MINUTES
AIR QUALITY COUNCIL
April 16, 2008
OSU – Tulsa Campus
700 N. Greenwood, Tulsa Oklahoma

For AQC Approval
July 16, 2008

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. April 16, 2008 at Oklahoma State University Tulsa Campus, Tulsa, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on November 2, 2007. Agendas were posted at the meeting facility and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting. Ms. Beverly Botchlet-Smith convened the hearings by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51, and Title 27A, Oklahoma Statutes, Sections 2-5-201 and 2-5-101 - 2-5-118. Ms. Smith entered the Agenda and the Oklahoma Register Notice into the record and announced that forms were available at the sign-in table for anyone wishing to comment on any of the rules. Mr. David Branecky, Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed. Mr. Eddie Terrill introduced the newest Council member, Montelle Clark, who is filling Mr. Don Smith's unexpired term.

MEMBERS PRESENT
Sharon Myers
David Branecky
Jim Haught
Laura Worthen Lodes
Jerry Purkaple
Rick Treeman
Montelle Clark

MEMBERS ABSENT
Bob Lynch
Gary Martin

DEQ STAFF PRESENT
Eddie Terrill
Beverly Botchlet-Smith
Scott Thomas
Cheryl Bradley
Max Price
Pat Sullivan

OTHERS PRESENT
Christy Myers, Court Reporter

DEQ STAFF PRESENT
Nancy Marshment
Sarah Penn
Dawson Lasseter
Myrna Bruce

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

Approval of Minutes Ms. Lodes moved to approve the February 5, 2008 Minutes as presented. Mr. Purkaple made the second.

Sharon Myers	Yes	Jerry Purkaple	Yes
Laura Lodes	Yes	Montelle Clark	Yes
Jim Haught	Yes	David Branecky	Yes
Rick Treeman	Yes		

OAC 252:100-17. Incinerators [AMENDED] Ms. Pat Sullivan stated that the Department's proposal would amend Subchapter 17, Part 5 to meet federal requirements for state plans under section 111(d) of the federal Clean Air Act applicable to existing sources. Ms. Sullivan identified the revisions that resulted from the EPA review stating that the EPA sees no further reason to delay the rulemaking. Staff asked for Council's recommendation to send the proposal to the Environmental Quality Board for permanent adoption.

Following Council discussion, public comments were heard from Earl Hatley, Grand River Keeper for the Grand River Watershed; and Nadine Barton, Citizens Action for a Safe Environment (CASE).

Mr. Haught made motion to accept the recommended changes plus removing the references to large facilities in 17-19(b) as discussed and Ms. Myers made the second.

Sharon Myers	Yes	Jerry Purkaple	Yes
Laura Lodes	Yes	Montelle Clark	Yes
Jim Haught	Yes	David Branecky	Yes
Rick Treeman	Yes		

OAC 252:100-19. Control of Emission of Particulate Matter [AMENDED]
OAC 252:100 Appendix C. Allowable Rate of Emissions for Indirectly Fired Fuel-Burning Units [REVOKED]
OAC 252:100 Appendix C. Allowable Particulate Matter Emission Rates for Indirectly Fired Fuel-Burning Units [NEW]
OAC 252:100 Appendix D. Allowable Rate of Emissions for Indirectly Fired Wood Fuel-Burning Units [REVOKED]
OAC 252:100 Appendix D. Allowable Particulate Matter Emission Rates for Indirectly Fired Fuel-Burning Units [NEW]
OAC 252:100 Appendix G. Allowable Rate of Emissions [REVOKED]
OAC 252:100 Appendix G. Allowable Particulate Matter Emission Rates for Directly Fired Fuel-Burning Units and Industrial Process [NEW]

Mr. Max Price stated that the Department's proposal would amend OAC 252:100-19-1.1, Definitions, to add definitions for condensable, filterable and total particulate matter. OAC 252:100-19-11, Allowable particulate matter emission rates from combined wood fuel and fossil fuel fired steam generating units, is being amended to add the word "total" before the words "particulate matter." In addition, the Department is proposing to update Appendices C, D and G for clarification and to conform with the proposed changes to Subchapter 19. Mr. Price pointed out that the amendments would clarify that the particulate matter emission rates contained in the rule and appendices refer to both condensable and filterable particulate matter.

Following discussion by Council, public comments were heard from Rusty Kroll for Public Service Company of Oklahoma; and Nadine Barton, CASE. Mr. Branecky then called for a motion. Mr. Purkaple moved for approval and permanent adoption and Mr. Treeman made the second.

Sharon Myers	Yes	Jerry Purkaple	Yes
Laura Lodes	Yes	Montelle Clark	Yes
Jim Haught	Yes	David Branecky	Yes
Rick Treeman	Yes		

OAC 252:100-44. Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units – Comments from the Council and the Public

Mr. Max Price advised that the notice of rulemaking intent for the April Air Quality Advisory Council meeting included a proposed new Subchapter 44, Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units. On February 8, 2008, the United States Court of Appeals for the District of Columbia vacated the Clean Air Mercury Rule (CAMR), thus rendering the proposed Subchapter 44 unenforceable. The Department may propose a new state rule on mercury at a later date. Staff believes a rule

may be necessary to preserve the mercury monitoring requirements imposed by CAMR which are contained in Subpart I of Part 75 in Title 40 of the Code of Federal Regulations.

Mr. Eddie Terrill provided additional insight and public comments were heard from Earl Hatley, Grand River Keeper for the Grand River Watershed; Chuck Gross, President to Sustainability N.O.W.; Bridgett Wood, Sustainability N.O.W. and mother; Nadine Barton, CASE; Kenya Taylor, 15-year old member of Sustainability NOW; Lydia Patitsas, Oklahoma Sustainability Network; Jean McMahon, Green Party of Oklahoma; and Joni LeVeness, Green Party of Oklahoma.

Mr. Branecky announced that no action by Council was required on the rulemaking and thanked the public for their comments.

Division Director's Report – Mr. Terrill gave a brief update on Division activities.

New Business – None

Adjournment -- Meeting adjourned at 11:30. Next meeting July 16, 2008 in Ponca City.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS

OF THE REGULARLY SCHEDULED

AIR QUALITY COUNCIL MEETING

HELD ON APRIL 16, 2008, AT 9:00 AM

IN TULSA, OKLAHOMA

ITEMS 1-4A

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MYERS REPORTING SERVICE
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ORIGINAL

COUNCIL MEMBERS

DAVID BRANECKY, CHAIRMAN
RICK TREEMAN, VICE-CHAIRMAN
JIM HAUGHT, MEMBER
SHARON MYERS, MEMBER
JERRY PURKAPLE, MEMBER
LAURA LODES, MEMBER
MONTELLE CLARK, MEMBER

DEQ STAFF

MYRNA BRUCE
BEVERLY BOTCHLET-SMITH
EDDIE TERRILL
PAT SULLIVAN
MAX PRICE
CHERYL BRADLEY

OTHERS PRESENT

HAROLD HATLEY
NADINE BARTON

PROCEEDINGS

MR. BRANECKY: Good morning. Before we get started I would like to remind everyone if you could put your cell phones on mute or turn them off, either one, I would appreciate that. And with that, we'll call the meeting to order and ask Myrna to take a roll call, please.

MS. BRUCE: Sharon Myers.
MS. MYERS: Here.
MS. BRUCE: Laura Lodes.
MS. LODES: Here.
MS. BRUCE: Jim Haught.
MR. HAUGHT: Here.
MS. BRUCE: Rick Treeman.
MR. TREEMAN: Here.
MS. BRUCE: Jerry Purkaple.
MR. PURKAPLE: Here.
MS. BRUCE: Montelle Clark.
MR. CLARK: Here.
MS. BRUCE: David Branecky.
MR. BRANECKY: Here.
MS. BRUCE: We do have a quorum.

MR. BRANECKY: Okay. Thank you, Myrna. The next item on the agenda is the Approval of the Minutes from our February 5 Meeting.

Do we have any discussion on the minutes? Motion for approval.

MS. LODES: I so move.
MR. PURKAPLE: I second.
MR. BRANECKY: All right. I have a motion and a second. Myrna, will you call the roll, please.

MS. BRUCE: Sharon Myers.
MS. MYERS: Yes.
MS. BRUCE: Laura Lodes.
MS. LODES: Yes.
MS. BRUCE: Jim Haught.
MR. HAUGHT: Yes.
MS. BRUCE: Rick Treeman.
MR. TREEMAN: Yes.
MS. BRUCE: Jerry Purkaple.
MR. PURKAPLE: Yes.
MS. BRUCE: Montelle Clark.
MR. CLARK: I abstain.
MS. BRUCE: David Branecky.
MR. BRANECKY: Yes.

MS. BRUCE: Motion approved.
MR. BRANECKY: With that we'll get into the public hearing portion of the meeting.
MS. BOTCHLET-SMITH: Do you want to introduce Montelle before we start the public hearing?
MR. BRANECKY: I guess I should. Let me back up. We have a new Council Member who is filling an unexpired term. So I'll let Eddie do the introductions for that.
MR. TERRILL: Yes. As most of you know, Don Smith was a representative from the general public, I think was the category. And his work did not allow him to be at very many of the meetings, so he made the decision to resign about a month and a half ago. And the Governor, on Friday I believe it was, appointed Montelle Clark to fill that unexpired term. And I think we're real fortunate to have Montelle. He's been active over the last several months as the mercury issue has been brought before us. I think he'll

1 bring a real good environmental perspective
2 to the Council. So, Montelle, welcome.
3 MR. CLARKE: Thank you.
4 Clearly, the Governor was desperate.
5 MR. BRANECKY: Okay. With that,
6 we'll go into the public hearing portion.
7 Beverly.
8 MS. BOTCHLET-SMITH: Good
9 morning. I'm Beverly Botchlet-Smith,
10 Assistant Director of the Air Quality
11 Division. As such, I'll serve as the
12 Protocol Officer for today's hearings.
13 The hearings will be convened by the
14 Air Quality Council in compliance with the
15 Oklahoma Administrative Procedures Act and
16 Title 40 of the Code of Federal
17 Regulations, Part 51, as well as the
18 authority of Title 27A of the Oklahoma
19 Statutes, Section 2-2-201, Sections 2-5-101
20 through 2-5-118.
21 Notice of the April 16, 2008
22 hearings were advertised in the Oklahoma
23 Register for the purpose of receiving
24 comments pertaining to the proposed OAC
25 Title 252, Chapter 100 rules as listed on

1 the Agenda and will be entered into each
2 record along with the Oklahoma Register
3 filing. Notice of the meeting was filed
4 with the Secretary of State on November 2,
5 2007. The Agenda was duly posted 24 hours
6 prior to the meeting at this facility and
7 at the DEQ.
8 If you wish to make a statement, it
9 is very important that you complete the
10 form at the registration table and you will
11 be called upon at the appropriate time.
12 Audience members, please come to the
13 podium for your comments and please state
14 your name.
15 At this time, we will proceed with
16 what's marked as Agenda Item 4A on the
17 Hearing Agenda. That is OAC 252:100-17,
18 Incinerators.
19 The presentation for this will be
20 done by Ms. Pat Sullivan of our staff.
21 MS. SULLIVAN: Mr. Chairman,
22 Members of the Council, ladies and
23 gentlemen, I'm Pat Sullivan. I'm an
24 Environmental Program Specialist working in
25 the Rules Unit of the Air Quality Division

1 of the Department of Environmental Quality.
2 Today I will present to you the
3 proposed modifications to the agency rules
4 on Municipal Waste Combustors at OAC
5 252:100-17, Incinerators Part 5.
6 On May 10, 2006, the EPA published
7 revised standards for existing and new
8 Municipal Waste Combustor units in the
9 Federal Register. Categories and entities
10 potentially affected by the final rule are
11 MWC units with a design combustion capacity
12 of greater than 250 tons per day.
13 Standards for MWC units were promulgated in
14 1995 and implemented in 2000. The Clean
15 Air Act requires review of standards every
16 five years. As a result of this review,
17 standards for existing MWC units have been
18 revised to reflect the actual performance
19 levels being achieved by those units. For
20 new MWC units, standards have been amended
21 to reflect the performance level achievable
22 by MWC units constructed in the future.
23 Two major revisions result from the
24 EPA review. As we go through these
25 revisions -- we're hoping that you'll pass

1 this today -- but if you'll go to your
2 rule, I'll direct you to each section and
3 be sure that you understand these. And
4 it's not going to be in order,
5 unfortunately, it's chronologically.
6 Emission guidelines for existing MWC
7 units are revised for particulate matter on
8 Page 3, OAC 252:100-17-16(a) cadmium -- I'm
9 sorry, for particulate matter that's at 17-
10 16. For cadmium it's at 17-17(a); for lead
11 it's 17(b); for mercury it's 17(c); and
12 dioxin, Page 4, OAC 252:100-17-19(a). The
13 nitrogen oxides emissions limit for mass
14 burn rotary waterwall type MWC units is
15 also revised, that's on Page 4 of
16 OAC 252:100-17-20, Standards for Nitrogen
17 Oxides.
18 The emission compliance testing
19 provisions have been revised, on Page 10,
20 OAC 252:100-17-25 to require increased data
21 availability from Continuous Emissions
22 Monitoring Systems, CEMS.
23 The revisions require CEMS to
24 generate at least 95 percent data
25 availability on a calendar years basis and

at least 90 percent data availability on a calendar quarter basis. The proposed revision will allow the optional use of CEMS to monitor particulate matter and mercury. Other revisions to the rule include parameters for operational activities by provincially-certified personnel, that's Pages 8 and 9, OAC 252:100-17-24; and on Page 11, the last page, you'll find a proposed incorporation by reference of updated reporting and recordkeeping requirements at OAC 252:100-17-26.

