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February 6, 2012

Dr. Alfredo Armendariz, Regional Administrator
U.S. Environmental Protection Agency – Region VI (6 PD-L)
1445 Ross Avenue, Suite 1200
Dallas TX 75202-2733

Subject: 2011 Revisions to Oklahoma Air Quality Control Implementation Plan

Dear Dr. Armendariz:

In her letter dated March 30, 2011, Governor Mary Fallin appointed me as her designee for the purpose of submitting documents to the U.S. Environmental Protection Agency for approval and incorporation into the State Implementation Plan (SIP) for Oklahoma.

Therefore, the State of Oklahoma submits for your review and approval under Section 110 of the federal Clean Air Act and 40 CFR Part 51, revisions to the Oklahoma Air Quality Control Implementation Plan and the associated evidence as required by 40 CFR 51, Appendix V, 2.1.


This submittal is the annual SIP update for 2011 and includes amendments OAC 252:100, Air Pollutant Control, which became effective July 1, 2011. The modifications to Oklahoma's plan were accomplished by the adoption of permanent rules by the Department of Environmental Quality. This submittal covers amendments to Subchapters 1, 3, 7, and 8 in OAC 252:100 that became effective July 1, 2011. The amendments to Subchapters 1, 7, and 8 clarify that the State's air pollution control permitting programs incorporate the provisions of EPA's Greenhouse Gas (GHG) Tailoring Rule (75 FR 31514) which defers Prevention of Significant Deterioration(PSD) and Part 70 (Title V) permitting for small sources of GHG. Although this submission contains revisions to the State's Part 70 permitting program, it is intended to be a SIP submittal only. If the State's Title V implementation plan requires revision, it will be done separately at a later date. Some scrivener's errors in OAC 252:100-1-4 and an error in the definition of "major stationary source" in OAC 252:100-8-31 were corrected. Amendments to Subchapters 3 and 8 incorporate the PSD and NNSR (Nonattainment New Source Review) implementation rule (73 FR 28321 and 75 FR 64864) for the PM_{2.5} (fine particulate matter)

NAAQS (National Ambient Air Quality Standards) (62 FR 38652 and 71 FR 61144). Additionally, the Department proposes changing Appendix E to maintain consistency with the NAAQS. Specifically, the nitrogen dioxide (NO₂) and sulfur dioxide (SO₂) primary standards would be modified to reflect recent changes made by the EPA.

These rules were promulgated in compliance with the Oklahoma Administrative Procedures Act and published in the *Oklahoma Register*, the official state publication for rule making actions. We have included five copies of the submittal as required by 40 CFR 51.103(a).

If you have questions, please contact Eddie Terrill, Director, Air Quality Division, Department of Environmental Quality at (405) 702-4154.

Sincerely,


Gary Sherrer
Secretary of Environment

Enclosures

cc: Steve Thompson, Executive Director, Department of Environmental Quality
Eddie Terrill, Director, DEQ Air Quality Division
Guy Donaldson, Section Chief, Air Planning Section, EPA Region VI (6PD-L)
Jeff Robinson, Section Chief, Air Permits, EPA Region VI (6PD-R)



AIR QUALITY DIVISION

2011

State Implementation Plan

Oklahoma Administrative Code
252:100

Submitted to EPA
February 2012



STEVEN A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

MARY FALLIN
Governor

February 6, 2012

Dr. Alfredo Armendariz, Regional Administrator
U.S. Environmental Protection Agency – Region VI (6 PD-L)
1445 Ross Avenue, Suite 1200
Dallas TX 75202-2733

RE: 2011 Revisions to the Oklahoma State Implementation Plan (SIP)

Dear Dr. Armendariz:

We certify that the rule making procedures for all the rules listed below were in compliance with the requirements of the Oklahoma Administrative Procedures Act, 75 O.S. 250.1 through 323, and 40 CFR Sections 51.102(f), 51.102(d), and CFR Part 51, Appendix V, 2.1(g).

Each rule and its public hearing history are listed in the tables below:

Subchapter 252:100-1, General Provisions

NOTICE	PUBLIC HEARING	GOVERNING BOARD
December 15, 2010	January 19, 2011	Air Quality Advisory Council
December 15, 2010	February 25, 2011	Environmental Quality Board

Subchapter 252:100-3, Air Quality Standards and Increments

NOTICE	PUBLIC HEARING	GOVERNING BOARD
June 15, 2004	July 21, 2004	Air Quality Advisory Council
June 15, 2004	August 24, 2004	Environmental Quality Board
December 15, 2010	January 19, 2011	Air Quality Advisory Council
December 15, 2010	February 25, 2011	Environmental Quality Board

Subchapter 252:100-7, Permits for Minor Facilities

NOTICE	PUBLIC HEARING	GOVERNING BOARD
December 15, 2010	January 19, 2011	Air Quality Advisory Council
December 15, 2010	February 25, 2011	Environmental Quality Board

