Similarly, EPA regulations for hazardous air pollutants (HAPs) have a “de minimis” threshold of 10 TPY of a single HAP and 25 TPY of all HAPs for a facility to be considered.

Comment 4: When ambient concentration levels or AACS are established they should be based on a scientific evaluation of health risk. The current standards are most often based arbitrarily on a fraction of the Occupational Exposure Level (OEL). Since the OEL is designed to protect a worker during a full career of 20 years, there is a great deal of conservatism in using this as a basis for state AACS.

Comment 5: Exemptions for facilities subject to Federal NESHAP Standards are also significant and should be retained in the new rule. Such exemptions are important for the regulated industry as well as for DEQ to reduce the toxics consideration to a manageable level.

When U.S. EPA established the Federal toxic rules, they identified 189 HAP substances and compounds. Part of the logic in only identifying this limited list was that these substances act a surrogate for many other toxic pollutants. Thus, it is not necessary to identify each and every possible toxic in existence.

Since the list of HAPs was developed in the early 1990s, EPA has gradually written Maximum Achievable Control Technology (MACT) standards for approximately 100 different industries. The standards do not require measurements of or set limits for each of the HAPs. What EPA has done is to set limits on a few pollutants such as dioxins/furans, formaldehyde, or particulate matter. The assumption is that, if these surrogate pollutants are controlled, then the other toxics will also be controlled or limited by the same processes.

This same concept should be applied to DEQ’s consideration of toxics. Any facility that is subject to a federal standard under 40 CFR Part 61 or 63 should be exempt from state regulation under Subchapter 42. This exemption should apply to all pollutants and to all “affected” equipment at the facility.

Comment 6: The proposed new Subchapter 42 also introduces the concept of an “Area of Concern.” This would give DEQ the option to identify such areas and to require modeling and / or monitoring to be conducted there. DEQ will have a new regulatory mechanism to study potential problem areas and to

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institute controls as required. Thus, there will be a backup means for state control of toxics despite the de minimis or federal exemptions mentioned above. To make this point clear, recommend the following sentence be added at the end of paragraph 42-52 (a) (2):

Exemptions stated elsewhere in OAC 252:100 shall not prevent the consideration of such sources for study and control measures.

SUMMARY

We appreciate your cooperation and consideration of these proposed changes. Please call me if you have any questions or if I can assist with a working group to resolve these issues.

Sincerely,

TRINITY CONSULTANTS



Donald C. Whitney, P.E.
Project Manager

Copy: Mr. Howard Ground
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Environmental Federation of Oklahoma
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KOCH HYDROCARBON LP

July 14, 2004

Mr. Eddie Terrill, Director
Air Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677



Re: *Koch Hydrocarbon, L.P.*
Submittal of Written Comments on
Proposed Rulemaking - OAC 252:100-42

Dear Mr. Terrill:

Koch Hydrocarbon, L.P. (KHLP) respectfully submits the following written comments concerning the proposed rule changes scheduled to be presented to the Air Quality Council (AQC) on July 21, 2004. We appreciate the opportunity to submit these comments for your consideration.

KHLP has several concerns regarding the language of the proposed Subchapter 42 as currently drafted, as well as the DEQ's implementation of the rule should it become final as written. The following sets forth KHLP's concerns and comments regarding the proposed Subchapter 42 and suggested revisions and clarifications.

SUBCHAPTER 42. CONTROL OF TOXIC AIR POLLUTANTS

Pursuant to the proposed rule revisions, the existing Subchapter 41 (OAC 252:100-41) will be separated into two (2) rules. Subchapter 41 will continue to address, and be limited to, implementation and enforcement of federal standards applicable to emissions of Hazardous Air Pollutants (HAP) (*e.g.*, National Emission Standards for Hazardous Air Pollutants – NESHAP and Maximum Achievable Control Technology – MACT standards) in accordance with authority delegated to the Department of Environmental Quality (DEQ) by the U.S. Environmental Protection Agency (EPA). As proposed, Subchapter 42 (OAC 252:100-42) addresses emissions of Toxic Air Contaminants (TAC) and Toxic Air Pollutants (TAP), both of which are defined independent of the federal definition of HAP.

Comment 1: The proposed Subchapter 42 in its present form is essentially an outline of a regulatory concept, lacking specific content necessary for implementation. This effectively limits and/or precludes industry review and comment concerning the potential impact of the proposed rule, especially with regard to existing sources.

As stated in OAC 252:100-42-3, Subchapter 42 will be applicable to sources that emit TAP as listed in Appendix O, which will also specify applicable Oklahoma Ambient Air Concentration Standards (AACS). Appendix O currently does not list the TAP and relevant AACS which will be applicable. To the extent Subchapter 42 is a proposed rule which will become effective upon adoption (as stated in OAC 252:100-42-31(a)), industry should be given the opportunity to review and comment on the specific standards which will be imposed by the rule. As currently drafted, industry cannot effectively review and comment on the proposed Subchapter 42 as the relevant emission limitations/control measures/control strategies which are or could be applicable are not specified.

Comment 2: KHL P suggests the DEQ consider the following comments regarding the definitions specified in OAC 252:100-42-2.

- A. “Ambient Air Concentration Standard” or “AACS” should be individually defined in Subchapter 42. Specifically, KHL P requests such definition include the scientific/technical data to be used by the DEQ to support an AACS determination.

As currently proposed, AACS is not defined in the proposed rule. OAC 252:100-42-50 references a “demonstration” when an AACS for a TAP is exceeded. Pursuant to OAC 252:100-42-20(b), the two factors influencing the decision to add or remove a substance from the TAP AACS list are as follows:

- (1) the toxicity of the substance;
- (2) the likelihood that anthropogenic emissions of the substance have caused or might cause ambient air concentration levels to exceed those that have been determined to be acceptable based on health risks.

Thereafter, OAC 252:100-42-52(a) indicates “[t]he impact of stationary facilities, mobile sources, and biogenic sources shall be considered in determining whether there is a significant risk from a TAP to the public in an area of concern.” AACS should be based on a scientific evaluation of health risk. Further, the criteria for assessing such risk should be clearly identifiable, with those circumstances that support a finding of “significant risk” being clearly stated or otherwise referenced so that industry will have notice and be informed of such circumstances.

As it is the determination of AACS which is the backdrop against which the DEQ will develop Areas of Concern (AOC) and which the regulated community will be subject to, KHL P believes AACS should be individually defined and the procedure for determining an individual AACS and the finding of “significant risk” specifically set forth, including the basis and scientific information to be used to support the DEQ’s determination of the AACS.

- B. The definition of “Area of concern” in OAC 252:100-42-2 should refer to “...having exceeded an AACS” rather than “... having exceeded a TAP” as currently written.
- C. 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, and therefore, a AACS is established.