MR. BRANECKY: Pat, could you point out again where the CEMS requirements were in the rules?

MS. SULLIVAN: The CEMS requirements are on Page 10, OAC 252:100-17-25. I'm sorry that's the IBR.

MR. BRANECKY: So the CEMS requirements are just incorporated by reference?

MS. SULLIVAN: Yes.

MR. BRANECKY: Okay. Thank you.

Ms. Sullivan: You're welcome.

We're almost there.

Proposed changes also includes an emission limit for fluidized bed, mixed fuel type MWC units emitting carbon monoxide that was promulgated in the July 14, 2004, Federal Register, and that's on Page 7, 100-17-21. And a correction of a scrivener's error at 17-21(b) correcting a referenced citation from 40 CFR 60.58b to 60.53b.

We're going back to the front now. Proposed changes for clarity include the addition of four definitions, Page 1, OAC 252:100-17-14.1, one of which is "EPA". The new definition redesignates EPA as the administrator of exemptions. A new subsection, on the top of Page 3, clarifies that facilities meeting the applicability requirements under the exemption section are not subject to 40 CFR Part 60 Subpart E. A new subsection (m), just below the Subpart L, clarifies the physical and operation changes made to an existing municipal waste combustor unit primarily for the purpose of complying with Part 5

are not considered in determining whether the unit is a modified or reconstructed under 40 CFR Part 60 Subparts Ea and Eb.

The proposed changes take two forms, narrative and, where appropriate, incorporation by reference.

EPA expects these modifications to have minimal cost and no economic impact since the final emission limits can be achieved using the same air pollution control technology that was used to comply with the current emission limit. Existing large Municipal Waste Combustor units will continue to use their existing MACT control technology to meet the emission limits, and will not incur costs to retrofit equipment. In addition, EPA does not believe that the revised limits will result in any increase in operation or maintenance costs.

If approved by the Council and the Environmental Quality Board, proposed changes to OAC 252:100-17 Part 5 and record of this hearing, will be submitted to EPA as a revision to Oklahoma's existing State 111(d) Plan for Municipal Waste

Combustors which became effective January 5, 1999.

Notice of the proposed changes to the rule and its accompanying 111(d) Plan was published in the March 17, 2008 Oklahoma Register.

The only comments received were from EPA and they were simply that these were of an administration nature. And consequently they had ~~an~~ no adverse comments.

This rule was first presented to the Council in April 2007 but was tabled in October while staff awaited EPA's reconsideration of three aspects of the Municipal Waste Combustor Rule. EPA has addressed these issues and though the results have yet to be published, staff has been informed that EPA sees no reason to delay this rule. Comments from the Council's 2007 meetings have been incorporated into the proposed rule. Therefore, staff suggests that the Council vote to recommend the amendment to OAC 252:100-17 Part 5 to the Environmental

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1 Quality Board for adoption as a permanent
2 rule.
3 Are there any questions?
4 MS. BOTCHLET-SMITH: At this time
5 will take questions from the Council.
6 MR. PURKAPLE: I have a couple of
7 questions.
8 MS. SULLIVAN: Yes, sir.
9 MR. PURKAPLE: On Page 3, at the
10 top, under Item L, the phrase "large", is
11 that defined someplace or do you know how
12 large "large" is?
13 MS. SULLIVAN: You have such a
14 good eye. We went through and removed all
15 the references to "large", I thought. So,
16 we will delete that.
17 MR. PURKAPLE: Okay. On Page 3,
18 also, 100-17 -- 16, 17 and 19, I guess, do
19 you propose to have added by April 28,
20 2009?
21 MS. SULLIVAN: Yes.
22 MR. PURKAPLE: Do those sections
23 apply, did you say only to existing MWCs or
24 does that apply to new as well?
25 MS. SULLIVAN: No, it doesn't.

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1 MR. PURKAPLE: Would it be
2 helpful to add the word "existing" prior to
3 the MWC for clarity sake for a person
4 reading the rule knowing that that would
5 apply to me?
6 MS. SULLIVAN: The new ones are
7 subject to the NSPS. But this is only for
8 total --
9 MR. PURKAPLE: But if you're
10 just reading those, would you know that it
11 applied only to existing?
12 MR. BRANECKY: Well if the
13 definition of MWC was -- construction was
14 commenced on or before September 29, 1994.
15 I guess that -- that's defined.
16 MR. PURKAPLE: Okay.
17 MR. BRANECKY: Did that take care
18 of it?
19 MR. PURKAPLE: But the parts that
20 I am talking about are -- maybe I didn't
21 understand what you said on the definition.
22 But take, for example, 100-17-16(a)(2) --
23 by April 28, 2009, it has where PM should
24 be for an MWC; is that new or existing?
25 And I understand --

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1 MR. BRANECKY: Well, you can see
2 by the definition it's anything before
3 September 29, 1994.
4 MS. SULLIVAN: Being placed in
5 that opening section is what clarifies that
6 issue. If it's not clear enough we can
7 reconsider, however, that's how it came.
8 MR. PURKAPLE: If it's clear to
9 others, that will be fine.
10 On Page 4, 100-17-19(b) there is
11 another reference to "large". What's in
12 the 40 CFR citation, at the end of that
13 sentence; is that the correct citation? 40
14 CFR 60.586b(g)(5)(iii).
15 MS. SULLIVAN: I'll have to check
16 the citation. I think we opened 19, so we
17 could take "large" out in that particular
18 section (inaudible due to cell phone
19 interference).
20 MR. PURKAPLE: That citation just
21 doesn't look right.
22 MS. SULLIVAN: Okay. We'll
23 double check the citation and we can take
24 the writing out of the
25 section/literature???? (inaudible).

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1 MR. PURKAPLE: (Inaudible) the
2 language that we've added refers to in
3 several cases, be the Director?
4 MS. SULLIVAN: Yes.
5 MR. PURKAPLE: Is that the
6 Director of DEQ? I'm assuming that it
7 doesn't have anything to do with EPA.
8 MS. SULLIVAN: Probably would be
9 the Director of DEQ.
10 MR. PURKAPLE: And does that --
11 MS. SULLIVAN: Just a second, let
12 me look. The Director is Eddie Terrill.
13 MR. PURKAPLE: Can we make it
14 clear that it will be Eddie and not someone
15 else?
16 MS. SULLIVAN: Cheryl, can you
17 tell us where it's at?
18 MS. BRADLEY: Yes, it is defined
19 in Subchapter 1. We actually incorporated
20 the definitions from the Oklahoma Clean Air
21 Act.
22 MR. PURKAPLE: Thank you, Pat.
23 MS. BRADLEY: You're welcome.
24 MS. SULLIVAN: Thank you. You
25 caught some really good things for us.

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1 MS. MYERS: My questions won't
2 be as good as his, but I'm going to ask
3 them anyway.
4 MS. SULLIVAN: All right.
5 MS. MYERS: In the sections where
6 you're talking about the standards for
7 particulate matter, cadmium, lead, et
8 cetera. By the April 28th date there are
9 more stringent requirements added, are
10 those from the federal standards or are
11 those an Oklahoma added standard?
12 MS. SULLIVAN: All of these
13 standards are from the Federal Register.
14 Am I understanding your question?
15 MS. MYERS: So on the federal --
16 we are not doing anything that would be
17 more burdensome than the federal?
18 MS. SULLIVAN: No. But what we
19 do in here, as you can see, before we had
20 (inaudible) milligrams. The Federal
21 Standards states it in micrograms, so we
22 did go back and did that.
23 MS. MYERS: Well, that makes
24 sense then. That makes sense.
25 MS. SULLIVAN: No. We did not --

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1 we are not exceeding any federal standards.
2 MS. MYERS: And then my other
3 question is just one out of curiosity, on
4 the references on the exemptions, where EPA
5 is designated as the administrator for
6 exemptions -- I guess I'm just curious why
7 we are passing that handle back over to
8 them instead of taking care of it in the
9 state.
10 MS. SULLIVAN: This is one of the
11 -- as they reconsidered this, this is one
12 of the points that they brought out very
13 clearly that they were returning to --
14 Cheryl can probably explain it better than
15 I, but that these -- they were no longer
16 passing down that power of exemptions that
17 it needed to go through.
18 MS. BRADLEY: Yes. In publishing
19 these revisions, EPA clarified that they
20 did not delegate specific authorities for
21 the -- within these emission guidelines or
22 within the resource performance standards.
23 So we're just clarifying our rule as a
24 regulatory agency. And it incorporates the
25 changes that EPA had promulgated in the air

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1 emission guidelines.
2 This particular scheme or these
3 rules apply only to one facility in
4 Oklahoma. It is located in Tulsa, Oklahoma
5 and currently, I believe, is not
6 operational.
7 MS. LODES: I have one question.
8 On the one where he took out -- on "L"
9 where he took out "large".
10 MS. SULLIVAN: Okay.
11 MS. LODES: Is that supposed to
12 say -- because it says any MWC is not
13 subject to Subpart E of 40 CFR; is that
14 supposed to mean that all of them are not
15 subject or is it supposed to be "that" is
16 not subject? If you're not subject to
17 Subpart E then you can request exemptions.
18
19 MS. SULLIVAN: I think it's the
20 other way; isn't it, Cheryl?
21 MS. LODES: That they're all
22 exempt from Subpart E?
23 MS. SULLIVAN: If this rule
24 applies to you, then you are exempt from
25 Subpart E.

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1 MS. LODES: Because you're
2 requesting the exemption here, this is the
3 part that is requesting the exemption.
4 Okay. So all of them are exempt from
5 Subpart E.
6 MS. BRADLEY: Correct. Subpart E
7 predates these regulations and EPA did not
8 want to have two different sets of
9 regulations apply to the same source with
10 the same purpose.
11 MS. LODES: Okay.
12 MS. SULLIVAN: The initial intent
13 of this rule was to simply bring the
14 facility -- bring the rule up to the actual
15 performance of the facility and it has
16 turned into a monster, because it has been
17 coming back to you for over a year now.
18 We're going to treat this like this
19 is the first time so that when can get your
20 Board packet, it won't be this thick.
21 MR. BRANECKY: Well, I guess I've
22 got a question now.
23 MS. SULLIVAN: Yes, sir.
24 MR. BRANECKY: Is there going to
25 be some confusion -- we've got facilities

1 notifying EPA of certain things. And yet
2 over here we're asking the DEQ to do
3 certain things, so who's in charge of this?
4 We are asking the Director of DEQ to make
5 some --
6 MS. SULLIVAN: If they are
7 operating, we're in charge.
8 MR. BRANECKY: But the facility
9 makes notification to EPA of certain
10 things?
11 MS. SULLIVAN: To be exempt.
12 MR. BRANECKY: So you don't think
13 there can be a problem of a facility trying
14 to figure out who's doing what or who they
15 are supposed to be talking to? We are
16 talking to DEQ on one hand for notification
17 of exempt, and notifying EPA on other
18 things. I think that's a little confusing.
19 MS. BRADLEY: On the surface it
20 may be, but it in the case of the one
21 facility we have, they are not exempt and
22 are subject to the regulations. So in
23 practice, it has not been an issue. And as
24 these rules are only applicable to existing
25 sources, we will have no new issues. We

1 don't anticipate any new additional sources
2 that would be subject to (inaudible). Any
3 new source would be subject to the NSPS and
4 we don't have these incorporation by
5 reference tailored rule to (inaudible).
6 MR. BRANECKY: I have one more
7 question for clarification purposes -- at
8 least for me. You know throughout the rule
9 on the compliance dates or the effective
10 date, we talked about before April 28 and
11 by April 28. Yet in the table for nitrogen
12 oxides, we talk about before April 28 and
13 then on or after April 28. Is there a
14 reason for that or should we make them
15 consistent?
16 MS. SULLIVAN: Earlier in the
17 meeting you asked me to change that.
18 MR. BRANECKY: What's that?
19 MS. SULLIVAN: We didn't change
20 it in the text because the text was
21 consistent with the rest of the rule. And
22 that --
23 MR. BRANECKY: There's no way to
24 be consistent then. We can't be
25 consistent. Use the same wording

1 throughout, is what I'm saying.
2 (Discussion)
3 MS. SULLIVAN: Do you want me to
4 change it or not?
5 MR. BRANECKY: No, just leave it.
6 MR. SULLIVAN: Thank you.
7 MS. BOTCHLET-SMITH: Do we have
8 any further questions from the Council at
9 this time? Montelle.
10 MR. CLARK: When I was
11 researching the use of the Maximum
12 Available Control Technology, in
13 controlling the mercury emissions from the
14 incinerators, last year -- for those who
15 are interested in the mercury issue, I read
16 that in 1990, municipal waste incinerators
17 were increasing 45 tons -- about 45 tons of
18 mercury emissions and that through the use
19 of the installed Maximum Available Control
20 Technology, that had been reduced to 2.2
21 tons by 2000. That's the latest numbers I
22 had.
23 Does that sound close to what your
24 understanding is?
25 MS. SULLIVAN: Mr. Clark, I don't

1 know, but I can have that researched for
2 you.
3 MR. CLARK: That's fine.
4 MS. SULLIVAN: I'll let you know.
5 MS. BOTCHLET-SMITH: We haven't
6 received any indication that anyone from
7 the public had a question or wished to
8 speak about this. So unless the Council --
9 Mr. Hatley?
10 MR. HATLEY: Actually, when I
11 filled out my card to speak it was on the
12 issue of mercury and that is my concern
13 with this document. So if I may, I would
14 like to comment about that.
15 My name is Earl Hatley. I am the
16 Grand River Keeper for the Grand River
17 Water Shed in the northeast corner of the
18 state where we are impacted by anura toxic
19 lead which is contaminating our fish. I am
20 also Board Member for the Oklahoma
21 Sustainability Network and I'm on the
22 Hazardous Waste Management Advisory Council
23 for the DEQ.
24 My only comment is, on Page 3, (c),
25 with mercury at the bottom of the page; and

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1 then at the top of the next page, that
2 would be paragraphs 1 and 2, at the end it
3 states "whichever is less stringent". And
4 I would argue based on the comments you've
5 been hearing for over a year that the DEQ
6 take the initiative to strengthen that and
7 say "whichever is more stringent".
8 That's my comment.
9 MS. BOTCHLET-SMITH: Thank you.
10 Ms. Barton.
11 MS. BARTON: My name is Nadine
12 Barton and I am with CASE, Citizens Action
13 for a Safe Environment. We were the
14 successful interveners to stop the building
15 of the Black Fox Nuclear Plant. I'm also
16 with the INCOG Air Quality Committee; and I
17 also hold a position on the DEQ's Radiation
18 Management Council.
19 I am here representing CASE today.
20 I have to concur with Mr. Hatley on that
21 situation. I'm assuming that somebody can
22 correct me that the only solid waste
23 municipal burner that this rule applies to
24 is the one that shut down across the river;
25 is that correct?

