

**MINUTES**  
**AIR QUALITY COUNCIL**  
**July 18, 2007**  
Ponca City Oklahoma

Approved AQC  
October 17, 2007

**Notice of Public Meeting** The Air Quality Council convened for its regular meeting at 9:00 a.m. July 18, 2007 in the Fourth Street Clubhouse, Ponca City, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on November 30, 2006. 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. Eddie Terrill, Director, Air Quality Division, welcomed Mr. Jim Haught to the Council replacing Bob Curtis. David Branecky, Council Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Don Smith

**DEQ STAFF PRESENT**

Eddie Terrill  
Beverly Botchlet-Smith  
Cheryl Bradley  
Pat Sullivan  
Joyce Sheedy  
Max Price

**OTHERS PRESENT**

Christy Myers, Court Reporter  
Brita Cantrell, EQB

**DEQ STAFF PRESENT**

Matt Paque  
Dawson Lasseter  
Nancy Marshment  
Myrna Bruce

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

**Approval of Minutes** Mr. Branecky called for approval of the April 18, 2007 Minutes. Mr. Martin made motion for approval and Mr. Treeman made the second. Roll call as follows with motion passing.

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

**OAC 252:100-17. Incinerators [AMENDED]** Ms. Pat Sullivan advised that the proposes 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. She explained that at Council's last meeting, staff had asked that this rule be continued while

EPA reconsidered three aspects of the proposed federal regulation. Ms. Sullivan noted that staff had not received notification of signature on the proposed standards; therefore, asked that the rule be carried over to the next appropriate Air Quality Council meeting. Mr. Branecky opened the floor for questions, then called for a motion to continue the rule to the next meeting. Ms. Myers made that motion and Mr. Purkaple made the second.

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

**OAC 252:100-7. Permits for Minor Facilities [AMENDED]** Dr. Joyce Sheedy stated that the proposal would amend Subchapter 7 to provide clarity and consistency with other Chapter 100 Air Pollution Control rules. Amendments would also remove reference to Subchapter 41, Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants, which has been revoked; correct the emissions calculation methods for determining if a permit is required; clarify when construction permits are required; and provide for administrative amendments to operating permits for minor facilities. Dr. Sheedy provided a letter of comments from OIPA for the record. Dr. Sheedy, Mr. Terrill, and Mr. Dawson Lasseter fielded questions regarding those suggested amendments. Mr. Branecky pointed out that staff recommended that the rule be passed and called for a motion. Mr. Haught made motion to accept with modifications as presented. Dr. Lynch made the second.

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

**OAC 252:100-1. General Provisions [AMENDED]**

**OAC 252:100-8. Permits for Part 70 Sources [AMENDED]**

**OAC 252:100-37. Control of Emission of Volatile Organic Compounds (VOCs) [AMENDED]**

**OAC 252:100-39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas [AMENDED]**

Mr. Max Price related that the proposal would clarify and/or remove redundant definitions in Subchapters 1, 8, 37 and 39. Staff recommended that Council pass the rulemaking as proposed and forward to the Environmental Quality Board for permanent adoption. During questions, a typo was noted on page 8. Mr. Price confirmed that the term “carbonic acid” was the correct term to use and the wording would be changed. Ms. Myers made motion to pass the rule with the change. Ms. Worthen made the second.

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

**OAC 252:100-44. Control of Mercury Emissions from Coal Fired Electric Steam Generating Units [NEW] and Proposed Mercury 111(d) Plan Public Hearing**

Mr. Max Price stated that the proposed adds a new Subchapter 44, Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units, which would incorporate by reference the federal Clean Air Mercury Rule (CAMR) issued in May 2005. Due to the controversial nature of this proposal and possible litigation in the federal courts, staff recommended that the rule be continued to Council’s January 2008 meeting. Public comments were received from Karen Hadden, Sustainable Energy and Economic Development Coalition; Pat Phillips, retired business owner; Sylvia Pratt; Lawrence Edison, Sierra Club; Montelle Clark; Earl Hatley; Senator Paul Muegge; Chuck Gross, Sustainability NOW; Darryl Phillips; Seneca Scott; Jeff Edwards, Sequoyah County Clean Air Coalition; and Dwayne Camp.

Mr. Terrill discussed the issues involved in the rulemaking and the scenarios for continuing the rule until further information is obtained. Mr. Purkaple made a motion to table the rulemaking until the January Council meeting with instructions for staff to bring back alternative recommendations based on public comment which has been submitted, along with an economic cost benefit analysis and incorporate the technological feasibility part as well. Mr. Terrill interjected that staff will use the cost benefit analysis studies that are already available. Ms. Myers made the second to Mr. Purkaple’s motion and roll call was taken.

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

**Proposed Mercury 111(d) Plan Public Hearing** (notation in transcript 4E page 4)

During the next hearing on Subchapter 5, Ms. Botchlet-Smith reminded that the Proposed Mercury 111d Plan is tied to this Subchapter 44 to incorporate the CAMR rule.

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

Ms. Nancy Marshment explained that the Department is considering increases in OAC 252:100-5-2.2 fees for minor facilities and for Part 70 sources. Along with Mr. Terrill, Ms. Beverly Botchlet-Smith, Assistant Director, Air Quality Division, provided a slide presentation stating the needs related to the fee increases. Following comments from Council and the public, Mr. Treeman moved to continue the rulemaking to the October meeting per staff’s recommendation. Mr. Purkaple made the second.

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

**Subchapter 19. Control of Emission of Particulate Matter** – Dawson Lasseter, Engineer Manager, DEQ, Air Quality Division provided an update as requested by Council at its April 18, 2007 meeting. No action was necessary.

**Division Director's Report** Eddie Terrill gave an update on Division activities and thanked Ponca City, Mr. Martin, and Mr. Purkapple for hosting the Council meeting

**New Business** None

**Adjournment** The next regular meeting is proposed for 9:00 a.m., Wednesday, October 17, in Oklahoma City, Oklahoma. Meeting adjourned at 12:45 p.m.

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

1  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY COUNCIL

REGULAR MEETING

ITEM NUMBERS 1-3

HELD ON JULY 18, 2007, AT 9:00 A.M.

PONCA CITY, OKLAHOMA

\* \* \* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MEMBERS OF THE COUNCIL

- DAVID BRANECKY - CHAIRMAN
- RICK TREEMAN - VICE-CHAIRMAN
- JERRY PURKAPLE - MEMBER
- JIM HAUGHT - MEMBER
- SHARON MYERS - MEMBER
- GARY MARTIN - MEMBER
- DR. BOB LYNCH - MEMBER
- LAURA WORTHEN - MEMBER
- DON SMITH - ABSENT

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY
- EDDIE TERRILL - DIVISION DIRECTOR
- BEVERLY BOTCHLET-SMITH - AQD

1

2

## PROCEEDINGS

3

4

MR. BRANECKY: Good morning,  
5 everyone. Let's go ahead and get started,  
6 we've got a full agenda today. Just to let  
7 you know, we recognize that it's starting  
8 to get a little warm in here and we've got  
9 maintenance on the way to see what the  
10 problem is. Hopefully, we can get it  
11 cooled down a little bit.

12

Also, before we get started, I'd  
13 just like to remind everyone to please turn  
14 off or mute your cell phones so we don't  
15 have any ringing during the meeting.

16

And with that, Myrna, would you call  
17 roll, please.

18

MS. BRUCE: Jerry Purkaple.

19

MR. PURKAPLE: Here.

20

MS. BRUCE: Sharon Myers.

21

MS. MYERS: Here.

22

MS. BRUCE: Jim Haught.

23

MR. HAUGHT: Here.

24

MS. BRUCE: Rick Treeman.

25

MR. TREEMAN: Here.

1 MS. BRUCE: Gary Martin.

2 MR. MARTIN: Here.

3 MS. BRUCE: Bob Lynch.

4 DR. LYNCH: Here.

5 MS. BRUCE: Laura Worthen.

6 MS. WORTHEN: Here.

7 MS. BRUCE: David Branecky.

8 MR. BRANECKY: Here.

9 MS. BRUCE: Absent is Don Smith,  
10 but we do have a quorum.

11 MR. BRANECKY: Okay. Next item  
12 on the Agenda is the Approval of the  
13 Minutes.

14 Do we have any discussion on the  
15 Minutes? If not, I'll entertain a motion  
16 for approval.

17 MR. MARTIN: Move approval.

18 MR. TREEMAN: Second.

19 MR. BRANECKY: I have a motion  
20 and a second. Myrna, please.

21 MS. BRUCE: Jerry Purkaple.

22 MR. PURKAPLE: Yes.

23 MS. BRUCE: Sharon Myers.

24 MS. MYERS: Yes.

25 MS. BRUCE: Jim Haught.  
MR. HAUGHT: Yes.

1

2

MS. BRUCE: Rick Treeman.

3

MR. TREEMAN: Yes.

4

MS. BRUCE: Gary Martin.

5

MR. MARTIN: Yes.

6

MS. BRUCE: Bob Lynch.

7

DR. LYNCH: Yes.

8

MS. BRUCE: Laura Worthen.

9

MS. WORTHEN: Yes.

10

MS. BRUCE: David Branecky.

11

MR. BRANECKY: Yes.

12

MS. BRUCE: Motion passed.

13

MR. BRANECKY: Okay. Before we

14

get into these public hearings we have a

15

new Council Member. I'd like Eddie to

16

introduce him, please.

17

MR. TERRILL: Yes. Bob Curtis,

18

who was a Council Member representing

19

transportation from the Tulsa area,

20

retired, I believe, this month and he had

21

been a member since 2003. We asked him to

22

come up so we could recognize him but he

23

decided that being retired and having

24

things better to do than come to Ponca City

25

for a Council Meeting took precedence over

1 that. So I think he's back east visiting  
2 grandkids. But we wanted to at least say  
3 something publicly about appreciation of  
4 his services, and we'll have a little  
5 plaque for him that we'll send to him  
6 later.

7 But things move on, and over the  
8 legislative session Jim Haught, who's the  
9 manager of Environmental Services for  
10 Oneok, and also from Tulsa, has been  
11 appointed and confirmed. So we're looking  
12 forward to working with Jim for the next  
13 seven years.

14 Welcome, Jim.

15 MR. HAUGHT: I appreciate it.  
16 Thank you.

17 (End of Items 1-3)

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

STATE OF OKLAHOMA )

) ss:

COUNTY OF OKLAHOMA )

I, CHRISTY A. MYERS, Certified  
Shorthand Reporter in and for the State of  
Oklahoma, do hereby certify that the above  
proceedings is the truth, the whole truth,  
and nothing but the truth; that the  
foregoing proceeding was recorded by  
shorthand by me and thereafter transcribed  
under my direction to the best of my  
ability; that said proceedings were taken  
on the 18th day of July, 2007, at Ponca  
City, Oklahoma; and that I am neither  
attorney for nor relative of any of said  
parties, nor otherwise interested in said  
action.

IN WITNESS WHEREOF, I have hereunto  
set my hand and official seal on this, the  
18th day of August.

\_\_\_\_\_  
CHRISTY A. MYERS, C.S.R.  
Certificate No. 00310

1  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY COUNCIL

REGULAR MEETING

ITEM NUMBER 4A

HELD ON JULY 18, 2007, AT 9:00 A.M.

IN PONCA CITY, OKLAHOMA

\* \* \* \* \*

MYERS REPORTING SERVICE  
(405) 721-2882

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MEMBERS OF THE COUNCIL

- DAVID BRANECKY - CHAIRMAN
- RICK TREEMAN - VICE-CHAIRMAN
- JERRY PURKAPLE - MEMBER
- JIM HAUGHT - MEMBER
- SHARON MYERS - MEMBER
- GARY MARTIN - MEMBER
- DR. BOB LYNCH - MEMBER
- LAURA WORTHEN - MEMBER
- DON SMITH - ABSENT

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY
- EDDIE TERRILL - DIVISION DIRECTOR
- BEVERLY BOTCHLET-SMITH - AQD

1

2

## PROCEEDINGS

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. BRANECKY: All right. With

that, we'll get into the public hearing

portion. Beverly.

MS. BOTCHLET-SMITH: Good

morning. I'm Beverly Botchlet-Smith,

Assistant Director of the Air Quality

Division. As such, I'll serve as the

Protocol Officer for today's hearings.

These hearings will be convened by

the Air Quality Council in compliance with

the Oklahoma Administrative Procedures Act

and Title 40 of the Code of Federal

Regulations, Part 51, as well as the

authority of Title 27A of the Oklahoma

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

through 2-5-118.

Notice of the July 18, 2007 hearings

were advertised in the Oklahoma Register

for the purpose of receiving comments

pertaining to the proposed OAC Title 252

Chapter 100 rules as listed on the Agenda

and will be entered into each record along

1 with the Oklahoma Register filing.

2           Notice of the meeting was filed with  
3 the Secretary of State on November 30,  
4 2006. The Agenda was duly posted 24 hours  
5 prior to the meeting at this facility and  
6 at the DEQ.

7           If you wish to make a statement, it  
8 is very important that you complete the  
9 form at the registration table, and you  
10 will be called upon at the appropriate  
11 time. Audience members, please come to the  
12 podium for your comments and please state  
13 your name.

14           At this time, we will proceed with  
15 what's marked as Agenda Item Number 4A on  
16 the Hearing Agenda and that is OAC 252:100-  
17 17, Incinerators.

18           The presentation will be made by  
19 Ms. Pat Sullivan of our staff.

20           MS. SULLIVAN: Thank you,  
21 Beverly.

22           Mr. Chairman, Members of the  
23 Council, ladies and gentlemen, I'm Pat  
24 Sullivan. I'm an Environmental Program  
25 Specialist working in the Rules Unit of the

1 Air Quality Division of the Department of  
2 Environmental Quality.

3 In April, I presented proposed  
4 modifications to the agency rules on  
5 Municipal Waste Combustors at OAC 252:100-  
6 17, Incinerators Part 5.

7 Staff asked that the rule be  
8 continued while EPA reconsidered three  
9 aspects of the proposed federal regulation  
10 as requested by Earth Justice. EPA  
11 anticipated reconsideration would be  
12 complete by early July so staff placed this  
13 item on the Council's July Agenda. As of  
14 yesterday, the proposed standards were  
15 still awaiting signature. So staff  
16 requests that Subchapter 17 be carried over  
17 to the next appropriate Air Quality Council  
18 Meeting. Thank you.

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

21 MR. PURKAPLE: Pat, I have a  
22 question. Under the definitions on Page 1,  
23 you made reference to the fact that the  
24 definitions of 60.1(b) are incorporated by  
25 reference as they existed on July the 10,

1 2006.

2 MS. SULLIVAN: Yes, sir.

3 MR. PURKAPLE: And if you'll flip  
4 over to Pages 6 and 7 -- on Page 6 the most  
5 inset paragraph, is paragraph (I).

6 MS. SULLIVAN: Yes, sir.

7 MR. PURKAPLE: I guess that's  
8 actually on roman numeral one (I). In the  
9 past there was a reference to July 1, 2002  
10 and then on the next page, on Page 7, at  
11 the top there's also a reference of it  
12 existing July 1, 2002. Should those also  
13 be July 10, 2006 or not?

14 MS. SULLIVAN: I will double  
15 check that, but I believe that the dates  
16 reflect the actual dates. I think it's  
17 correct, but I will check it before our  
18 next meeting.

19 MR. PURKAPLE: Okay. Thank you.

20 MS. BOTCHLET-SMITH: Other  
21 questions from the Council? I did not  
22 receive any notice of anyone from the  
23 public wishing to comment on this. Seeing  
24 no one indicating that, it appears there's  
25 no other comments.

1

2 MR. BRANECKY: Okay. With that, I  
3 guess our options are that the DEQ has  
4 asked that we continue this to the next  
5 Council Meeting. Hopefully by then we will  
6 be able to finalize what they need to do.  
7 So with that, I'll entertain a motion if  
8 you so choose to continue this until the  
9 next meeting.

10 MS. MYERS: So moved.

11 MR. PURKAPLE: Second.

12 MR. BRANECKY: Motion and a  
13 second. Myrna, call the roll, please.

14 MS. BRUCE: Jerry Purkaple.

15 MR. PURKAPLE: Yes.

16 MS. BRUCE: Sharon Myers.

17 MS. MYERS: Yes.

18 MS. BRUCE: Jim Haught.

19 MR. HAUGHT: Yes.

20 MS. BRUCE: Rick Treeman.

21 MR. TREEMAN: Yes.

22 MS. BRUCE: Gary Martin.

23 MR. MARTIN: Yes.

24 MS. BRUCE: Bob Lynch.

25 DR. LYNCH: Yes.

1 MS. BRUCE: Laura Worthen.  
2 MS. WORTHEN: Yes.  
3 MS. BRUCE: David Branecky.  
4 MR. BRANECKY: Yes.  
5 MS. BRUCE: Motion passed.  
6 (End of Item 4A)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY COUNCIL  
REGULAR MEETING

ITEM NUMBERS 4B

HELD ON JULY 18, 2007, AT 9:00 A.M.

IN PONCA CITY, OKLAHOMA

\* \* \* \* \*

MYERS REPORTING SERVICE  
(405) 721-2882

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MEMBERS OF THE COUNCIL

- DAVID BRANECKY - CHAIRMAN
- RICK TREEMAN - VICE-CHAIRMAN
- JERRY PURKAPLE - MEMBER
- JIM HAUGHT - MEMBER
- SHARON MYERS - MEMBER
- GARY MARTIN - MEMBER
- DR. BOB LYNCH - MEMBER
- LAURA WORTHEN - MEMBER
- DON SMITH - ABSENT

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY
- EDDIE TERRILL - DIVISION DIRECTOR
- BEVERLY BOTCHLET-SMITH - AQD

1

2

## PROCEEDINGS

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MS. BOTCHLET-SMITH: The next item on the Agenda is Item Number 4B, OAC 252:100-7, Permits for Minor Sources, and Dr. Joyce Sheedy will be giving the staff presentation.

DR. SHEEDY: Mr. Chairman, Members of the Council, ladies and gentlemen, we propose to revise the permitting requirements for minor facilities in Subchapter 7, Sections 2, 15, and 18 by adding provisions for an administrative amendment for minor facility operating permits; to replace reference to Subchapter 41 with reference to Subchapter 42; to increase the time allowed to notify the DEQ of a transfer of ownership from 10 days to 30 days; to delete the throughput limits for determining permit exempt status for oil and gas exploration and production facilities; and to change the emissions limits for "permit by rule" to match the format used in "permit exempt facility".

1           We also took this opportunity to  
2     make other non-substantive changes to  
3     format, grammar, et cetera for clarity and  
4     for consistency with the other rules in  
5     Chapter 100. This proposed revision was  
6     first noticed for the January 17, 2007, Air  
7     Quality Council Meeting which was cancelled  
8     due to the weather and it was available for  
9     comments from December 15, 2006 through  
10    January 17, 2007. It was presented to the  
11    Council for the first time on April 18,  
12    2007, at which time it was continued to  
13    today's meeting.

14           A letter of comments was received  
15    via e-mail on July 12, 2007 from Angie  
16    Burkhalter of OIPA. These comments were  
17    received too late to be included in the  
18    Council packet. However, a copy of this  
19    letter has been provided to the Council  
20    Members and is available for the public  
21    here today.

22           OIPA requested that the Council  
23    action on the proposed revision to  
24    Subchapter 7 be delayed to the October  
25    meeting to allow time for industry a

1 d DEQ staff to work through the details of  
2 developing the permit exempt throughput  
3 guidance. We do not believe this is  
4 necessary. This change to the rule will  
5 not become effective until July 1, 2008,  
6 which allows sufficient time to prepare the  
7 exempt throughput guidance before that  
8 effective date.

9 Ms. Burkhalter also stated that  
10 Subchapter 7 might be an appropriate place  
11 to add language being developed to clarify  
12 issues concerning the temporary testing and  
13 completion of new and/or re-completed  
14 wells. We have no assurance that such  
15 language will be developed prior to the end  
16 of this year. We don't think the benefits  
17 of an administrative amendment for minor  
18 facility operating permits and the other  
19 proposed changes to Subchapter 7 should be  
20 delayed while a solution to this long-  
21 standing problem of construction permits  
22 for new and/or re-completed wells is  
23 sought.

24 After the proposed revision of  
25 Subchapter 7 was posted on our website, we

1 were made aware that some of the new  
2 language was not as clear as it needs to  
3 be. We are proposing that the following  
4 changes be made to the revision that is  
5 contained in the Council packets and  
6 available at this meeting.

7           On Page 3, in 252:100-7-15(a), we  
8 propose to change the sentence in (a) to  
9 read, "A construction permit is required to  
10 commence construction or installation of a  
11 new facility or the modification of an  
12 existing facility as specified in OAC  
13 252:100-7-15(a)(1) and (2)".