Comment 3: How does the DEQ propose to implement Subchapter 42 once it becomes effective and an AACS is designated? Will existing sources be granted a specified period of time to comply or will compliance be required immediately?

As drafted, OAC 252:100-42-31(a) prohibits any person from causing or contributing to a violation of the TAP AACS, which is similar to the current regulatory requirements specified in OAC 252:100-41-36(a) (*i.e.*, “... no person shall cause or permit the emission of any toxic air contaminant in such concentration as to cause or contribute to a violation of the MAAC.”). There is a considerable number of existing TAC/TAP sources within industry which were previously determined to be in compliance with or exempt from Subchapter 41. It is conceivable that an AACS and AOC could result in a determination which differs from previous determinations regarding the MAAC. Therefore, industry could become subject to new applicable standards/requirements upon the DEQ designating a AACS and AOC. To the extent these new requirements will affect existing sources, KHLP requests existing sources be given a period of time for phase in of the new Subchapter 42 requirements following its effective date.

Comment 4: Subchapter 42 should contain provisions which exempt “de minimis” sources.

Exemptions for small quantity “De minimis” emissions as currently specified in Subchapter 41 are significant and have been relied on by both the DEQ and the regulated community for several years. KHLP believes the importance of a “de minimis” exemption at some level should be retained in Subchapter 42. The lack of such an exemption would put an undue burden on industry and the DEQ to evaluate and regulate small quantities of emissions which were previously determined to have an insignificant impact to the environment.

Comment 5: The exemption specified in OAC 252:100-42-3(b) for sources that are required to control emissions of TAP pursuant to a federal NESHAP or MACT Standard should be expanded to include not only the specific TAP controlled via the NESHAP/MACT Standard but all emissions of TAP that are associated with the specific source category and which were previously evaluated by EPA.

As proposed in OAC 252:100-42-3(b), sources that are in compliance with equipment requirements, work practice requirements, or other requirements under the federal NESHAP and MACT Standards to control emissions of a TAP are considered to be in compliance with Subchapter 42 for that specific TAP. KHLP agrees with the underlying intent and purpose of

such exemption (*i.e.*, the NESHAP/MACT generally specify the maximum achievable control technology available and the resulting HAP emission levels incorporating use of such controls). However, for certain HAPs associated with various source categories, EPA has determined “no control” was effectively the MACT Floor (*e.g.*, no emissions control was required for the specific HAP based on the quantity of HAP potentially emitted, technical unavailability of controls, etc.). Therefore, KHLP requests the exemption in OAC 252:100-42-3(b) be amended to include all TAP sources which are already adequately regulated under an existing MACT (regardless of whether the TAP emissions are subject to an equipment requirement, work practice requirement, or other requirement in the federal Standard).

In accordance with and pursuant to the 1990 Clean Air Amendments, only 189 HAP substances and compounds were identified. Part of the logic in identifying this limited list was that a number of the listed substances/compounds act as surrogates for many other hazardous pollutants. Thus, it was not necessary to identify each and every possible hazardous pollutant in existence.

Since development of the list of HAP in the early 1990s, EPA has gradually written MACT Standards for approximately 100 different industry source categories. The Standards do not require measurements of or set limits for each of the HAP potentially emitted. Rather, EPA has set limits on a few specifically identified HAP (*e.g.*, dioxins/furans, formaldehyde, particulate matter, etc.). The assumption is that if these HAPs are controlled, then other HAP substances and compounds will also be controlled or limited by the same processes. The actual pollutant limits and controls have been specifically designed for each industry after careful study.

This same concept should be applied to DEQ’s consideration of TAP. Any facility that is subject to a federal Standard under 40 CFR Part 61 or 63 should be exempt from regulation under Subchapter 42. This exemption should apply to all pollutants and to all “affected” equipment at the facility.

Comment 6: Will the new Subchapter 41 and 42 be submitted to EPA for adoption as part of Oklahoma’s State Implementation Plan (SIP)?

Exclusive of the federal Standards referenced above which are incorporated by reference pursuant to OAC 252:100-41-15 and 16, Subchapter 41 as it currently exists is not part of the SIP and is therefore classified as a “State-only requirement”. To the extent the revisions to Subchapters 41 and 42 are approved and become effective, will the DEQ forward these rules to EPA for inclusion in the SIP whereby the same would become enforceable by EPA and/or via citizen suit? We believe that it would not be appropriate to include these rules in the Oklahoma SIP and ask the DEQ to commit to keeping the final version of these rules as “state-only requirements”.

Comment 7: 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”?

Based on the exemptions currently promulgated in Subchapter 41 (*see* OAC 252:100-41-43) and which were incorporated into the definition of “Insignificant activities” (*see* OAC 252:100-8-2), many existing emission sources/units which emit TAP were specifically exempted from Subchapter 41 and were otherwise identified and treated in relevant Title V permits as being either Insignificant Activities (IA) or Trivial Activities (TA). As stated in OAC 252:100-42-30, any stationary source which emits any TAP will be subject to the Stationary Source Requirements specified in Part 5 of Subchapter 42. Any emission source/unit which emits a TAP (regardless of quantity) would no longer qualify as an IA or TA as Subchapter 42 would constitute an applicable requirement. Accordingly, the DEQ would also need to revise the definition of “Insignificant activity” specified in OAC 252:100-8-2.

Comment 8: OAC 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”.

OAC 252:100-42-52(b)(5) references “de minimis status” and “permit exempt status” and indicates the same may be revoked through rulemaking. As indicated in Comment 4 above, Subchapter 42 does not currently provide a “de minimis” exemption. Based on the language specified in OAC 252:100-42-30 (“... Section 42-30 applies to any stationary source which emits any TAP”) and 252:100-42-52(a)(1) (“Owners or operators of stationary facilities that emit a TAP ...”) any and all sources of TAP will be subject to Subchapter 42. Therefore, the above-cited language in Subchapter 42 appears to be inconsistent with other provisions in the rule.

Comment 9: OAC 252:100-42-52(a)(1) specifies stationary facilities that emit a TAP and are located in a designated AOC for that TAP “... shall be required to take the control measures determined by the Director.” What are the basis and factors to be considered for determining which control measures will potentially be required?

Subchapter 42 does not specify the basis upon which the indicated control measure determination will be made by the Director. Further, Subchapter 42 does not specify what factors are relevant and will be reviewed prior to making such determination (*e.g.*, energy, environmental, health risk, costs, economic impacts, availability of technically feasible controls, etc.). KHLPL requests the DEQ specify the basis and factors that will be considered for determining the control measures to be required.

Comment 10: OAC 252:100-42-52(b)(1) specifies when facility owners/operators will be required to perform ambient air modeling and/or monitoring for a specific TAP. As written, this provision appears to contain inconsistent provisions which are requested to be clarified.