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1 MS. BRADLEY: Correct.
2 Barton: : Okay. This is a
3 point of clarification. If for some reason
4 in the future that plant is sold and for
5 some reason it is reactivated, the question
6 is this:
7 Would there be an increased cost to
8 manifest the standards that were presented
9 here today?
10 MS. SULLIVAN: We had a change in
11 attorneys since our last meeting. However,
12 the attorneys for that facility have been
13 actively involved in this rule, and they
14 have surveyed it and believe that they can
15 meet these new standards at that facility.
16 And as I said in the beginning, the concept
17 behind these changes was to bring the rule
18 up to the level that they are preforming.
19 They have been preforming better than the
20 standards. And that's what they discovered
21 when they revisited the rule, after five
22 years.
23 MS. BARTON: Okay. Since we are
24 on that subject and the attorneys are
25 looking at that, it may be premature, but

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1 is there a possibility that they are
2 seeking a new owner of that plant to
3 regenerate its capacity to burn; or do you
4 know the answer to that question?
5 MS. SULLIVAN: I have no idea.
6 MS. BRADLEY: I'd like to get us
7 back on track with regard to the
8 rulemaking. The operation of this
9 particular facility and whether it's going
10 to open doesn't have direct bearing on this
11 proceeding today. And as Pat had
12 mentioned, that the facility retrofits have
13 been more successful than anticipated, and
14 we are actually making our rules more
15 stringent with these rule changes. But the
16 facilities are already able to comply at
17 this time. So it is a tightening of the
18 rules -- tightening to the level that EPA
19 has researched and verified that the
20 facilities will be able to meet the rule.
21 MS. BARTON: The other question
22 is, I was not clear on the understanding of
23 proposed new burners in the state. Do they
24 comply with this rule, or is there a more
25 stringent rule, or less stringent rule? I

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1 never understood that from the interchange
2 of the Council. Can you clarify that?
3 MS. BRADLEY: Newly built
4 facilities would be subject to a different
5 set of rules. Actually, the Federal
6 regulations 40 CFR Part 60 Subpart (E)(b),
7 they are more stringent because they are
8 new facilities and would not require a
9 retrofit in order to reduce emissions.
10 MS. BARTON: Thank you. That's
11 it.
12 MS. BOTCHLET-SMITH: Thank you.
13 Seeing no other hands, I would give this
14 back to the Council for any other questions
15 or comments.
16 MR. BRANECKY: Is there any
17 further discussion from the Council?
18 MR. TERRILL: David, let me
19 answer a little bit about the question that
20 Mr. Hatley had.
21 In order for us to make that change
22 that was requested, we would -- that kicks
23 in a statutory requirement that we would
24 have to do since there's a corresponding
25 federal requirement that we would be more

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1 stringent than, that would kick in a full
2 blown economic cost benefit analysis for us
3 to do and that is not on the top of my list
4 of things to do, because that would be
5 extremely complicated and time consuming
6 for us to do that. And so I would have no
7 idea when we would bring this rule back, if
8 we were going to do that, so we would be
9 without a rule. We would eventually do
10 that if that's what the Council wants but I
11 have no idea when we would bring that rule
12 back because I'm not sure exactly how you
13 would do a cost benefit analysis on that
14 type of a small change.
15 I guess what we would commit to do
16 is if we have indications -- if we have
17 facilities that do -- or if they start up a
18 facility here in Tulsa, we'll take a look
19 at this rule and make sure that it's
20 tightened as strictly as we possibly can
21 and if we have issues, then we will come
22 back to the Council and make that
23 adjustment. But that's the reason I would
24 be -- we can do that if that's what the
25 Council wishes, but you need to understand

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1 we'll have to do a lot of extra work in
2 order to make that pass legislative
3 scrutiny.
4 MR. BRANECKY: All right. Any
5 other questions from the Council? If not,
6 Myrna, would you take a roll please.
7 MS. MYERS: Don't we need a
8 motion first?
9 MR. BRANECKY: I'm okay. I need
10 a motion then.
11 MR. HAUGHT: I'll make a motion.
12 MR. BRANECKY: I need a second.
13 MS. MYERS: I'll second it with
14 the changes that I'm sure Jim supports and
15 the things that were discussed.
16 MR. BRANECKY: We have a motion
17 and a second.
18 MR. HAUGHT: The motion was to
19 accept the recommended changes that were
20 published in the rule, plus, to remove the
21 references to large facilities.
22 MR. BRANECKY: A motion to adopt
23 with the suggested changes that were made
24 today would be sufficient.
25 MR. HAUGHT: Yes, verification of

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1 the reference in 252:17-19(b).
2 MR. BRANECKY: Okay. Let me see
3 if I can restate that then.
4 The motion was to adopt with the
5 suggested wording changes in addition to
6 clarify the reference included in Section
7 17-19(b). And remove the reference to
8 "large".
9 Does everyone understand what we're
10 trying to do? Pat.
11 MS. SULLIVAN: There were two
12 references to "large". Did you get that in
13 there? And then I was going check on those
14 citations. I'll double check that.
15 MR. BRANECKY: All right. Do we
16 have everything covered? Does everyone
17 understand the motion? I have a motion and
18 I have a second. Myrna.
19 MS. BRUCE: Sharon Myers.
20 MS. MYERS: Yes.
21 MS. BRUCE: Laura Lodes.
22 MS. LODES: Yes.
23 MS. BRUCE: Jim Haught.
24 MR. HAUGHT: Yes.
25 MS. BRUCE: Rick Treeman.

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1 MR. TREEMAN: Yes.
2 MS. BRUCE: Jerry Purkaple.
3 MR. PURKAPLE: Yes.
4 MS. BRUCE: Montelle Clark.
5 MR. CLARK: Yes.
6 MS. BRUCE: David Branecky.
7 MR. BRANECKY: Yes.
8 MS. BRUCE: Motion passed.
9
10 (Items 1-4A Concluded)
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1

2 C E R T I F I C A T E

3 STATE OF OKLAHOMA)
) ss:
4 COUNTY OF OKLAHOMA)

5

6 I, CHRISTY A. MYERS, Certified
7 Shorthand Reporter in and for the State of
8 Oklahoma, do hereby certify that the above
9 proceeding is the truth, the whole truth,
10 and nothing but the truth; that the
11 foregoing proceeding was taken down in
12 shorthand by me and thereafter transcribed
13 under my direction; that said proceeding
14 was taken on the 16th day of April, 2008,
15 at Tulsa, Oklahoma; and that I am neither
16 attorney for, nor relative of any of said
17 parties, nor otherwise interested in said
18 action.
19 IN WITNESS WHEREOF, I have hereunto
20 set my hand and official seal on this, the
21 26th day of May, 2008.
22
23
24 CHRISTY A. MYERS, C.S.R.
Certificate No. 00310
25

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DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS

OF THE REGULARLY SCHEDULED

AIR QUALITY COUNCIL MEETING

HELD ON APRIL 16, 2008, AT 9:00 AM

IN TULSA, OKLAHOMA

ITEM 4B

* * * * *

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ORIGINAL

COUNCIL MEMBERS

DAVID BRANECKY, CHAIRMAN
RICK TREEMAN, VICE-CHAIRMAN
JIM HAUGHT, MEMBER
SHARON MYERS, MEMBER
JERRY PURKAPLE, MEMBER
LAURA LODES, MEMBER
MONTELLE CLARK, MEMBER

DEQ STAFF

MYRNA BRUCE
BEVERLY BOTCHLET-SMITH
EDDIE TERRILL
PAT SULLIVAN
MAX PRICE
CHERYL BRADLEY

OTHERS PRESENT

RUSTY KROLL
NADINE BARTON

PROCEEDINGS

MS. BOTCHLET-SMITH: All right. Before we go on to the next Agenda Item, I just want to make a note, we referred earlier to anyone in the public filling out these forms, Notice of Speaking. Those are actually located on the table just outside the door. If you wish to comment on this rule that is coming up or the next Item on the Agenda, if you would kindly fill one of these out just so that we make sure that we include everyone who does want to speak. Thank you.

The next item on the Agenda is 4B. This is OAC 252:100-19, Control of Emission of Particulate Matter; OAC 252:100 Appendix C, both revoked and new; OAC 252:100 Appendix D, revoked and new; OAC 252:100 Appendix G, revoked and new.

And Mr. Max Price of our staff will be making the presentation.

MR. PRICE: Thank you, Beverly. Mr. Chairman, Members of the

Council, ladies and gentlemen.

Staff is proposing to amend section OAC 252:100-19-1.1, Definitions, by adding definitions for filterable, condensable and total particulate matter.

Staff is also proposing to amend section OAC 252:100-19-11, allowable particulate matter emissions rates from combined wood fuel and fossil fuel fired steam generating fossil fuel fired steam generating units, by adding the word "total" to the phrase "particulate matter".

In addition staff is proposing to revoke three appendices in Chapter 100 and replace them with the following new appendices:

Appendix C. Allowable Particulate Matter Emission Rates for Indirectly Fired Fuel-Burning Units.

Appendix D. Allowable Particulate Matter Emission Rates for Indirectly Fired Wood Fuel-Burning Units.

Appendix G. Allowable Particulate Matter Emission Rates for Directly Fired

Fuel-Burning Units and Industrial Process.

These amendments are being made to clarify that the particulate matter emission rates contained in this rule and appendices refer to both condensable and filterable particulate matter.

It has always been the staff's position that the standards contained in Subchapter 19 are for total particulate matter which includes both condensable and filterable particulate matter.

At five previous meetings, staff has presented its case for this position and provided documentation to the Council that, in the opinion of the staff, proves the standards in Subchapter 19 have always been interpreted as total particulate matter as defined in this proposal.

While this is the first time for the proposed changes to Subchapter 19 here before the Council, it is not the first time we've had to adjust this issue.

Staff first proposed to add the definitions for filterable and condensable

1 particulate matter to Subchapter 1 in July
2 of 2006. Due to the comments received, the
3 definitions were removed from the July 2006
4 proposals, and Council passed the rest of
5 proposed changes in July of 2007.
6 Copies of the comments, staff
7 responses, and presentations on the
8 previous rule proposals and Subchapter 19
9 have already been provided to the Council
10 and are posted on the Air Quality Division
11 web pages.
12 Staff received one comment from EPA
13 on this and it has been included in your
14 packet.
15 Staff asked that the Council vote to
16 send these proposals to the Environmental
17 Quality Board with a recommendation that
18 they be adopted as permanent rules.
19 Thank you.
20 MS. BOTCHLET-SMITH: At this time
21 we'll take questions from the Council.
22 MR. BRANECKY: Any questions,
23 comments? Montelle.
24 MR. CLARK: Forgive me, because I
25 am way behind on this one. I know it's

1 been worked on for quite some time. Can
2 you give me an example of facilities --
3 specific facilities that this is referring
4 to?
5 MR. PRICE: It refers to any
6 facility that actually is a fuel-burning --
7 it can be anything, it could be a boiler.
8 In this case, EGU, it could be fuel-burning
9 equipment such as an engine. This is a
10 general particulate matter rule for all of
11 those. Indirectly fired refers to kilns,
12 things of that nature where the material
13 being used actually (inaudible) with the
14 fuel. A kiln would be an example of
15 indirectly fired (inaudible).
16 MS. MYERS: Okay. We've all
17 directly fired, by this definition, which
18 has been eliminated. But sitting here
19 reading through some of the definitions
20 that are still there, such as a fuel-
21 burning unit, "Internal combustion engine
22 or gas turbine, or other combustion device
23 used to convert the combustion of fuel into
24 usable energy".
25 We combust fuel, but we're producing

1 product, we are not turning it into usable
2 energy. So Subchapter 19 wouldn't
3 necessarily apply.
4 MS. LODES: Because combustion of
5 fuel is part of a product, not usable
6 energy.
7 MS. MYERS: We are producing
8 product, not energy.
9 MR. PRICE: That's an interesting
10 point. I hadn't thought about that.
11 MS. MYERS: I haven't thought
12 about it from that specific viewpoint, Max,
13 I mean, we do control emissions of
14 particulate matter. We have precipitators
15 or bag houses or whatever. But in trying
16 to revisit this rule, if you go through
17 some of the other portions of it, this
18 would not apply to cement kilns.
19 MR. PRICE: Well, it should have.
20 You would fall under industrial process, I
21 believe.
22 MS. MYERS: But industrial
23 process, even on that, the industrial
24 process excludes fuel-burning units. And
25 our fuel consumption is not to produce

1 energy. It's to produce product.
2 MR. PRICE: Well, I hadn't
3 thought about that to tell you the truth.
4 I was worried about getting my filterable
5 and condensable in there.
6 I don't have an answer for that. So
7 it probably needs to be changed.
8 MR. BRANECKY: Well, it sounds
9 like we need an answer before we proceed.
10 At least I do.
11 MR. PURKAPLE: Would you be a
12 particulate matter facility?
13 MS. MYERS: We do have some
14 particulate matter that is produced as a
15 byproduct of the process.
16 MR. PURKAPLE: We're not
17 isolating you, but there is another
18 definition down here that it seems like
19 could apply.
20 MR. BRANECKY: It is the
21 predominant emissions and that may not
22 necessarily be the case.
23 MR. PRICE: That has to do with
24 the rule -- the permit by rule provisions.
25 We made a provision but it was last

1 modified way back in the stone age. When
2 we talk about particulate matter
3 facilities, I think you get a permit by
4 rule.
5 MS. MYERS: Then we have other
6 restrictions under different federal rules.
7 The way I'm reading this rule right now, it
8 does not appear to apply to facilities that
9 are using fuel to produce product, not
10 energy.
11 MR. PRICE: Is it in your permit?
12 MS. MYERS: I'm trying to
13 remember what that reads in the permit,
14 Max, and I don't remember off-hand.
15 MR. PRICE: You know, it kind of
16 took me -- because I hadn't thought about
17 that. But I agree the definition probably
18 needs tweaking there, because I know it has
19 always been part of the permit division on
20 this. So perhaps if Council wants, we can
21 go back and re-look at this definition.
22 MS. MYERS: No. You can leave us
23 out, that's fine.
24 MR. PRICE: I do believe we need
25 the permits in there.