Subchapter 252:100-8, Permits for Part 70 Sources

NOTICE	PUBLIC HEARING	GOVERNING BOARD
December 15, 2010	January 19, 2011	Air Quality Advisory Council
December 15, 2010	February 25, 2011	Environmental Quality Board



Dr. Alfredo Arnedariz
EPA Regional Administrator
SIP Submittal
February 6, 2012

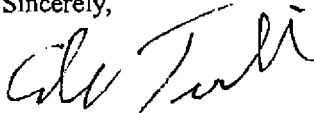
Appendix E, Primary Ambient Air Quality Standards

NOTICE	PUBLIC HEARING	GOVERNING BOARD
December 15, 2010	January 19, 2011	Air Quality Advisory Council
December 15, 2010	February 25, 2011	Environmental Quality Board

The notices of DEQ's intent to adopt new or amended rules were published in the *Oklahoma Register*. The *Oklahoma Register* is a semi-monthly publication prescribed by the Oklahoma Administrative Procedures Act in which all rule making actions and the associated documents must be published. (Now accessible @ www.sos.state.ok.us/oar .) Notices of rulemaking intent include the date, time and location of public hearings and information on how the public may submit written or oral comments on proposed rules. The public comment period for all Air Quality Council meetings begins on the date of publication of the notice and ends on the date of the public hearing. The Environmental Quality Board (EQB) accepts comments on the date of the EQB hearing.

If you have questions or require additional information, please contact Cheryl Bradley, Environmental Programs Manager, at (405) 702-4218.

Sincerely,



Eddie Terrill, Director
Air Quality Division

Legal Authority

27A O.S. §2-5-105 designates DEQ as the administrative agency for the Oklahoma Clean Air Act (CAA). DEQ's Air Quality Division (AQD) handles the statutory authorities and responsibilities concerning air quality under OAC 252:4-1-3(c). The AQD has the authority to carry out all duties, requirements, and responsibilities necessary and proper for the implementation of the Oklahoma CAA and fulfilling the requirements of the federal CAA under 27A O.S. §§1-3-101(B)(8), 2-3-101(E)(1), and 2-5-105. Upon recommendation of the Air Quality Advisory Council, the Environmental Quality Board has the authority under Oklahoma statutory law 27A O.S. §2-5-106 to adopt air quality regulations for DEQ. DEQ has the authority under Oklahoma law to:

- Enforce those regulations and orders of DEQ [27A OS §§2-5-105(4) and 2-5-110];
- Maintain and update an inventory of air emissions from stationary sources [27A O.S. §2-5-105(19)];
- Establish a permitting program [27A O.S. §2-5-105(2)]; and
- Carry out all other duties, requirements and responsibilities necessary and proper for the implementation of the Oklahoma CAA and the fulfillment of the requirements of the federal CAA [27A O.S. §2-5-105(22)].

Specifically, the Environmental Quality Board and DEQ have the existing authority to:

- Adopt emissions standards and regulations to implement the Oklahoma CAA and fulfill requirements of the federal CAA [27A O.S. §§2-2-104, 2-5-105, 2-5-106, 2-5-107, and 2-5-114];
- Enforce the relevant laws, regulations, standards, orders and compliance schedules authorized by the Oklahoma CAA [27A O.S. §§2-5-105(4) and 2-5-110], and seek injunctive relief when necessary [27A O.S. §§2-5-105(14) and 2-5-117(A)];
- Abate pollutant emissions on evidence that the source is presenting an immediate, imminent and substantial endangerment to human health [27A O.S. §2-5-105(15)];
- Prevent construction, modification, or operation of a source in violation of the requirement to have a permit, or in violation of any substantive provision or condition of any permit issued pursuant to the Oklahoma CAA [27A O.S. §2-5-117(A)(2)];
- Obtain information necessary to determine compliance [27A O.S. §§2-5-105(17), (18)];
- Require recordkeeping, make inspections, and conduct tests [27A O.S. §2-5-105(17)];
- Require the installation, maintenance and use of monitors and require emissions reports of owners or operators [27A O.S. §2-5-112(B)(5)]; and
- Make emissions data available to the public [51 O.S. §§24A.1 through 24A.27].

The appendix contains copies of these referenced statutes.

**APPENDIX
LEGAL AUTHORITY**

§27A-1-3-101. State environmental agencies - Jurisdictional areas of environmental responsibilities.

A. The provisions of this section specify the jurisdictional areas of responsibility for each state environmental agency and state agencies with limited environmental responsibility. The jurisdictional areas of environmental responsibility specified in this section shall be in addition to those otherwise provided by law and assigned to the specific state environmental agency; provided that any rule, interagency agreement or executive order enacted or entered into prior to the effective date of this section which conflicts with the assignment of jurisdictional environmental responsibilities specified by this section is hereby superseded. The provisions of this subsection shall not nullify any financial obligation arising from services rendered pursuant to any interagency agreement or executive order entered into prior to July 1, 1993, nor nullify any obligations or agreements with private persons or parties entered into with any state environmental agency before July 1, 1993.