OAC 252:100-42-52(b)(1) currently states the following:

(1) Following designation by the Director, the DEQ may require stationary facilities emitting a particular TAP and located in an area **that has been designated an area of concern** for that TAP or which is a proposed area of concern for that TAP to perform ambient air modeling and/or monitoring for that TAP. (Emphasis added)

As written, the requirement for an owner or operator to conduct modeling and/or monitoring for a TAP is triggered following the designation of an area as an AOC. Thereafter, the rule references a “proposed area of concern” when the DEQ may require modeling and/or monitoring. As required under OAC 252:100-42-50, an AOC for a TAP is not designated until after a public meeting wherein the DEQ demonstrates the AACS for the TAP is exceeded. Therefore, as written, the above provision appears to contain contradictory terms and should be revised to specifically state the DEQ’s intent.

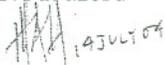
Aside from the above comment, please be aware that the escalating costs of modeling and monitoring during today’s depressed economic state will likely create additional economic hardships for the regulated community. Modeling programs can be very expensive to run, and the costs associated with monitoring programs can similarly be substantial depending on the length of time required to be monitored, the TAP to be monitored, etc. These costs may create a substantial burden and will reduce the cost competitiveness of our in-state industry in comparison to neighboring states. If DEQ is intent on imposing these requirements, we suggest that you consider a provision that makes the DEQ primarily responsible for performing necessary modeling/monitoring, and if the DEQ designates an area as an AOC, then industry would be requested to perform additional modeling/monitoring.

We appreciate your cooperation and consideration of the above-referenced comments and proposed changes. Thank you again for the opportunity to submit these comments and for your consideration of our concerns. Please contact Michael Hampton, P.E., Compliance Manager (Environmental) at (580) 395-6283 with any questions or if we can assist with a working group to resolve these issues.

Sincerely,



Randall R. Kooiman
Plant Manager, KHLP/Medford





October 13, 2004

Brad Cook
Air Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

Re: OGE Energy Corp. Comments on Proposed Rule OAC 252:100-42 and Proposed Appendix O

Dear Mr. Cook:

OGE Energy Corp along with its subsidiaries OG&E Electric Services and Enogex Inc. offers the following comments with respect to the proposed rules cited above. The comments are organized into two sections, the first section being conceptual comments and the second section specific to the currently proposed language of the rule.

Section A. Conceptual Comments

1. **Appendix O.** Determination of the ambient air concentration standard (AACS) level. We agree that an Area of Concern (AOC) should only be designated following appropriate monitoring instead of modeling. However, there is no definition in this rule, or in any other Oklahoma air quality rule, for the term "ambient air concentration standard" (AACS). If 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 AACSs. To compare 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. TAP concentrations measured or modeled in any geographic area should be evaluated in a way that prevents designation of an AOC based upon transient ambient levels.
2. The rule should clarify the entity that will bear the costs for monitoring and/or modeling for both establishing the boundaries of an AOC and determining controls or monitoring after the area is established.
3. **252:100-42-50.** We agree that public notification is important, however, a paragraph is also needed that describes how industry will be notified that their facility affects and/or is located in, an AOC. Industry notification should occur no less than 30 days, or some other

specified time period, prior to public notification to allow industry time to respond and/or investigate.

4. *252:100-42-51(a)*. The applicability of control strategies should provide for exclusion of de minimus 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.
5. *252:100-42-51(a)(1)*. We feel the statement "impacts an AOC" may not consider the significance of the level of impact of individual sources. We believe a significance level should 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.
6. *252:100-42-51(b)* Industry must be allowed the opportunity to have input into the development of control strategies. The current language is too subjective in allowing the Department (or Director, see Section B.2.) full latitude in determining controls. The rule should specify that any control strategy should be no more stringent than BACT, and should be made part of the SIP.

Section B. Specific Comments:

1. In a few places the term "*this Subchapter 42*" is used. This seems redundant, unless there is "another" Subchapter 42. We suggest deleting "42" in each instance.
2. The term "the Department" is used in several places throughout the rule and in most instances should be replaced by "the Director".
3. *252:100-42-4*. This section requires retention of previously taken measures for TAP control unless a modification is approved. OGE believes it is the intent of DEQ to allow for removal of controls also. If so, it would be clearer to include removal of controls in the language. The paragraph would then read:

... Any work practice, material substitution, or control equipment required by the department prior to June 11, 2004 to control a TAP, shall be retained, unless a modification, including removal, is approved by the Director.

4. *252:100-42-20(b)*. This paragraph seems to specify how the Council and Board are to make their decision on adding or deleting substances from Appendix O. We believe this was not the intent of the language. The following changes are suggested:

(b) Protocol. The decision to add or remove a substance from the TAP AACS list will be based on The Director may recommend substances to be added or removed from the TAP AACS based on:...

5. **252:100-42-20(b)(2) and 252:100-42-20(b)(4).** We feel the use of the word “acceptable” is too subjective. We suggest the following to make the language less subjective:

(2) availability of methods for monitoring the ambient air concentration of the substance at the levels deemed to be ~~acceptable~~ for toxic to human health:...

4) information indicating that anthropogenic emissions of the substance cause ambient air concentration levels to exceed those that have been determined to be ~~acceptable~~ toxic based on health risks.

6. **252:100-42-50(a) Designation.** It is suggested the AOC be first proposed, then become a final designated area following the 30 day comment/public meeting time period.

The Director may ~~designate~~ propose designation of an Area of Concern (AOC) for a TAP when it is demonstrated by monitoring that the AACS for that TAP is exceeded. Designation of an AOC shall become final 30 days following designation or 30 days following a public meeting if requested pursuant to paragraph (b)(2) below.

7. **252:100-42-50(b) Public notification.** It is unclear how the public will learn the boundaries of an AOC. We believe it would be helpful to the public to publish the boundaries in the initial legal notice, and include the information on the department website. This can be accomplished by the following wording changes:

...(1) The Department shall publish notice of the findings, and at a minimum publish legal notice on the agency website and in one newspaper local to the AOC. The publication shall identify the boundaries of the AOC and identify the locations where information may be reviewed.

8. **252:100-42-51(b)(1).** While the term “feasibility” is included in this paragraph the concept of cost and relative contribution of any one contributing stationary source should also be addressed. For example, if 50% of the TAP concentration is contributed by mobile sources, a stationary source that may contribute the other 50% should not have to bear the burden of controlling 100% to the AACS. This is not clearly addressed in this subpart. We suggest the words “including costs” be added as listed below.

(1) Control measures. Owners or operators of a facility impacting an AOC shall take control measures determined by the Department. When determining control measures, the

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OGE Energy Corp Comments on Proposed Rules OAC 252:100-42 and Appendix O
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Department shall account for the impact of any emissions from mobile, non-road, or biogenic sources, and the availability and feasibility, including costs, of control measures.

9. **252:100-42-51(d)**. After re-designation is made a subsequent public notification should be required.

If you have any questions you may contact me at 553-3439 or by email at beversjo@oge.com.