1 MS. MYERS: Well, it may be
2 something you want to clarify, because the
3 way it reads to me right now, if I take it
4 literally, it does not apply.
5 MR. PRICE: I wished you had
6 talked to me about that earlier. I
7 appreciate it.
8 MS. BOTCHLET-SMITH: Do we have
9 other questions from the Council today?
10
11 MR. HAUGHT: Yeah, I do. Max,
12 are there examples of facilities that -- I
13 mean if this total definition of -- the
14 particulate matter definition where it's
15 filterable and condensable, that's in
16 question. Are there facilities now, that
17 by going through this and really clarifying
18 that both of these are going to be
19 considered as part of the total, that would
20 be out of compliance with their permits?
21 MR. PRICE: As far as I know -- I
22 mean, this is on the previous (inaudible)
23 there is only one facility that probably
24 might have a problem with front-in/back-out
25 situation (inaudible), and it turned out

1 that they really didn't. Apparently, they
2 were goofing up the test, that is what I
3 understand. And all the facilities in the
4 state, don't have any problem meeting this
5 -- filterable and the condensable in the
6 back.
7 MR. HAUGHT: And is this the
8 definition then that if facilities are
9 depending on manufacturer's specifications
10 for particulate matter for emissions that
11 this would already be, this
12 front-half/back-half or that the total --
13 or that the condensable and filterable are
14 included in manufacturer's estimates?
15 MS. LODES: I'll answer that.
16 No, they are not unless you specifically
17 ask the manufacturer to include both.
18 Because when I'm working with facilities, I
19 always make sure, that's one assurance that
20 -- that I request is that it will provide
21 filterable and condensable. Because most
22 of them only provide filterable because a
23 lot of -- while Texas and Oklahoma are very
24 big on being combined, there are other
25 regions in this country that don't and they

1 look at the NSPS's which are filterable.
2 So if you're looking for it, ask for it
3 because they won't necessarily put it on
4 there.
5 MR. HAUGHT: That's may be people
6 who have done permit representations based
7 on manufacturer's specifications that may
8 find that they are not representing the
9 correct total number then, given in this
10 definition.
11 MR. PRICE: I know it's always
12 been policy in the department. And this is
13 what -- we're trying to make this rule
14 simply for clarification. We've always
15 included the back-half and the front-half
16 in these standards for 19. So if they were
17 issued a permit that was included in there,
18 we've always had that policy. This rule
19 has been around since the '70s.
20 MR. HAUGHT: But when issued the
21 permit it's based on what the
22 manufacturer's specifications are, or what
23 the permittee is making representations to
24 is what I don't know. And what I want to
25 see is if this is in debate enough that it

1 is going to cause some kind of widespread -
2 - there's a lot of permits out there, I
3 want to see what the --
4 MR. PRICE: Well, I researched
5 all permits that we have on file. And I
6 can't really speak to what -- one
7 individual particulate facility that is out
8 there. I do not know. But I researched
9 all the permits in our files and there are
10 about 4,000 of them. And whenever we refer
11 to Subchapter 19 and whenever the permit
12 writer designed whether or not it is
13 applicable to it, (inaudible) they're going
14 to have to meet this standard, they always
15 refer to front-half and back-half. And I
16 have never had a permit where they didn't
17 meet it. Of course, we would not have
18 issued the permit if it couldn't have met
19 the rule. So I've never run across one and
20 I've looked at over 4,000 documents. It's
21 really more of a clarification than it is
22 anything else.
23 MR. HAUGHT: Okay, one more. On
24 the definition of condensable as being
25 added. Is this pulled directly from some

1 other source? My question on this is where
2 it talks about the condensing immediately
3 after discharge from the stack. When you
4 use words like immediate, that could be up
5 for some interpretation. So is that
6 defined or is that --
7 MR. PRICE: Yes, sir. These
8 definitions came right out of the federal
9 standards. And they also define secondary
10 particulate matter. This particulate
11 matter is formed some distance from the
12 stack. This is why they're trying to make
13 a clarification on it. "Immediately" means
14 it's right there. At the stack, it
15 immediately becomes ambient temperature,
16 and that's condensable. And this
17 definition is taken right out of the
18 federal rule.
19 MR. HAUGHT: Well, it doesn't
20 from the ambient temperatures, it may be
21 suppose to at the exhaust point but it
22 doesn't become ambient temperature until --
23 MR. PRICE: It condenses
24 immediately, it doesn't have a chemical
25 reaction downstream. It's like say an

1 incinerator, their matonics come out as
2 vapor and they immediately condense once
3 they leave the stack. They cool down
4 (inaudible). There is no chemical reaction
5 downstream where the gases (inaudible) form
6 (inaudible). This is what we're talking
7 about. These are the things you also catch
8 on the stack test, that the back is
9 sometimes called back-half. They condense
10 and form in the test. So the condensable
11 is really the back-half.
12 MR. BRANECKY: Max, are those two
13 definitions "directly and indirectly fired"
14 have those moved somewhere?
15 MR. PRICE: Yes, sir. We are
16 going to bring up the definition sections
17 next month. And Subchapter 33 also uses
18 each of these definitions. So (inaudible)
19 this rule (inaudible). It is also going to
20 be used in Subchapter 33. They are being
21 moved to Subchapter 30.
22 MR. BRANECKY: So if we take them
23 out of here and pass this rule then they
24 don't exist anywhere.
25 MR. PRICE: Well, when Subchapter

1 1 passes, they both come together at the
2 same time.
3 MR. BRANECKY: Okay.
4 MS. BRADLEY: I took a moment to
5 confer with Dawson Lassiter, who is our
6 Chief Engineer, regarding the useable
7 energy issue. It is not part of the
8 proposed changes which I think is clear to
9 Council, and to the audience. And with
10 regard to the energy specifically
11 mentioned, permits feel it is applicable to
12 the cement kiln issue. We have
13 consistently applied it in the past. And
14 because the process does utilize the energy
15 created during combustion, it is a useable
16 energy, it's just not useable in the sense
17 of electricity -- an electric generator.
18 So it is our opinion at this time that we
19 would not recommend a change and we have
20 not had difficulty in applying it to the
21 permitting situation.
22 MS. MYERS: I do believe it is
23 part of our permit and we did comply with
24 it. It was just one of those points that
25 kind of got my attention this morning.

1 MS. BRADLEY: Well, it peaked my
2 interest as well, so I thought I would go
3 back to the people who apply it day-in and
4 day-out and get their opinion on that.
5 MS. MYERS: Thank you.
6 MR. BRANECKY: Any other
7 questions from the Council? Sharon, is
8 that satisfactory with you?
9 MS. MYERS: Sure.
10 MR. PRICE: If I may, Sharon,
11 that is something I will look in to. If
12 there is any redundancy in these
13 definitions, it really, really, bothers me
14 and it's hard for people to understand.
15 You made a point, and we'll look at it
16 again. And if it's necessary we'll bring
17 it back next year and fix it.
18 MS. MYERS: Okay.
19 MS. BOTCHLET-SMITH: All right.
20 I received one notice of comment from the
21 public. Mr. Rusty Kroll.
22 MR. KROLL: I'm Rusty Kroll. And
23 I'm speaking on behalf of the Public
24 Service Company of Oklahoma this morning.
25 Ladies and gentlemen of the Council,

1 We would simply want to reiterate some
2 previous comments that we have made on this
3 rule that has to do with the fact that
4 steam generating units and particularly
5 PSO's Northeastern Plant is subject to a
6 federal standard under NSPS. And that
7 standard does not include condensable
8 matter, but filterable matter only. And a
9 level of -- should I repeat what I just
10 said?
11 We've made previous comments based
12 on the fact that PSO's Northeastern section
13 station is subject to a federal standard
14 that does not include condensable
15 particulate matter. And this rule has the
16 effect of making a state standard that is
17 potentially two to three times more
18 stringent than the applicable federal
19 standard. And the reason is because in the
20 exhaust from the coal-fired power plant,
21 based upon our coal data, the condensable
22 material can be as much as 75 percent of
23 the emitted particulate matter. There is a
24 state statute that requires when these --
25 the ODEQ develops a rule that is more

1 stringent than an equivalent federal
2 standard that there be a justification done
3 prior to the proposal of the rule. I mean,
4 it's been our persistent position as we've
5 talked about this rule, that needs to be
6 done in this case. And I think we're still
7 in that position. For today I will just
8 incorporate and adopt our prior comments on
9 this rule on this particular topic.
10 Thank you very much.
11 MS. BOTCHLET-SMITH: Okay.
12 Nadine, did you want to comment?
13 MS. BARTON: I'm Nadine Barton
14 with CASE. After listening to the comments
15 from PSO, I guess that question was
16 answered. It appears, at least in his
17 case, that this standard for particulate
18 matter would be more stringent than what is
19 now in place.
20 Could I have clarification on that?
21 MR. TERRILL: I guess we would
22 disagree with that. We believe that this
23 has been part of the state requirement that
24 goes back -- that predates the NSPS
25 requirement and that it is not stricter.

1 We do not feel that we have to -- the
2 statute that's been raised doesn't really
3 apply in this case because it's been part
4 of our SIP previous to that time. All this
5 is, is a clarification that came up because
6 we had a specific facility that we had
7 complaints against, that it turned out that
8 the bulk of the complaints were probably
9 being generated by the back-half. And I
10 decided that we needed to clarify what
11 we've been doing for the last 25 years,
12 again, and that's what started all this.
13 MS. BARTON: Thanks.
14 MR. TERRILL: We do not believe
15 this is anything different than what we've
16 been requiring and what we've required, for
17 the last 25 years. To our knowledge, all
18 these facilities in Oklahoma comply with
19 this rule, back-half/front-half, because
20 it's part of the total particulate matter.
21 MS. BARTON: Thank you for your
22 clarification.
23 MS. BOTCHLET-SMITH: Do we have
24 any other questions from the Council?
25 David.

1 MR. BRANECKY: All right. I'll
2 try to get it right this time.
3 If there's no further discussion
4 from the Council, staff has asked that we
5 pass this rule as presented. So I'm
6 looking for a motion.
7 MR. CLARK: Is there still some
8 confusion on what Ms. Myers raised?
9 MR. BRANECKY: Are you okay with
10 the explanation?
11 MS. MYERS: I'm sure that
12 Subchapter 19 is in my permit.
13 MR. BRANECKY: Okay. But you're
14 okay with the way the wording is?
15 MS. MYERS: I think it would be
16 good for Max to check into it further and
17 we can revisit it another time.
18 MR. BRANECKY: You don't need
19 that before we take action?
20 MS. MYERS: Is there any big
21 hurry to pass this today?
22 MR. TERRILL: It's been to the
23 Council at least five times and we've got a
24 lot of stuff coming up. So at some point
25 we're going to have to have a two-day

1 meeting to get to all of our rules if we
2 don't pass some of this.
3 MR. BRANECKY: I'm still looking
4 for a motion.
5 MR. PURKAPLE: I move that we
6 adopt this as a permanent rule.
7 MR. BRANECKY: I have a motion.
8 I need a second.
9 MR. TREEMAN: I'll second it.
10 MR. BRANECKY: I have a motion
11 and a second. Myrna, will you call the
12 roll, please.
13 MS. BRUCE: Sharon Myers.
14 MS. MYERS: Yes.
15 MS. BRUCE: Laura Lodes.
16 MS. LODES: Yes.
17 MS. BRUCE: Jim Haught.
18 MR. HAUGHT: Yes.
19 MS. BRUCE: Rick Treeman.
20 MR. TREEMAN: Yes.
21 MS. BRUCE: Jerry Purkaple.
22 MR. PURKAPLE: Yes.
23 MS. BRUCE: Montelle Clark.
24 MR. CLARK: I don't have a lot of
25 background on this but I'll go with staff's

1 recommendation and vote yes.
2 MS. BRUCE: David Branecky.
3 MR. BRANECKY: Yes.
4 MS. BRUCE: Motion passed.
5
6 (Item 4B Concluded)
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1
2 C E R T I F I C A T E
3
4 STATE OF OKLAHOMA)
5) ss:
COUNTY OF OKLAHOMA)
6 I, CHRISTY A. MYERS, Certified
7 Shorthand Reporter in and for the State of
8 Oklahoma, do hereby certify that the above
9 proceeding is the truth, the whole truth,
10 and nothing but the truth; that the
11 foregoing proceeding was taken down in
12 shorthand by me and thereafter transcribed
13 under my direction; that said proceeding
14 was taken on the 16th day of April, 2008,
15 at Tulsa, Oklahoma; and that I am neither
16 attorney for, nor relative of any of said
17 parties, nor otherwise interested in said
18 action.
19 IN WITNESS WHEREOF, I have hereunto
20 set my hand and official seal on this, the
21 26th day of May, 2008.
22
23
24 CHRISTY A. MYERS, C.S.R.
Certificate No. 00310
25

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DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS

OF THE REGULARLY SCHEDULED

AIR QUALITY COUNCIL MEETING

HELD ON APRIL 16, 2008, AT 9:00 AM

IN TULSA, OKLAHOMA

ITEM 5

* * * * *

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ORIGINAL

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DEQ STAFF

MYRNA BRUCE
BEVERLY BOTCHLET-SMITH
EDDIE TERRILL
PAT SULLIVAN
MAX PRICE
CHERYL BRADLEY

OTHERS PRESENT

EARL HATLEY
CHUCK GROSS
BRIDGETT WOOD
NADINE BARTON

PHILLIP FIELDER
LYDIA ~~PATEETISES~~ Patitsas
JEAN ~~MACMAHAN~~ McMahon
~~JANIE LAVENTIS~~ Joni LeVeness

PROCEEDINGS

MS. BOTCHLET-SMITH: All right. The next item on the Agenda is OAC 252:100-44. Mr. Max Price will present this item. I would like to point out that although we're not having a hearing on this, we want to keep this on record for public comment. Max.