14           Also on Page 3, in 252:100-7-  
15 15(a)(2)(B)(ii), we propose to delete, "at  
16 an existing facility covered by an  
17 individual permit" from the end of the  
18 sentence since it is redundant, it's  
19 already stated in (B) itself.

20           And then on Page 4 --

21           MR. BRANECKY: Joyce, could you  
22 repeat that? I didn't (inaudible).

23           DR. SHEEDY: Okay. In  
24 (2)(B)(ii), the end of that sentence, "an  
25 existing facility is covered by an

1 individual permit".

2 MR. BRANECKY: Okay. So that's  
3 the same.

4 DR. SHEEDY: Well, we had already  
5 said that in (B) up above there. So that's  
6 just redundant language, so we propose to  
7 remove that language.

8 And then on Page 4, 252:100-7-  
9 15(c)(1), a colon was left off after, I  
10 think, the first sentence after "to",  
11 before the strike out starts. So we want  
12 to put that colon in.

13 And then on Page 5, we propose to  
14 replace the language in 252:100-7-18(a)  
15 with, "An operating permit is required for  
16 a minor facility as specified in OAC  
17 252:100-7-18(a)(1) and (2).

18 And then also on Page 5, 18(a)(2).

19 MS. BOTCHLET-SMITH: Joyce, could  
20 you speak up just a bit? I think they're  
21 having a little trouble hearing you in the  
22 back.

23 DR. SHEEDY: I'm sorry, is this -

24 -

25 MS. BOTCHLET-SMITH: Can you move

1 your microphone down?

2 DR. SHEEDY: Is it working?

3 MS. BOTCHLET-SMITH: It is now.

4 DR. SHEEDY: I just wasn't close

5 enough. I'm sorry. Where did you lose me?

6 Okay, on Page 5. All right.

7 On Page 5, in 18(a), we propose to  
8 replace the language in 252:100-7-18(a)  
9 with, "An operating permit is required for  
10 a minor facility as specified in OAC  
11 252:100-7-18(a)(1) and (2)".

12 Then on 18(a)(2), which is also on  
13 Page 5, we propose to replace that language  
14 with, "No person shall cause or authorize  
15 the operation of a minor facility modified  
16 pursuant to OAC 252:100-7-15(a)(2) for more  
17 than a 60-day period without applying for a  
18 DEQ issued Air Quality operating permit".

19 Then again on Page 5 in (e), we  
20 propose to replace that first sentence  
21 with, "An operating permit application  
22 shall meet the following requirements." I  
23 guess that's (e).

24 And then on (e)(1), we'll replace  
25 the sentence after the tag line with, "An

1 operating permit application must contain  
2 the following information".

3           Those are the changes that we're  
4 proposing. In addition to these changes,  
5 the differences between the proposed  
6 revision presented today and the one  
7 presented at the April Air Quality Council  
8 Meeting consist of, on Page 2 we propose to  
9 delete paragraph (g)(2) and the first  
10 sentence in paragraph (g)(1). This is new,  
11 and we propose to do this since the limits  
12 in OAC 252:100-7-2(g)(2)(A) and (B) require  
13 updating to avoid conflict with the  
14 specifications in the definition of "permit  
15 exempt facility" that's contained in OAC  
16 252:100-7-1.1. This is due to the  
17 availability of better emissions data. As  
18 more knowledge is obtained regarding  
19 emissions from this equipment, further  
20 updates may be required. This being the  
21 case, it seems prudent to remove these  
22 limits from the rule to avoid unnecessary  
23 rule revisions and SIP changes. The  
24 removal of these limits will have no effect  
25 on the use of the "permit exempt facility"

1 rule.

2           In 252:100-7-15(a)(2)(B) on Page 3,  
3 we moved "for an existing facility covered  
4 by an individual permit" from (B)(ii) to  
5 (B) for clarity and we added "to" at the  
6 beginning of (B)(I) and (ii).

7           In 252:100-7-15(c) on Page 4, we  
8 propose to add "Construction permit  
9 applications shall contain at least the  
10 data and information listed in OAC 252:100-  
11 7-15(c)(1) and (2). This is for formatting  
12 purposes. We have also reformatted  
13 paragraph (c)(1) for clarity.

14           We have reworded the first sentence  
15 in 252:100-7-15(e) on Page 4. These are  
16 not really substantive changes, they're  
17 just for clarity.

18           In 252:100-7-18(b)(2) on Page 5 we  
19 replaced the word "source" with "facility"  
20 since facility is the proper term to use  
21 regarding minor facilities.

22           In 252:100-7-18(b)(3) on Page 5 we  
23 added "and/or" for formatting purposes.

24           In 252:100-7-18(e)(2)(A) through (c)  
25 on Page 6 we replaced the semicolons, with

1 commas, for grammatical purposes and added  
2 "and" at the end of (c).

3           This is the second time these  
4 proposed revisions to Subchapter 7 have  
5 been presented to the Council. At this  
6 time, we request that the Council recommend  
7 these changes to the Environmental Quality  
8 Board for adoption as a permanent rule.  
9 Thank you.

10                   MS. BOTCHLET-SMITH: Are there  
11 any questions or comments from the Council?

12                   MR. PURKAPLE: Joyce?

13                   MS. BOTCHLET-SMITH: Yes.

14                   MR. PURKAPLE: With respect to  
15 Angie Burkhalter's request regarding the  
16 guidance document, if I understand that  
17 right, you are presently in the process of  
18 working on something that will help  
19 determine whether or not they meet the  
20 requirements of Subchapter 7?

21                   DR. SHEEDY: Our permit  
22 engineering group will be working on that.  
23 I'm not sure where it is at the moment, but  
24 it will be something to replace what was in  
25 (g)(2). I would expect that it would be

1 something similar to throughput limits and  
2 (inaudible) limits.

3 MR. PURKAPLE: And then that's  
4 something that they might have by the end  
5 of the year, because the rule doesn't take  
6 effect until 2008. So maybe sometime at  
7 the end of this year they could do  
8 something?

9 DR. SHEEDY: It doesn't take  
10 effect until July 1st. Dawson.

11 MR. TERRILL: Let me speak a  
12 little bit to things because I want to make  
13 sure that everybody is clear that has an  
14 interest in this. We are committed to  
15 working with industry to get this guidance  
16 done. It kind of depends on how detailed  
17 the guidance ends up being. I mean you can  
18 come up with a hundred different scenarios  
19 and that's the reason we ultimately felt  
20 like it wasn't appropriate to try to put it  
21 into a rule because things change, you got  
22 to change the rule, and it really makes it  
23 difficult. So it just really depends on  
24 how long it takes us to work through the  
25 various scenarios that are proposed to us.

1 It shouldn't be that difficult to do, it's  
2 just a matter of making sure we all get  
3 this down because ultimately it will  
4 probably end up at the Corp Com, in the DEQ  
5 Memorandum of Understanding, the guidance  
6 document that we jointly read through only,  
7 that's the kind of thing that ends up in  
8 that. So we want to make sure that we have  
9 as many scenarios as possible.

10           The other issue, on the construction  
11 permit for new sources, in trying to figure  
12 out how to get some flexibility there,  
13 that's something that we recognize would be  
14 nice to do, but it's hard for us -- it's  
15 been very difficult for us to figure out  
16 how to do that within our structure without  
17 giving up something to that industry that  
18 we can't do for other folks. So we're  
19 still committed to work with on that issue  
20 but that may be a lot more difficult to  
21 figure out and it's really a separate issue  
22 altogether from the guidance, but we will  
23 do that.

24           MR. PURKAPLE: Eddie, when you  
25 say new sources, you're talking about the

1 newly completed wells?

2 MR. TERRILL: Wells, right.

3 Yeah, the well issue. We've struggled with  
4 that for a long time and we're making some  
5 progress, I think, with what some of the  
6 other states are doing, but they're really  
7 two separate issues that don't really have  
8 a thing to do with this rule. We're a lot  
9 more optimistic on the guidance than the  
10 other one.

11 MR. PURKAPLE: Thank you.

12 MR. HAUGHT: Dawson, while you're  
13 still here, on Page 3 of this, relative to  
14 the construction permit being required,  
15 when you look at that in the context of the  
16 permit exempt facilities are going to move  
17 from permit exempt to requiring a permit,  
18 requirements there to do a construction  
19 permit and typically the process is you do  
20 a construction permit prior to any physical  
21 work going on at the facility and then you  
22 come back later on, 60 days or so, and  
23 there's not a written permit. It kind of  
24 reflects, I guess, most of the staff  
25 evaluations done or the bulk of it done in

1 a construction permit prior to it being  
2 installed to see if that's -- all the rules  
3 are being met and all the representations  
4 are valid.

5           With the operating permit, you  
6 typically do kind of the (inaudible). Kind  
7 of like applying for a construction permit  
8 and actually getting put -- sometimes there  
9 is some minor variations there. With this  
10 one, when you have a modification of an  
11 existing facility that's going to make it  
12 required, and one of the comments that's  
13 often (inaudible) or that the equipment is  
14 already there and in place, is essentially  
15 are we going to -- is there any way to  
16 combine those processes or does it need to  
17 be an application filed for a construction  
18 permit and then once that's issued within  
19 60 days resubmit the same information and  
20 go through the same process again to get an  
21 operating permit? Since that is the  
22 essentially the final configuration is  
23 there anyway --

24           DR. SHEEDY: When you're not  
25 doing any actual construction or

1 installation; is that what you mean, too?

2 MR. HAUGHT: Yeah, because it may  
3 just be a matter of difference in  
4 operations. If your actuals are less than  
5 40 but you're going to increase throughput  
6 or do something that would just change that  
7 status.

8 MR. LASSETER: I'm Dawson  
9 Lasseter, I'm Chief Engineer, Air Quality.  
10 There's been some confusion on this and I  
11 think our practice and I think our  
12 understanding was, when we developed the  
13 permit exempt rule was, that we realized  
14 that this kind of situation would happen  
15 and what was intended was that if you have  
16 a permit exempt facility and you don't  
17 construct something, but you need a permit,  
18 that you just get an operating permit. And  
19 I know there's been confusion about that,  
20 even among the staff. That was the  
21 intention and I think that's the way we  
22 should be doing it now. Because you're  
23 right, it doesn't make much sense to get a  
24 construction permit if it's going to be the  
25 same thing as the operating permit you've

1 already constructed and everything was  
2 there. And that's different from a  
3 facility that should have always had a  
4 permit and is out there un-permitted and  
5 discovers that it needs a permit. I think  
6 in those cases, probably historically,  
7 we've done a number of different things;  
8 we've either asked for the construction  
9 permit application first or pay the fees  
10 for a construction permit and then just get  
11 an operating permit. I think that's been  
12 the practice for minor facilities. If it's  
13 a major facility, we've got a different  
14 story, but that's not what you asked.

15 MS. BOTCHLET-SMITH: Any other  
16 questions from the Council?

17 Again, I have not received any  
18 notice from anyone in the public wishing to  
19 comment on this rule. I don't see anybody  
20 raising their hand, so, David.

21 MR. BRANECKY: All right. Staff  
22 has recommended passage of this rule. I'll  
23 entertain a motion if Council wishes at  
24 this point.

25 MR. HAUGHT: I'll move that we

1 accept this with the modifications that  
2 were submitted today.

3 MR. BRANECKY: Okay. Do I have a  
4 second to that?

5 MR. LYNCH: I'll second.

6 MR. BRANECKY: Okay. Myrna, call  
7 roll, please.

8 MS. BRUCE: Jerry Purkaple.

9 MR. PURKAPLE: Yes.

10 MS. BRUCE: Sharon Myers.

11 MS. MYERS: Yes.

12 MS. BRUCE: Jim Haught.

13 MR. HAUGHT: Yes.

14 MS. BRUCE: Rick Treeman.

15 MR. TREEMAN: Yes.

16 MS. BRUCE: Gary Martin.

17 MR. MARTIN: Yes.

18 MS. BRUCE: Bob Lynch.

19 DR. LYNCH: Yes.

20 MS. BRUCE: Laura Worthen.

21 MS. WORTHEN: Yes.

22 MS. BRUCE: David Branecky.

23 MR. BRANECKY: Yes.

24 MS. BRUCE: Motion passed.

25 (End of Item 4B)



1  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY COUNCIL  
REGULAR MEETING

ITEM NUMBER 4C

HELD ON JULY 18, 2007, AT 9:00 A.M.

IN PONCA CITY, OKLAHOMA

\* \* \* \* \*

MYERS REPORTING SERVICE  
(405) 721-2882

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MEMBERS OF THE COUNCIL

- DAVID BRANECKY - CHAIRMAN
- RICK TREEMAN - VICE-CHAIRMAN
- JERRY PURKAPLE - MEMBER
- JIM HAUGHT - MEMBER
- SHARON MYERS - MEMBER
- GARY MARTIN - MEMBER
- DR. BOB LYNCH - MEMBER
- LAURA WORTHEN - MEMBER
- DON SMITH - ABSENT

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY
- EDDIE TERRILL - DIVISION DIRECTOR
- BEVERLY BOTCHLET-SMITH - AQD

1

2

## PROCEEDINGS

3

4

MS. BOTCHLET-SMITH: The next item on the Agenda is Item Number 4C. This is OAC 252:100-1 General Provisions; OAC 252:100-8 Permits for Part 70 Sources; OAC 252:100-37 Control of Emission of Volatile Organic Compounds; OAC 252:100-39 Emission of Volatile Organic Compounds in Nonattainment Areas and Former Nonattainment Areas. And Mr. Max Price will be giving the staff presentations.

14

MR. PRICE: Thank you, Beverly.

15

16

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

17

18

19

20

21

22

These proposed amendments to the definition Sections 1-3, 8-1.1, 37-2 and 39-2 are being undertaken to clarify and/or remove redundant definitions from Chapter 100. Among the proposals is a refined definition for volatile organic compounds.

23

24

25

This will be the fourth time for the Council to hear these amendments. In hopes of having these necessary definition

1 amendments approved by the Council, staff  
2 has removed the troublesome definitions for  
3 filterable and condensable PM from this  
4 proposal.

5 We ask that the Council vote to send  
6 these proposals to the Environmental  
7 Quality Board with a recommendation that  
8 they be adopted as permanent rules. Thank  
9 you.

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

12 DR. LYNCH: Excuse me, I'll just  
13 make a comment. On the face of it, the  
14 definition of VOCs seems -- I was thinking  
15 of VOCs in terms of vapor pressure or  
16 something, not really defining what it is  
17 as what it does.

18 MR. PRICE: Yes, sir. If you  
19 look at the original definitions for  
20 Volatile Organic Compounds the vapor  
21 pressure is irrelevant. It's actually --  
22 it's full of chemical reactivity under a  
23 certain test that the EPA conducts.

24 DR. LYNCH: I just wonder if it  
25 ought not to be called something other than

1 VOCs. The Lab does not see that as a VOC;  
2 to the Lab, the VOC is something totally  
3 different.

4 MR. PRICE: I understand that.  
5 But the definition is pretty well set by  
6 NSPS and the NESHAP rules. We would be  
7 hard pressed to change the name of it.

8 MR. TERRILL: It's kind of  
9 ingrained in EPA's lexicon. They're just -  
10 - I know what you're saying, but we'd have  
11 a mess if we tried to do that.

12 MR. LYNCH: The confusion I can  
13 see is if someone's out measuring VOCs and  
14 ambient air in terms of a potential  
15 exposure to something toxic, this is not  
16 like they're -- wondering maybe they think  
17 they're measuring one thing and somebody is  
18 measuring something totally -- a little  
19 difference so that could create a problems.

20 MR. TERRILL: We'll take a look  
21 at that, but we may (inaudible) somewhere  
22 else.

23 MR. PURKAPLE: Max?

24 MR. PRICE: Yes, sir.

25 MR. PURKAPLE: Have the questions

1 or concerns expressed in previous meetings  
2 concerning the confusion of the effluent,  
3 what's it, (inaudible) separators?

4 MS. WORTHEN: Effluent water  
5 separators.

6 MR. PURKAPLE: Effluent water  
7 separators, have those all been resolved or  
8 --

9 MR. PRICE: I believe so, sir.  
10 That was actually a problem. It wasn't a  
11 problem with the definition, it was a  
12 problem with the way that it was being  
13 interpreted at one time. And I'd like to  
14 point out that the -- to show you how badly  
15 this thing was done, the definition in  
16 question was in Subchapter 1, which was a  
17 general definition, but the actual, what I  
18 call applicable definitions, were in the  
19 Subchapters that actually applied to those  
20 things and those definitions were much more  
21 detailed and much more -- this mistake  
22 should never have occurred. So I believe  
23 it can be resolved and that's the reason we  
24 took out the waste water from that proposed  
25 change from last time.

1 MR. PURKAPLE: Thank you.

2 MS. BOTCHLET-SMITH: It looks  
3 like we have one commentor from the public  
4 who would like to comment.

5 Be sure and state your name when you  
6 come to the podium.

7 MS. SHELBY: Sharon Shelby, AES  
8 at Shady Point. Just looking at the  
9 definition on Page 8 it looks like there  
10 might be a typo and I just wanted to double  
11 check that as I was reading it.

12 In the strikeout where it lists the  
13 excluded compounds it has "carbonic acid"  
14 but then down in the underline it has  
15 "carbolic acid." Just checking to see if  
16 that's actually supposed to be a change or  
17 just a typo.

18 MR. PRICE: I'm glad you pointed  
19 that out. That should be -- let me find  
20 the definition of VOC here.

21 That should be "carbonic acid."  
22 That's a good catch. And chances are that  
23 is also on 37 and 39, in that definition.  
24 So that's one change that we need to make,  
25 immediately upon passage of it.

1                   MR. LASSETER: It looks like on  
2 37 and 39 you struck VOCs all together.

3                   MR. PRICE: That is correct.

4                   MS. BOTCHLET-SMITH: It doesn't  
5 appear anyone else from the public has a  
6 comment on this. So if we don't have any  
7 other comments or questions for the  
8 Council, then go ahead David.

9                   MR. BRANECKY: Staff has  
10 recommended we adopt this rule and send it  
11 to the Board as a permanent rule. I'll  
12 entertain a Motion for whatever the Council  
13 wishes to do.

14                   MS. MYERS: I make a motion that  
15 we pass it and send it to the Board.

16                   MR. BRANECKY: We have a motion -  
17 - is that --

18                   MS. MYERS: I make a motion that  
19 we pass this onto the Board.

20                   MS. WORTHEN: I'll second.

21                   MR. BRANECKY: -- motion with the  
22 change made?

23                   MS. MYERS: Yes. With the change  
24 that was made.

25                   MR. BRANECKY: Okay. All right.

1 We have a motion and a second. Myrna.

2 MS. BRUCE: Jerry Purkaple.

3 MR. PURKAPLE: Yes.

4 MS. BRUCE: Sharon Myers.

5 MS. MYERS: Yes.

6 MS. BRUCE: Jim Haught.

7 MR. HAUGHT: Yes.

8 MS. BRUCE: Rick Treeman.

9 MR. TREEMAN: Yes.

10 MS. BRUCE: Gary Martin.

11 MR. MARTIN: Yes.

12 MS. BRUCE: Bob Lynch.

13 DR. LYNCH: Yes.

14 MS. BRUCE: Laura Worthen.

15 MS. WORTHEN: Yes.

16 MS. BRUCE: David Branecky.

17 MR. BRANECKY: Yes.

18 MS. BRUCE: Motion passed.

19 MR. TERRILL: Chairman, before we

20 go on to mercury, while I'm thinking about

21 it, for those of you who follow these rules

22 through the Board process, I want to let

23 everybody know that these rules will not be

24 going with the August Board meeting in

25 Guthrie. There was a problem with the

1 notice and rather than try to clarify that  
2 and figure it out, the decision was made  
3 that we would not be taking any rules to  
4 the Board meeting in Guthrie, but they'll  
5 be held over and we'll take them to the, I  
6 believe it's the November Board meeting in  
7 Weatherford. So for those of you who might  
8 be following these rules that we pass today  
9 plus the ones that we did in the last  
10 Council meeting, they will not be going to  
11 the Guthrie Board meeting. So I wanted to  
12 make everyone aware of that.

13 MR. BRANECKY: It shouldn't make  
14 any difference because they wouldn't become  
15 effective until next June anyway.

16 MR. TERRILL: It won't make any  
17 difference from a practical standpoint, but  
18 if you show up at the Guthrie meeting to  
19 see what they do with the rules, they will  
20 not be on the Agenda.