Sincerely,



Julia Bevers, CIH
Sr. Industrial Hygienist

Cc: Summer Goebel
David Branecky
Wade Ingle
Steve Henderson



October 15, 2004

Mr. Eddie Terrill, Director
Air Quality Division
Oklahoma Department of Environmental Quality
707 N. Robinson
Oklahoma City, OK 73101



Re: Proposed Rulemaking for Toxic Air Emissions

Dear Mr. Terrill:

The Oklahoma Independent Petroleum Association (OIPA) is providing this letter to you concerning the Oklahoma Department of Environmental Quality's (ODEQ's) proposed rulemaking regarding toxic air emissions. OIPA represents approximately 1500 small operators engaged in the exploration and production of crude oil and natural gas.

We understand the desire for the Air Quality Division (AQD) to update and clarify the toxic rules in accordance with the changes that have occurred at the federal level regarding toxic air emissions. However, we are concerned about the need for more stringent state requirements and the indefinite nature of the proposal. In specific, we are concerned with how the proposed rules could potentially impact small oil and gas operators. The following information provides our comments and concerns with the proposed action.

1. We have been told that ODEQ needs this rule to be able to respond to citizen complaints. Doesn't the state already have authority to address these types of issues? Title 27A O.S. § 2-5-107.B.2. allows the department to investigate citizen's complaints. We would like to have a better understanding of the state's issues, and the need for it to have its own toxic air emission program that is more stringent than the federal requirements. For example, is the state currently experiencing enforcement problems?
2. Reference 252:100-42-2: The term ambient air concentration standard (AACS) needs to be defined in the definitions.
3. 252:100-42-20 (b):
 - a. In reference to item (1), how will ODEQ determine the toxicity of the TAP? What data will they use?

b. In reference to item (2), the cost of the monitoring requirements should be included as well, especially if industry is required to conduct monitoring.

c. In reference to item (3), the decision to add or remove a substance from the TAP list is based on the quantity of substance emitted in Oklahoma. How will a threshold quantity be established for each TAP?

d. In reference to item (4), this information needs to be based on sound science. We recommend the following be added to the statement: "widely accepted, peer reviewed scientific based information indicating...".

4. Reference 252:100-42-50(b)(1): The oil and gas operators of the emission sources that could be impacted by the designation of an AOC may not reside in the area where the notice is being published. We request that notice also be published in newspapers with state-wide circulation i.e. both the Tulsa and Oklahoma City newspapers.

5. Reference 252:100-42-51(b)(1): The cost impacts to the small business owners of the emission sources should be a consideration in determining control measures. 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. These types of wells operate at the edge of profitability. Industry needs a method or means to appeal the ODEQ's specified control technologies. We recommend that this be clarified in the rule.

6. Reference 252:100-42-51(b): In January 2004, the Air Quality Council approved the "permit exempt facility" rule. If a company's facility is deemed to be "permit exempt", it could potentially be located within or contributing to an AOC. This could pull a permit exempt facility into permitting, monitoring, and modeling requirements that could be very costly, especially for small businesses. This is contrary to the intent of the permit exempt rule. In addition, the rule should be written to allow small businesses to easily determine if they are subject to the rule and how to comply with it.

7. Reference Appendix O:

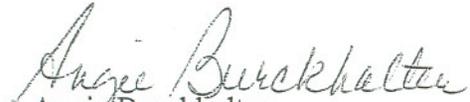
a. It appears that ODEQ is considering more stringent toxic air emission standards than it is currently using. What is the scientific basis or need to do so?

b. How were these substances selected to be placed on the list? What were the thresholds that were used?

c. Some of the 2002 emission inventories for each substance in Appendix O show zero emissions. Is this a rounding error? If not, why have they been placed on the list?

We appreciate the opportunity to provide input on the proposed rulemaking. However, we are concerned about the need for more stringent state requirements and the indefinite nature of the proposal. If you have any questions on other items provided in this letter, please contact me at 405-942-2334, x 221. Thank you in advance for your consideration.

Sincerely,


Angie Burckhalter
Director of Regulatory Affairs



Gas Processors Association

November 2, 2004

Brad Cook
Air Quality Division
Oklahoma Department of Environmental Quality
PO Box 1677
Oklahoma City, OK 73101-1677

Re: Gas Processors Association (GPA) Submittal of Written Comments to Proposed Subchapter 42 and Appendix O

Dear Mr. Cook:

GPA respectfully offers the following general comments regarding the currently proposed OAC 252:100-42 (Subchapter 42) and proposed Appendix O.

GPA (as representatives of the Oil and Gas Industry in Oklahoma) believe the proposed revisions are an improvement to the existing program as currently promulgated under OAC 252:100-41. However, given the uncertainties, conservatism, and the fact that risk factors for many pollutants are continuously being updated, GPA, MOGA, and OIPA strongly support the Oklahoma Department of Environmental Quality's (DEQ) use of the 10⁻⁴ risk levels to determine acceptable Ambient Air Concentration Standards (AACS) for Toxic Air Pollutants (TAP). For example, a new IRIS assessment is underway for formaldehyde health impacts and corresponding risk factors. A current study supports a lower carcinogenic slope factor of 5.5E-9 m³/ug, which is several orders of magnitude lower than the current IRIS slope factor of 1.3E-5 m³/ug. EPA's Office of Air Quality Planning and Standards has published the updated formaldehyde slope factor in its risk tables (<http://www.epa.gov/ttn/atw/toxsource/table1.pdf>). Therefore, there needs to 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.

Members of GPA have reviewed the October 13, 2004 comments of OG&E and recommend the DEQ adopt the changes set forth in OG&E's comments. Additionally, we recommend that the process for designating Areas of Concern (as currently set forth in OAC 252:100-42-50) be further defined in the rule so that the process is specifically clear and not open to interpretation. We believe this change would be beneficial to both the DEQ as well as members of the regulated community. In addition, specific questions that we believe should be addressed in the final Subchapter 42 are the following:

- What triggers monitoring for a pollutant?
- How will it be demonstrated that an AACS has been exceeded?
- How will the boundaries of an AOC be determined?
- How will it be demonstrated that an AOC is back in compliance with the AACS?

Thank you for your consideration of these comments. Representative members of GPA would appreciate the opportunity meet with you to discuss these comments as soon as possible and would be pleased to work with the DEQ to draft regulatory changes to clarify the currently proposed language of Subchapter 42 pursuant to the comments herein identified as well as those previously submitted by individual members. Please contact me at (918) 493-3872 to discuss DEQ's availability.