MR. PRICE: Mr. Chairman, members of the Council, ladies and gentleman.

At the July 18, 2007 meeting of the Air Quality Advisory Council voted to table this proposal until the January 17, 2008 meeting and requested that staff bring back other options based on the comments received.

At the January 17, 2008 meeting, staff presented four options.

Option one was to pass the previously proposed rule OAC 252:100-44 Control of Mercury Emissions from Coal-Fired Electric Steam Generation Units which incorporated by reference the EPA's

Clean Air Mercury Rule or CAMR.

Option two was a state rule based on the original proposed Maximum Achievable Control Technology, MACT standards published by EPA in the Federal Register on January 30, 2004.

Option three was a state rule modeled after the National Association of Clean Air Agencies, NAACA Model Rule, it's dated on November 14, 2005 which would have established emission reduction goals of 90 percent across the spectrum by establishing mercury emission standard for the industry.

The fourth option, the Council could have done nothing and allowed time for the EPA and courts to settle this because it was in the courts being battled out. Or we could have waited for the EPA to give us a Federal Implementation Plan to go ahead and enforce the CAMR rule.

Over the course of the previous hearings, staff has received almost 600 comments concerning this issue.

Most commenters urged the department to adopt a state rule based on the NAACA

1 Model Rule, however uncertainties of the
2 technology feasibility and economics did
3 not make this the clear choice.
4 Council continued this issue until
5 this meeting of the Air Quality Advisory
6 Council meeting.
7 On February 8, 2008, the United
8 States Court of Appeals for the District of
9 Columbia vacated the CAMR thus rendering
10 the proposed Subchapter 44, Incorporation
11 by Reference, unenforceable.
12 On March the 26th, staff learned
13 that EPA is going to appeal the courts
14 ruling.
15 As a result of these court actions,
16 staff believes that a state only rule may
17 be necessary to preserve the mercury
18 monitoring requirements imposed by CAMR
19 which are contained in Subpart I of Part 75
20 in Title 40 of the Code of the Federal
21 Regulations.
22 This option is being evaluated and
23 no action by the Council is necessary at
24 this time. Thank you very much.
25 MS. BOTCHLET-SMITH: Are there

1 any questions from the Council? Eddie, did
2 you want to add something?
3 MR. TERRILL: Yes. Let me kind
4 of tell you where I think we're going to go
5 with this. The Court decision that Max
6 referred to now raises the issue as to
7 whether or not the 112 requirements for
8 analyzing this under the MACT requirements
9 and whether the MACT hammer has fallen for
10 existing sources, that's in question now.
11 I know EPA is appealing this and chances of
12 them getting a full hearing in front of the
13 DC circuit is pretty slim. And even if
14 they do, they're going to lose this. It
15 went just exactly like we thought it would
16 because we thought that they had gone the
17 wrong route. But what we understand from
18 Region 6 is that EPA is currently looking
19 at putting out guidance on how to deal with
20 existing sources. There is some
21 conflict as to whether or not the MACT
22 hammer falls. And what that means is that
23 existing sources would be subject to a more
24 stringent requirement where you look at the
25 12 top performers and make some judgment

1 about what is required based on that. And
2 that would be something the state would
3 have to do if EPA doesn't come out with
4 some sort of a rule.
5 Digressing a little bit, EPA is also
6 being sued over their CAIR rule, the Clean
7 Air Interstate Rule, which doesn't apply to
8 Oklahoma but it did apply to the 28 states
9 east of us. And it has to do with NOx and
10 SO2 reductions under cap and trade systems.
11 And the reason I mentioned this is because
12 if EPA loses this suit, which they may very
13 well, that means they will be over for the
14 last 10 years and all the regulations --
15 major regulations that they proposed to
16 control SOx, NOx, PM, and Mercury, they
17 will have lost every one of those. And it
18 also creates a huge problem for us as the
19 regulating entity and also the industry as
20 to what actually controls mercury, SO2,
21 NOx, PM. There are no federal rules other
22 than the NSPS type requirements to deal
23 with that.
24 And you've got a new ozone standard
25 that has been proposed and it's just -- and

1 you've also got SIPS that are due under the
2 Regional Haze Requirement, the CAIR rule
3 exempted states that CAIR applied to from
4 BAR (ps) requirements because the CAIR
5 requirements took care of that for them.
6 So it creates a huge huge problem for
7 everyone because there is no certainty now
8 as to what -- how we are going to meet the
9 ozone standard and what that does to our
10 regional haze SIP. Really what this does
11 is it's going to create a major problem
12 relative to control of these pollutants and
13 what is to be expected and how do we move
14 forward.
15 And I have just got to believe that
16 if EPA loses this then they are going to
17 have to go back to square one and do what
18 they should have done ten years ago and
19 propose a multi-pollutant bill that covers
20 all pollutants, mercury included, and
21 possibly even CO2.
22 So in the interim, what we are going
23 to propose to do -- and we would have
24 brought it to the Council this time,
25 except that it proved to be a little bit

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1 more difficult than what we had thought, is
2 that we want to preserve requirement to
3 monitor. We believe that is important, so
4 does EPA. We anticipate EPA to try to
5 salvage something out of the CAMR rule and
6 issue guidance and requirements that will
7 require those sources that we're required
8 to monitor under CAMR to continue that. We
9 believe that is important as well, so we
10 have some idea of what is happening.
11 We also want to make sure that for
12 new sources that want to build in Oklahoma
13 that we have the most stringent
14 requirements possible. And if we don't
15 believe that that is going to be covered
16 under the federal requirements then we will
17 be coming back with a state rule covering
18 new sources that would control somewhere
19 between 85 and 90 percent. We want to make
20 sure that what is required can be monitored
21 and verified so that we don't have
22 uncertainty with new sources relative to
23 what they can monitor.
24 We also believe that if they are
25 going to build here in Oklahoma then they

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1 should comply as strictly as they possibly
2 can, so that would take care of the new
3 sources. We think we can take care of that
4 anyway under the existing requirements but
5 to be sure we may come back with a state
6 only rule that clarifies that.
7 And then in addition, as I said
8 before, we contracted or provided some
9 money to do fish flesh sampling throughout
10 the state and I got a report yesterday that
11 that has started again. It began last
12 summer but they anticipate being completely
13 done at 75 locations in 42 -- 75 sites on
14 42 lakes throughout the state. That should
15 be done sometime by the end of spring.
16 That will give us an idea of whether or not
17 we have an issue relative to our fish
18 population in mercury.
19 So that's kind of where we are. For
20 existing sources EPA is going to have to --
21 they are going to have to deal with it.
22 And since there is a 112 requirement that
23 would kick in -- there is some question as
24 to whether or not if we did something that
25 was stricter than the federal requirement

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1 for existing sources, does the requirement
2 for us to do the cost benefit analysis that
3 we mentioned earlier, does that kick in?
4 I've got opinions from our attorneys on
5 both sides that.
6 I tend to lean toward the fact that
7 if the MACT hammer has fallen, that means
8 there is an existing federal requirement.
9 And for us to do something that is more
10 strict than that we would have to do a cost
11 benefit analysis which may prove difficult
12 to do with mercury. Having said that if
13 the MACT hammer has fallen then that really
14 is going to get at what people have been
15 asking for anyway which is strict control
16 of mercury.
17 And the question then becomes, well,
18 what time frame do you do it in, sooner or
19 later or somewhere in the middle? So that
20 is all going to clarify itself, I think,
21 over the next two or three months. But in
22 the meantime we are going to move forward
23 in the two areas that I mentioned, the
24 monitoring and making sure that the
25 existing -- our new sources have to control

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1 somewhere between 85 and 90 percent,
2 whatever we feel can be verified. And
3 then we're going to take a wait-and-see
4 attitude for existing sources at this point
5 and see what EPA does. Because when we
6 look at what it's going to cost and I know
7 this is not something that we really take -
8 - we really considered as what are
9 responsibilities are, but on the other hand
10 I think that it's incumbent that EPA, and
11 us to some extent, as well, do provide some
12 information to the general public as to
13 what it's going to cost to the ratepayers
14 to do all these controls because with the
15 price of fuel, and the price of steel,
16 labor and all the other things going on, I
17 think you are going to be shocked at what
18 some of these proposed retrofit costs are
19 going to come to. And, you know, that's
20 fine as long as we are willing to pay for
21 it, but that's where we are at.
22 We can talk about blame and try to
23 figure out why this happened but the
24 reality of it is -- where we are without
25 any kind of certainty, EPA is just going to

1 have to figure out a pathway forward. And
2 relatively soon because -- I'll talk a
3 little bit about the new standard. We are
4 going to have to make some decisions about
5 that in the next two or three years.
6 So that's kind of a long explanation
7 of where we are, and why we did not bring
8 back a rule this time, and what we plan on
9 doing probably for the July Council
10 meeting.
11 MS. BOTCHLET-SMITH: Okay. We
12 are ready for any questions or comments
13 from the Council.
14 MR. PURKAPLE: Eddie, do you have
15 a feel for what the surrounding states are
16 doing at the moment for the minor
17 facilities?
18 MR. TERRILL: I'm trying to
19 remember. Kansas is in the process -- they
20 had a huge issue relative to CO2 and they
21 denied a permit for a new facility -- a new
22 power plant based on CO2. And when they
23 did that that created a huge problem for
24 them in a lot of other areas. And there is
25 some question about what authority there

1 are going to have after the legislature
2 gets through correcting their -- what they
3 believe to be was their erroneous decision
4 not to require that facility to have a
5 permit.
6 I'm not aware of any -- Arkansas,
7 Louisiana, Texas doing anything with
8 mercury, specifically, different than what
9 the feds have done. I think Missouri
10 talked about it but I don't think they ever
11 did. I would have to go back and look to
12 verify that because that's kind of a moving
13 target. There's all kinds of discussions
14 that are ongoing because this is still a
15 major issue nationally, obviously.
16 MR. CLARK: Eddie, didn't New
17 Mexico do something?
18 MR. TERRILL: Yeah. New Mexico
19 did, you're right. And I don't remember
20 what it was, but they did do something. I
21 think it may have been for new -- they were
22 more concerned, I think, about new
23 facilities. And I do think they've got
24 some existing requirements that are real
25 strict for new. But I don't know what they

1 did with existing sources, Montelle, to
2 tell you the truth. But I know they did
3 enact something similar to what I think we
4 will do for new sources. I can check that
5 out though, if you all would be interested
6 in what the other states are doing.
7 MS. BOTCHLET-SMITH: Okay. We've
8 got a number of folks from the public that
9 wish to comment. I'm going to take these
10 in the order that they were received. Mr.
11 Earl Hatley.
12 MR. HATLEY: My name is Earl
13 Hatley. I am the Grand River Keeper for
14 the Grand River Watershed.
15 I would just like to say that some
16 of what I've heard I am happy with because,
17 you know, I know that the DEQ is beginning
18 to sample for fish. What I was told, it
19 would be summer before they got to Grand
20 Lake, so there seems to be a timeline
21 difference there. I had hoped they would
22 be quicker than that. I'm glad that you
23 are going to start measuring these
24 emissions because I think that's very
25 important.