21 (End of Item 4C)

22

23

24

25



1

1

DEPARTMENT OF ENVIRONMENTAL QUALITY

2

STATE OF OKLAHOMA

3

4

5

6

7

\* \* \* \* \*

8

TRANSCRIPT OF PROCEEDINGS

9

OF THE AIR QUALITY COUNCIL

10

REGULAR MEETING

11

ITEM NUMBERS 4D

12

HELD ON JULY 18, 2007, AT 9:00 A.M.

13

PONCA CITY, OKLAHOMA

14

\* \* \* \* \*

15

16

17

18

19

20

REPORTED BY: Christy A. Myers, CSR

21

22

23

24

MYERS REPORTING SERVICE  
(405) 721-2882

25

2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MEMBERS OF THE COUNCIL

- DAVID BRANECKY - CHAIRMAN
- RICK TREEMAN - VICE-CHAIRMAN
- JERRY PURKAPLE - MEMBER
- JIM HAUGHT - MEMBER
- SHARON MYERS - MEMBER
- GARY MARTIN - MEMBER
- DR. BOB LYNCH - MEMBER
- LAURA WORTHEN - MEMBER
- DON SMITH - ABSENT

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY
- EDDIE TERRILL - DIVISION DIRECTOR
- BEVERLY BOTCHLET-SMITH - AQD

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PROCEEDINGS

MS. BOTCHLET-SMITH: Okay. The next Item on the Agenda is Number 4D, OAC 252:100-44 Control of Mercury Emissions from Coal Fired Electric Steam Generating Units and Proposed Mercury 111d Plan. And 111d Plan is a public hearing, not a rule. Mr. Max Price will again give the staff presentation.

MR. PRICE: Mr. Chairman, Members of the Council, ladies and gentlemen. This is the fifth hearing for the proposed incorporation by reference of the Clean Air Mercury Rule. Because of the controversial nature of this proposal and possible litigation in the federal courts, staff request that the Council table this proposed rule until the January '08. Thank you.

MS. BOTCHLET-SMITH: Do we have any questions or comments from the Council today?

MR. TERRILL: I'll clarify that a little bit, before me move on, for the

1 Council. We still believe that the  
2 litigation that's ongoing should be  
3 resolved by the end of the year, or first  
4 of next year and that would fundamentally  
5 change the CAMR rule. There's been a  
6 challenge to how the rule was proposed and  
7 we think that the suit has a fairly good  
8 likelihood of succeeding, and if they do,  
9 the Court could do a lot of things. The  
10 minimum would be to set the CAMR rule back  
11 for more consideration by EPA. So we don't  
12 believe that there's a big urgency to move  
13 forward with our rule.

14           We've been subject to a FIP, a  
15 Federal Implementation Plan notice from EPA  
16 for about four months now and the fact that  
17 they have not FIP'ed any state, tells me  
18 that they have some concerns with the way  
19 they're not going to be successful in the  
20 litigation as well. And there are very few  
21 states actually that have moved forward on  
22 this rule. A lot of them are either making  
23 substantial changes or they're waiting to  
24 see what happens with litigation or they're  
25 just not doing anything, waiting for EPA to

1 move forward with the FIP. So we feel  
2 pretty strongly that to move on this would  
3 be premature. I think we'll kind of come  
4 back and revisit this. It will also give  
5 us a chance -- because of all the rains, we  
6 have not been able to get onto the lakes  
7 and streams to do the fish flesh analysis  
8 that we hoped would be well underway by  
9 now, but in talking with our lab they  
10 assured me they're going to get that done  
11 this summer. So that should start -- if we  
12 don't get anymore rain, that should start  
13 in earnest, relatively soon.

14               So that will give us some time to  
15 pull some additional real world data and so  
16 we would urge the Council to table this or  
17 carry it over until the January Council  
18 meeting to see where we are, relative to  
19 the federal position.

20               MS. MYERS: Is January long  
21 enough or should we consider just  
22 arbitrarily setting April, it's not going  
23 to effect performance?

24               MR. TERRILL: Either one. It's  
25 not -- that's right and I don't know that

1 it makes any difference. It's possible  
2 that there could be a decision by the end  
3 of the year but all indications that we're  
4 getting is, it's going to be right after  
5 the first of the year. So it depends on  
6 when the Council meeting is scheduled. But  
7 to me the effect would be April or January.  
8 We could bring it back in January, just in  
9 case.

10 MS. MYERS: Is the proper  
11 procedure to table it, Matt, or to just  
12 carry it over?

13 MR. PAQUE: Well, if we carry it  
14 over it will come back in October.

15 MS. MYERS: Okay.

16 MR. PAQUE: It would have to be  
17 continued in the October meeting.

18 MS. MYERS: But we can table it  
19 until the April meeting?

20 MR. PAQUE: Yeah.

21 MS. MYERS: Okay.

22 MS. WORTHEN: I know, Sharon,  
23 you're suggesting carrying it over until  
24 April. Is there any problem, Eddie, if  
25 it's carried over to April -- I know if

1 it's carried to January and we weren't able  
2 to act on it, it would be in time for the  
3 February Board meeting to end up in this  
4 next years rules. Is there a time line  
5 concern there with this rule?

6 MR. TERRILL: Well, not for us.  
7 We can do it as an emergency if we miss the  
8 -- can we propose it as emergency if we  
9 miss the deadline, Matt, or -- since we  
10 haven't done that originally?

11 MR. PAQUE: We could bring it as  
12 an emergency but it's still -- it would go  
13 to the June Board and be effective sometime  
14 next summer. That's if we brought it by  
15 emergency in April.

16 MR. TERRILL: But we wouldn't  
17 have to wait on the legislature to come  
18 back. I think that was her --

19 MR. PAQUE: Yeah, the permit rule  
20 would come back through the cycle.

21 MS. MYERS: I was just concerned  
22 that --

23 MR. PAQUE: I'm sorry, there is  
24 no June Board meeting in '08, it will be  
25 August. So we'd be looking at a longer

1 delay.

2 MR. TERRILL: Well, that's unless  
3 -- they have June Board meetings. They  
4 have some --

5 MR. PAQUE: Yeah. It could  
6 happen. Yes.

7 MR. TERRILL: It's the discretion  
8 of the Board, depending on whether or not  
9 they have rules that need to go to their  
10 June Board meeting and if they don't have  
11 anything to do, then they sometimes -- they  
12 have the option to cancel that meeting.  
13 But if we were to take the mercury rule to  
14 the June meeting they will make -- I don't  
15 want to speak for them but I feel  
16 relatively certain that that would be of  
17 importance enough that they would  
18 (inaudible), but it's possible they could  
19 put it off.

20 MS. WORTHEN: My concern was, I  
21 know there is time lines in the rule the  
22 way it is now and industry has got to make  
23 their decisions on what to do -- what they  
24 need to do to meet the allocations and I  
25 know this is going before litigation

1 depending on -- I mean, what's going to  
2 happen there? Because if the litigation  
3 extends on then EPA has to extend the  
4 deadlines for industry.

5 MR. TERRILL: Well, the fact that  
6 they haven't FIPped us tells me that they  
7 don't anticipate any -- that they may end  
8 up extending the deadlines. I don't see  
9 how they can not. There is so much going  
10 on right now with the new ozone proposal,  
11 BART and all of the ramifications of that,  
12 that are starting to be realized, a new  
13 change in administration, you're likely to  
14 see a whole list of things that they come  
15 back and take a look at, and some of the P3  
16 and P4 discussions they're looking at more  
17 than one pollutant and mercury will be  
18 caught up in that. So there is so many  
19 unknowns because of the (inaudible) and  
20 political cycle and the other things that  
21 are being proposed, it's hard to know for  
22 sure what's going to happen with it. But  
23 to me, the fact that we have not been  
24 FIPped tells me that EPA is not confident  
25 that they are going to prevail in this. I

1 mean they lost the green-house gas, they  
2 lost the NSR and I would never guess that  
3 they would lose those and this one is even  
4 more precarious than their legal footing in  
5 those two. But I don't know, I'm not in  
6 industry. But in my discussion it didn't  
7 seem to be that big of an issue to wait.

8 MS. BOTCHLET-SMITH: Many of you  
9 have indicated that they want to comment on  
10 this rule today and I'm going to just go  
11 through this list. If anyone wishes to  
12 change their mind because of what's being  
13 proposed, that's fine, but everyone is  
14 certainly welcome to comment as you  
15 intended.

16 And if I mispronounce your name, I'm  
17 going to apologize right up front. Karen  
18 Hadden.

19 MS. HADDEN: I'd like to speak.

20 MS. BOTCHLET-SMITH: Okay. If  
21 any of you who want to speak, if you'll  
22 come to the podium and then restate your  
23 name, so our court reporter can get that  
24 correct in her records. And if you would  
25 also indicate your affiliation when you

1 state your name for the record.

2 MS. HADDEN: Thank you so much.

3 I appreciate the opportunity to be here and

4 I'll be real brief. I'm Karen Hadden, I'm

5 the director of the Sustainable Energy and

6 Economic Development Coalition. We are

7 actually in Texas and we work state-wide

8 there but we work also, whenever we can,

9 with people throughout the country.

10 Our organization has been working on

11 mercury for about seven years and I've been

12 personally involved for most of that time

13 as well. And I have come to the conclusion

14 to extensive research that mercury is a

15 huge risk to our public health, the Texas

16 medical association has come up with a

17 statement urging reductions because of

18 health issues. Our fish too often get

19 contaminated and that's where we get human

20 exposure. In Texas when they did testing

21 we now have 14 water bodies that have

22 official warnings from the Department of

23 Health and that's because the mercury

24 levels are so high.

25 When I looked at the comments that

1 were submitted jointly by several groups,  
2 including AEP, it struck me because they  
3 were talking about hot spots and how to  
4 define them. And they said -- they talked  
5 about the EPA ruling that a hot spot is  
6 technically anywhere where the fish are  
7 over .3 parts per million mercury and it's  
8 solely attributable to the utilities  
9 emissions. Our standard in Texas, I can't  
10 speak for Oklahoma, is .7, which is quite a  
11 bit more lax than this standard and yet we  
12 have these health advisories.

13           Part two though, to prove that this  
14 mercury is coming from utilities is very  
15 difficult, even though we know that in most  
16 cases it is the only source that is there  
17 and getting into the waters.

18           A recent study was done by the UT  
19 Health Science Center in San Antonio. This  
20 was interesting and I hope it can be done  
21 in other states, including Oklahoma. They  
22 looked at all of our counties, 254, and  
23 they got school district data about autism.  
24 And they found that in the counties where  
25 there were coal plants the rates of autism

1 were higher and they correlate directly  
2 where the most coal plants are. They do  
3 not maintain that this is a causation of  
4 the autism, but they do note a striking  
5 correlation for every thousand pounds of  
6 locally emitted mercury they found a 17  
7 percent increase in autism.

8           So this warrants further study. We  
9 know that there are serious health impacts  
10 neurological damages from mercury.

11           Our recommendation for any state  
12 considering rules, is to reduce mercury by  
13 90 percent at all sources, which was the  
14 original intent of the Clean Air Act. The  
15 mercury rules that got enacted were subject  
16 to a lot of industry influence. We had  
17 Debra Holmstead who came in directly from  
18 Lincoln and Watkins and parts of the rules  
19 were directly word-for-word from the  
20 industry documents as they got adopted and  
21 those rules came in very, very weak. And  
22 this is not just a citizen perspective, but  
23 it was born out by the government  
24 accountability office, by medical personnel  
25 that had a huge investigation task force

1 and as you noted earlier, many states are  
2 contesting these rules, they are not  
3 protective of our health. I want to  
4 apologize for the fact that Texas is a huge  
5 problem for you here in Oklahoma. We are  
6 unfortunately, and we're working on it, to  
7 change this, but we are unfortunately worst  
8 in the nation for power plant mercury with  
9 over 11,000 pounds in 2005. AEP has two  
10 plants in Texas, one of them is near  
11 Longview and it's called the Perky plant  
12 with 1,142 pounds of mercury and -- almost  
13 as much as the whole state of Oklahoma. In  
14 2005, together with their Welsh plant,  
15 which is near Houston, they do exceed the  
16 entire mercury of the whole state of  
17 Oklahoma, which is at 1275 -- or 1295  
18 rather. I'm sorry.

19           So basically, to wrap up, I'm going  
20 to leave with you some information you may  
21 have already but it's about legislation  
22 being conducted in states throughout the  
23 country as well as some further details.  
24 AEP maintains that all of this mercury is  
25 going to travel extensively and go some

1 place else. Well, that's not good for  
2 whoever is down wind and if that's the  
3 case, then probably a fair amount of the  
4 mercury that's coming from Texas is  
5 unfortunately landing here. Because of  
6 these serious impacts on our children and  
7 our health, I think it's worth looking at  
8 further. I'm glad to hear that you're  
9 taking time to deliberate on this. In  
10 Texas we did approve the federal rules, the  
11 cap and trading. We are horrified by that  
12 because it really does mean that our  
13 utilities can buy credits and continue  
14 polluting. A whole bunch of new plants are  
15 trying to get permits as a result, and we  
16 have yet to get any assurances of what  
17 reductions will occur. Basically, they  
18 have a way out because if it turns out they  
19 can't meet their reductions, they can buy  
20 credits. So we're very concerned. We're  
21 continuing to work on this. We got told by  
22 the state, by the Environmental Agency,  
23 that they were not allowed to be stricter  
24 than federal law, which was out-and-out  
25 false. That is not what the law says,

1 either our state law or the federal law.  
2 So we had quite a battle on our hands and  
3 we will continue to work because mercury in  
4 our whole region is a threat to our health.  
5 And I thank you for this opportunity. I'll  
6 hand you one handout that's for everybody  
7 and then I have single copies on some  
8 others. And I thank you very much.

9 MS. BOTCHLET-SMITH: Pat  
10 Phillips.

11 MS. PHILLIPS: My name is Pat  
12 Phillips, I'm a retired business owner from  
13 Salisaw and I'm here as an individual. My  
14 main concern is that if we, Oklahoma, adopt  
15 the laxer rule of CAMR as other states  
16 adopt the stricter rule, Oklahoma will  
17 become a dumping ground. This is  
18 dangerous, especially with the cap and  
19 trade regulations. I have children,  
20 grandchildren, and great-grandchildren in  
21 Oklahoma and I am very, very interested in  
22 what their quality of life will be. Thank  
23 you for your time.

24 MS. BOTCHLET-SMITH: Sylvia  
25 Pratt.

1 MS. PRATT: Good morning. My  
2 name is Sylvia Pratt. I haven't seen you  
3 guys for a while, but here I am. I live  
4 north of the current center plant, about --  
5 I live actually about six miles from the  
6 Kansas state line, pretty much straight  
7 north. We can see the emissions from the  
8 coal plant on many days and on days when it  
9 comes over we can occasionally smell sulfur  
10 emissions and thing of that nature dropping  
11 out. So I feel I'm personally effected by  
12 whatever decisions are made. And they are  
13 proposing to double, as I understand it,  
14 their capacity there, and I do have a  
15 problem with that.

16 But to the mercury rule, I think  
17 it's well known that mercury is a potent  
18 neurotoxin. It has been implicated in the  
19 rise -- or in cases of autism. Autism has  
20 risen dramatically in the past few years.  
21 Not too long ago it was diagnosed at the  
22 rate of about 1 in every 1,500 children, it  
23 is currently at 1 in every 150 children. I  
24 don't know if that's due to more diagnosis  
25 or if it's actually risen that much, but we

1 have a problem. Houston, we have a  
2 problem.

3 I have a question, which I know you  
4 can't answer at this point, but if rule  
5 implementation is delayed, the plant  
6 seeking permits in the (inaudible) be grand  
7 fathered under current rules or current  
8 lack of rules. Looking at the proposed  
9 rule, I wonder how does the state plan,  
10 under the proposed rule, to reduce mercury  
11 emissions from 23,000 ounces a year cap to  
12 9,000 ounces a year cap in 2018 and beyond?  
13 If this is through more efficient emission  
14 controls we should seriously consider doing  
15 it now instead of waiting.

16 And number four, I believe that cap  
17 and trade is no protection for Oklahomans  
18 or our environment. Emission control and  
19 reduction is required. If utilities are  
20 unwilling to do so, let them look to more  
21 environmentally friendly and sustainable  
22 methods, like producing electricity. And I  
23 urge you to, whenever this does come up  
24 again, to please consider the health of our  
25 children and our grandchildren. Thank you.

1 MS. BOTCHLET-SMITH: Lawrence  
2 Edinison.

3 MR. EDINISON: My name is  
4 Lawrence Edinison and I'm the Chair of the  
5 Oklahoma chapter of the Sierra Club. I  
6 want to comment to you that I've had a 30  
7 year career in the state working with  
8 pollution control matters and I'm not  
9 unfamiliar with rulemaking, but my  
10 experience has been in water and in an  
11 interesting way that's what's lead me to  
12 this hearing in some regards. While  
13 working on water the states across the  
14 county have been faced with trying to do  
15 total maximum daily loads on pollutants  
16 such as mercury. And for at least the last  
17 five years at the National Association of  
18 Water Pollution Control Administrators a  
19 common complaint and problem has been that  
20 there is no way to effectively deal with  
21 water as far as mercury content and  
22 therefore no way to effectively address the  
23 fish problems and the fish tissue problems  
24 unless the air controls are tightened  
25 because most of the mercury is, in fact,

1 from air deposition.

2           The EPA plan that is before you is a  
3 much more lax plan than is necessary and  
4 needed and in fact would take much longer  
5 to accomplish meaningful mercury rules than  
6 even current rules, and our club,  
7 therefore, both at the state level and  
8 national would strongly encourage you to  
9 consider as many states have done, a much  
10 more stringent rule. Some states are  
11 adopting rules that would accomplish a 90  
12 percent reduction in a much shorter time.  
13 And we believe this is appropriate for the  
14 health and the well being of the public.

15  
16           Mr. Chair, I suspect you may have  
17 gotten some postcards from some of our  
18 members and our friends over the recent  
19 months and it is a very serious issue to  
20 us. So when you reconvene on this rule, we  
21 would encourage you to deny the EPA version  
22 and to adopt something much more stringent.  
23 We would be pleased to have the opportunity  
24 to give you some specific proposals in that  
25 regard.

1                   I did have two documents that I  
2 wanted to leave for you for your record and  
3 one of them is a booklet that I didn't have  
4 enough copies for everyone. I'll try to  
5 get all of the Council a copy. It's a  
6 recent report from EPA -- or from the  
7 Sierra Club's national office called the  
8 Dirty Truth about Coal. It has a section  
9 that addresses mercury. And then I also  
10 have a briefing document from the National  
11 Sierra Club regarding mercury and our  
12 problems with the current proposed rules.  
13 So I'll leave those for you now and I'll  
14 try to get you additional copies that you  
15 can distribute. Thank you.

16                   MS. BOTCHLET-SMITH: Montelle  
17 Clark.

18                   MR. CLARK: Hi. Montelle Clark.  
19 Thanks for your time today and the  
20 opportunity to comment on all of this. My  
21 written comments are part of the record, of  
22 course, and I spoke last time and I won't  
23 repeat what I said at the last meeting.  
24 Since that last meeting I've been trying to  
25 think about this from -- it seems like it's

1 difficult to even consider these rules  
2 because much of what we're doing is  
3 operating from a lack of scientific  
4 evidence. As you guys know, there is very  
5 little in the way of field measurements on  
6 how much mercury is in the ground, in the  
7 fish, in the soil and in the water here in  
8 Oklahoma and not enough real evidence on  
9 smoke stack amounts of mercury that are  
10 coming out. It's really difficult to kind  
11 of get a handle on this. I'm sure it is  
12 for you guys, as well.

13           Some of the things that I've been  
14 thinking about, pondering, since the last  
15 meeting is, I think about the MACT  
16 standards, M-A-C-T, Maximum Available  
17 Control Technology standards that come out  
18 of the Clean Air Act and that have been  
19 applied with so much success in two other  
20 cases, with medical and municipal waste  
21 incinerators. It's hard for me to  
22 understand why we made an exception for  
23 coal-fired power plants when those controls  
24 on the incinerators have been so effective.  
25 Of course, politics came into play with all

1 of this, but it seems like it's a proven  
2 record that the control technology can  
3 work. It's not just theoretical. It's  
4 worked very well with incinerators.

5           In 2005, when a bipartisan group of  
6 U.S. Senators tried to overturn this  
7 mercury rule, they lost in a 47 to 51 vote.  
8 Senator Olympia Snowe, a Maine Republican,  
9 said, I am confounded by the failure of  
10 this rule to meet either the spirit or  
11 letter of the law. It is clearly  
12 delinquent in protecting all Americans  
13 equally from the hazards of mercury. This  
14 vote followed a report from EPA Office of  
15 Inspector General. They found that EPA's  
16 mercury rule development process did not  
17 fully assess the rules impact on children's  
18 health.