Sincerely,

Johnny Dreyer, GPA Director of Industry Affairs

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a, Oklahoma 74145

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VIA E-MAIL AND US POSTAL 1ST CLASS

Brad Cook
AQD – Rules Planning Group
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Re: Oklahoma Administrative Code (OAC) 252:100-42
Control of Toxic Air Pollutants
Proposed November 1, 2004

Dear Mr. Cook:

American Airlines, Inc. (American) respectfully submits the following comments regarding the Oklahoma Department of Environmental Quality's (ODEQ) November 1, 2004 proposal for the Control of Toxic Air Pollutants to be located at OAC 252:100-42.

American commends ODEQ for recognizing the proliferation of Federal regulations concerning Hazardous Air Pollutants (HAPs) and for proposing regulations that would greatly simplify compliance requirements imposed upon the regulated industries. American agrees with the overall approach of the proposal and applauds ODEQ's efforts to simplify the process.

COMMENTS:

- 1) *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 OAC 252:100-42-31.*

Through promulgation of proposed OAC 252:100-42, ODEQ aspires under certain circumstances to regulate specified "Toxic Air Contaminant(s) or TAC(s)" through the administration of Maximum Acceptable Ambient Concentration (MAAC) standards found in Appendix O. Protocol for inclusion in Appendix O are found at proposed OAC 252:100-42-20(b) and make clear that human health is a primary concern. In other words, OAC 252:100-42 will provide for regulation of certain pollutants through health based standards. OAC 252:100-42-31(a)(1)(C) as currently written would not apply requirements to any "stationary source or emission unit ... 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 ..."

Such exemptions are logical given that the NESHAP MACT standards while initially technology oriented are eventually to be analyzed ("residual risk analysis") and verified to be reflective of health concerns. If upon analysis a technology based MACT standard is determined not to be

adequately protective of health concerns, then health based standards will be issued for the respective source category. Further, NESHAP MACT standards are to be reassessed every eight (8) years to insure that health concerns continue to be protected. Therefore, it is reasonable to exclude facilities covered by a MACT standard from Subchapter 42 as such regulations shall continue to be protective of human health.

We understand that ODEQ intends to exempt sources or emission units that emit TACs that are subject to regulation pursuant to MACT emission standards, work practices or other controls. However, American believes that stance is too narrowly construed and does not account for the in-depth analysis and review of the source categories that occurred during promulgation of the MACT regulations. More specifically, numerous HAPs were considered during the respective MACT development processes for each source category and determined to have a minimal impact on a facility-wide basis. For many HAPs, stationary sources and/or emission units so situated the MACT floor was determined to be No Additional Control and therefore no standard or work practice was set. In essence, EPA's evaluation encompassed the whole gamut of HAPs that would be encountered by each source category and as a result EPA chose not to set a standard, work practice or other control measures for certain HAPs, stationary sources and/or emission units pursuant to informed determinations. In short, with regards to MACT regulated industries, EPA has already accounted for relevant health based toxic concerns and additional regulation under proposed OAC 252:100-42-31 would be redundant.

In conclusion, American believes ODEQ should fully recognize EPA's efforts in developing comprehensive health based MACT regulations and should not administer duplicative coverage under OAC 252:100-42-31, even when standards, work practices or other control measures are not specifically set forth for each of a source category's HAPs (some of which may also be classified as TACs).

Accordingly, American requests OAC 252:100-42-31(a)(1)(c) be amended to read as follows:

“...
“

(C) that is not subject to any Federal NESHAP referenced in OAC 252:100-41-15 ~~a final emission standard, work practice, or other requirement to control emissions of a TAC promulgated under Sections 112(d) and/or Sections 112(d) or 129 of the Federal Clean Air Act, and OAC 252:100-17, Parts 5, 7, and 9.”~~

2) *The proposed Group of Chromium Compounds MAAC standard should be modified to only address Hexavalent Chromium Compounds.*

American has concerns regarding proposed standards for the entire Group of Chromium Compounds as found in proposed Appendix O. Specifically, the IRIS Database focuses on Hexavalent Chromium Compounds. Many Chromium Compounds are naturally occurring in native soils, which creates the possibility of background concentrations¹. However, Hexavalent

¹ USEPA Office of Solid Waste and Emergency Response, Hazardous Waste Land Treatment, SW-874 (April, 1983) Page 273, Table 6.46

Chromium Compounds are not naturally occurring and are typically generated through or for industrial usage. As such, American recommends that the "Group Chromium Compounds" MAAC proposal be restructured to only include "Hexavalent Chromium Compounds".

3) Proposed OAC 252:100-42-31(b) should be modified to require rulemaking during each "AOC Compliance Strategy" event.

American has concerns regarding OAC 252:100-42-31(b) Additional Rulemaking. Specifically, the language appears somewhat inconsistent stating that rulemaking both "may" be required and "shall be developed". American believes that all additional or targeted requirements derived from "Area of Concern (AOC) Compliance Strategies" should be implemented through rulemaking procedures.

Accordingly, American requests OAC 252:100-42-31 be amended to read as follows:

~~"(b) Additional Rulemaking. AOC Compliance strategies may require rulemaking. ..."~~

Upon your receipt and review of the above comments, please contact me at (918) 292-3735 should you need any further information in support of the above comments and/or should you wish to discuss these matters in further detail.

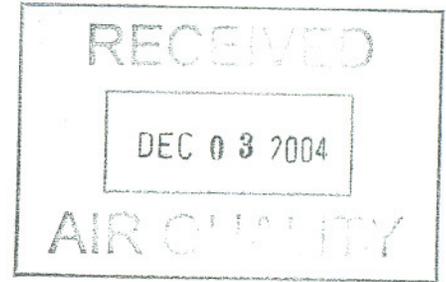
Thank you in advance for your time and consideration regarding these matters.

Sincerely,

Thelma Norman
Sr. Engineer



Terra Nitrogen, Limited Partnership
Verdigris Plant
6606 East 540 Road
Claremore, OK 74017
(918) 266-1511



December 2, 2004

Mr. Brad Cook
Air Quality Division
Department of Environmental Quality
707 N. Robinson
Oklahoma City, OK 73101

Mr. Scott Thomas
Air Quality Division
Department of Environmental Quality
707 N. Robinson
Oklahoma City, OK 73101

RE: Terra Industries Inc. ("Terra")
Submittal of Written Comments
Proposed Rulemaking - OAC 252:100-42

Dear Mr. Cook and Mr. Thomas:

Terra respectfully submits the following written comments regarding the proposed rule changes to Oklahoma Administrative Code ("OAC") 252:100-41, specifically the scope and applicability of proposed OAC 252:100-42 ("Subchapter 42"). The following comments identify Terra's concerns regarding the proposed language for Subchapter 42 (dated November 1, 2004), and where appropriate, include suggested revisions to further clarify the scope and applicability of the rule. Terra appreciates the opportunity to submit the below comments.

Terra applauds the efforts of the Oklahoma Department of Environmental Quality ("DEQ") in undertaking the proposed rulemaking. To the extent possible, Terra would like to work with the DEQ to address these comments and finalize the proposed Subchapter 42 as the same will significantly affect ongoing operations at Terra's Oklahoma facilities.