1 However, I just wanted to say that I
2 live in an area where we are already
3 suffering from the neurotoxin, lead. And
4 we have fish consumption lines for lead in
5 the Grand River Watershed. And we know a
6 lot of children have lost a lot of IQ
7 during the past few decades. And it seems
8 to be getting worse instead of better.
9 Now we have another neurotoxin that
10 we are dealing with. And the fish
11 consumption warning for Mercury is actually
12 more stringent than the fish consumption
13 for lead.
14 As you know Grand Lake drains the
15 entire tri-state mining district, 500
16 square miles of cadmium, lead, and zinc
17 mines (inaudible) it's all flowing in from
18 Grand and the Neosho Rivers. So it's just
19 a further injustice to an environmental
20 justice site according to Region 6, EPA,
21 because of the ten tribes and the low
22 income of the area.
23 And so I would ask the state to not
24 wait three years, you know, wait on EPA
25 because -- and again even going back to

1 that solid waste rule being more stringent
2 rather than less stringent. I just have to
3 ask how much is an IQ worth and how long do
4 we need to wait and is it going to be worth
5 it to wait. Other states have already
6 acted. I see no reason why this state
7 can't act. We can go ahead and do what's
8 right. Cap and trade has to be out of the
9 equation because new sources would come in
10 and allow the existing sources to just buy
11 credit and that doesn't change the problem
12 that we are facing. So again, I have
13 written comment letters on this. The
14 (inaudible) rule, or Option Number 3 is the
15 best option. Other states are
16 incorporating that. It has been proven in
17 Court twice now that that is feasible.
18 The Water Keeper Alliance first took
19 the EPA to Court in early 2000 and it went
20 all the way to the Supreme Court and they
21 proved that you could reduce mercury by 90
22 percent within 3 years and the Bush
23 administration responded with the CAMR
24 rule. And they lost, obviously. I think
25 that it would not hurt the state at all to

1 see the future and make the future now
2 instead of later. I appreciate the
3 opportunity to comment today. Thank you.
4 MR. CLARK: Mr. Hatley, could you
5 stay there for just moment, I just want to
6 ask you a question.
7 You live in the Tar Creek northeast
8 Oklahoma area, correct?
9 MR. HATLEY: That's correct.
10 MR. CLARK: There's been -- has
11 there been blood level testings done on
12 some of the residents in that area for some
13 of these heavy metals and has mercury been
14 one of the ones that's been tested for?
15 MR. HATLEY: The only heavy metal
16 testing that has been done in our area so
17 far is just with small children, six and
18 under. We have no data on adults. That
19 requires a different type of testing
20 because the blood level testing for example
21 is a measure of the exposure within a ten
22 day period. Because after ten days, the
23 body absorbs that lead into the bone and
24 the bone marrow. So adults have to be
25 measured by an XRF machine strapped around

1 their leg. And that's a very expensive
2 process and we've been trying to get that
3 to the area for a long time. And working
4 with the Harvard School of Public Health, I
5 think ultimately we'll be able to do that.
6 As far as mercury is concerned, none
7 of the children have been tested for
8 mercury. And there have been no mercury
9 studies of human beings in that area. It
10 seems -- and I've been fighting for ten
11 years to get some funding to study adults
12 in the area. Even the Harvard School of
13 Public Health can't come up with the money
14 to do that type of study. We've worked
15 with other universities and agencies -- and
16 the EPA, the ATSDR, and DEQ are not doing
17 those studies. It's up to the community to
18 figure out how to raise that money. We're
19 hoping to be able to raise that money to do
20 an adult study. And we will study mercury.
21 Right now I'm having my farm pond
22 sampled for mercury in fish. They are
23 using my farm pond as a background for lead
24 in the Tar Creek site, because our farm is
25 far enough away that they can do that. And

1 they've agreed to test for mercury in my
2 fish. I think every farmer wants to know
3 whether or not their ponds that they spent
4 the money to build and put in fish, so that
5 they would know they were safe, so they can
6 take their children out and catch the fish
7 and eat it. They need to know whether or
8 not -- all this pollution is in those ponds
9 and they can't even eat their own fish.
10 And that's a major problem to me. I
11 spent a lot of money, ensuring that I
12 wouldn't have to catch my fish out of the
13 river. As a tribal person, you know, I
14 grew up on fish and game, and that's all I
15 know to do. So this is an intense problem.
16 I can't drive that point home any harder.
17 We lack human study -- we do. Studying the
18 fish is not necessarily the accumulation in
19 humans, depending upon how much fish they
20 eat.
21 But I know as the River Keeper, I
22 watch year after year, you know, all these
23 boats coming in with their annual load of
24 fish that they freeze and can. They don't
25 know about the lead warning and they don't

1 know anything about the mercury warnings.
2 I do the best I can to educate them but
3 they are like me, you know, that's what
4 they do, they fish. So you know, we're
5 stuck with being in that position.
6 MR. CLARK: Thank you.
7 MR. HATLEY: Thank you.
8 MS. BOTCHLET-SMITH: David, I've
9 had a request for a five minute break to
10 accommodate our court reporter, just give
11 her a few minutes.
12 MR. BRANECKY: Okay. Let's take
13 a five minute break.
14 (Break)
15 MS. BOTCHLET-SMITH: Mr. Chuck
16 Gross, can you step to the podium?
17 MR. GROSS: I would like to thank
18 the Council for the opportunity to appear,
19 and also for the short break. I think this
20 is the second time I've spoken after Earl
21 Hatley.
22 My name is Chuck Gross and I am
23 President of Sustainability N.O.W., for
24 Nowata, Osage, and Washington counties. I
25 am a member of the Board of Directors of

1 the Oklahoma Sustainability Network where
2 I'm also Vice-president and treasurer at
3 the present time.
4 For a living, I'm an oil and gas
5 operator. I'm speaking today on behalf of
6 Sustainability N.O.W.
7 Our organization favors the adoption
8 of strict limits on mercury emissions from
9 coal-fired plants. The Court actions
10 holding that the Environmental Protection
11 Agency acted improperly in adopting the
12 Clean Air Mercury Rule in contravention of
13 then-existing law should not be the basis
14 for delaying protection to Oklahoma's
15 vulnerable populations -- women, young
16 children, and especially infants. A review
17 of the literature on mercury's toxicity
18 leads us to conclude that regulations
19 should be enacted with all due haste since
20 the technology exists to remove the
21 substantial amounts of mercury emitted by
22 these plants.
23 There are other costs incurred
24 rather then just the direct economic
25 dollars and cents. Health, education,

1 personal development cost all result from
2 the impairment by neurotoxins such as
3 mercury. Please take these costs into
4 consideration, as well as the economic
5 costs.
6 Please move to adopt regulations
7 which provide for the maximum reduction in
8 mercury from these plants.
9 While I cannot speak for our entire
10 organization, I will say that I have
11 electric service at many of the producing
12 oil, gas, and service facilities which I
13 own in Oklahoma, in Osage County. And I
14 feel that the increase in electric rates,
15 in dollars and cents, is totally justified
16 to clean up Oklahoma's air. Just as I
17 cannot allow pollution from my production
18 facilities, electric generating plant
19 operators must not be allowed to permit
20 pollution from their facilities either.
21 I expect this to have substantial
22 economic cost. I have 31 meters, where I'm
23 served by (inaudible) Valley Electric. But
24 it needs to be done. I thank you.
25 MS. BOTCHLET-SMITH: Ms. Bridgett

1 Wood.
2 MR. CLARK: Excuse me, is it all
3 right if I ask a question?
4 MS. BOTCHLET-SMITH: Sure.
5 MR. CLARK: I didn't get a chance
6 to ask this when Mr. Hatley was up there,
7 but he referred to the fish consumption
8 warnings that exist here in Oklahoma, I
9 think on all of our rivers and lakes; is
10 that correct -- on all of our rivers and
11 lakes?
12 MR. TERRILL: Yes.
13 MR. CLARK: Can you tell me where
14 those fish consumption warnings came from;
15 did they come from actual measurements of
16 high mercury levels in our fish, or are
17 they projected or estimated?
18 MR. TERRILL: Actually they're --
19 I'm trying to think of the right word --
20 they're not based on actual data. They are
21 a precautionary warning because we don't
22 have any data. What we're hoping to do is
23 once we get the actual data, revise that to
24 reflect what the advisory should be. Since
25 they didn't have enough data to make a

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1 definitive call on the various water
2 bodies, they took a precautionary statement
3 until they gathered enough data. That's
4 what it is.
5 MR. CLARK: I noticed that the
6 warnings were very specific to certain
7 types of fish -- certain species of fish,
8 including some that are very popular with
9 sports fishermen -- bass and such as that,
10 is that based on high mercury limits found
11 in other states, and seen in these exact
12 fish?
13 MR. TERRILL: I think it's based
14 on the fact that they are a predatory fish
15 and there's a likelihood that the reason
16 there is a mercury issue, then that water
17 body is probably going to show up in that
18 fish type.
19 MR. CLARK: Have there -- we
20 talked about the fish flesh test that are
21 due -- that are coming back here by the end
22 of spring, do you know if there has been
23 any fish flesh tests done in surrounding
24 regions like say southeast Kansas,
25 northwest Arkansas, and Missouri; have

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1 there been any test done there?
2 MR. TERRILL: I'm not sure if
3 they've done it for mercury, I know they've
4 done it for other -- for lead, but I'm not
5 sure if they have done it for mercury or
6 not, to be honest with you.
7 MR. CLARK: You don't have any
8 data on that?
9 MR. TERRILL: We may have but I
10 don't have it with me today. I'll check
11 that out for you though.
12 MR. CLARK: Thank you.
13 MR. HATLEY: May I ask the
14 Council a follow-up question?
15 MS. BOTCHLET-SMITH: Sure.
16 MR. HATLEY: The state of Kansas
17 has a fish consumption warning on the
18 Spring River up to the state line. So
19 obviously the fish don't stop at the state
20 line, they come right on down to Grand
21 Lake. They go up the river to spawn. And
22 that was based on science. And what I was
23 told by the DEQ in the water division, you
24 know -- I was first handed a pamphlet about
25 this two years ago -- was that they did

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1 study random water bodies because the EPA
2 issued the fish consumption warning in '04,
3 for the state of Oklahoma. And the DEQ
4 came out with their warning in '06 based on
5 random sampling in the state. And I was
6 told that our area, in northeast Oklahoma,
7 was the highest because, you know, we have
8 so many power plants surrounding Grand
9 Lake.
10 MR. TERRILL: For mercury?
11 MR. HATLEY: For mercury. And
12 the state of Missouri has a statewide
13 warning as well and that is based on their
14 studies. And several of the rivers out of
15 Missouri feed into the Grand Lake as well.
16 MR. TERRILL: Well, that
17 contradicts what I've been told. I'm not
18 aware that we've got any specific data.
19 That's the whole purpose of doing this
20 study that we are doing now, is to find out
21 what's there. I don't think that's right,
22 but I've been wrong before.
23 MR. HATLEY: I'm just telling you
24 that that's what I've been told.
25 MR. TERRILL: I understand.

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1 MR. HATLEY: But I do know that
2 Kansas and Missouri (inaudible) testing.
3 MR. TERRILL: I know that they
4 have done some other metal studies up
5 there, but mercury -- I'm almost positive
6 that that hadn't been done in any of those
7 water bodies up there.
8 MR. HATLEY: It has, believe me.
9 I'm on the -- I served as a consultant for
10 the Seneca-Cayuga tribe in a Trustee
11 Council. And we meet with Missouri and
12 Kansas, ENR and KAG every couple of months
13 and we've discussed this for years. When
14 they studied the Spring River they came out
15 with the mercury warning for that about two
16 years ago and it was based on their test
17 and the same with Missouri.
18 MR. TERRILL: Other states, you
19 mean, have done it. They've done the
20 mercury testing.
21 MR. HATLEY: Yes. And I was
22 saying Kansas and Missouri.
23 MR. TERRILL: Okay. That's what
24 I thought.
25 MR. HATLEY: And those fish come

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1 into Oklahoma. But I was also told by the
2 DEQ that they did some random sampling and
3 it came out clear. They ended up agreeing
4 with the EPA and came out with their own
5 warning.
6 MS. MYERS: Eddie, there may be
7 some testing that the Oklahoma Water
8 Resources Board is doing. But I'm not sure
9 what the status is on that. But I had
10 talked with them once before and they are
11 suppose to be doing some testing.
12 MR. TERRILL: But they are also
13 suppose to share that data.
14 MS. MYERS: I don't know what the
15 status is.
16 MR. TERRILL: And I know that
17 there is some old testing that was done
18 several years ago up there but nothing
19 recently. By recently, I mean in the last
20 five years. So I will verify that though.
21 MS. BOTCHLET-SMITH: Thank you
22 for your patience, Ms. Wood. I'm sorry.
23 MS. WOOD: I'm not a public speaker. My
24 name is Bridgett Wood. I'm a member of
25 several different organizations, but today

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1 I come to you as a mother of three
2 children.
3 Ladies and gentlemen of the Council.
4 I am here to ask you to restrict mercury
5 emissions from coal-fired power plants now.
6 The technology is available to reduce
7 emissions at a reasonable cost to tax
8 payers -- to ratepayers. Women of
9 childbearing age, their unborn, as well as
10 young children are most at risk from
11 exposure to mercury. The cost associated
12 to exposure with special education and
13 federal assistance are high, not to mention
14 the human cost. Many children born exposed
15 to mercury are often the poorest and living
16 in close proximity to power plants and have
17 a disadvantage to start with. At last
18 count there were over 294,000 children
19 living within 30 miles of a coal-fired
20 power plant. And that is the benchmark for
21 the greatest risk to exposure.
22 The state has also been under a fish
23 consumption advisory for many years. Women
24 of childbearing age should not eat more
25 than one meal per week of locally caught

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1 fish. And this is unacceptable.
2 I'm asking for implementation of
3 stricter restrictions of emissions from
4 coal-fired power plants now, rather than
5 waiting for the EPA to implement them.
6 Thank you.
7 MR. CLARK: Can I ask you a
8 question, Ms. Wood?
9 MS. WOOD: Yes.
10 MR. CLARK: You say that you
11 would be willing to pay extra on your
12 electric bill every month to know that
13 mercury controls were in place to the best
14 of our technological ability?
15 MS. WOOD: Yes, very much so.
16 MR. CLARK: You would be willing
17 to pay three or four dollars extra per
18 month -- five dollars -- we don't know
19 exactly how much it would cost but you're
20 willing to pay that?
21 MS. WOODS: I would pay three
22 times that, happily.
23 MS. BOTCHLET-SMITH: Ms. Nadine
24 Barton.
25 MS. BARTON: For the record,