19           I'd like to thank the representative  
20  
21 from the SEED Coalition for mentioning the  
22 University of Texas study, sort of stole my  
23 thunder on that one a little bit. But this  
24 same year, 2005, there was a peer reviewed  
25 study released by Mt. Sinai Center for

1 Children's Health. This scholarly article,  
2 which I urge you to read, has this to say;  
3 the major findings in this analysis are  
4 that a, exposure to methal mercury emitted  
5 to the atmosphere by American electric  
6 generation facilities causes lifelong loss  
7 of intelligence in hundreds of thousands of  
8 American babies born each year, and b, that  
9 this loss of intelligence exacts a  
10 significant economic cost to American  
11 society, a cost that amounts to at least  
12 hundreds of millions of dollars each year.  
13 Moreover, these cost will recur each year  
14 with each new birth (inaudible) as long as  
15 mercury emissions are not controlled.

16 By contrast, the cost of  
17 installing stacked filters to control  
18 atmospheric mercury emissions is a one-time  
19 expense.

20 The high cost of in-utero exposure  
21 in methal mercury are due principally to  
22 the life-long consequences of irreversible  
23 injury to the developing brain. Similar  
24 life-long neuro-behavior consequences have  
25 been observed after exposure of the health

1 and brain to other environmental toxins,  
2 including lead. The report goes on to  
3 state that the long history of lead use in  
4 the United States provides a chilling  
5 reminder of the consequences of failure to  
6 act on securing evidence of harm. It is  
7 important that we do not repeat this  
8 sequence with mercury.

9           These Mt. Sinai researchers are not  
10 the only ones to study the economics of  
11 controlling our air pollution. I'm sure  
12 many of you know of the EPA cost-benefit  
13 analysis as they've done with the Clean Air  
14 Act. They've done this, I believe, three  
15 times since the Clean Air Act and the  
16 amendments of 1990 et cetera. For example,  
17 they looked at one 20-year period and found  
18 that the cost of complying with the  
19 requirements of the Act was 523 billion  
20 dollars. That's a sizeable number, no  
21 doubt about it. But they also analyzed the  
22 benefits which could be quantified and  
23 expressed in dollar terms. These included  
24 improved worker attendance and  
25 productivity, reduced expenditures on

1 health care and more. They found that the  
2 benefits totaled 22 trillion dollars. T.

3           These studies were the subject of  
4 extensive peer review, independent panels,  
5 distinguished economists, and scientists.  
6 The point of this is that investments in  
7 clean air technology and programs seem to  
8 have a strong record of paying off for all  
9 of us, maybe not directly, but indirectly.

10           The proponent of the CAMR rule like  
11 to point out that mercury pollution is a  
12 global issue. I agree with them. It's a  
13 global issue and it's a regional issue. In  
14 fact, as mentioned, two of our nation's  
15 three largest emitters of mercury are in  
16 Texas and Texas authorities have accrued  
17 more coal-fired power plants that will emit  
18 thousands of pounds of additional mercury.

19           I guess I don't really like to think  
20 about the possibility of Texas coal plants  
21 being able to buy even more -- buy out  
22 state credits to emit even more mercury  
23 pollution that can end up in Oklahoma.  
24 Some of this mercury will no doubt drift  
25 into our state on our strong southernly

1 winds. I think this is all the more reason  
2 why we should do everything we can to  
3 reduce the problem at home. How can we ask  
4 other states, other countries to reduce  
5 their emissions when we are not doing our  
6 best to achieve the same goal, whether that  
7 be related to mercury or greenhouse gases?

8 Proponents of this weaker CAMR rule  
9 also say that we can't adopt stricter  
10 standards than the other states in Region  
11 6. I think this is a defeatist argument.  
12 It reduces Oklahoma to the lowest common  
13 denominator. If the EPA won't give us a  
14 stronger federal rule, which we need, then  
15 we need to just take the lead. Mexico is  
16 in Region 6. They have a serious battle on  
17 the way over existing proposed coal-fired  
18 power plants in the four corners region.  
19 It's a battle that's torn apart the Navaho  
20 people. But just this past April their  
21 legislature passed new mercury regulations  
22 that forgo the federal cap and trade  
23 program. They have also joined the lawsuit  
24 against the EPA over the federal rules. I  
25 would urge you -- we need to do the same in

1 Oklahoma. Thank you.

2 MS. BOTCHLET-SMITH: Earl Hatley.

3 MR. HATLEY: I want to thank you  
4 for allowing me to speak today. At the  
5 last meeting I gave you my original  
6 comments regarding the fact that state-wide  
7 mercury pollution in fish causing a fish  
8 consumption advisory includes farm ponds  
9 and therefore is taking of private  
10 property.

11 Today I wanted to talk more  
12 technical and a lot of those have already  
13 been said. In fact, you have ample  
14 evidence from a couple of other groups that  
15 were presented last time. I went out on a  
16 search and spent this past time searching  
17 for evidence on how mercury falls out from  
18 power plants. And for the life of me I  
19 could not find a single reference that  
20 substantiated what was presented in that  
21 Power Point at the last meeting. However,  
22 if what he said is true then if China is  
23 polluting us, who are we polluting? So if  
24 China is polluting us and we are polluting  
25 Europe and Europe is polluting China then

1 everybody's happy? What I did find was  
2 hundreds of studies and I just incorporated  
3 a few in my letter, which you have. And  
4 the fact that you're tabling this until  
5 April talks to some of the things that I  
6 was saying in my letter and that is  
7 regulatory uncertainty is part of the  
8 problem here. The other part of the  
9 problem is the fact that our fish are  
10 polluted. And I can no longer or any other  
11 person in Oklahoma can take their children  
12 out and teach them how to fish and then  
13 bring that fish home and cook it and eat  
14 it, the way it is right now.

15           Tabling it until April, then perhaps  
16 adopting CAMR is not going to change  
17 anything, it's only going to get worse.  
18 With cap and trade -- well, if they build  
19 the red rock plant and they build some new  
20 plants during this period of time, it's  
21 assumed, or I would assume, that the  
22 existing plants would simply buy credits  
23 from the new plants, assuming that they're  
24 less polluting, have lower mercury  
25 emissions. And what changes? Nothing

1 really changes for 10 to 15 years at least,  
2 and that's only 70 percent.

3           I think it brings home the fact that  
4 we can do better and that we have to do  
5 better. And so I would ask the Council  
6 today to go ahead and adopt the STAPPA  
7 rule, which would decrease mercury  
8 emissions by 90 to 95 percent by 2012.  
9 I've found studies that indicate that once  
10 you've eliminated a mercury source -- and  
11 they did this down in the everglades, it  
12 takes five years for a water body to  
13 recover enough that you can begin eating  
14 fish. So I think rather than wait, we  
15 should just go ahead and do what's right  
16 for the public safety in Oklahoma and  
17 eliminate regulatory uncertainty for  
18 industry and go ahead and adopt the STAPPA  
19 rule and get started cleaning up our state  
20 and making our state safe. In addition, I  
21 would like to see a moratorium on the  
22 building of any new power plants during  
23 this period until we've eliminated enough  
24 of our mercury emissions and have seen that  
25 our waterways are now safe and the fish are

1 now safe to eat. We can generate needed  
2 energy from renewable sources during the  
3 moratorium torn period.

4 I don't want to see us putting this  
5 off and putting this off and at the same  
6 time building new plants. I just don't see  
7 how that gets us anywhere. Thank you very  
8 much.

9 MS. BOTCHLET-SMITH: David, we  
10 have talked about taking a break. She  
11 needs it now.

12 MR. BRANECKY: A court reporter  
13 break?

14 COURT REPORTER: Yes.

15 MR. BRANECKY: Okay. Why don't  
16 we take about a 10 minute break and we've  
17 got several more comments on record. Give  
18 our court reporter a break.

19 REPORTER: Thank you.

20 (Break)

21 MS. BOTCHLET-SMITH: Okay. The  
22 next commentor is Senator Paul Muegge.

23 MR. MUEGGE: Of course, I'm going  
24 to defer the subject at hand to others and  
25 at this point what I want to -- do a little

1 history lesson. I sat in your chair back  
2 in the mid-'80s on the control of  
3 (inaudible) Council and I was visiting with  
4 somebody, I had the opportunity to have a  
5 lot of assistance and encouragement because  
6 I was strictly a layperson at that time  
7 with Charlie Tyree of OG&E, and of course  
8 Mark Coleman was there.

9 Fast forward to the day when DEQ was  
10 formed, I was in the legislature. For  
11 several years we had looked at what we  
12 needed to do in forming the Department of  
13 Environment Quality. And of course we set  
14 around a lot of tables, a lot of public  
15 interest and I think it's been a great  
16 thing to the state of Oklahoma to have a  
17 Department of Environmental Quality that's  
18 been able to deal with all of the different  
19 environmental issues that we have in our  
20 state.

21 And I've got to refer to Gary Martin  
22 because I feel somewhat responsible for him  
23 being on this. Gary, we had a lot of  
24 meetings in Ponca City, right here in this  
25 room, in regard to some of the formulations

1 of DEQ, but foremost I want to thank each  
2 of you, individually, for your service to  
3 the state of Oklahoma and to the citizens  
4 because these council decisions are very  
5 important and sometimes you don't get too  
6 many thank you's. Eddie smiled at me. He  
7 and I were having some discussions about  
8 some current things that are going on.

9 I am currently employed by  
10 (inaudible). They acquired the legacy from  
11 cyber (inaudible), Blackwell's smelter  
12 site. And let me share with you by going  
13 back to my experience on this Council and  
14 my experience in the legislature, it's  
15 served me quite well in dealing with the  
16 very difficult issues that we have to deal  
17 with. Some people ask me -- today they say  
18 well, why do you continue to work in these  
19 environmental issues and my simple response  
20 is for the kids, it's for future  
21 generations. So keep that in mind.

22 The other thing, coming out to  
23 communities, holding these hearings, I  
24 think that's very important. It gives us  
25 some transparency to what's going on and I

1 think it builds some trust in the public  
2 interest because the public interest, right  
3 at this time folks are just really critical  
4 of governments at any level and you are the  
5 link that can make a difference in how that  
6 public reacts.

7           Lastly, I want to thank staff  
8 people, you just don't know how important  
9 staff people are in your organization until  
10 you serve on a Board like this, and until  
11 you're in the state legislature and have to  
12 call upon a variety of people and -- it  
13 just gives me gratification to know that I  
14 was a small part of that. And I want you  
15 to know that you got some serious  
16 challengers out here in (inaudible). And I  
17 think -- I make one reference to coal  
18 issues. Part of the mix of energy  
19 components that we're going to deal with in  
20 the future is many, and we're going to  
21 continue to use coal. So you're going to  
22 have to make some provisions that make sure  
23 that those emissions are properly done.  
24 People say well, it cost too much money.  
25 Well, my philosophy about this is and it

1 was going into this thing and it continues  
2 today, it's pay now or pay later and I just  
3 don't think we can continue to pay later  
4 because we've got a lot of environmental  
5 challenges in the state of Oklahoma, and I  
6 think we're making a lot of progress.

7 Thank you again for allowing me to  
8 speak to you and once again, you know what  
9 your responsibilities are and it's a great  
10 service to the state of Oklahoma. Thank  
11 you.

12 MS. BOTCHLET-SMITH: Chuck Gross.

13 MR. GROSS: Thanks for the  
14 opportunity to speak today. I'm president  
15 of Sustainability NOW, which stands for  
16 Nowata, Osage, and Washington counties.  
17 Mercury is a dangerous neurotoxin. It's  
18 emitted from coal-fired power plants. It's  
19 necessary. We need electricity. At the  
20 same time, we need to limit it. Everything  
21 goes someplace. Mercury ends up too much  
22 of the time in our food chain and certainly  
23 in our air. If our mercury is not  
24 deposited here, it's more likely that it is  
25 deposited in the Atlantic Ocean and becomes

1 part of our food chain from fish that's  
2 harvested there. One in six women of child  
3 bearing age has blood mercury levels  
4 exceeding what the EPA considers safe level  
5 for developing babies.

6           In our organization we're  
7 particularly concerned about the  
8 possibility of mercury contamination in our  
9 three county area from upwind plants. We  
10 believe that a good approach to controlling  
11 mercury emissions in Oklahoma is  
12 containment, whether it's staff -- I came  
13 across it first as a national association  
14 of clean air agencies, which calls for  
15 capturing at least 90 percent of the  
16 mercury and would not allow interstate  
17 trading of mercury emissions credits, but  
18 would allow balancing within -- in many  
19 cross-state situations. We urge that you  
20 adopt this model for Oklahoma.

21           Thank you again for the opportunity  
22 to speak. Most of the rest of what I had  
23 to say had already been said.

24                   MS. BOTCHLET-SMITH: Darryl  
25 Phillips.

1

2                   MR. PHILLIPS: Good morning. My  
3 name is Darryl Phillips. I want to thank  
4 you for this opportunity to speak and I'm  
5 going to try to keep it very brief.

6                   Just a few words on why I'm here or  
7 how I became here. Down in our town of  
8 Salisaw, Oklahoma there was a coal-fired  
9 power plant proposed by Tanasta  
10 Corporation. And some of us weren't too  
11 happy with that. There's a term of course,  
12 NIMBY, not in my backyard, and I won't just  
13 skip the fact that there was some not in my  
14 backyard involved, but in the process of  
15 studying this problem and learning more  
16 about different ways of burning coal and  
17 all the rest of that, I discovered or I  
18 became very interested in the mercury  
19 question, particularly. Since that time,  
20 the power plant in Salisaw has been  
21 abandoned, the idea has been abandoned,  
22 Tanasta has gone away. I have no further  
23 interest in it from that standpoint. But  
24 I'm still concerned about the mercury and  
25 that's why I came today. I'm very happy

1 that you have decided to hold off on this  
2 until CAMR gets a little more straightened  
3 out or whatever is going to happen with the  
4 legal matters.

5           So all I really have to say, there's  
6 no point in saying anything about the  
7 effects of mercury, we all know the effects  
8 of mercury, I just want to thank you for  
9 your continued interest and for your  
10 allowing individuals that are not part of  
11 any utility or any particular special  
12 interest group to give us a chance to  
13 speak. I would hope at some point, I don't  
14 know how this happens legally, but I would  
15 like to see this topic changed from whether  
16 or not we're going to adopt CAMR on just a  
17 yes or no question, to whether it's going  
18 to be CAMR, whether it's going to be  
19 STAPPA, whether it's going to be something  
20 else. I think that the various  
21 possibilities need -- if possible, to be  
22 given an equal footing and then you people  
23 will certainly make your own decisions as  
24 to which way you've got to go. It's just  
25 very much biased against STAPPA right now,

1 because the only thing that you could  
2 possibly do today is yes or no on CAMR. So  
3 I'd like to see that broaden out if there  
4 is some reasonable way to do it.

5 Other than that, I really don't have  
6 anything further to say. I thank you for  
7 your time.

8 MS. BOTCHLET-SMITH: Seneca  
9 Scott.

10 MR. SCOTT: How you guys doing?

11 Again, I want to thank everybody for this  
12 opportunity to present our comments and to  
13 the Council for having this meeting here  
14 today. It's fortunate for me, although  
15 today is not really a work day, that we  
16 have a office here, the company I work for,  
17 in Ponca City. So it's kind of neat to be  
18 able to tie some of the sustainability  
19 involvement we have into my work life.

20 We also came over with Montelle  
21 early first thing this morning. Had some  
22 good conversations about this, one of which  
23 is that it's hard for those of us who are  
24 volunteers, on the whole, to keep coming  
25 back to meetings like this. Fortunately,

1 the last meeting was held in Tulsa, which  
2 asn't as (inaudible) particularly, but on  
3 the whole, it's difficult for (inaudible)  
4 come from Salisaw or wherever it might be  
5 across the state of Oklahoma and that's  
6 where the comments I'm going to read are  
7 more geared to.

8           Again, Oklahoma Sustainability  
9 Network is a non-profit organization. OSN  
10 provides opportunities for its members to  
11 share information regarding Oklahoma's  
12 economy, ecology and social equity. Due to  
13 health and environmental and economic  
14 consequences of mercury emissions, OSN is  
15 opposed to the Oklahoma Department of  
16 Environmental Quality's proposed adoption  
17 of the clean air mercury rules and  
18 participating in the federal cap and trade  
19 program.

20           OSN urges the Air Quality Advisory  
21 Council to reject the proposed rule. OSN  
22 further request that the Air Quality  
23 Advisory Council adopt a rule based on the  
24 STAPPA/ALAPCO model.

25           Point number two, OSN urges the ODEQ

1 to reject the proposed rule. The  
2 rulemaking record contains no justification  
3 for the proposed rule. The rulemaking  
4 record establishes that mercury emissions  
5 from coal burning power plants are health  
6 hazards, particularly to people and the  
7 environment near the plants. There is no  
8 evidence that mercury emissions are not  
9 harmful. It is not disputed that reduced  
10 mercury emissions would be beneficial to  
11 the health of Oklahomans and to the  
12 environment in which they live and work.  
13 The rulemaking record establishes that the  
14 proposed rule will increase the amount of  
15 mercury emissions due to the cap and trade  
16 mechanism and the lenient 70 percent  
17 reduction requirement. Because other  
18 states have adopted more stringent  
19 standards and have decided not to  
20 participate in the federal cap and trade  
21 mechanisms, Oklahoma, under the proposed  
22 rule, would be a desirable location for the  
23 power plants which pollute the most.

24 The rulemaking record does not  
25 contain data that there is any benefit from

1 the adoption of the proposed rule. To the  
2 contrary, the rulemaking record indicates  
3 that the proposed rule will allow increased  
4 mercury emissions in Oklahoma and that  
5 increased mercury emissions will have  
6 adverse health and environmental  
7 consequences. OSN urges ODEQ to reject the  
8 rule.

9           The data in the rulemaking record is  
10 flawed. The rulemaking record contains  
11 only estimates of current mercury emissions  
12 in Oklahoma. These estimates appear to be  
13 based upon the amount of mercury in the  
14 coal and estimates of performance in the  
15 existing mercury reduction technology.  
16 There are very few actual measurements.  
17 The few actual measurements are reported to  
18 be substantially higher than the estimates.  
19 Absent reliable data regarding amounts of  
20 mercury that are currently being emitted,  
21 there is no basis for ODEQ to adopt a  
22 lenient standard in the proposed rule.  
23 Because the evidence available to DEQ  
24 regarding mercury emissions is flawed, OSN  
25 urges the DEQ to reject the proposed rule.

1                   Although many states have adopted  
2 more stringent regulations than the federal  
3 CAMR, the industry has not come forward  
4 with any information that the more  
5 stringent regulations of other states are  
6 too costly. Because information regarding  
7 most of compliance is readily available to  
8 the industry and industry has not come  
9 forward with such evidence, OSN urges DEQ  
10 to reject the proposed rule and adopt a  
11 more stringent standard.

12                   Today's hearing on the CAMR is the  
13 third scheduled hearing on the proposed  
14 rule, since the first of the year. It is  
15 very expensive to prepare for and attend  
16 each hearing. OSN understands DEQ is  
17 expected to table the proposed rule at  
18 today's hearing and schedule yet another  
19 hearing, it sounds like maybe a year from  
20 now, from today. This will require  
21 additional expense to attend yet another  
22 hearing for the purpose of opposing the  
23 proposed rule. Because the rule is  
24 obviously flawed, OSN urges the DEQ to  
25 reject it and instruct DEQ staff to prepare

1 a model rule based on the STAPPA/ALAPCO  
2 model state rule. This action will lessen  
3 the burden on all of the parties and will  
4 result in progress toward an appropriate  
5 clean air mercury rule.

6 And I'd just like to submit these  
7 comments for the record and thank the  
8 Council for the time today.

9 MS. BOTCHLET-SMITH: Jeff  
10 Edwards.

11 MR. EDWARDS: Hi, my name is Jeff  
12 Edwards. I'd like to thank the Council and  
13 Mr. Terrill for allowing us to have this  
14 meeting here today and to be able to speak  
15 on -- with regard to this rule.

16 I'm a member of a couple of  
17 organizations that are interested in this  
18 rule. I'm the father of an autistic  
19 daughter and so -- my wife is a board  
20 member of a group called FEAT of Arkklahoma,  
21 which is an autism related group for  
22 families for the effective autism  
23 treatment. I'm also here as a member of  
24 the Sequoyah county Clean Air Coalition  
25 because I live in Sequoyah county Oklahoma

1 where they were planning to build the  
2 Tanasta Plant that Mr. Phillips is speaking  
3 of. I'm also a member of the Oklahoma Bar  
4 Association and I've practiced law for  
5 almost 20 years now.