COMMENTS:

COMMENT NO. 1: As currently proposed, Subchapter 42 does not exempt and/or specifically address emissions of toxic air contaminants resulting from accidental/catastrophic releases.

Currently, OAC 252:100-41 ("Subchapter 41") exempts emissions of toxic air contaminants ("TAC") resulting from accidental or catastrophic releases. Pursuant to OAC 252:100-41-1, the purpose of Subchapter 41 is stated as follows:

The purpose of this Subchapter is to control the routine emission of hazardous and toxic air contaminants from stationary sources, not to include accidental, or catastrophic releases. (Emphasis added)¹

¹ For purposes of interpreting the purpose and intent of Subchapter 41, the term "accidental" is not defined in Subchapters 1 or 41. Such term is generally defined as meaning "arising from extrinsic causes . . . occurring unexpectedly or by chance . . . happening without intent or through carelessness . . ." *Merriam Webster's Collegiate Dictionary* 7 (10th ed. 1995).

Pursuant to the express provisions of Subchapter 41, the same is applicable to the routine emission of TAC, not emissions resulting from accidental or catastrophic releases. The above-stated purpose of Subchapter 41 was thoroughly discussed and analyzed prior to the promulgation of Subchapter 41. As a general principal, it was recognized that it would be difficult, if not impossible, to regulate and/or permit accidental/catastrophic releases (inclusive of releases associated with equipment malfunctions) due to the very nature of such releases. First, the resulting releases are, for all practical purposes, impossible to predict as the same are the result of an accidental occurrence or malfunction that is unplanned, not intended, and not within the scope of representative source operations. This fact alone would preclude any preliminary estimate of potential emissions association with an accidental release or malfunction for permitting purposes. Second, in many instances such releases involve safety relief/emergency devices which are required to be incorporated into the design of the equipment to prevent potentially hazardous operating conditions which could result in loss of life and/or significant damage to facility equipment (e.g., pressure relief devices/safety valves, etc.).

Inclusion of TAC emissions associated with accidental/catastrophic releases within the applicability of Subchapter 42 and consideration of the same for purposes of the designation of an Area of Concern ("AOC") may subject the regulated community to the following determination process:

- To the extent an accidental/catastrophic release occurs from a facility, at what point during the release will an applicable Maximum Acceptable Ambient Concentration ("MAAC") for an AOC be exceeded?
- Assuming an exceedance of a MAAC for an AOC is potentially indicated, is the facility 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?
- What if it is impossible to determine the specific emission point at which an accidental or catastrophic release will occur or there is no available control technology to control the release?

The above consequences were sought to be avoided pursuant to Subchapter 41 and are clearly unintended pursuant to the DEQ's existing permitting structure and procedures. Notwithstanding, as a general matter, relevant regulatory requirements place a duty on owners and operators to reduce emissions to the extent possible. This general duty is also applicable to accidental/catastrophic releases and releases associated with equipment malfunctions resulting in TAC emissions.

The regulated community may, from time to time, experience emissions of TAC which are the direct result of an accidental or catastrophic release (e.g., malfunction, emergency condition, etc.). The resulting emissions are neither planned nor quantifiable prior to the incident, but rather, are the result of unpredictable circumstances/conditions which, in many instances, require immediate action to prevent loss of life and/or significant damage to facility equipment. As the express purpose and intent of Subchapter 42 (i.e., protect the public and the environment from the harmful effects of TAC) is similar, if not the same, as that of the existing Subchapter 41, the applicability of Subchapter 42 should be limited to routine emissions of TAC and exclude/exempt TAC emissions resulting from accidental and/or catastrophic releases.

SUGGESTED REVISION: *Based on the above comment, the following redlined revisions to OAC 252:100-42-1. Purpose. are suggested:*

The purpose of this Subchapter is to control the routine emission of toxic air contaminants (TAC), not to include accidental or catastrophic releases, and thereby protect the public and the environment from the potentially harmful effects of TAC that are emitted into the ambient air.

COMMENT NO. 2: *As currently proposed, OAC 252:100-42-20(b) Protocol. specifies the factors upon which the Director of the Air Quality Division may recommend substances be added or removed from the TAC MAAC list. To the extent each of the four (4) 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?*

As currently proposed, the four (4) factors/criteria listed in OAC 252:100-42-20(b)(1) through (4) are interpreted as not being mutually exclusive (*i.e.*, a substance will not be recommended to be included in the TAC MAAC list based solely on its toxicity even though there are no methods to monitor the ambient air concentration of the substance or there is no available information regarding the current quantity of the substance emitted in Oklahoma). Additionally, the factors relevant for removing a substance from the TAC MAAC list are or may be mutually exclusive (*i.e.*, a substance currently believed to be toxic could be subsequently reclassified as being nontoxic). Therefore, the factors applicable to the Director recommending a substance be added versus removed from the TAC MAAC list are different.

SUGGESTED REVISION: *Based on the above comment, the following redlined revisions to OAC 252:100-42-20(b) Protocol. are suggested:*

(b) **Protocol.** The Director may recommend substances to be added to or ~~removed from~~ the TAC MAAC list ~~based on~~ subject to the applicability of all of the following:

(1)

(c) The Director may recommend a substance be removed from the TAC MAAC list based on the nonapplicability or a negative determination regarding any one or more of the factors/criteria specified in (b)(1) through (4).

COMMENT NO. 3: *Will the initial adoption and subsequent modification and revision of the TAC MAAC list (*i.e.*, APPENDIX O of Subchapter 42) as specified in OAC 252:100-42-20(c) be subject to formal rulemaking presented to the Air Quality Council and subject to public review and comment? Likewise, once a recommendation is made by the Director to add or remove a substance from the TAC MAAC list, will such recommendation be presented to the Air Quality Council as formal rulemaking and be subject to public review and comment?*

As currently proposed, OAC 252:100-42-20(c) does not clearly specify whether the initial adoption and subsequent modification and revision of the TAC MAAC list (*i.e.*, Appendix O) will be subject to formal rulemaking presented to the Air Quality Council and subject to public review and comment. Appendix O, which is indicated as a “technical document” containing TAC MAAC under consideration is included with the proposed Subchapter 42.

For purposes of clarifying the intent of OAC 252:100-42-20(c) and to the extent the initial adoption and any subsequent determination to add or remove a substance from Appendix O and/or the applicable MAAC for a substance could significantly impact various members of the regulated community, it is recommended that all such determinations be specifically subject to formal rulemaking procedures.

SUGGESTED REVISION: *Based on the above comment, the following redlined revisions to OAC 252:100-42-20(c) are suggested:*

(de) TAC MAAC adoption and revision. The initial adoption and any subsequent revision or modification of the TAC MAAC list shall be in the form of formal rulemaking, and as such, will be presented to the Air Quality Council and include the opportunity for public review and comment will be in accordance with the rulemaking procedures of the Department.