B. Department of Environmental Quality. The Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility:

1. All point source discharges of pollutants and storm water to waters of the state which originate from municipal, industrial, commercial, mining, transportation and utilities, construction, trade, real estate and finance, services, public administration, manufacturing and other sources, facilities and activities, except as provided in subsections D and E of this section;

2. All nonpoint source discharges and pollution except as provided in subsections D, E and F of this section;

3. Technical lead agency for point source, nonpoint source and storm water pollution control programs funded under Section 106 of the federal Clean Water Act, for areas within the Department's jurisdiction as provided in this subsection;

4. Surface water and groundwater quality and protection and water quality certifications;

5. Waterworks and wastewater works operator certification;

6. Public and private water supplies;

7. Underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, except for:

a. Class II injection wells,

b. Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission,

c. those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act regulated by the Commission, and

d. any aspect of any CO₂ sequestration facility, including any associated CO₂ injection well, over which the Commission is given jurisdiction pursuant to the Oklahoma Carbon Capture and Geologic Sequestration Act;

8. Notwithstanding any other provision in this section or other environmental jurisdiction statute, sole and exclusive jurisdiction for air quality under the federal Clean Air Act and applicable state law, except for indoor air quality and asbestos as regulated for worker safety by the federal Occupational Safety and Health Act and by Chapter 11 of Title 40 of the Oklahoma Statutes;

9. Hazardous waste and solid waste, including industrial, commercial and municipal waste;

10. Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto, except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986;

11. Radioactive waste and all regulatory activities for the use of atomic energy and sources of radiation except for the use of sources of radiation by diagnostic x-ray facilities;

12. Water, waste, and wastewater treatment systems including, but not limited to, septic tanks or other public or private waste disposal systems;

13. Emergency response as specified by law;

14. Environmental laboratory services and laboratory certification;

15. Hazardous substances other than branding, package and labeling requirements;

16. Freshwater wellhead protection;

17. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department;

18. Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents;

19. Environmental regulation of any entity or activity, and the prevention, control and abatement of any pollution, not subject to the specific statutory authority of another state environmental agency;

20. Development and maintenance of a computerized information system relating to water quality pursuant to Section 1-4-107 of this title; and

21. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility.

C. Oklahoma Water Resources Board. The Oklahoma Water Resources Board shall have the following jurisdictional areas of environmental responsibility:

1. Water quantity including, but not limited to, water rights, surface water and underground water, planning, and interstate stream compacts;

2. Weather modification;

3. Dam safety;

4. Flood plain management;

5. State water/wastewater loans and grants revolving fund and other related financial aid programs;

6. Administration of the federal State Revolving Fund Program including, but not limited to, making application for and receiving capitalization grant awards, wastewater prioritization for funding, technical project reviews, environmental review process, and financial review and administration;

7. Water well drillers/pump installers licensing;

8. Technical lead agency for clean lakes eligible for funding under Section 314 of the federal Clean Water Act or other applicable sections of the federal Clean Water Act or other subsequent state and federal clean lakes programs; administration of a state program for assessing, monitoring, studying and restoring Oklahoma lakes with administration to include, but

not be limited to, receipt and expenditure of funds from federal, state and private sources for clean lakes and implementation of a volunteer monitoring program to assess and monitor state water resources, provided such funds from federal Clean Water Act sources are administered and disbursed by the Office of the Secretary of Environment;

9. Statewide water quality standards and their accompanying use support assessment protocols, anti-degradation policy and implementation, and policies generally affecting Oklahoma Water Quality Standards application and implementation including but not limited to mixing zones, low flows and variances or any modification or change thereof pursuant to Section 1085.30 of Title 82 of the Oklahoma Statutes;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Board;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility;

12. Development of classifications and identification of permitted uses of groundwater, in recognized water rights, and associated groundwater recharge areas;

13. Establishment and implementation of a statewide beneficial use monitoring program for waters of the state in coordination with the other state environmental agencies;

14. Coordination with other state environmental agencies and other public entities of water resource investigations conducted by the federal United States Geological Survey for water quality and quantity monitoring in the state; and

15. Development and submission of a report concerning the status of water quality monitoring in this state pursuant to Section 1-1-202 of this title.

D. Oklahoma Department of Agriculture, Food, and Forestry.

1. The Oklahoma Department of Agriculture, Food, and Forestry shall have the following jurisdictional areas of environmental responsibility except as provided in paragraph 2 of this subsection:

- a. point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,
- b. pesticide control,
- c. forestry and nurseries,
- d. fertilizer,
- e. facilities which store grain, feed, seed, fertilizer and agricultural chemicals,
- f. dairy waste and wastewater associated with milk production facilities,
- g. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department,
- h. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents,
- i. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility, and
- j. storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of the Department.