6           So there are a few things that I  
7 want to mention about the process and then  
8 a few things in detail about the proposed  
9 rule. I think one of the problems that I  
10 initially had with the proposed rule, the  
11 CAMR rule, was the fact that it didn't seem  
12 like there was really enough notice  
13 statewide for the consideration of that  
14 rule. I think pretty much everybody I know  
15 that was in opposition to it and has come  
16 to these last few meetings did not know  
17 about it for the first couple of times, the  
18 first couple of meetings. I understand  
19 there are procedures to publish that, but I  
20 would hope in the future that there might  
21 be a little more publicity put towards  
22 something that important for the state  
23 because we got kind of a late start on  
24 this.

25           It wasn't until around January that

1 we found out that the CAMR rule was being  
2 proposed and it put us at a little bit of a  
3 disadvantage and possibly capturing the  
4 draft. As an attorney for quite a lengthy  
5 period of time, I've always found that it's  
6 important to capture the draft. The person  
7 who has the initial draft has an advantage  
8 because they can put in the initial draft  
9 what they want to put in it.

10 We're in a position now where  
11 there's been a draft proposed which is in  
12 corporation of the federal CAMR rule. And  
13 our position of the organization, also the  
14 Clean Air Coalition is that we would like  
15 to see the STAPPA rule be the draft that's  
16 being considered. So at this time I guess  
17 my only problem with the tabling of the  
18 particular issue that's before the Board is  
19 that if we table this issue right now, when  
20 it comes back up before the Board we're  
21 still looking at consideration of adoption  
22 of the CAMR rule, where it would be nice to  
23 see if the Board could just withdraw  
24 consideration of the CAMR rule and go back  
25 and consider using the STAPPA rule as the

1 draft that's for consideration.

2           Now as to the FEAT of Arkklahoma  
3 there's been some mention today of a  
4 correlation between mercury emissions and  
5 autism. The University of Texas study,  
6 which was mentioned earlier, I actually  
7 have a copy of, and the representative of  
8 the SEED coalition mentioned some  
9 statistics from it. I'm going to read a  
10 couple of things from this particular  
11 study. When they looked at special  
12 education rates and then they looked at  
13 autism rates as a subset of those within  
14 the Texas state lines -- they used data on  
15 emissions that came from the EPA and then  
16 they looked at correlation in school  
17 districts on special education and autism  
18 rates in those locations and she mentioned  
19 the 17 percent increase. I think she's  
20 being very conservative on that. Actually,  
21 when you read the abstract of this  
22 particular study, it says there is a  
23 significant increase in the rates of  
24 special education students and autism rates  
25 associated with increases in

1 environmentally released mercury. On  
2 average for each 1,000 pounds of  
3 environmentally released mercury there was  
4 a 43 percent increase in the rates of  
5 special education and a 61 percent increase  
6 in the rates of autism. Now that was an  
7 ecological study, obviously there needs to  
8 be more done in that realm, but I think  
9 mercury has been a suspect of autism for  
10 quite some time and in fact there are  
11 federal claims for hearings going on right  
12 now in D.C. to see if there is a  
13 correlation between mercury and autism.

14           Now interestingly enough, the cap  
15 and trade provisions between Oklahoma and  
16 neighboring states, in our opinion, could  
17 come back to really almost draw in plants  
18 that are wanting to locate in this state to  
19 emit mercury. If we have a lenient rule  
20 then plants that can come into this state  
21 and use unlimited cap and trade, they can  
22 sell claim credits to other plants within  
23 the state, which would allow them to  
24 pollute for longer periods of time. It  
25 basically dilutes the whole cap and trade

1 system.

2           Now there is some information which  
3 you've already received in your record that  
4 shows that most mercury tends to fall  
5 within a 30 mile radius of where it's  
6 emitted. In the letter that was submitted  
7 by Earl Hatley a little bit earlier he  
8 sites an EPA 1999 study of hazardous air  
9 pollutions from emissions from electric  
10 utility steam generating units and it shows  
11 that in -- EPA estimates that up to 14  
12 percent of mercury emitted by coal burning  
13 power plants is deposited within 30 miles  
14 of the plant. Well, that concerns me  
15 because I live between two coal-fired power  
16 plants. I live between AES Shady Point and  
17 I live between Muskogee's coal-fired plant.  
18 Now easterly winds prevail, that would make  
19 me think that within 30 miles of both those  
20 plants, we're getting quite a bit of  
21 mercury deposition.

22           Now I've heard antidotedly that  
23 there's been some testing done in the  
24 Stillwell area, which is showing very, very  
25 high levels of mercury. Stillwell will be

1 directly east of the Muskogee plant. Now  
2 there is some other factors that come into  
3 consideration when they've been looking at  
4 hot spots in the northeast and that is most  
5 of the hot spot data that you look at,  
6 they've been looking at mercury deposition  
7 -- or mercury levels in fish, which is what  
8 I understand the state of Oklahoma is going  
9 to do.

10 Well, there's a new study --  
11 actually a study that was done in January  
12 of this year from the Hubbard Brook  
13 foundation and they think that that's --  
14 they think that because you're only looking  
15 at fish and not looking at other types of  
16 animals that the data that the EPA  
17 estimates for mercury accumulation may  
18 actually be flawed, and that the levels  
19 that are actually being deposited could be  
20 up to 30 to 40 percent higher if you look  
21 at such other animals like loons that eat  
22 some of these particular fish and eat  
23 vegetation -- different animals that eat  
24 vegetation in the area.

25 So they've done a project and it's

1 got some weight behind it. It's got some  
2 people like Charles (inaudible) who's a PhD  
3 from Syracuse University, David Evers, PhD  
4 from Bio-Diversity Research Institute,  
5 Thomas Butler, PhD from Cornell University,  
6 Cecilia Chan, a PhD from Dartmouth and  
7 there is a few others on the list. So  
8 they've done a pretty comprehensive look at  
9 this and what they've found is, that when  
10 you look at the deposition levels and you  
11 take the whole realm of animals into  
12 consideration, the rates of mercury  
13 deposition appears to be much higher. And  
14 they've also correlated with color charts  
15 and all kinds of things like that, that  
16 will show you there are higher deposition  
17 levels closer to the plants.

18           So when we're looking in Oklahoma  
19 about a mercury emissions rule, there is a  
20 couple of things that they also looked at  
21 here, which should be considered, and one  
22 of them is that the effect of lowering  
23 water levels for energy production has an  
24 effect on the concentration levels of  
25 mercury. So in Oklahoma we've got a lot of

1 (inaudible) generation plants. We've got a  
2 lot of water that's going up and down quite  
3 a bit. And in the food chain, when you look  
4 at it from a wetlands perspective and how  
5 these animals are interacting with the  
6 environment, what you find is that they're  
7 getting higher levels when the water is at  
8 a low point than they are when it's at a  
9 high point. You couple that with higher  
10 levels of acid rain, which kind of erode  
11 the soil and erode the ability of the  
12 vegetation to absorb some of this mercury  
13 and everything ends up in the water. When  
14 everything ends up in the water then it  
15 ends up in the rest of the food chain. And  
16 I've got this study which I can leave here  
17 as part of the record, it's got all the  
18 graphs and everything that I'm talking  
19 about. It's based out of the northeast,  
20 which could be different. As (inaudible)  
21 mentioned earlier there's a lack of data in  
22 this area.

23           One thing that concerns me is if we  
24 look at Oklahoma this year and start doing  
25 fish studies this year, we've had enormous

1 amounts of rainfall -- is that going to  
2 skew the results? I mean there are some  
3 things like that that would become an  
4 issue, I would think. So it might be  
5 worthwhile for the Board and the ODEQ in  
6 our analysis and evaluation to possibly  
7 look at this study and see what the  
8 differences were between that and the EPA  
9 study and take some of that into  
10 consideration when you look at it further.

11           So in consideration of that, I will  
12 tell you that there's some more information  
13 that I looked at from -- it's actually a  
14 Harvard study, which correlates the effects  
15 of mercury economically to the country.  
16 And basically what they came up with is  
17 they looked at IQ levels which are  
18 decreased by mercury exposure. And in  
19 looking at the increase -- or the decrease  
20 in IQs that could be expected from mercury  
21 exposure, they calculated some dollar  
22 figures. And using a cost of illness  
23 approach, they estimated the value of one  
24 lost IQ point to be approximately \$16,500  
25 per year. Now they looked at it further

1 and they found that there was a correlation  
2 between methal mercury exposure in males  
3 and increase risk of moderate myocardial  
4 infarction and premature mentality. They  
5 looked at that and using a cost of illness  
6 approach they estimated the value of a  
7 myocardial infarction to be approximately  
8 \$50,000 U.S.. Using a willingness to pay  
9 approach, they estimated that a premature  
10 fatality to be approximately six million  
11 dollars. And so when you're looking at the  
12 cost of mercury you have to look a little  
13 bit beyond what the ordinary cost that you  
14 would view would be. You have to look at  
15 the data that's there and the only data  
16 that's really there that puts a dollar  
17 figure on this is Harvard study, which I'll  
18 also leave here for you today, to consider.

19 In closing, I would hope that you  
20 might consider the effect of a delay on  
21 this, on this particular rule. I  
22 understand, as Mr. Terrill said, that they  
23 haven't been FIPped yet. I also understand  
24 that the deadlines are kind of arbitrary at  
25 this point, but what's to prevent the state

1 of Oklahoma from enacting a stricter rule  
2 at this time? Whatever the federal  
3 government does, Oklahoma -- it's almost  
4 100 percent assured that they're going to  
5 allow the states to do something stricter  
6 if they want to. So let's look at doing  
7 something stricter for Oklahoma. Let's  
8 come up with a good rule that's going to  
9 protect the public health. Thank you for  
10 your time.

11 MS. BOTCHLET-SMITH: Dwayne Camp.  
12 Mr. Camp, I know you came in a little bit  
13 later, but if you would restate your name  
14 and your organization for the reporter, for  
15 the record.

16 MR. CAMP: I'm Dwayne Camp,  
17 tribal member from nearby and I represent  
18 no tribe. We're strictly grassroots. I  
19 work with the campaign for sovereignty,  
20 which we began years ago talking about  
21 sovereignty for the native people and  
22 protecting the remnants of sovereignty that  
23 we still enjoy. These other gentlemen that  
24 I have heard, I missed my friend Earl  
25 Hatley's address and he is the one that

1 alerted me about the mercury levels  
2 sometime back and I wasn't able to be here.  
3 These other gentlemen that spoke that I did  
4 hear are very knowledgeable and I  
5 appreciate what they have to say. I wanted  
6 to say that we don't want to lower our  
7 standards here certainly, and we know about  
8 the huge coal-fired plants that are going  
9 up all over the world. I understand  
10 they're building them in China, one every  
11 three days or something, but they're not  
12 good for the land, the water, the people,  
13 any living thing, and we're going -- we're  
14 considering lowering our mercury standards.

15           Most of the people that I know,  
16 certainly my relatives and friends that  
17 fish out here have no idea of the dangers  
18 (inaudible) and the DEQ up there is  
19 supposed to be safeguarding our health on  
20 these matters, I don't think they're doing  
21 a very good job of letting everybody know  
22 exactly where we stand all of the time.  
23 And my technical background isn't such that  
24 I can make recommendations. I can only say  
25 that we're going to oppose this plant down

1 here, that they're still having public  
2 meetings on the Red Rock Plant, the billion  
3 dollar -- multi-billion dollar enlargement  
4 of the plant. We're going to see that that  
5 doesn't take place if we possibly can. The  
6 lowering of the standards, I can speak for  
7 the majority of the native people in this  
8 community that I've worked with, and we  
9 have seven tribes represented here, five  
10 out of the Pawnee, Osage and the Cherokee  
11 still have land here, and without  
12 exception, they're adamantly opposed to any  
13 lowering of the standards and certainly  
14 want the Oklahoma DEQ to work with us and  
15 we don't feel like that was always the  
16 case.

17 I would like to commend Mr. Hatley  
18 because he has kept us up to date and let  
19 us know a little bit about what's happening  
20 here and I certainly would just go on  
21 record saying that he campaigned for  
22 sovereignty and the grassroots organization  
23 I work with here, the Indian people, we  
24 oppose lowering the standards. Thank you.

25 MS. BOTCHLET-SMITH: That's the

1 last commentor that we have from the  
2 public. At this time we could take any  
3 additional questions or comments from the  
4 Council.

5 Hearing none, David, it's yours.

6 MR. BRANECKY: Okay. I will try  
7 to lay out what I think are our options --  
8 and this, our options if any, will be  
9 passed.

10 The DEQ or staff has recommended  
11 that we table this rule until sometime next  
12 year, either the January meeting or the  
13 April meeting. We can, at this point,  
14 adopt a rule if we so choose. We can  
15 reject the rule and send it back to DEQ or  
16 we can continue the rule until the next  
17 Council meeting. Did I give all the  
18 options? No. We could reject this rule  
19 and send it back and tell the staff to  
20 bring us a different rule. So with that,  
21 it's up to Council to make a motion.

22 MR. PURKAPLE: I have a question.  
23 If we table this until sometime next year,  
24 Eddie, what are we going to be doing in the  
25 interim on that in respect to (inaudible)?

1                   MR. TERRILL: Well, we'll  
2 continue -- we'll evaluate the information  
3 that came in today, especially the study  
4 that -- there's a couple of them I'm not  
5 aware of. So we'll be taking a look at  
6 that and obviously we'll see what happens  
7 at the federal level with what they do with  
8 the litigation.

9                   We are still looking at other  
10 options. I mean there's a lot of fluid  
11 movement going on and we -- originally, if  
12 you remember, we brought forth three  
13 different rules; brought the STAPPA/ALAPCO  
14 rule, we brought a modified rule, and we  
15 brought the CAMR rule and we got no comment  
16 on the first two and that's how we ended up  
17 with the CAMR rule with a little bit of a  
18 modification.

19                   Of course, there seems to be a lot  
20 more interest in mercury and so we'll  
21 continue to evaluate and we'll take the  
22 best information we've got and if we feel  
23 it's appropriate, we'll bring something  
24 back to the Council to consider. I'm still  
25 struggling with -- we feel fairly confident

1 that the proposed rule for new sources is  
2 about as strict as it's going to get. We  
3 don't think it will be any stricter under  
4 any other scenario. The real issue comes  
5 in are we going to allow cap and trade and  
6 are we going to require faster and more  
7 detail in reductions when there's resistant  
8 sources. And then the whole issue of hot  
9 spots and the type of coal that's burned.  
10 It's a complicated issue and we'll continue  
11 to evaluate that as to whether or not I  
12 feel like -- it's not just passing the  
13 Council, it's -- once it gets out of the  
14 Council it goes to the Board, it goes to  
15 the legislature and you've got to be aware  
16 that there are pitfalls in both of those  
17 about the rule being sent back. So I'm  
18 interested in something that the citizens  
19 want and that they can get passed those two  
20 levels and so we'll continue to evaluate it  
21 and we may bring back a suggestion tweaking  
22 what we've got or we may bring back exactly  
23 what we're tabling.

24 MR. BRANECKY: Well, if we table  
25 the rule today, if we reject that then

1 we'll have to bring something else?

2 MR. TERRILL: Well, no. You can  
3 bring that back and if we have other  
4 information that we could bring -- we would  
5 bring that up at the Council meeting for  
6 your consideration. That's what I meant, I  
7 mis-spoke there.

8 MR. PURKAPLE: Well then if we,  
9 just as a technicality, we can't table  
10 without specifying a date that we bring it  
11 back, take it off the table; is that right?

12 MR. BRANECKY: That is correct.

13 MR. PURKAPLE: Okay. So then if  
14 we tabled it until January, excuse me, if  
15 we table it until April, technically would  
16 that prevent you all from bringing back  
17 information at the January meeting? In  
18 other words, would it be advantageous to  
19 table it until January, for example, to  
20 give you the opportunity to bring back the  
21 results of your studying and fictional  
22 evaluation of comments?

23 MR. PAQUE: I think that we can  
24 bring the information back in January and  
25 talk about a rule. I don't know that since

1 we proposed the mercury rule as a  
2 Subchapter 44 you couldn't put something  
3 else in its place in January. Does that  
4 make sense?

5 MR. TERRILL: But we could bring  
6 not only the tabled rule back, we could  
7 propose a new rule to come to the Council  
8 for the first time?

9 MR. PAQUE: Uh-huh.

10 MR. TERRILL: We could do that,  
11 too.

12 MR. PURKAPLE: But you couldn't  
13 do that in January if we tabled it until  
14 April?

15 MR. PAQUE: Right.

16 MR. TERRILL: I don't know that -  
17 - I see your point. If we wanted to bring  
18 in a different rule in January?

19 MR. PAQUE: Yeah. I wouldn't  
20 want the unintended consequence of tabling  
21 it in April and preventing you (inaudible).

22 MR. TERRILL: I think that's  
23 right.

24 MR. PAQUE: Yes.

25 MR. PURKAPLE: So from that

1 standpoint it would be better to table it  
2 until the January meeting? I assume  
3 October would be too early for you to be  
4 able to --

5 MR. TERRILL: There won't be a  
6 decision and we won't have any more data, I  
7 don't think, especially the fish plus data  
8 won't be ready. So the effect is the same,  
9 April, January, I mean if we needed to we  
10 could carry it over again to January.

11 MR. BRANECKY: Any more  
12 discussion?

13 MR. LYNCH: I guess for the  
14 record I'll state my preference. My  
15 preference would be that we reject the rule  
16 considering the comments. In fact, I think  
17 we'll have to vote on -- sooner or later  
18 vote on this one and then with the changes  
19 I think it would be better to have  
20 something new. That's my --

21 MR. BRANECKY: Is that an opinion  
22 or a motion?

23 MR. LYNCH: Right now it's an  
24 opinion.

25 MR. HAUGHT: Did we lose ground

1 to do that timing wise and the fact that  
2 you're in this rule for this length of  
3 time? If we oppose this rule today and we  
4 start on something new, any difference on  
5 that versus a new proposal?

6 MR. LYNCH: That would be my  
7 concern.

8 MR. HAUGHT: A new proposal  
9 starts in April. Is it easier to modify  
10 the existing proposal than it would be to  
11 kill it at this point and start over again?

12 MR. PAQUE: Yeah. All the  
13 technicalities, it would be easier to stay  
14 with this proposal.

15 MR. LYNCH: But how much can you  
16 modify it?

17 MR. PAQUE: Well, this current  
18 rule, all that's being proposed is  
19 incorporating federal rule by reference.  
20 So we would have to adopt new language to  
21 modify it, insert it into that particular  
22 subchapter that's been created. Since it's  
23 a new rule, it's -- I mean obviously  
24 another -- new -- different subchapter  
25 dealing with mercury could be proposed,

1 there are some other options since there  
2 isn't any regulation in place, currently.

3 MS. MYERS: At some point in time  
4 will we still be required or encouraged to  
5 adopt by reference the federal standards or  
6 does that depend on what is (inaudible)?

7 MR. PAQUE: Well, if you're  
8 talking about the current CAMR is under  
9 litigation and one of the possible remedies  
10 there would be that the Court could send  
11 CAMR back to EPA to reevaluate some things  
12 and they could -- then we would repropose  
13 the rule and then that option would be to  
14 incorporate that new proposal by reference.

15 MS. MYERS: It's not an easy  
16 issue.

17 MR. PAQUE: It's not.

18 MR. BRANECKY: I need a motion  
19 one way or the other.

20 MS. MYERS: Matt, if we reject  
21 this today and ask staff to come back with  
22 the proposal for January, is there enough  
23 time for us to do that?

24 MR. TREEMAN: I guess if you  
25 reject it today can you bring it back for

1 incorporation by reference again once it's  
2 been kicked out? Can you do that?

3 MR. PAQUE: Yeah. I think we  
4 would be prohibited from bringing this  
5 proposal back for a year -- for a  
6 legislative year.

7 MR. TREEMAN: Even if the ruling  
8 of the Courts changed appreciably?

9 MR. PAQUE: Well, if the rule  
10 changed I think we could bring it back, if  
11 they change the rule. One of the things I  
12 guess I didn't point out was if EPA is  
13 required to change the rule, that will take  
14 some time. We will have the Court decision  
15 and then EPA would have to rewrite the  
16 rule. So we're kind of looking at the  
17 scenario like the very first rulemaking we  
18 heard today, that incinerator rule where it  
19 was remanded and they were working with it.  
20 It would have to take some time. If the  
21 rule is rejected today, this particular  
22 proposal as it's worded could not be  
23 brought back for another legislative year,  
24 but we could -- if the rule changed we  
25 could bring a different rule back.