COMMENT NO. 4: *APPENDIX O, which is attached to the proposed November 1, 2004 Subchapter 42 and identified as a “technical document”, includes various substances and specifies levels based on 24-hour averages and references the same are under consideration for inclusion in Appendix O. With few exceptions, the Subchapter 42 24-hour average concentrations for specified carcinogens are significantly below the corresponding MAAC Standard currently specified under Subchapter 41. The same is true for the Reference Concentration (SC42 RfC) based standard for the specified non-carcinogens. What is the DEQ’s basis and/or rationale for reducing the existing MAAC Standards pursuant to Subchapter 42?*

Although Terra agrees and favors the DEQ’s intended application of Subchapter 42 (*i.e.*, Area of Concern (“AOC”) approach to implementing the proposed Subchapter 42), the DEQ has not provided sufficient information to the regulated community on the basis and rationale for the potential TAC MAAC standards specified in APPENDIX O to provide meaningful review and comment. It should be 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, Terra suggests 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.

COMMENT NO. 5: *The Director’s designation of an AOC pursuant to OAC 252:100-42-30(a) and the DEQ’s determination of AOC Compliance Strategies pursuant to OAC 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 Departments consideration of AOC Compliance Strategies should specifically include economic feasibility as applicable to individual stationary sources.

As currently proposed, the designation of an AOC pursuant to OAC 252:100-42-30(a) is not subject to formal rulemaking although public notification and the opportunity to request a public meeting are specified in OAC 252:100-42-30(b) and (c), respectively. Further, the applicability and implementation of AOC Compliance Strategies pursuant to OAC 252:100-42-31(a) are not specifically subject to formal rulemaking presented to the Air Quality Council and subject to public review and comment even though OAC 252:100-42-31(b) indicates the potential for additional rulemaking.

The designation of an AOC as well as the Department's determination of AOC Compliance Strategies have the potential to significantly affect the regulated community (*i.e.*, the same could result in a company being required to purchase, install, and operate control equipment with costs potentially ranging in the millions of dollars). Therefore, it is requested that all such determinations be specifically subject to formal rulemaking procedures and evaluation of potential AOC Compliance Strategies include economic feasibility as applied to individual stationary sources.

***SUGGESTED REVISION:** Based on the above comment, the following redlined revisions to OAC 252:100-42-30(a)(1) and 252:100-42-31(b) are suggested:*

OAC 252:100-42-30(a)(1):

(a) Designation.

(1) The Director may, via formal rulemaking and presentation to the Air Quality Council, designate an Area of Concern (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. ~~Designation of an AOC shall become final 30 days following publication of the notice of designation or 30 days following a public meeting if requested pursuant to subsection 42-30(e) below.~~

(2) ...

(b) **Public notification.** The Department shall publish prominent legal notice of the boundaries and other information associated with the AOC. The publication shall identify locations where information may be reviewed. The notice shall also include a 30-day opportunity to submit written comments on the proposed AOC request, or and give the date, time, and place of the Air Quality Council ~~for, a public meeting on the designation.~~

(c) ...

OAC 252:100-42-31(b):

(b) **Additional rulemaking.** AOC Compliance Strategies shall be in the form of formal rulemaking, and as such, will be presented to the Air Quality Council and include the opportunity for public review and comment ~~may require rulemaking.~~ Rules proposed as an AOC Compliance Strategy may include but shall not be limited to the measures in the following paragraphs.

(1) **Control measures.** As an AOC Compliance Strategy, the Department may propose control measures, work practice standards, control equipment requirements, material substitution requirements, or stack emissions standards. When considering such measures as an AOC Compliance Strategy, the Department shall account for the impact of any emissions from mobile, non-road, ~~and~~ biogenic sources, and the availability and economic feasibility of the measures.

COMMENT No.6: OAC 252:100-42-31(a)(1)(C) references the phrase "that is not subject to a final emission standard" regarding the applicability of AOC Compliance Strategies to a stationary source or emissions unit. To the extent that a stationary source or emissions unit is 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, such stationary source/emissions unit should not be subject to compliance with AOC Compliance Strategies developed by the DEQ under Subchapter 42.

In accordance with the cited references to the Federal Clean Air Act, the U.S. Environmental Protection Agency ("EPA") has promulgated a number of National Emission Standards for Hazardous Air Pollutants for Source Categories (40 CFR Part 63). These Standards are often referred to as Maximum Achievable Control Technology Standards ("MACT Standards"). The same were developed by EPA following careful review of Hazardous Air Pollutant ("HAP") emissions, the majority of which are also classified as TAC. In its review, EPA determined the MACT Floor for certain activities/emission sources of HAP was "no control" (i.e., controls were not needed).

In promulgating the MACT Standards, EPA conducted an in depth analysis and review of the various source categories. As a result of its analysis, several emission units, although identified as HAP emission sources within the regulated source category, were specifically exempted from the applicability of the MACT Standards based on EPA's determination that MACT regulation was not required. In response to comments, EPA has previously indicated its determination to exclude/exempt certain activities and/or emissions units from the MACT Standards was due, in large part, to the fact that certain emission sources cannot practicably be controlled and/or have minimal emissions on a facility-wide basis. Accordingly, EPA determined the MACT Floor for these emission sources to be "no control" and expressly declined to regulate the same pursuant to the MACT Standards.

To the extent EPA has issued a final MACT Standard wherein the MACT Floor for a source or emissions unit has been determined to be "no control", it does not appear reasonable that the same source or emissions unit be identified and included in an AOC Compliance Strategy regarding emissions of the same substance although classified as a TAC simply because the source or emissions unit does not have a final emission standard, work practice, or other emissions control requirement specified in the MACT Standard. The reason such requirements are not stated in the MACT Standard is that EPA has previously determined such emission sources cannot practicably be controlled and/or their emissions are already of a *de minimis* nature.

***SUGGESTED REVISION:** Based on the above comment, the following redlined revisions to OAC 252:100-42-31(a)(1)(C) are suggested:*

(C) that is not 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 and/or that has been specifically exempted from the same due to a determination by the EPA that such emission sources cannot practicably be controlled or their emissions are already of a de minimis nature (e.g., MACT Floor determined to be no control), and OAC 252:100-17, Parts 5, 7, and 9.

Upon your receipt and review, please contact me should you have any questions or wish to discuss the above comments in further detail prior to the December 9, 2004 Air Quality Council meeting.