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1 again, my name is Nadine Barton. I
2 represent CASE, Citizens Action for a Safe
3 Environment.
4 Well here we are again. I have to
5 concur with all of the past speakers to
6 give a little force behind what they say.
7 I would like to make some comments about
8 mercury, the neurotoxin that it is.
9 I do have a question for DEQ. How
10 many new coal-fired plants are now in the
11 beginning permit stages? Does anybody know
12 that? Do we have any?
13 MR. TERRILL: One.
14 MS. BARTON: One. And where is
15 that located?
16 MR. TERRILL: Dawson, that is
17 in-house, isn't it? So it's public record,
18 right? Shady Point is proposing to add one
19 or two units. One unit.
20 MS. BARTON: And where is that?
21 MR. TERRILL: Shady Point is down
22 near Poteau -- between Poteau and -- it's
23 an existing facility.
24 MS. BARTON: All right. It is an
25 existing. So --

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1 MR. TERRILL: They are adding one
2 new unit. Proposing to add one new unit.
3 MS. BARTON: So there's no new
4 proposed coal-fired plants to be built from
5 scratch at this time?
6 MR. TERRILL: No. We don't have
7 any permits in-house for a green fields
8 power plant.
9 MR. FIELDER: I might mention
10 that we've got one that is still effective
11 -- the permit is still effective and it
12 should be constructed (inaudible).
13 MR. TERRILL: Yes, that's --
14 MR. FIELDER: It's still a viable
15 permit.
16 MS. LODES: But I believe that's
17 also an expansion, isn't it?
18 MR. TERRILL: Right. It's not a
19 green field.
20 MS. BARTON: So these -- the ones
21 that are in the permit process, since we
22 have this gray area, what standards do we
23 use for the mercury emissions? Do we just
24 go by what we've had before or are we going
25 to enact more stringent ones? I realize

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1 that they're in a situation where they have
2 control costs based on their permitting
3 costs. So what do we do -- how is that
4 handled, I'm not sure?
5 MR. TERRILL: You mean for the
6 one that is in-house; the one we started
7 on?
8 MS. BARTON: Yes.
9 MR. TERRILL: We are going to
10 handle that through the BACT analysis. And
11 we've talked to them and they understand
12 that there are going to be some strict
13 requirements on mercury.
14 MS. BARTON: All right.
15 MR. TERRILL: And not only
16 mercury but all their pollutants.
17 MS. BARTON: The other ones that
18 were covered by that.
19 MR. TERRILL: Right.
20 MS. BARTON: Okay. It was my
21 understanding at a previous meeting, we
22 talked about the fact that where we are
23 situated geographically in the world, that
24 mercury pollutants that are generated from
25 China coal producing plants are relatively

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1 dumped into our area, especially in the
2 northeastern part; is that correct or am I
3 -- is that misinformation?
4 MR. TERRILL: It's not
5 information that I've got, but I'm not
6 saying it's not true. But I don't know how
7 you could know that because it's not
8 tagged. So how do you know that -- and
9 that's the difficulty that we're going to
10 have.
11 MS. BARTON: Where it comes from?
12 MR. TERRILL: Yeah. It's --
13 MS. BARTON: Okay. I'll just
14 move on.
15 The rule that you will propose to
16 the Council in the future, is that going to
17 encompass trading credits for mercury from
18 other sources, in-state and out-of-state?
19 MR. TERRILL: We don't anticipate
20 doing that. That was part of what got the
21 CAMR Rule --
22 MS. BARTON: Thrown out.
23 MR. TERRILL: -- thrown out.
24 MS. BARTON: Well, we are opposed
25 to trading any pollutants from any state.

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1 I just think that our regulations defeat
2 that, if we do that, the health of our
3 people.
4 I hope that the DEQ will look at
5 being more proactive in passing more
6 stringent rules into the mercury emissions
7 standard. Because of the fact that
8 somewhere down the line, it being a
9 neurotoxin, and we have discussed in
10 previous meetings about all of the concern
11 over one and 150 children with autism. And
12 you know, we looked at mercury and the
13 vaccinations and all that and I think that
14 I stated at a previous meeting, I think
15 that in future generations we'll find that
16 it's not only that but it could be from
17 these mercury emissions from coal-fired
18 plants that enter our food chain. Either
19 through fish, or through the water, through
20 the plant life that is polluted with
21 mercury, and then up-taking it into their
22 plant material, and then humans ingesting
23 that.
24 It's been discussed about the
25 increase of our utility rates, should we

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1 have those more stringent requirements for
2 mercury. I think that we have to look at
3 the balance here of being proactive,
4 passing more stringent requirements with
5 these new plants for those mercury
6 emissions, versus, down the line the health
7 care cost that are incurred by the
8 insurance company and the state, when you
9 have a child or an adult who has been
10 impacted by mercury ingestion, either by
11 eating it, or inhalation of it, that we
12 look at making that more stringent to save
13 our misery caused by those affected,
14 especially pregnant women, infants, and
15 children, and then finally us, our old-
16 timers. We are in a stage of learning how
17 this neurotoxin affects us. And I think
18 that, we, as people here in the present,
19 have a responsibility to those children now
20 born and those into the future to take them
21 in mind. Because they're the ones that are
22 going to be taking our places up here. And
23 if you have them subjected to this kind of
24 neurotoxins -- we've got lead, we've got
25 mercury, we've got drugs of all kinds that

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1 they are being submitted to, who is going
2 to run this country? But we have an
3 opportunity to show a proactive
4 responsibility in passing the most
5 stringent requirements on this emission of
6 mercury, now. It will effect us in the
7 future. We will all pay. And the electric
8 companies will pass it on to the consumer
9 anyway, so I can't, you know, condone their
10 whining. But I think there isn't any
11 mother or grandmother in this room and
12 being all of those above, that would not be
13 willing to pay an extra three to four
14 dollars a month if it would ensure that at
15 least we have taken the proactive stance
16 that we're going to protect our future
17 generations and those children that are
18 here today.
19 After making this statement, I want
20 to refer to the fish studies of DEQ and the
21 Water Quality Division. I know at one time
22 in the '80s, that Jimmy Pig -- you all
23 remember Jimmy Pig. Anybody here old
24 enough to remember him?. I believe that he
25 worked for the Water Resources Board; is

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1 that correct?
2 (Inaudible conversation)
3 MS. BARTON: Okay, but I think
4 that he was involved in the fish studies
5 that were done in most of the streams, and
6 creeks, and rivers within the state.
7 My comment is, is that surely
8 somebody in the Water Resources Board or
9 the State Health Department has taken up
10 his banner to do further testings. Has the
11 DEQ ever inquired to the Water Resources
12 Board, if they have an ongoing study of
13 fish in the streams, and rivers, and lakes
14 in Oklahoma?
15 MR. TERRILL: I haven't. I would
16 assume that the water folks do, they talk
17 to those folks all the time.
18 MS. BARTON: Okay. I would just
19 like to put that out, you know, as part of
20 the public to interject some of that
21 information which they have compiled and
22 make it public so that we understand that
23 there isn't double overlapping but there is
24 confirmation about the contaminants of
25 these hard metals and especially lead.

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1 That's the end of my comments. Thank you.
2
3 MS. BOTCHLET-SMITH: Kenya
4 Taylor.
5 MS. TAYLOR: Can you hear me?
6 Okay. My name is Kenya Taylor and I'm a
7 15-year-old member of Sustainability
8 Nowata, Osage, and Washington counties.
9 I'm hear to ask that you restrict mercury
10 emissions from coal-fired power plants and
11 do it now. I don't want to wait for a
12 national movement to make this change
13 because our dangerous mercury levels are
14 harming unborn children, hindering the
15 potential that they have in life. Not only
16 that, but if I want to have children in ten
17 years, they could be affected by the
18 mercury that has accumulated in my body up
19 until now. Please do not allow the
20 destruction of young lives to continue
21 through the lack of restrictions that we
22 have on toxic mercury emissions.
23 Thank you.
24 MR. CLARK: Can I ask a question.
25 Do you have a sense of how long it would

1 be, given EPA's appeal, the Bush
2 Administration's appeal, the court
3 decision, given that in combination with
4 how long it typically takes EPA to -- given
5 a sense of how long before they did come
6 back and enforce it?
7 MR. TERRILL: Well, it depends,
8 if the 112 hammer has actually fallen then
9 there's not any rules to come out with. I
10 mean we'll have to begin -- there's a
11 process that you go through that would take
12 probably, what, about a year, Phillip, to
13 go through that? Once they make that
14 determination, they've got a notification
15 process and then there's another process
16 that you go through. It depends on whether
17 or not that EPA believes that's what
18 happened when the Court vacated that rule.
19 That's what I think happened, I think the
20 hammer did fall. So if they go that route,
21 the process starts immediately.
22 MR. CLARK: Then it would be up
23 to us to implement it and pass the rules
24 for the state of Oklahoma.
25 MR. TERRILL: It wouldn't be a

1 matter of passing the rule, it would be a
2 matter of evaluating each facility that was
3 subject, and all of our power plants would
4 be subject to the 112 requirements and then
5 going through that analysis to determine
6 what level of control would be required.
7 You look at the top 12 percent, it's
8 complicated. We try to avoid doing that
9 because it's a very complicated process and
10 labor intensive. And it would be a lot
11 easier if EPA would propose a rule. The
12 fallback was, the Congress had, that if EPA
13 didn't do it then it fell to the states to
14 do it. And that was suppose to be an
15 incentive to push EPA to do it, so you
16 didn't have 50 states doing something,
17 supposedly the same but everybody is going
18 to look at it differently. Now whether or
19 not that would be a 90 percent control or
20 not, I don't know. It depends on what the
21 analysis showed as to what the top 12
22 percent we're able to achieve.
23 MR. CLARK: So it sounds like
24 what you are saying, it could be a few
25 years before this could come through

1 completely.
2 MR. TERRILL: At least that long
3 before the whole analysis was done. And
4 then if EPA was to propose a separate rule,
5 you know, it could take two or three years.
6 And a lot of this depends on -- not only
7 the timing of your rule, but whether or not
8 the -- if you've got 50 states that are
9 doing this -- or you've got 20 states that
10 are doing something, there is only a
11 certain amount of labor, skilled labor,
12 materials -- there is a whole lot of other
13 stuff that figures into what your time
14 tables are, realistically, and that factors
15 into your costs. And that's part of the
16 problem that EPA has created by the fact
17 that they have lost all of this. And
18 you've got everybody that may be trying to
19 figure out how they can comply with a
20 variety of rules with no certainty. So I
21 don't really have a good feel for where the
22 country is relative to materials and
23 skilled help, and all the other things
24 you're going to have to have to do these
25 retrofits and to install this equipment.

1 MR. CLARK: So you don't know how
2 long it will take to install this?
3 MR. TERRILL: Well, you can set
4 deadlines and meeting them are two
5 different things. I think that what they
6 are finding and what we are going to find
7 relative to regional haze, which is a
8 separate program but the concept is the
9 same, is when you go out and try to find
10 the materials and the skilled people to
11 make these installations, even if they're
12 five years down the road, you may find
13 that's impossible to do because they're
14 booked. And you can't schedule -- you
15 can't get something done, if you can't get
16 it done. So I don't know how you deal with
17 that. You know, I don't. But we'll have
18 to figure out some pathway forward. That's
19 the reason I think EPA is going to have to
20 come back to square one and figure out not
21 only what the requirements are going to be,
22 but they're also going to have to figure
23 out a time table that can realistically be
24 met. And who gets it first. What part of
25 the country goes first. I don't know how

1 they are going to do that. So it's a
2 manufacturing issue and a skilled labor
3 issue.
4 MR. CLARK: Am I correct, if I --
5 my reading on this on what it appears --
6 how it appears to have been effective on
7 the municipal waste incinerators is that
8 once mercury controls were installed,
9 environmental deposition of mercury
10 declines fairly rapidly or does it take
11 decades?
12 MR. TERRILL: I think what they
13 found with the municipal incinerators, the
14 stack height on those is such that most of
15 that mercury and most everything else came
16 out within a fairly small radius. In other
17 words, they don't have tall stacks so you
18 don't have -- and what they burn ended up
19 in a form that deposited locally as opposed
20 to globally. So that's the reason that you
21 saw those dramatic decreases in levels, not
22 only from mercury but all other metals and
23 other things such as that is because they
24 have such a small radius in which their
25 emissions come out. And what they burned

1 was such that the metals came out there.
2 So you did see a dramatic decrease of air
3 pollutant around those facilities because
4 of what they burned and how it was burned.
5 That's my understanding of it anyway.
6 MS. BOTCHLET-SMITH: I'm not
7 going to attempt the last name of this next
8 person. As you all know, I do a good job
9 of mispronouncing names sometimes. Lydia.
10 MS. PATEETISES: The last name is
11 Pateetises (phonetic spelling).
12 MS. BOTCHLET-SMITH: Yeah. I
13 never would have done that right. Sorry.
14 MS. PATEETISES: That's all
15 right. My name is Lydia Pateetises, and I
16 am with the local chapter of the OSN,
17 Oklahoma Sustainability Network. It's here
18 in town and it's called Sustainable Green
19 Country. And basically I have a question
20 that's related to the cost of creating the
21 study on mercury emissions control. I'm a
22 little nervous. I'm terribly sorry.
23 But my question is this. When you
24 look at the cost of controlling mercury
25 emissions, do you compare that to the cost