1

2 MS. MYERS: If we table it until  
3 January and have the same discussion again  
4 and decide at that point, depending on what  
5 the Court decisions are which direction to  
6 go, does that work into the scenario in  
7 order to get something done?

8 MR. PAQUE: I think so. Yeah.  
9 And we could bring back other options. The  
10 Department wouldn't be prohibited from  
11 bringing back other options as well and  
12 just as the rule was originally proposed in  
13 three forms like (inaudible) said.

14 MS. MYERS: So if we tabled it  
15 until January then there is a possibility  
16 you could bring back other options for  
17 consideration at that time and then reject  
18 whichever options we wanted to?

19 MR. PAQUE: Yeah, I think  
20 procedurally we could do that.

21 MR. PURKAPLE: So what I'm  
22 hearing is -- if we table it with  
23 instruction to staff to bring back  
24 additional information and additional  
25 proposals for suggestions.

1 MR. TERRILL: We could do that.

2 MR. PURKAPLE: Would January be  
3 too quick?

4 MR. TERRILL: I think we could do  
5 it in January. Another thing I would  
6 suggest though if that's what the Council  
7 would want us to do that would be fine, I  
8 would also ask that you request that we  
9 bring back some (inaudible) of what it's  
10 going to cost if we go beyond -- or what  
11 it's going to cost the rate payers because  
12 we can pass rules here, the Board can pass  
13 them, but once it gets to the legislature  
14 you get all kinds of other special interest  
15 that will come out and talk about the rule.  
16 It's a lot better to have discussed those  
17 things in this forum so that you have a lot  
18 of opportunity for comment and I think  
19 that's a key component as to what it would  
20 cost and the ongoing cost and those sorts  
21 of things. We really haven't discussed it.  
22 There will be a cost to the rate payer if  
23 we pass something that's stricter than --  
24 or something different than what the Feds  
25 require. I don't have a problem with that

1 but then I'm only one rate payer out of two  
2 million. So it's only fair I think if we -  
3 - it's really not our decision. For us  
4 it's the cleaner the stacks and the cleaner  
5 -- the less emissions we have the better,  
6 but the pragmatic is that it will be more  
7 expensive. I think that needs to be  
8 discussed so that folks can have an option  
9 to see both sides of this issue because  
10 that's what it will come down to.

11 MR. PURKAPLE: I think that would  
12 be my preference, to table it until January  
13 with a recommendation for staff to bring  
14 back alternatives based on the information  
15 that's been given here and study the  
16 information that's been provided to us with  
17 additions of the cost analysis that you had  
18 suggested.

19 MR. HAUGHT: I'd like that they  
20 conclude that we have heard this one-sided  
21 --

22 REPORTER: Can you speak up? I'm  
23 sorry.

24 MR. HAUGHT: I'm sorry. I would  
25 like to include that we have heard the side

1 from the health effects and from that  
2 issue, the rates are definitely concerned  
3 and being new to this maybe I'm not as up  
4 to speed on that but I'm still uncertain  
5 somewhat as to the technological  
6 feasibility given the particular  
7 configuration of plants that we have in the  
8 state and the sources of coal and what the  
9 product is, the raw product that they're  
10 using. What I hate to do is to pass a rule  
11 and mandate a percentage reduction and then  
12 find out we're subjecting someone to  
13 something that technologically -- that  
14 technically can't be managed. It has to be  
15 attained and it has -- and so there's a  
16 cost and we can argue about what cost is  
17 reasonable but if it physically can't be  
18 done we need to know that and not set  
19 ourselves up to fail on that.

20 MR. TERRILL: And that's a good  
21 point because the type of coal mixture we  
22 have is different than it was in the  
23 (inaudible) area, for instance, where they  
24 did that study. It's a little bit  
25 different than what they have in Texas.

1 And that does factor into that, no doubt  
2 about it. Hopefully we'll have some fish  
3 plus data for you all to consider as well  
4 and (inaudible).

5 MR. BRANECKY: I heard your  
6 preference, is that a motion?

7 MR. PURKAPLE: Yeah. I  
8 (inaudible) stated or not. I move that we  
9 table it until the January Council meeting  
10 with instructions for staff to bring back  
11 alternative recommendations based on public  
12 comment which has been submitted, along  
13 with that a cost -- economic cost benefit  
14 analysis and we incorporate the  
15 technological feasibility part of that as  
16 well.

17 MR. TERRILL: Let me modify that  
18 just a little bit. At the cost feasibility  
19 analysis, that indicates that we can do a  
20 study on the health specs. We'll take some  
21 stuff that EPA has already done, but for us  
22 to do our own cost benefit analysis on  
23 mercury may be a little bit more than we  
24 can do. We'll do the best we can with  
25 existing data and see what -- so we can get

1 some idea of -- because there is -- some  
2 studies have been done about the health  
3 benefits that you get from these types of  
4 reductions from all pollutants, not just  
5 mercury and we can present some of that to  
6 you.

7 MR. BRANECKY: So does everyone  
8 understand the motion? Okay. Mr. Purkaple  
9 made a motion, I need a second.

10 MS. MYERS: I'll second it.

11 MR. BRANECKY: Motion and a  
12 second. Myrna.

13 MS. BRUCE: Jerry Purkaple.

14 MR. PURKAPLE: Yes.

15 MS. BRUCE: Sharon Myers.

16 MS. MYERS: Yes.

17 MS. BRUCE: Jim Haught.

18 MR. HAUGHT: Yes.

19 MS. BRUCE: Rick Treeman.

20 MR. TREEMAN: Yes.

21 MS. BRUCE: Gary Martin.

22 MR. MARTIN: Yes.

23 MS. BRUCE: Bob Lynch.

24 DR. LYNCH: Yes.

25 MS. BRUCE: Laura Worthen.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. WORTHEN: Yes.  
MS. BRUCE: David Branecky.  
MR. BRANECKY: Abstain.  
MS. BRUCE: Motion passed.

(End of Item 4D)



1  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY COUNCIL

REGULAR MEETING

ITEM NUMBERS 4E

HELD ON JULY 18, 2007, AT 9:00 A.M.

PONCA CITY, OKLAHOMA

\* \* \* \* \*

REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE  
(405) 721-2882

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MEMBERS OF THE COUNCIL

- DAVID BRANECKY - CHAIRMAN
- RICK TREEMAN - VICE-CHAIRMAN
- JERRY PURKAPLE - MEMBER
- JIM HAUGHT - MEMBER
- SHARON MYERS - MEMBER
- GARY MARTIN - MEMBER
- DR. BOB LYNCH - MEMBER
- LAURA WORTHEN - MEMBER
- DON SMITH - ABSENT

STAFF MEMBERS

- MYRNA BRUCE - SECRETARY
- EDDIE TERRILL - DIVISION DIRECTOR
- BEVERLY BOTCHLET-SMITH - AQD

1

2

## PROCEEDINGS

3

4

MS. BOTCHLET-SMITH: The next item on the Agenda is Item number 4E. This is OAC 252:100-5 Registration, Emissions Inventory and Annual Operating Fees. The staff presentation will be done by Nancy Marshment and after her presentation then I'll give a Power Point presentation today.

11

MS. MARSHMENT: Mr. Chairman, Members of the Council, ladies and gentlemen, my name is Nancy Marshment and I am an Environmental Programs Specialist with the Air Quality Division's Rules and Planning Section of the Department of Environmental Quality.

18

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

25

1 administering the Department's Air Quality  
2 programs.

3           Fees for both minor facilities and  
4 Part 70 sources would be adjusted  
5 automatically each year using the Consumer  
6 Price Index. At the present time, only  
7 Part 70 source fees are calculated in this  
8 manner.

9           Staff has received no comments on  
10 the proposed change at this time.

11           Air Quality Division Assistant  
12 Director, Beverly Botchlet-Smith, will now  
13 provide more background information for  
14 this proposed rule.

15           MS. BOTCHLET-SMITH: Just for  
16 clarification, David Branecky and I are  
17 discussing the fact that we have the 111(d)  
18 Plan with mercury that was set up as a  
19 public hearing and, of course, we wouldn't  
20 go forward with the 111(d) until we go  
21 forward with the rule and it is dependent  
22 upon the CAMR rule. So we'll revisit that  
23 after this portion of the Agenda, in case  
24 anybody was wondering.

25           I have brought some information to

1 the Council and public to give you a little  
2 bit of background of why we're requesting a  
3 fee increase for both Title V and non Title  
4 V. This just shows a breakdown of our  
5 income. The actual percentage split during  
6 our fiscal year of '07 and then what we are  
7 estimating that split to be on budgeted  
8 projections for our FY'08, which began July  
9 1. Just this year has begun.

10           You can see our percentage of  
11 federal grants is decreasing. I'll go into  
12 a little more explanation on that in  
13 further slides. State appropriations have  
14 gone up slightly. That is because of the  
15 slight increase that they have given us. A  
16 very minor change in the estimates on how  
17 the fees -- how and where that money is  
18 coming.

19           I do think the most interesting  
20 thing to note on this slide is at this  
21 point in time, Title V fees are right at 54  
22 percent of our income, but our actual total  
23 Title V expense is 78 percent.

24           As you can see, we've gone back  
25 through it to 1997 to give you a graphical

1 representation of how our budgets have been  
2 split between operational, in the yellow;  
3 and our personnel that is salary infringed,  
4 in the light green.

5 Our operational budget has remained  
6 virtually flat since 2001, 2002, but the  
7 majority of our increases -- steady  
8 increase as you might know, has been in the  
9 personnel fringe.

10 I think what this says is we've just  
11 done a really good job squeezing back on  
12 our operational expenses and we have found  
13 ways to tighten our belts when we needed to  
14 because our commitment was to make sure we  
15 took care of staff, make sure that we met  
16 our obligations for salary infringe, which  
17 continue to increase.

18 This could change slightly in the  
19 future. I don't know how long we can  
20 continue to hold on to this operational  
21 budget.

22 In this last year we had a 20 -- or  
23 since March of this current calendar year,  
24 a 25 percent increase in our medical cost.  
25 And I'm sure you all are feeling that. I

1 don't know where it's going to go, but I  
2 don't anticipate it going down.

3           This is a split of our tons that we  
4 billed for -- since 1995. I realize it's  
5 difficult for those of you to see the  
6 actual numbers. The purple, minor source;  
7 the red is our major. The number that is  
8 imprinted over the purple is the tons of  
9 minor sources that were billed in each of  
10 those years. The number at the top of the  
11 bar is the tons for the Title V that were  
12 billed in each year.

13           As you can see, minor source is  
14 increasing. And I've got some questions on  
15 that as I was preparing this. Probably one  
16 of the reasons that -- or a couple of the  
17 reasons that this has happened is we had  
18 some quashed emission initiatives, which  
19 increase the minor source tons to be  
20 billed. We've had better emission factors,  
21 and we've actually had some major sources  
22 that went into a synthetic minor status  
23 and, of course, they are then considered as  
24 minor when it comes to paying fees. So  
25 we're seeing a slight increase in the

1 minors, very little decrease in tons in our  
2 Title V sources.

3           This goes through 2005. We're still  
4 working on our 2006 data.

5           As of last week, of the 1,309  
6 facilities that we have in our universe, we  
7 were still waiting on data from 75 of those  
8 facilities and that's why 2006 is not  
9 included in this. We plan to bring this  
10 back with more information in October, and  
11 perhaps at that time we could include the  
12 2006, if you're interested.

13           This is just a history of our fees.  
14 I wanted to include this, to speak on our  
15 request on the CPI being applied to our  
16 minor sources. You can see in the early  
17 years that our minor source and Title V  
18 fees were virtually the same until we had a  
19 fee case in '98. We raised those fees in  
20 '99, but at that point in time, minor  
21 sources were capped at 17.12. We continue  
22 to apply the CPI to our Title V major  
23 sources.

24           We came back again in 2001 with  
25 another fee case, at which time we proposed

1 the increase to 22.28 and again raised  
2 minor sources to be even with what we were  
3 charging for our Title V sources, but  
4 capped it there. We've continued to apply  
5 the CPI to our Title V sources but we have  
6 not done that to the minor sources, and in  
7 this rule we are requesting that that be  
8 changed so that the CPI would be applied to  
9 both minor sources and major sources.

10 I wanted to try to keep this simple,  
11 and I'm hoping I'm going to explain this in  
12 a way that is not too confusing. We're  
13 just looking at our shortfalls. We had a  
14 mandated salary increase from our  
15 legislature in 2006 of 5 percent. For our  
16 division, that resulted in \$281,959.  
17 That's the annual cost. We also had  
18 significant increases in our insurance, 36  
19 percent. I call that significant. The  
20 resulted cost on that to our division on an  
21 annualized basis is \$513,704.

22 Our FICA and retirement percentage  
23 has also gone up. We're currently at 13.55  
24 percent, that includes that 2 percent  
25 increase, percent of salary. We have to

1 add 1 percent each year until we get to  
2 16.5. Now that amount that I've got in the  
3 slide of \$212,585, that's just what our  
4 cost is with the 2 percent increase. I'm  
5 not even taking into account what  
6 additional 1 percent each year could -- how  
7 that could hit us until we hit the 16.5  
8 percent of salary.

9 But even without that being  
10 included, total of all of these increases  
11 is over a million dollars. Well, you might  
12 ask, doesn't the legislature give you some  
13 money when they mandate increases? And  
14 yes, they do. Unfortunately, they only  
15 gave us \$159,000, which is not even a dent  
16 towards the million we need to meet these  
17 obligations. So we have an \$849,000  
18 shortfall.

19 We're also faced with the loss of  
20 federal funds. Current discussions in  
21 Congress indicate that our 105 or Air  
22 Grant, could be cut as much as 16 percent.  
23 The President proposed a 16 percent cut  
24 from 220 million to 185 million and then we  
25 would get our proportional share. Sixteen

1 (16) percent cut of what our federal 105  
2 Grant was, or Air Grant, for this past year  
3 would be \$204,727. Well, that's not going  
4 to be easy, but even worse, our 2.5 program  
5 has been funded through a non-matching  
6 grant from EPA since its inception in 1998.  
7 And that's going away. We're going to lose  
8 100 percent of that funding. That's what  
9 supports our PM2.5 network; a \$568,000  
10 shortfall.

11 I've got a couple of slides here  
12 that will graphically illustrate that.  
13 This is our 2.5 Grant. You can see when we  
14 -- this goes back to 2000, but in the early  
15 years we were getting a little over  
16 \$350,000 a year, remained steady as the  
17 program increased. We began to put out  
18 more monitors. We needed a little bit more  
19 money to support that. That was common  
20 across the country and EPA increased  
21 funding. You might notice in 2003 it  
22 looked like we didn't get any money. That  
23 was just a function of -- our fiscal year  
24 and EPA's fiscal year are not the same and  
25 the way the money was awarded we ended up

1 getting, basically, a double award in '04.  
2 It just hit the end of our fiscal year. If  
3 you split those two, you can see -- that  
4 award in '04, if you split that in two, it  
5 would still be in that \$450,000 range.

6 Our best year, as far as getting  
7 money from the feds, was in '05 and we did  
8 replace some equipment that year and it was  
9 good because since then our grant has done  
10 nothing but decrease. We got a little bit  
11 more money this year. The program is  
12 ending -- they went across the country and  
13 if there was money sitting in the coffers  
14 that wasn't getting spent, EPA brought that  
15 money back in and they tried to spread that  
16 out equally to those of us that needed the  
17 money to get by.

18 One thing I would like to point out  
19 though, our money for FY'08, that \$363,000,  
20 that's for a nine month program. The grant  
21 ends on March 30th; our fiscal year ends on  
22 June 30th. That was what we calculated we  
23 would need to run the program through March  
24 30th of 2008.

25 This is a representation of our 105

1 Grant or Air Grant. You can see since 2002  
2 it has gone down slightly. There's a  
3 little bit of a blimp there in '07. The  
4 reason we had more money then, we applied  
5 for some special project money. This was  
6 like a one time special project that we  
7 were going to do and so that money was just  
8 rolled in with our regular Air Grant and  
9 that's why you see the increase there. If  
10 you pull those funds out, you would see  
11 that -- I believe we got about 1.2 million  
12 in that year.

13           We've also got a projected shortfall  
14 in customer service support. For those of  
15 you who are not aware of the work that our  
16 Customer Service Division does, since the  
17 Oklahoma Clean Air Act began, there was a  
18 Small Business Assistance Panel that was  
19 enacted with that Act. The intent of that  
20 was that they would provide permit  
21 assistance, help people, actually go out to  
22 these small businesses and help them with  
23 their permits. They've been working in  
24 that area since the beginning of our air  
25 program under the Clean Air Act, in the

1 Oklahoma Clean Air Act. And most recently  
2 they have been assisting us also with some  
3 of our mercury data, specifically when we  
4 began the fish flesh study and the analysis  
5 involved with that.

6           There are 3.1 FTEs currently in the  
7 Customer Service Division that are  
8 dedicated to this program. They only work  
9 on Air Quality issues. They are out in the  
10 field, they are working with businesses on  
11 Air Quality issues. We have provided them  
12 \$92,916 since 1998. As you might guess,  
13 this does not come close to funding three  
14 FTEs. We've identified this year a  
15 shortfall of \$119,000, and this is just to  
16 support the salary and fringe of those  
17 three FTEs that are dedicated to this  
18 program, which is associated with Title V.

19           One of the more critical things  
20 that's very difficult to put a dollar value  
21 on, is our salary administration. I've  
22 heard comments about how important it is  
23 for industry to have good, trained staff  
24 for safety reasons; and we feel like it's  
25 important for us to have good, trained

1 staff to provide the service that we are  
2 obligated to provide to the state of  
3 Oklahoma. We've got to be able to retain  
4 those people when we hire them.

5           As part of that plan we do have the  
6 ability to do career progressions, promote  
7 people to Level 3 and Level 4 as they gain  
8 that experience. We have the ability  
9 through our legislature to do equity  
10 adjustments, market based adjustments, and  
11 in the past, even paper performance.

12           I'd like to focus on the equity and  
13 market based adjustments. When I talk  
14 about retention, I'm not talking about just  
15 keeping our staff from industry because we  
16 do have staff that get hired away and go to  
17 work for industry, but we have to compete  
18 with other state agencies. We're not the  
19 only agency that hires environmental  
20 program specialist. They may call them  
21 something -- I guess they do have the same  
22 job title and they may do similar work, but  
23 we have found over the last few years that  
24 sometimes another agency may pay a little  
25 bit more than we do and we've got to stay

1 competitive with that to retain our staff.

2           One of the other things we've done  
3 in the last year is we've added in Level 3  
4 Managers. This was done to free up our  
5 managers to where they can get out in the  
6 field with some of our younger staff, help  
7 train those people and bring them up to the  
8 level of some of our more experienced  
9 people, and give us our Manager 3's to  
10 where they can just help manage what's  
11 going on. I think this is a good move,  
12 we're already seeing some positive benefits  
13 from it and Edmund wants to speak to that,  
14 and (in), as well. And because we have not  
15 always done as good of a job as we'd like  
16 in retaining our staff, we've got the added  
17 cost of -- in retaining we have the added  
18 cost of training the new ones we hire.

19           For instance, over the last three  
20 years in our compliance and enforcement  
21 sections, alone, we've had a 50 percent  
22 turnover. This requires a lot of resources  
23 for additional training. And this will  
24 continue to require ongoing funding.

25           We did a survey of our neighboring

1 states to kind of see where we fall with  
2 our Title V fees. And for this -- for me  
3 to give you any numbers, I've got to put my  
4 glasses on. Give me just a minute.

5           You can see Oklahoma on the next --  
6 to the end on the right. Here we are at  
7 25.12 on Title V fees. And for the most  
8 part, if you see another state that has a  
9 lower Title V fee, for instance, Louisiana  
10 at \$12.83, that's not a fair  
11 representation. I guess what I'm saying  
12 here is we're not comparing apples and  
13 oranges because you'll also notice  
14 Louisiana charges up to \$142 a ton for  
15 half. This is also done in New Mexico, and  
16 it's also done in Colorado.

17           While you may get a break on your  
18 Title V fee, if you think about the tons  
19 and the emissions that you have turned in  
20 or that industry turns in on their annual  
21 emissions, I would say if we did  
22 comparisons of the cost, if we broke out  
23 those halves, the Title V fees in those  
24 other states -- I think this is going to  
25 equalize on out, and what I'm trying to say  
here is they're not going to be as low as  
they appear to be -- if you take into

1 account the tons that are not being billed  
2 as a Title V fee but are being billed at  
3 the half fee, and if we were to do the same  
4 thing, I think the affect to industry would  
5 be much greater than just raising our Title  
6 V fee.