Sincerely,



Jim Schellhorn
Director of Environmental, Health & Safety
Terra Industries Inc.

cc: Gary Collins Terra Nitrogen – Verdigris Plant
Brian Flanagan Terra Nitrogen – Woodward Plant



December 3, 2004

Mr. Eddie Terrill, Director
Air Quality Division
Oklahoma Department of Environmental Quality
707 N. Robinson
Oklahoma City, OK 73101

Re: Proposed Rulemaking for Toxic Air Emissions

Dear Mr. Terrill:

The Oklahoma Independent Petroleum Association (OIPA) is providing this letter to you concerning the Oklahoma Department of Environmental Quality's (DEQ's) revised proposed rulemaking regarding toxic air emissions. OIPA represents approximately 1500 small and large operators engaged in the exploration and production of crude oil and natural gas.

We would like to emphasize our concerns regarding how the proposed rules could potentially impact small oil and gas operators. The following reiterates some of our concerns previously submitted to DEQ on this issue, and provides new comments on the revised proposed language.

1. In the public meeting held on October 20, 2004, the Air Quality Division (AQD) staff provided a flow chart to industry which clarifies the process. However, the revised proposed language does not follow this flowchart. We recommend that the language mirror the flow chart process.

For example: The flow chart states that the toxic air pollutant will be monitored by DEQ; however, it is not clear in the proposed language under 252:100-42-30(a)(1) who will conduct the initial monitoring. We recommend the following language (shown in bold) change:

252:100-42-30(a)(1). Designation. "...when it is demonstrated by **AQD's** monitoring that the MAAC for that TAC is exceeded..."

2. 252:100-42-30(b). Public notification. Many oil and gas operators do not reside in or near their production sites. Notice of a proposed AOC needs to be published in newspapers with state-wide circulation i.e. both the Tulsa and Oklahoma City newspapers.

3. 252:100-42-30(d). Scope. It is not clear in this section who will conduct this monitoring, modeling or other means to delineate the boundaries of the AOC. We think that the AQD should propose the boundaries based on the data it collects and analyzes. We recommend the following change (shown in bold) to clarify that the AQD will delineate the AOC boundaries.

252:100-42-30(d) Scope. “...boundaries of which shall be determined by the AQD’s monitoring, modeling or other means approved by the Director.”

4. 252:100-42-31 (a)(1). Applicability. The proposed language states that the compliance strategies will apply to “any” stationary source or emission unit. This would be very onerous and costly on small businesses, owners of sources that had very low emissions, and on the DEQ. We have recommended changes to the proposed rulemaking in items 6-9 below.

5. 252:100-42-31 (a)(2). Applicability. The proposed language states that operators of facilities located in an AOC are not required to meet the TAC MAAC on site. Where is the MAAC required to be met? There should be a defined point or at least a general description of where this is located; otherwise, this is a moving target for industry.

6. 252:100-42-31(b). Additional rulemaking. We understand that there may be instances where DEQ will work with a company emitting a TAC in or near an AOC, to determine if any voluntary actions can be conducted by the operator or owner to control emissions; however, the proposed language “may” allow implementation of control strategies without a rulemaking. We are concerned that onerous and costly control strategies could be implemented by the DEQ without proper notice to industry and an opportunity to provide input. We are greatly concerned how this could impact small oil and natural gas operators. We request DEQ add language to clarify this issue.

7. 252:100-42-31(b)(1). Control Measures. The cost of a control measure is very important as it may adversely impact 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. As such, we recommend the following language changes (shown in bold).

252:100-42-31(b)(1). “...and the availability, cost, and feasibility of the measure.”

8. 252:100-42-31(b)(2). Permits required. This section allows the AQD to permit TAC sources for which the AOC was designated. It will be onerous and costly on both industry and the AQD to permit applicable sources with very low emissions. It will be especially onerous and costly on small businesses, especially owners of marginal wells.

We recommend 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.

9. 252:100-42-31(b)(3). Monitoring and modeling requirements. The proposed language allows the AQD to require owners or operators of applicable stationary sources to perform monitoring and/or modeling for the TAC of concern. The cost impacts of monitoring or modeling for small business owners of the emission sources and/or sources with very low emissions can be significant. Again, this would greatly impact an owner of a marginal oil or gas well. We recommend that any monitoring or modeling be included with the proposed compliance strategy and go through the rulemaking process. This would allow these entities an opportunity to provide input into the process. We recommend the following sentence be added to the end of the paragraph.

252:100-42-31(b)(3). “Any monitoring or modeling requirements placed on owners or operators of applicable stationary sources by the AQD shall be developed in accordance with the rulemaking procedures of the Department.”

10. Reference Appendix O: Again, we are providing comments in regards to more stringent toxic air emission standards than is currently in place. What is the scientific basis or need to do so? We agree 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. We recommend that the existing standards for the listed substances be utilized until the AQD has data in hand that suggests these standards should be lowered.

We appreciate the opportunity to provide input on the proposed rulemaking. If you have any questions on other items provided in this letter, please contact me at 405-942-2334, x 221. Thank you in advance for your consideration.

Sincerely,

Angie Burckhalter
Director of Regulatory Affairs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

December 9, 2004



Mr. Scott Thomas
Environmental Program Manager
Air Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Dear Mr. Thomas:

Thank you for the opportunity to comment on the proposed changes for Oklahoma Air Pollution Control Rules OAC 252:100, as listed below:

Subchapter 4	New Source Performance Standards
Subchapter 17	Incinerators
Subchapter 41	Control of Emissions of Hazardous Air Pollutants and Toxic Air Contaminants
Subchapter 42	Control of Toxic Air Contaminants (TAC) [New]
Appendix O	Toxic Air Contaminants Ambient Air Concentration Standards [New]
Appendix E	Primary Ambient Air Quality Standards
Appendix F	Secondary Ambient Air Quality Standards

Subchapter 4. New Source Performance Standards

This action provides the annual update by the State to incorporate the most current NSPS standard through September 1, 2004. We support this action.

Subchapter 17. Incinerators

We did not have adverse comments on the language added to subsection 63(j) of OAC 252:100-17.

Though not asked to comment on 252:100-17-63, we did notice two issues: Section (d) (Municipal waste combustion units), paragraph (2) should include Subpart-BBBB; and Section (h) (Hazardous waste combustion units), paragraph (2) should refer to 40 CFR 63, Subpart EEE (not EEEE).

Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants

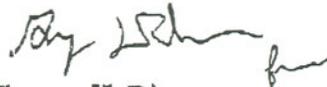
This action provides the annual update by the State to incorporate the most current NESHAP standards through September 1, 2004. We support this action.

Appendices O, E, and F

No adverse comments.

We appreciate the opportunity to comment on the proposed rules prior to the public hearing on December 9, 2004. We have incorporated comments provided by the Air Permitting, Air State and Tribal Operations, and the Air Enforcement Sections. Should you have questions regarding any of these comments, please feel free to contact me or Ms. Carrie Paige of my staff at (214) 665-6521.

Sincerely yours,



Thomas H. Diggs
Chief
Air Planning Section

cc: Ms. Cheryl Bradley (ODEQ)
Mr. Brad Cook (ODEQ)
Ms. Lisa Donovan (ODEQ)