1 of, what we are probably seeing now, higher
2 rates of special education due to decline
3 of IQ points; the higher cost of healthcare
4 that we are also probably experiencing due
5 to the neurotoxin and consequently the
6 lower productivity that these people may be
7 suffering from?
8 That's basically my question.
9 MR. TERRILL: I guess -- well,
10 the short answer to your question is, no.
11 Are you asking if we have to do -- if we do
12 a more strict study or if we do a more
13 strict rule to meet the requirement that's
14 in their statutory to do a cost benefit
15 analysis, what would we look at?
16 MS. PATEETISES: I guess what I'm
17 asking is -- is that do we necessarily --
18 fundamentally to me, the right thing to do
19 is go ahead and shoot for the strictest
20 guidelines that we can possibly have in
21 this state. Because, as we know, mercury
22 emissions is a significant neurotoxin and
23 it has a whole host of negative effects on
24 a society. And if we truly are concerned
25 about the health of our society and the

1 productivity of our society, then it would
2 be beneficial to us to take steps,
3 regardless of what those costs are. And it
4 seems quite evident there are a of people
5 in this room that would be more than
6 willing to pay the increase rates on their
7 utility bills to take care of that issue --
8 to address that issue. Am I making any
9 sense? Okay.
10 MR. TERRILL: I understand what
11 you're saying but I guess in order for us
12 to -- what I said before, in order for us
13 to move forward with a rule that's stricter
14 than what I believe the -- there's a
15 corresponding federal rule, then we'll have
16 to do a cost benefit analysis in order to
17 do that. We have never done a cost benefit
18 analysis under that requirement. I really
19 have no idea what the Legislature is going
20 to want to see in order to sustain that
21 rule when it comes to them. Because the
22 way the process would work, Council would
23 pass it, Board would pass it, then the
24 Legislature and the Governor have their
25 opportunity to ask questions about it. And

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1 as part of that, we have a requirement
2 since there is an underlying federal rule
3 already in place, if you believe that 112
4 now applies, we would have to do that cost
5 benefit analysis. I have no idea what we
6 would have to do to meet that burden.
7 And we would -- I can tell you, we
8 don't have the expertise to do that kind of
9 analysis. EPA doesn't even have the
10 expertise to do that analysis on all of
11 their rules. They have a requirement in
12 some instances to do it, but they don't.
13 And we just don't have the -- I wouldn't
14 even know how to begin to ask our staff to
15 do that.
16 MR. CLARK: The EPA, have they
17 not done the cost benefit analysis on the
18 Clean Air Act -- cost of compliance studies
19 on the Clean Air Act?
20 MR. TERRILL: Yeah, and they will
21 tell you that it's a guess, it's a best
22 guess as to what they think and they make a
23 lot of assumptions. They have folks that
24 that's what they do, but they don't do that
25 for all of the rules they pass. They do it

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1 with some of the big ones like the ozone
2 standard, they had to do some sort of an
3 estimate even though they don't factor that
4 into where the standard -- in setting of
5 the standard, when they start looking at
6 the implementation then they factor in all
7 that -- those costs. We've never done
8 that. And you know, if that's something
9 that the Council would want us to do or the
10 public would want us to do, then that's
11 something we'll have to factor in and we
12 would just have to come up with the
13 resources, I guess, to do that but we just
14 don't have that. We don't have the
15 expertise in-house to do it.
16 MS. LODES: Now, Eddie, I need to
17 clarify what my understanding is of what
18 you're asking is -- I don't think the cost
19 benefit analysis that we're used to seeing
20 with EPA includes something looking at such
21 cost as if you don't reduce the emissions,
22 something like special education costs --
23 MR. TERRILL: Right, it doesn't.
24 MS. LODES: -- or health --
25 MR. TERRILL: I don't think it

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1 does either. I think they just look at
2 what hospital admissions or they look at
3 the gross data and try to make a
4 determination of what the benefits would be
5 from that, but they don't go into the kind
6 of detail that I think that you're talking
7 about.
8 MR. CLARK: It seems like it
9 would be very difficult to quantify the
10 lost IQ point or rates of special education
11 and what percentage of those special
12 education students were there due to
13 mercury toxicity versus birth defects or
14 whatever it might be.
15 MR. TERRILL: This goes back to
16 what I've said from the beginning. There
17 is no way to guarantee that if Oklahoma had
18 the strictest mercury rules of anyone in
19 the country that that would do one thing to
20 the fish in our water bodies. I mean there
21 is just no way to know that. I mean it's
22 possible that it would go down, but is it
23 going down because of what we've done or is
24 it going down for some other reason. And
25 you know --

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1 MS. MYERS: I think one of the
2 mistaken assumptions that I'm hearing
3 repeatedly, is that everything that is
4 happening is coming from air emissions from
5 major stationary sources. We have mobile
6 sources to consider, we've got naturally
7 occurring metals that leach out of rock
8 formations into the lakes. Such as down at
9 Lahey Creek. So there are a lot of other
10 factors that enter into it besides trying
11 to capture everything and blame it on the
12 stationary sources. There's a lot of other
13 factors to be considered.
14 MR. TERRILL: And part of that is
15 that EPA has gotten away from part of their
16 original mission, which is to be a science
17 and research body. They're woefully short
18 in taking a look at the issue of not only
19 mercury but a lot of hazardous and toxic
20 material, and exactly what are those
21 impacts on the public. And this is really
22 their job and they should already have done
23 this. I mean there should be no question
24 as to what really needs to be done but they
25 just haven't addressed it. And it is a

1 problem because there is no doubt that
2 mercury is a very passionate issue and it
3 can be a problem, but how do you deal with
4 that -- you know, that's what we are
5 debating.
6 MR. CLARK: To Ms. Myers' point.
7 In the northeast, in particular, they seem
8 to have more data on this issue of hotspots
9 around power plants. Does that come from a
10 soil sampling that they come up with these
11 hotspots -- that they found these hotspots?
12
13 MR. TERRILL: Well, there is also
14 different types of coal. They burn
15 anthracite, is my understanding, and that
16 has a tendency to create local depositions
17 as opposed to going into the global pool.
18 There's studies on both sides of this issue
19 and they have done some up in the
20 northeast. They've got more -- a lot more
21 concentration of power plants up there too,
22 than we do here. And so -- and a lot more
23 uncontrolled power plants than we do here.
24 So that factors in --
25 MS. MYERS: And when you talk

1 about northeast are you talking about the
2 northeast United States or northeastern
3 Oklahoma?
4 MR. TERRILL: I think you're
5 talking about northeast United States,
6 aren't you?
7 MR. CLARK: Yes. That's the data
8 I've seen on hotspots.
9 MR. TERRILL: Yeah, me too. And
10 that's where I've seen most of it and
11 talking to folks in other parts of the
12 country, they're not convinced that that
13 projects to other areas, it's just more
14 specific to that area because of the
15 uniqueness of what we've got, yeah.
16 MR. CLARK: Have the Air Quality
17 Administrators in New England not also
18 stated that they believe that a
19 considerable amount of their mercury
20 contamination issue is a result of high
21 mercury emissions from midwestern coal
22 plants?
23 MR. TERRILL: They have stated
24 that. Yes. That is correct.
25 MR. CLARK: And they asked us to

1 reduce our mercury emissions to help them?
2
3 MR. TERRILL: No. But they've
4 asked EPA to do it nationally and that's
5 how they feel it ought to be addressed, is
6 that EPA has to require that because every
7 state is going to have their own politics
8 in asking the states do it. There is a
9 process you can go through that if they
10 really thought that was an issue, they
11 could file a 126 Petition and state that
12 this particular source is causing a problem
13 in our state and do something about it.
14 And then the burden comes to us to say it
15 is or it isn't. And to my knowledge no 126
16 Petition has ever been filed relative to
17 mercury. They have filed it relative to
18 ozone pollutants, but not mercury.
19 MS. BOTCHLET-SMITH: Okay, our
20 next commenter --
21 MR. TERRILL: Were you done?
22 MS. PATEETISES: I am.
23 MR. TERRILL: Okay.
24 MS. BOTCHLET-SMITH: I'm sorry.
25 Our next commenter is Jean MacMahan.

1 MS. MACMAHAN: Hi. I'm with the
2 Green Party of Oklahoma and I'm speaking
3 pretty much for myself, though. I'm
4 dressed as a polar bear to represent all
5 the vulnerable and innocent people,
6 animals, and plants that are affected by
7 mercury emissions. And also our industrial
8 society that pollutes and won't live
9 sustainably.
10 I think that you can't call yourself
11 a Department of Environmental Quality or be
12 concerned with air quality if you allow
13 large amounts of mercury into the
14 environment. And we know it comes from
15 coal plants. The science is out there. We
16 are led by government that hides science,
17 that misinterprets science, that helps the
18 public -- makes the public disbelieve
19 scientific data when it's right there. And
20 we just -- you just have to go by what's
21 there and act accordingly and not keep
22 going around in circles, harming people,
23 children in the womb. I think maybe the
24 religious right needs to learn more about
25 this. The media is under corporate

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1 control, of course, and coal plants are
2 spending what, 450 million -- huge amounts
3 to say they are clean, when they are not
4 clean. We can't let them get away with it.
5 We have to get the information out.
6 And also the polar bear -- there
7 could be mercury toxins that have reached
8 the polar bears. The mercury is found in
9 their blubber as well as other things. And
10 the earth is in danger and local Oklahomans
11 are in danger and they aren't being told
12 about it. And I think that we need to find
13 out from you what we can do to help you get
14 this news out and act accordingly.
15 Thank you.
16 MS. BOTCHLET-SMITH: Janie
17 Laventis.
18 MS. LAVENTIS: Thank you for
19 letting me speak. I'm also with the Green
20 Party of Oklahoma. We are delegates to the
21 National Need to Know, we are not
22 recognized as the party here. I would just
23 like to say that there needs to be shift, a
24 step change in our thinking, when cost
25 benefit analysis do not factor in the human

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1 cost involved. And the EPA will not
2 mandate that. As an Air Quality Control
3 Council here, you have an opportunity to
4 get ahead of this. And I just hope you
5 will think in terms of the human cost,
6 involved. Thank you.
7 MR. CLARK: Let me ask you a
8 question. Would you be willing to pay
9 extra every month in your utility bill?
10 MS. LAVENTIS: Absolutely. If
11 it's done properly. If -- when you figure
12 in how much mercury is accessible, if you
13 are not going by the standards set by the
14 industry but by the standards set by the
15 actual people who are still trying to live
16 off the land because they can't even afford
17 electricity. So, yes, as an electricity
18 payer, as a tax payer, I'm just begging our
19 Councils, whether it be from Air Quality or
20 whatever Councils are gathering, that we
21 take the wisdom that comes to them at this
22 point in time and make the choices that are
23 going to make a difference for the
24 betterment of our children's lives because
25 without that shift, we are not going to

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1 have a world that I want my kids to live
2 in. So yes, sir.
3 MS. BOTCHLET-SMITH: Thank you.
4 That was the last commenter from the
5 public. If the Council has any other
6 questions they can bring them up at this
7 time.
8 MR. BRANECKY: There is no action
9 required by us today?
10 MS. BOTCHLET-SMITH: There is no
11 action required and with none being taken,
12 that would conclude the hearing for today.
13
14 (Item 5 Concluded)
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2 CERTIFICATE
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4 STATE OF OKLAHOMA)
5) ss:
6 COUNTY OF OKLAHOMA)
7
8 I, CHRISTY A. MYERS, Certified
9 Shorthand Reporter in and for the State of
10 Oklahoma, do hereby certify that the above
11 proceeding is the truth, the whole truth,
12 and nothing but the truth; that the
13 foregoing proceeding was taken down in
14 shorthand by me and thereafter transcribed
15 under my direction; that said meeting was
16 taken on the 16th day of April, 2008, at
17 Tulsa, Oklahoma; and that I am neither
18 attorney for, nor relative of any of said
19 parties, nor otherwise interested in said
20 action.
21 IN WITNESS WHEREOF, I have hereunto
22 set my hand and official seal on this, the
23 28th day of May, 2008.
24
25

1 CHRISTY A. MYERS, C.S.R.
Certificate No. 00310
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OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY COUNCIL
Attendance Record
April 16, 2008
Oklahoma City, Oklahoma

NAME and/or AFFILIATION	Address and/or Phone and/or E-Mail
Myrna Bruce	DEQ 7170
Cheryl E. Bradley	DEQ x4218
Gary Sullivan	
Nancy Marshment	DEQ x4216
Christy Myers	DEQ Court Rep.
Bobbie Hall	AES Shady Point Bobbie.Hall@AES.com
Beverly Botchlet-Smith	DEQ
Gail Tate	DEQ
Randy Beeson	Emerson Services, Inc.
Joseph E. Cowen, PE	Buzzi Unicem USA - Pryor 918 824 4423
Brad Burris	Weyerhaeuser Valliant, OK
Mark Lawson	Spirit AeroSystems Tulsa, OK Mark.Lawson@Spiritaero
Jim Haught	AQC
Gerald Berchna	DEQ 405-247-4341 g.berchna@ntpp.com
David Branecky	AQC
Julia Bevers	OGE
Perry Friedrich	GRDA (918) 824-1034
Earl Hatley	Grand River Dam Authority 918-256-5269
Ford Benham	OGE 405-553-3221
Chuck Gross	Sustainability N.D.W. 918-337-0538
David Provence	Chevron Phillips Chemical Co 918-661-7999
Kelley Lawrence	918-331-3966
Lydia Peters	Sustainability Green Country 918.592.5082
Montelle Clark	OSN "
Garry L. Keele, II	Hall Estill gkeele@hallestill.com
Steve Moyer	Sinclair Tulsa Refining Co smoyer@tcsoc.com

OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY COUNCIL
Attendance Record
April 16, 2008
Oklahoma City, Oklahoma

NAME and/or AFFILIATION		Address and/or Phone and/or E-Mail
Rusty Kroll	DSDA	320 S. Boston, Suite 500 RKROLL@dsda.com
Deanne Hughes	Cardinal Engineering	1015 N Broadway OKC 73102
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Nancy Graham	INCOG	
Leslie Moyer	Sustainable Green Country	LeslieMoyer@gmail.com
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