7 Eddie, you want to weigh in on that?

8 MR. TERRILL: Well, what that  
9 also -- it also concentrates the fee into  
10 certain segments of industry and that's one  
11 way to do it. I mean you could not spread  
12 it out across everyone so-to-speak but  
13 concentrate on those that raises the half,  
14 the rational might be that they have the  
15 greatest impact on public health and so  
16 they should pay more.

17 The other thing that's not captured  
18 here, is that we didn't try to go in and  
19 figure out what states, although we know  
20 what states they are, we didn't try to  
21 illustrate here if they charged \$60 an hour  
22 to do your permit modification or write  
23 your new permits. We didn't figure what  
24 the overall impact would be if we charged  
25 15 to 20 to \$30,000 every time we did a  
full compliance inspection like some states  
do.

1           I mean there is all kinds of ways to  
2 get at this, but we just -- I've always  
3 felt that the simplest and easiest way to  
4 do it is -- you get into a host of other  
5 problems if you try to do that and we just  
6 felt like it was simpler and easier just to  
7 do the Title V across the board fees and  
8 non Title V, and go from there. But  
9 there's other ways to get at it, but for us  
10 to make that kind of switch it would take  
11 probably a year or two for us to bring all  
12 the different types of proposals back to  
13 you all and for there to be a good thought  
14 process that goes on before we do that. We  
15 don't have time to -- we've got a need that  
16 we've got to address in the next budget  
17 year.

18 MS. BOTCHLET-SMITH: Thank you. I knew  
19 you'd say it better than I would.

20           One thing that I do want to point  
21 out before we go to the next slide, the  
22 black line that runs across all of these  
23 bars is a presumptive minimum. That is  
24 it's the federal fee. If the feds were  
25 running our program they would be charging

1 \$41.02 per ton.

2           This was kind of a -- we have never  
3 done a minor source fee comparison. For  
4 years, through our regional organizations,  
5 we've been doing our Title V fee surveys  
6 just to kind of -- either we're doing it or  
7 if there's another state doing it, we're  
8 providing information. But this year we  
9 decided that we also wanted to take a look  
10 at our minor sources and how those are  
11 feed.

12           You'll notice on here that some  
13 states did not indicate to us that they  
14 charge a minor source fee. However, those  
15 are the states that Eddie mentioned that  
16 may be charging permit maintenance fees.  
17 They may be charging 59, 60, \$65 an hour  
18 just to work on your permit. There's a  
19 whole multitude of reasons why some of  
20 these states are not charging a fee. If  
21 they're not charging it -- they're not  
22 calling it a minor source fee, but they are  
23 getting the money from another source that  
24 is still affecting the same industry.  
25           Do you want to add anything to that,

1 Eddie?

2 MR. TERRILL: No, that's pretty  
3 much it.

4 MS. BOTCHLET-SMITH: This is a  
5 summary of all of the shortfalls I've just  
6 brought to you. Our unfunded legislative  
7 increases of \$849,000, our projected loss  
8 of federal funds of \$568,000, our  
9 obligation to customer service for ongoing  
10 permit assistance and small business  
11 assistance support of \$119,000.

12 Now I mentioned to you earlier about  
13 the salary administration. I said that's  
14 really hard for us to put a value on.  
15 Well, if you were to look back at that  
16 earlier slide where I said it was a  
17 \$281,000 kit for a 5 percent increase that  
18 was legislatively mandated in '06, I just  
19 dropped that number in. There's going to  
20 be -- it's hard for us to estimate it, I  
21 felt like this was a lowball estimation.  
22 This would assume one raise from the  
23 legislature, it does not include any kind  
24 of an equity adjustment, any kind of market  
25 adjustments that we might have to do,

1 certainly doesn't include any kind of  
2 training cost, but I had to come up with a  
3 figure. So I wanted to use one that I felt  
4 like we could stand behind because we had  
5 experienced this most recently.

6           And then the other charge on the  
7 indirect fees, those are our administrative  
8 charges that we -- that basically helps run  
9 the Agency. It's a 16 percent increase  
10 that is charged on all fees and that runs  
11 administrative services, and building  
12 obligations, pays the utilities, it's  
13 overhead. Total shortfall, two million  
14 dollars.

15           So our request -- proposed request  
16 today is that we would raise our minor  
17 source fees \$2.84 per ton, plus, we would  
18 ask that we would add the CPI and have that  
19 apply each year similar to the way we do on  
20 our Title V fee. And we also propose that  
21 our Title V fee would be increased \$6.84  
22 per ton.

23           Increasing minor sources \$2.84, that  
24 is a 12.7 percent increase. The Title V  
25 increase, that is a 27 percent increase.

1 And we will take questions.

2 MR. TERRILL: Back that up.

3 Would you back that up one slide? I want  
4 to point out how we got this number.

5 Well, there's about a two million  
6 dollar shortfall in the slide before that  
7 and the way we came to this conclusion, and  
8 you might want to know why we haven't gone  
9 to you all to ask for a fee increase since  
10 2001.

11 EFO and other folks have been very  
12 helpful in getting us other sources of  
13 income for the last three or four years.  
14 We had a \$800,000 a year to run our toxics  
15 program, we got \$400,000 a year from the  
16 underground storage tank program that the  
17 legislature said to use part of that to  
18 help offset, to keep us from having to ask  
19 for Title V fee increases. But what we  
20 did, we backed out \$400,000 that we can get  
21 every year from that and then we also  
22 backed out those increases from the minor  
23 sources, we're making the assumption that  
24 we'll increase the minor source fee, that  
25 two dollars and something, and back that

1 out and that's how we came up with the  
2 \$6.84 for the major sources.

3           We've kind of had to put this  
4 together in a really hurriedly fashion  
5 because we really didn't know until the  
6 very end of the legislative session exactly  
7 what kind of shortfall we were going to  
8 have from the legislature. There was some  
9 hope that we would get funded with our  
10 obligations to a greater degree than what  
11 we actually ended up getting. So Steve's  
12 mandate to the other divisions was, "we've  
13 got address this shortfall" and that's what  
14 we're doing and that's the reason that we  
15 felt we had to bring this.

16           Even though we probably could have  
17 done a better job with a second  
18 presentation, I think Beverly did a real  
19 good job of laying it out, it's pretty  
20 straight forward. Here's where we are,  
21 here's our shortfalls. We're not asking  
22 for anymore NTPs, we're just trying to make  
23 up what we didn't get and in that way  
24 trying to retain some of our staff.

25           We also have been able to manage

1 this through our slope, tell us what we  
2 budget for positions and we can't hire  
3 them, with the turnover, it takes a while  
4 to get them hired back, and we kind of felt  
5 this slope too. But we're in a position  
6 now where we will not be able to make  
7 budget with the NTPs that we've got in the  
8 2009 budget. We just now got approved the  
9 2008 budget. It's the 2009 budget that  
10 concerns me and we're starting to work on  
11 that now and what I'm proposing is whatever  
12 the Council approves and we get to the  
13 legislature, that we would fee that after  
14 July of next year. So we're talking about  
15 these increases would come in to us in 2008  
16 or 2009 -- 2008/2009 budget year. We're  
17 that short.

18           And I've been asked two questions  
19 more than once; what happens if you don't  
20 get this fee increase?

21           In the past we've had tangible  
22 changes that we knew we wouldn't do, so we  
23 were asking for FTEs. I'll be honest with  
24 you, I don't know what we'll do if we don't  
25 get this increase. We have to make budget

1 regardless. We will have about a million  
2 dollar shortfall. We'll have to make  
3 cutbacks. Probably -- maybe we'll have to  
4 lay folks off, I don't know. Probably  
5 wouldn't have to go to -- we probably  
6 wouldn't have to do that, we probably would  
7 just cut positions that we didn't have  
8 filled at the time that we would fill if we  
9 were able to, but that will translate into  
10 a reduction of services.

11           And I can tell you what we're not  
12 going to do. We're not going to cut back  
13 our toxics program because that was an  
14 obligation that -- we're not going to cut  
15 it back with what we're doing now. We will  
16 do some additional things, if you fund it,  
17 that we're not able to do right now because  
18 we're diverting that toxics money to  
19 running our division. But we would  
20 complete our projects but we won't do  
21 anything new for that and we're also not  
22 going to cut back our supplies and  
23 enforcement program because I think that's  
24 what insures the public that we're  
25 protecting their health and I'm just not

1 going to cut that part of the program even  
2 if we have to move every permit engineer  
3 that we've got to do that. I mean that's  
4 just the way I feel about it.

5 (Pause)

6 MR. TERRILL: The other thing is  
7 we have not had a Finance Committee meeting  
8 in a while. We were going to do one in  
9 January but we cancelled the Council  
10 meeting and we didn't ever do that. We  
11 never got back with them. Frankly, we were  
12 kind of waiting -- I was kind of waiting to  
13 see what was happening with (in) program,  
14 whether or not we would be able to generate  
15 some of the reports, kind of a checkbook  
16 like report that's something that they have  
17 spoke to (in) would generate at some point  
18 and it's not going to get there anytime in  
19 the near future.

20 So we're going to have a Finance  
21 Committee meeting and lay it out for the  
22 members of the Finance Committee so they  
23 can report back to you all in October.

24 But I can tell you what it's going  
25 to show is that since 2001 we've been

1 running a deficit on the Title V side of  
2 our program. For a long time we were  
3 funding minor sources out of our Title V  
4 program and that has switched dramatically  
5 over the last couple of years and we're  
6 running about a million dollars a year  
7 imbalance Title V versus non Title V. And  
8 we've got the stuff to lay that out for you  
9 all. But it's a way that government  
10 accounting is done, it's complicated. It's  
11 not like your checkbook. We're on  
12 different fiscal years and we get money out  
13 of different Titles. That's the reason we  
14 asked David and Cheryl to come in case you  
15 all have any questions about that part of  
16 it, they'll be able to answer that. But  
17 it's not as straight forward as I would  
18 like it to be. But it's the system we've  
19 got and we'll have to live with it. But  
20 the fact that we're not asking for anything  
21 other than what we were able to document  
22 made me a lot more comfortable about  
23 rolling this out a little earlier than I  
24 would have liked, but we just didn't have  
25 time to massage it around any. It is what

1 it is.

2           So what we're hoping for is some  
3 comments today on what you all would like  
4 to see. Most of you sitting out there are  
5 fee payers that are going to have to foot  
6 this bill, among others; and also Council  
7 feedback on what you all would like to see,  
8 and if we did have to resend it, we'll come  
9 back in October and do that.

10           MR. PURKAPLE: Beverly, on the  
11 Title V fee comparisons, are the tonnage  
12 caps in each state the same? Do you know?

13           MR. TERRILL: You mean 4,000  
14 tons?

15           MS. BOTCHLET-SMITH: Just a  
16 minute.

17           MR. TERRILL: Some states, is it  
18 Colorado, I think, is a 6,000 ton cap and -  
19 -

20           MS. BOTCHLET-SMITH: I've got it  
21 right here. Actually, Minnesota does not  
22 have a cap.

23           MR. TERRILL: Well, some fee on  
24 the allowables instead of the actuals,  
25 that's another difference.

1                   MS. BOTCHLET-SMITH: Missouri has  
2 4,000 tons per year per pollutant but a  
3 12,000 tons per year total pollutants. New  
4 Mexico, 6,000 tons per year. These others  
5 are 4,000.

6                   You know, we can make this  
7 information available to the Council, we  
8 could probably put it on the web along with  
9 our presentation. This is just some -- you  
10 just can't put very many footnotes on a  
11 chart. So this is kind of the companion  
12 notes that go along with that. It will  
13 explain some of that.

14                  MR. TERRILL: We'll make a place  
15 on our website for a fee case or something  
16 like that and we'll post this, we'll post  
17 all the footnotes and stuff, anything that  
18 we think might be of value to you all as  
19 you evaluate this, we'll make that  
20 available on our website so you can look at  
21 it at your leisure.

22                  MR. PURKAPLE: A follow up to  
23 that. In Oklahoma, in our fee structure,  
24 have we always had a 4,000 ton per year  
25 cap?

1                   MS. BOTCHLET-SMITH: I believe  
2 that that was established when we first put  
3 our rules forward. I don't think we've  
4 ever deviated from that.

5                   MR. PURKAPLE: Have you all  
6 considered increasing the tonnage cap?

7                   MS. BOTCHLET-SMITH: We've kicked  
8 that around a little bit over the last  
9 couple of weeks, but this -- we brought  
10 this today instead.

11                  MR. PURKAPLE: But that's not  
12 part of this proposal?

13                  MS. BOTCHLET-SMITH: That's not  
14 part of this proposal.

15                  MR. PAQUE: That would require an  
16 act in the legislature.

17                  MS. BOTCHLET-SMITH: It would  
18 require us to go to the legislature and  
19 change the Oklahoma Clean Air Act. That's  
20 why this is our preferred method.

21                  MR. PURKAPLE: This is a follow  
22 up comment. I assume that since this is  
23 unfunded mandates that you all are working  
24 the legislative side of the process to try  
25 to clarify and fix that problem.

1                   MR. TERRILL: Yes. Steve has  
2 worked it about as hard as you can work it  
3 from his aspect. That's the reason we  
4 really didn't know until the last two or  
5 three days exactly what it was going to be.  
6 But I think Steve would tell you this if he  
7 was here, you all sitting in the audience  
8 have a lot more stroke with the legislature  
9 than we do because he's one of however many  
10 State Agencies there are over there,  
11 lobbying for their slice of the pie and so  
12 -- and to be frank about it, the sense that  
13 we're getting is that the legislature wants  
14 us to do one more and more of this with  
15 fees, same way with EPA. EPA needs to have  
16 a message sent to them, they can't continue  
17 to cut the State grants and ship this off  
18 on fee payers. If they're going to do  
19 that, then they need to go through public  
20 comments saying we're going to shift  
21 everything to the states and fee payers and  
22 pay for it and we're getting out of the  
23 business. And that's where your trade  
24 associations, your lobbies, talk to our  
25 Congressmen and Congresswomen and Senators

1 and tell them you want EPA to fund the  
2 states. I mean if EPA would fund us, the  
3 obligation they put on us, I wouldn't have  
4 to ask for fee increases. We estimate that  
5 what we're underfunded from EPA that we  
6 make up through you all paying for it and  
7 us figuring out how to get it done through  
8 our in-kind work and what we get from the  
9 legislature, we wouldn't need that if EPA  
10 would fund that.

11 So that's where -- it starts with  
12 EPA and they're not doing their fair share  
13 and it gets pushed all the way down. At  
14 the end of the day, you guys are going to  
15 have to work with us and tell the  
16 legislature that we can't continue to do  
17 that.

18 MS. MYERS: How many permits were  
19 filed -- how many permit applications are  
20 filed on an annual basis?

21 MR. LASSETER: 800.

22 MS. MYERS: Huh?

23 MR. LASSETER: 800.

24 MS. MYERS: Have you done any  
25 calculations on the potential increase of

1 revenue by raising those costs and raising  
2 them not to an unreasonable level, but to a  
3 level where you don't hit with frivolous or  
4 time consuming applications? I mean if  
5 it's going to cost people more to file then  
6 they are less likely to give you a half  
7 completed application.

8 MR. TERRILL: We've looked at all  
9 of that and really -- and it's kind of like  
10 when I was talking about mercury, when we  
11 looked at the rule, I'm always thinking  
12 about what's it going to do over at the  
13 legislature because at the end of the day -  
14 - once it gets over there we really don't  
15 have a whole lot of input as to whether  
16 it's up or down and then there's a lot of  
17 factors that come into play over there that  
18 don't show up at these Council meetings,  
19 but that they listen to.

20 My concern is that you would have  
21 Chamber of Commerces, municipal league,  
22 folks that want industry coming into their  
23 town to lobby against raising these fee  
24 increases, especially for new permits  
25 coming in because that might discourage

1 economic development. And they probably do  
2 -- I don't know how big of a point they've  
3 got, but it is a factor I guess that the  
4 facility would contemplate, although I  
5 think the other incentives far outweigh  
6 that, but we just lose the ability to have  
7 a dialogue, once it goes over there and we  
8 just always come down on the side of we'll  
9 charge a minimum amount, that kind of  
10 recoups our cost, but we get most of our  
11 revenue from Title V. I'm not opposed to  
12 doing that but for this year we're going to  
13 have to have some -- if we're going to do  
14 that, we're going to have to have some kind  
15 of compromise of funds we can count on in  
16 the event that we lose over at the  
17 legislature.

18 In fact, we want to come back with a  
19 proposal to you all in October with a  
20 contingent fee based on what happens over  
21 at the legislature, that's fine as long as  
22 there's an understanding that we're going  
23 to have to bill something higher in July of  
24 next year to apply for next year's budget.

25 Now a problem here that I don't know

1 how to address and I'm not sure what the --  
2 I know what the consequences are supposed  
3 to be, but so far they haven't been, and  
4 that is this Title V/non Title V balance.  
5 Right now we're running about a million  
6 dollars a year. We probably, over the last  
7 five years, are about three and a half  
8 million dollars in the hole. And  
9 supposedly, if EPA were doing what the  
10 Clean Air Act says it is, there would be  
11 some consequence for us having a program  
12 for Title V not supporting itself. I don't  
13 know. I don't have any idea what that is.  
14 They have not said anything to us about it.  
15 And personally, I don't care. I'm not an  
16 accountant and I don't know what the long-  
17 term implications of that are. But what's  
18 happened is we're just doing more and more  
19 work on Title V sources than we are minor  
20 sources. The permit exempt has caused that  
21 to some degree. And the fact that we've  
22 just got more work out there with our major  
23 sources than we do our minor sources.  
24 I think that the minor source thing  
25 will take care of itself. That's the

1 reason we're only asking for a smaller  
2 amount and then the CPI, that will average  
3 out eventually and it will be -- it's  
4 probably about a wash, since it's for Title  
5 V because for a long time the minor sources  
6 were being carried by the major sources.  
7 And so I don't know what the consequences  
8 of that are, if any. That's the only thing  
9 that makes me reluctant to say that we can  
10 cure a long-term fix by looking to other  
11 sources because I don't know if there are  
12 any implications, it may turn out that  
13 there's nothing. But we would want to look  
14 at that and try to make sure that we are  
15 not creating a bigger problem for ourselves  
16 down the road, relative to our EPG and our  
17 level of effort with all kinds of other  
18 stuff that can put our federal grant in  
19 jeopardy, if we screw it up. And it's a  
20 lot more complicated than what you think  
21 because we lumped all that stuff in to one  
22 grant.

23 MR. BRANECKY: So what you're  
24 asking -- you're asking us to continue this  
25 rule until October?

1                   MR. TERRILL: We just want some  
2 direction on what to bring back.

3                   MS. MYERS: Continue it to  
4 January.

5                   MR. BRANECKY: What's that?

6                   MS. MYERS: Continue it to  
7 January.

8                   MR. BRANECKY: Continue it to  
9 January?

10                  MS. BOTCHLET-SMITH: I think  
11 we're asking for it to be continued to  
12 October.

13                  UNIDENTIFIED MALE: Table it.

14                  MS. BOTCHLET-SMITH: Of this  
15 year.

16                  MR. HAUGHT: I've got two  
17 questions for you to answer. One is I  
18 wonder -- I don't know what's on the chart  
19 that you've got to hand out, but are there  
20 any other measures or metrics that -- we  
21 can see where we're at, dollar per ton for  
22 fees, but it doesn't address the overall  
23 cost. How do we know how efficient we are  
24 for implementing these things. When you  
25 take all the sources of revenue -- I mean

1 Oklahoma's is all fee based and some of the  
2 others have fees for other things. When  
3 you look at those sources of revenue, where  
4 do we stand with our peers on what it costs  
5 totally on the agency's efficiency, per  
6 Title V facility?

7 MS. BOTCHLET-SMITH: I don't  
8 think that our survey addressed that in the  
9 way you're wanting it answered.

10 MR. HAUGHT: Because that's  
11 really -- I'd like to know if nobody gets  
12 their money in exactly the same mix, which  
13 they don't, then how do we know where we  
14 stand compared to others, efficiency-wise?

15 MS. BOTCHLET-SMITH: I don't know  
16 how to answer that.

17 MR. TERRILL: I don't know and I  
18 don't know how you would do that because  
19 everybody does them a little bit different.  
20 That's a lot of the reasons why we've been  
21 resistant about going to an hourly fee for  
22 writing permits for instance because within  
23 our permit section you have some folks that  
24 you want them writing their permits because  
25 you know it will get out the door as quick

1 as possible and then we've got new folks or  
2 folks that don't work quite as fast, if  
3 you're charging the same amount per hour --  
4 it goes back to efficiency. And I don't  
5 know how you could measure that other than  
6 whether or not you're satisfied with the  
7 customer service you get when you're  
8 dealing with us, whether or not your  
9 permits are getting turned around in a fast  
10 enough order.

11           To be honest with you, that's what  
12 drives in a lot of other states where we've  
13 seen a lot of changes in the way they do  
14 business, is the fact they're not getting  
15 permits out the door. They have six to  
16 nine months lag time for every customer  
17 that comes in the door and that's a best  
18 case scenario. So I would be up for or  
19 willing to look at anything that's been  
20 suggested and we'll take a look at the  
21 literature and see if the other states have  
22 done that, but generally, it's based on a  
23 knee-jerk reaction of something that's not  
24 getting done. You bring up a good point.

25           MR. HAUGHT: And from your

1 standpoint, on an hourly basis, there's not  
2 a lot of incentive. Some of them being  
3 paid by the hour with no limits. The paper  
4 performance up there, if you have a fixed  
5 fee that's coming in for a permit that's  
6 turned out and those permit writers who  
7 turn out more and that will bring in more  
8 revenue to the Agency. I mean if you have  
9 a fixed fee and then a paper performance  
10 then that's going to encourage someone to -  
11 - if they can see some benefit to working  
12 harder and doing that, then that the thing  
13 to do.

14           The other question I've got and  
15 we'll see how this goes. It seems like  
16 when it comes to providing information, we  
17 don't have a real good accounting system  
18 that knows what information that we're  
19 requesting but yet it seems to be good  
20 enough to know that we've got shortfalls  
21 and that these other things are not going  
22 to work. So I'm not real sure on -- are we  
23 sure that the Title V numbers that are up  
24 here really reflect a need for Title V if  
25 we have -- if we divert an accounting

1 system; is the sufficient?

2 MS. BOTCHLET-SMITH: We have a  
3 pretty sophisticated Time and Effort  
4 System. We go through each day and submit  
5 each month, how we work and if we're  
6 working on Title V activities, it's coded  
7 as such. And while we don't have an  
8 automated system that spits out a report,  
9 we have Cheryl, who works in our finance  
10 department, who hand-pulls those reports  
11 when we need them and we're able to  
12 validate our time back to how we worked and  
13 whether it was on a grant, whether it was a  
14 non Title V activity, or a Title V activity  
15 and that is done -- actually, we're  
16 required to go back and look at those  
17 validations on grants and we have to report  
18 those on our grants to EPA at the end of  
19 each grant year.

20 MR. TERRILL: But let me also say  
21 that the statement I made probably was a  
22 little bit too flippant because it's not  
23 that we don't have the data to support what  
24 we've got. It's not a checkbook. You're  
25 looking at the pluses and minuses-way to

1 look at it. We've got -- in fact, I've got  
2 reports that they generated before we came  
3 up here that shows where we are with our  
4 cash balance and all that stuff, but it's  
5 because -- it's just not easily understood  
6 but we can't sit down with all these at the  
7 same time, but we will sit down with the  
8 finance committee and bring them up to  
9 speed where we are, or an individual, we  
10 would be glad to sit down with each one of  
11 you all and have you go through this, we  
12 just can't have all of you doing it at the  
13 same time.

14 I'm comfortable that we do have a  
15 source that we know where we are with it,  
16 it's just not in a format you can easily  
17 show up here, but we'll be glad to go  
18 through and do that if you want to try at  
19 the Council meeting.

20 MS. BOTCHLET-SMITH: I think we  
21 want to make sure that we didn't mislead  
22 you in anyway. It's not that we don't have  
23 good accounting data. We have the data.  
24 We have the records. What we've been  
25 lacking is a financial system through

1 People Soft that we can say, I need to see  
2 this report and you request it and it spits  
3 it out the other end. We don't have --  
4 People Soft is not structured and I'm  
5 probably answering what David ought to be  
6 saying, that program is not built to where  
7 it always spits out in a nice little report  
8 what we would like as quickly as we would  
9 like it. But the data is there, the books  
10 are good, it's just very time consuming for  
11 us to pull reports because we do it  
12 manually. I say we, Cheryl does it  
13 manually. So any kind of data that you  
14 believe that we haven't presented to  
15 support our case -- I mean we could pull  
16 those reports and that is what Eddie is  
17 referring to that we present to the Finance  
18 Committee.

19 MR. TERRILL: I don't know. It  
20 might not be a bad idea to have one of the  
21 reports. It will be kind of difficult to  
22 see up here, but we can come back in  
23 October and show you all, what the Finance  
24 Committee says, so you can see what we're  
25 talking about and have this explanation of

1 what they see when we sit down with them.  
2 That's fair. That's something that if all  
3 of you are interested, we could do it for  
4 all of you or however you want to do it, to  
5 be comfortable with what we say we need, we  
6 need. So we'd be glad to do that if that  
7 would be helpful.

8 MR. HAUGHT: Okay. Whatever  
9 action we take we all need to be  
10 comfortable with, based on true numbers,  
11 when we're asked to take an action. But  
12 then there is still some question about our  
13 accounting. It's in a little bit of  
14 dismay. I want to make sure that you're  
15 comfortable with where we're at, the  
16 representation that you're making to us so  
17 that we can act appropriately.

18 MR. TERRILL: Actually, it's the  
19 other way around. You all need to be  
20 comfortable because you're the one that  
21 will represent your fee payer. I mean,  
22 because you're representing a segment and  
23 David is representing a segment. You're  
24 the ones who need to be comfortable with  
25 where we are. But then again, I see it

1 everyday and it's a frustrating system, but  
2 it's because I'm not an accountant. I'm  
3 used to a checkbook balance. I know what  
4 I've got on both sides and that's not what  
5 we've got here. We can step through that  
6 in October. It will just take a little  
7 while and you need to understand it may not  
8 be -- it's a little disconcerting when you  
9 look at it and see all these negative  
10 numbers. You've got to be willing to sit  
11 through the explanation, too, because,  
12 David and Sharon can tell you, it's like  
13 having a tooth pulled.

14 MS. MYERS: (Inaudible comment).

15 MR. BRANECKY: Okay. Do we have  
16 any comments from the public on this at  
17 this point?

18 MS. BEVERS: I have a question.

19 MR. BRANECKY: Question?

20 MS. BEVERS: I just have two real  
21 easy questions. Julia Bevers. Just to  
22 clarify, these numbers right up here are -  
23 - so if you apply those changes to the  
24 current fee, what's the total change?

25 MS. BOTCHLET-SMITH: What would

1 the new fee be?

2 MS. BEVERS: What would the new -  
3 - what would be different just based on  
4 those amounts?

5 MS. BOTCHLET-SMITH: The minor  
6 source fee would be 25.12, which is the  
7 current major fee today.

8 MS. BEVERS: So I didn't ask the  
9 question right.

10 MS. BOTCHLET-SMITH: Is that what  
11 you're asking?

12 MS. BEVERS: No.

13 MS. BOTCHLET-SMITH: Okay. Ask  
14 again.

15 MS. BEVERS: I'm asking if you  
16 collect this much, what's the total amount  
17 of money you're going to collect based on  
18 minor and Title V source emission fees?  
19 The annual total.

20 MS. BOTCHLET-SMITH: All right.  
21 I didn't put that in the presentation but I  
22 think it's right around 1.5.

23 MR. TERRILL: Do you remember  
24 seeing that two million up there? What we  
25 did was we backed out \$400,000 that we get

1 every year that comes from the legislature  
2 through that underground storage tank  
3 program. And then we backed out, making an  
4 assumption to get this 284, we backed out  
5 the total tons we billed for the minor  
6 sources and then we divided that, what was  
7 left, into the amount we billed in 2000 and  
8 that's what we came up with. So it's  
9 roughly 1.6 million.

10 MS. BOTCHLET-SMITH: Yeah. I  
11 wanted to say 1.5 but --

12 MR. TERRILL: Yeah, 1.5. It's  
13 roughly 1.5 million.

14 MS. BOTCHLET-SMITH: For Title V.  
15 When we worked that calculation to try to  
16 determine what the Title V increase should  
17 be, we had already arrived at what the  
18 minor source increase needed to be. So  
19 when we calculated what we would collect  
20 from that, that amount was also pulled from  
21 our total two million dollar shortfall. So  
22 we removed -- or we subtracted the amount  
23 that would be raised on minor sources at  
24 the \$2.84 increase, which is about  
25 \$162,000, I think and the \$400,000. So

1 that's -- we're right in the neighborhood  
2 of 1.5 million.

3 MS. BEVERS: Is what you will  
4 collect if you collected another 6.84 per  
5 ton?

6 MS. BOTCHLET-SMITH: That is  
7 correct.

8 MS. BEVERS: Okay. And the only  
9 other question is how many FTEs are there  
10 in the Division?

11 MS. BOTCHLET-SMITH: About 115.  
12 I could tell you exactly when I --

13 MS. BEVERS: And the reason I  
14 ask, I thought it was around 100-something,  
15 between 100 and 200 and I thought that  
16 showed that the insurance went up \$500,000.  
17 That's \$2,500 per person.

18 MS. BOTCHLET-SMITH: It's --  
19 that's right. It's unbelievable, Julia. It  
20 has increased -- that's a 36 percent  
21 increase.

22 MS. MYERS: Why is that?

23 MS. BEVERS: That means the total  
24 is -- if that's 36 percent --

25 MS. MYERS: I know insurance has

1 gone up, but why has it gone up that much?

2 MS. BEVERS: That's \$7,500.

3 MS. BOTCHLET-SMITH: David, do  
4 you want to address that?

5 MR. BRANECKY: I can't tell you  
6 why. That's just what our cost increases  
7 have been. This is David Dyke.

8 Let me do this off the top of my  
9 head. We have been budgeting about \$9,000  
10 in benefits, \$8,000 to \$9,000 in benefits  
11 last year, requesting \$13,000 an employee  
12 for benefits.

13 Retirement has gone up every year.  
14 As Beverly told you, the insurance cost,  
15 really went up. I think we've been behind  
16 -- the state has been behind the curve and  
17 we're catching up now.

18 MS. MYERS: Do state employees  
19 pay any portion of the cost of their health  
20 insurance or is that 100 percent  
21 subsidized?

22 MS. BOTCHLET-SMITH: We receive a  
23 benefit allowance that if we exceed that  
24 then we have to also pay.

25 MR. TERRILL: We've got kind of a

1 cafeteria plan that's sort of -- it's not -  
2 - we're only allowed to accept what the  
3 states provides. So they've got a limited  
4 cafeteria that you can pick and choose your  
5 medical provider, your dental provider, you  
6 can have an eye-glass protection and all  
7 the other stuff. But you really pick what  
8 you get and they negotiate that, supposedly  
9 using the strength of the number of  
10 employees we've got.

11 MS. BOTCHLET-SMITH: We don't  
12 really have any influence on their  
13 decisions or what it's going to cost us.  
14 They don't ask us.

15 MR. TERRILL: And I'll just tell  
16 you. There's another problem that we fight  
17 and there's no way to get around this, and  
18 it's illegal if we try to. When we look at  
19 the folks we have, the candidate pool we  
20 have, frankly we're not able to attract  
21 enough or to retain a large number of  
22 folks. A lot of the folks we hire are  
23 folks that retired from other jobs or  
24 they're older and they are going to have  
25 more medical costs and that gets translated

1 to our insurance cost. And you can't  
2 discriminate, nor do I want to. If we have  
3 a good person that's -- that we think is  
4 the best that's 55 years old, we're going  
5 to hire them just as quickly as we would  
6 somebody that's 25. That gets translated  
7 to -- that's a double-edged sword, no doubt  
8 about it. And I'm sure that contributes to  
9 our rise in health costs, but we're not the  
10 only state agency that does that.

11 MR. BRANECKY: Bud, did you have  
12 a question or comment?

13 MR. GROUND: Bud Ground, PSO, and  
14 I have a couple of questions. And I know  
15 this is the first time we've seen it, so  
16 things look a little strange, until our  
17 review, I know it looks strange. But it  
18 looks like there is, just from the  
19 emissions chart, an increase in non Title V  
20 emissions and a decrease in Title V  
21 increases. So it's pretty much flat. So  
22 it just seems that it didn't really  
23 correlate to the amount of work that you  
24 might consider for the different sources  
25 based on total overall emissions, even

1 given the fact that last year and the year  
2 before, you had a permit exempt -- you  
3 exempted a lot of the minor sources out.  
4 Something just seems to me like it's a  
5 little strange. But I guess my question  
6 is, have you looked into -- in your  
7 evaluation, have you looked at the --  
8 what's going to happen in the next five  
9 years when you're going to see a 50 percent  
10 reduction increase overall in most Title V  
11 sources or a lot of the large, especially  
12 the generating sources? You're talking  
13 about potential -- just off the top of my  
14 head I can't think of how much that might  
15 be or how much it will impact, based on the  
16 caps, but it should have an impact.

17 MR. TERRILL: I don't think we're  
18 going to see a whole (in) cap. I don't  
19 know that we're going to see much of a  
20 decrease in that. But to be honest with  
21 you, we're hoping that the continued growth  
22 in the economy, new sources -- again, you  
23 guys have hit on that double-edge sword.  
24 You guys get pressed to cut your emissions,  
25 cut your emissions, then we raise your fees

1 higher and higher because there's less  
2 emissions making it work. That's something  
3 that's going to have to be addressed  
4 overall but there's going to have to be  
5 some kind of give with what we have to do.  
6 In other words, just because you cut your  
7 emissions, that doesn't mean that what  
8 we've got to do gets cut, it's what you're  
9 going to have to do, to do that. But that  
10 is something, you're right, we've got to  
11 look at that.

12 MR. GROUND: Well, that's exactly  
13 right and that's what the point I wanted to  
14 make is I think maybe in the next two years  
15 is not the time to do it. But I think  
16 there needs to be an overall fee structure,  
17 fee restructure.

18 MR. TERRILL: Well, actually,  
19 there needs to be a national look at how we  
20 do air pollution control in the country.  
21 And that goes to the point I wanted to make  
22 about one of the comments that was made to  
23 us about reducing the number of monitors we  
24 have out there, PM in the ozone monitoring.  
25 There's going to be a big push and a big

1 temptation to do that, especially in the  
2 rural areas if they drop the ozone  
3 standards. And that's the reason I'm  
4 getting a little bit into my director's  
5 report, we've been here a long enough time  
6 that I'm not going to do one, but for those  
7 of you who are following this, you know  
8 that EPA has proposed that they drop the  
9 ozone standard somewhere between -- well,  
10 it could go down to .06, but they could  
11 leave it where it is now. And our comments  
12 are going to be, because I don't think  
13 we've got the expertise nor should we try  
14 to evaluate whether or not EPA science is  
15 good, bad or indifferent to where they set  
16 the standards. Because let's say, for  
17 instance, they propose .075 or even if they  
18 just say we're not going to the routing  
19 convention anymore and go to .080, either  
20 one of those we've got issues in both Tulsa  
21 and Oklahoma City with .080 and we've  
22 definitely got issues across the state at  
23 .075. Our comments to EPA are going to be  
24 the -- and we have not set down to look at  
25 this yet because it's going to require a

1 lot of work and we want to make sure that  
2 we know what the standards are going to  
3 be, but it's going to be something in the  
4 essence of the system hasn't worked. So  
5 we've got areas of the country; Dallas,  
6 Houston, California, large sections of  
7 California, the east, they can't make the  
8 existing standard, they're sure not going  
9 to be able to make the lower standard. But  
10 if there is enough data that EPA is  
11 comfortable in saying that there is a  
12 significant part of our population that's  
13 effected at the lower rate then we've got  
14 to look how they're doing this nationwide.  
15 We've got to come to the conclusion, I  
16 think, that having attainment and  
17 nonattainment areas probably isn't going to  
18 work anymore. We need to go to more of a  
19 health advisory type of system where we  
20 have monitors out, we know what's going on,  
21 we provide real-time data to our folks in  
22 the rural areas as well as in the cities.  
23 They may have to do something different  
24 with their activities because if -- in  
25 Texas, for instance, if, I believe it's

1 Houston, if they eliminate all of their  
2 point sources, they still can't make the  
3 existing standard. So how in the world are  
4 they going to get a lower one or have any  
5 kind of economic growth. So that  
6 discussion with the citizens and with  
7 politicians is something they're going to  
8 have to do because I just don't think they  
9 can address that and we need to get away  
10 from it.

11 EPA, like I said the way to address  
12 what I'm talking about is EPA's budget, we  
13 believe they could find enough in doing  
14 stuff that doesn't mean anything in the  
15 overall scheme of things to anybody. That  
16 they could sit down and say, we'll do this  
17 and the region will do this, and the states  
18 will do this, carve that federal tie up and  
19 we wouldn't have near the burden on you all  
20 that we're having. But if that's the way  
21 they want -- or they want the fee payer, or  
22 you all, to have a solution to pay for it.  
23 I mean I don't know, but it has to start at  
24 the federal level. We're not going to be  
25 able to deal with this at the state level.

1 I just don't think we are without cutting  
2 either -- what we provide for you all or  
3 raising your fees down the road. I just  
4 don't see a way to do that.

5           But now is the time to start talking  
6 to our legislatures and to the trade  
7 associations and we're going to be doing  
8 that as part of our national association,  
9 the EPA came to a total of one occasion.  
10 You all can come to us and explain to us  
11 why you need to hire a contractor to do  
12 what you've got 800,000 people hired to do.  
13 Hell, they hire contractors for everything.  
14 They don't do anything themselves. Well,  
15 let those contractors run it, give that  
16 money to us.

17           But you're exactly right. It needs  
18 to be the fee payers and the feds and the  
19 states sitting down together to figure how  
20 we move forward on this because at the end  
21 of the day all our citizens are going to  
22 pay for this even if the taxes are reduced  
23 the utility bills or public health and we  
24 need to have that debate quickly because  
25 it's a tough issue and nobody wants to do

1 it. If they drop that standard we're oing  
2 to have to do that because we're going to  
3 be very resistant in doing anything until  
4 Texas does something with their transport  
5 issue because that's -- bottom line -- and  
6 the same with Kansas. Kansas will want us  
7 to do something with our transport issues.  
8 So --

9 MR. BRANECKY: Speaking of moving  
10 forward.

11 MS. BOTCHLET-SMITH: Do you all  
12 have any other questions for either me or  
13 Eddie or those from our finance group?

14 MR. PURKAPLE: Eddie, what I  
15 heard you say is that in October if we  
16 wanted you to that you would bring and  
17 share with us the financial information  
18 that you all see if we would agree to be  
19 patient and let you explain what we're  
20 looking at to kind of help us understand  
21 the confusion.

22 MR. TERRILL: Sure.

23 MR. PURKAPLE: Because I know  
24 this is the first time I've seen any of the  
25 financial stuff and I kind of think it

1 might be helpful for the Council if we just  
2 kind of see what we all have to deal with.

3 MR. BRANECKY: But we'd still  
4 plan on having the Finance Committee  
5 meeting?

6 MR. TERRILL: Yeah. What I'd  
7 like to do is have a Finance Committee  
8 meeting and so that they're up to speed so  
9 they can chime in or something that they  
10 didn't understand it or whatever. So yeah,  
11 what we would like to do is have a Finance  
12 Committee meeting and then come back and do  
13 an extended finance report if it's only  
14 just David or Sharon, I think if they just  
15 kind of a brief recap we'd kind of like to  
16 go through, like, what we've done with them  
17 and have them comment as well as our  
18 finance fellows.

19 MR. PURKAPLE: It seems  
20 reasonable to me.

21 MR. BRANECKY: Okay. So they've  
22 asked -- the staff has asked that we  
23 continue this until the October meeting.  
24 So in order to do that if you so choose, I  
25 need a motion.

1 MR. TREEMAN: So moved.

2 MR. PURKAPLE: Second.

3 MR. BRANECKY: With the  
4 understanding that we will have the Finance  
5 Committee meeting and you will bring  
6 additional information back to us in  
7 October. Okay a Motion and a second.  
8 Myrna.

9 MS. BRUCE: Jerry Purkaple.

10 MR. PURKAPLE: Yes.

11 MS. BRUCE: Sharon Myers.

12 MS. MYERS: Yes.

13 MS. BRUCE: Jim Haught.

14 MR. HAUGHT: Yes.

15 MS. BRUCE: Rick Treeman.

16 MR. TREEMAN: Yes.

17 MS. BRUCE: Gary Martin.

18 MR. MARTIN: Yes.

19 MS. BRUCE: Bob Lynch.

20 DR. LYNCH: Yes.

21 MS. BRUCE: Laura Worthen.

22 MS. WORTHEN: Yes.

23 MS. BRUCE: David Branecky.

24 MR. BRANECKY: Yes.

25 MS. BRUCE: Motion passed.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

(End of Items 4E)