2. In addition to the jurisdictional areas of environmental responsibility specified in subsection B of this section, the Department of Environmental Quality shall have environmental jurisdiction over:

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
 - (2) slaughterhouses, but not including feedlots at these facilities, and
 - (3) aquaculture and fish hatcheries,
- including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities, and
- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

E. Corporation Commission.

1. The Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating:

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, of:
 - (1) Class II injection wells,
 - (2) Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Commission,
 - (3) those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act, and
 - (4) any aspect of any CO₂ sequestration facility, including any associated CO₂ injection well, over which the Commission is given jurisdiction pursuant to the Oklahoma Carbon Capture and Geologic Sequestration Act.

Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,

- g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are

- subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,
- h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:
 - (1) natural gas liquids extraction plant,
 - (2) refinery,
 - (3) reclaiming facility other than for those specified within subparagraph e of this subsection,
 - (4) mineral brine processing plant, and
 - (5) petrochemical manufacturing plant,
 - i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:
 - (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
 - (2) other oil and gas extraction facilities and activities,
 - j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities,
 - k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata,
 - l. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission,
 - m. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents, and
 - n. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

2. The exclusive jurisdiction, power and authority of the Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

3. When a deleterious substance from a Commission-regulated facility or activity enters a point source discharge of pollutants or storm water from a facility or activity regulated by the Department of Environmental Quality, the Department shall have sole jurisdiction over the point source discharge of the commingled pollutants and storm water from the two facilities or activities insofar as Department-regulated facilities and activities are concerned.

4. For purposes of the federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be subject to the direct jurisdiction of the federal Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the Commission for such discharge.

5. The Commission shall have jurisdiction over:

- a. underground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality,
- b. aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality, and
- c. the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund, the Oklahoma Petroleum Storage Tank Release Indemnity Program, and the Oklahoma Leaking Underground Storage Tank Trust Fund.

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities. The Department of Environmental Quality shall not have any jurisdiction with respect to pipeline transportation of carbon dioxide.

7. The Department of Environmental Quality shall have sole environmental jurisdiction for point and nonpoint source discharges of pollutants and storm water to waters of the state from:

- a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,
- b. manufacturing of equipment and products related to oil and gas,
- c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection, and
- d. other facilities, activities and sources not subject to the jurisdiction of the Commission or the Oklahoma Department of Agriculture, Food, and Forestry as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the federal Clean Air Act as amended.

F. Oklahoma Conservation Commission. The Oklahoma Conservation Commission shall have the following jurisdictional areas of environmental responsibility:

1. Soil conservation, erosion control and nonpoint source management except as otherwise provided by law;

2. Monitoring, evaluation and assessment of waters to determine the condition of streams and rivers being impacted by nonpoint source pollution. In carrying out this area of responsibility, the Oklahoma Conservation Commission shall serve as the technical lead agency for nonpoint source categories as defined in Section 319 of the federal Clean Water Act or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal storm water or as otherwise provided by state law;

3. Wetlands strategy;

4. Abandoned mine reclamation;

5. Cost-share program for land use activities;

6. Assessment and conservation plan development and implementation in watersheds of clean lakes, as specified by law;

7. Complaint data management;

8. Coordination of environmental and natural resources education;

9. Federal upstream flood control program;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility;

12. Utilization of Oklahoma Water Quality Standards and Implementation documents; and

13. Verification and certification of carbon sequestration pursuant to the Oklahoma Carbon Sequestration Enhancement Act. This responsibility shall not be superseded by the Oklahoma Carbon Capture and Geologic Sequestration Act.

G. Department of Mines. The Department of Mines shall have the following jurisdictional areas of environmental responsibility:

1. Mining regulation;

2. Mining reclamation of active mines;

3. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission; and

4. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of responsibility.

H. Department of Wildlife Conservation. The Department of Wildlife Conservation shall have the following jurisdictional areas of environmental responsibilities:

1. Investigating wildlife kills;

2. Wildlife protection and seeking wildlife damage claims; and

3. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

I. Department of Public Safety. The Department of Public Safety shall have the following jurisdictional areas of environmental responsibilities:

1. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; and

2. Inspection and audit activities of hazardous waste and materials carriers and handlers as authorized by the Hazardous Materials Transportation Act.

J. Department of Labor. The Department of Labor shall have the following jurisdictional areas of environmental responsibility:

1. Regulation of asbestos in the workplace pursuant to Chapter 11 of Title 40 of the Oklahoma Statutes;
2. Asbestos monitoring in public and private buildings; and
3. Indoor air quality as regulated under the authority of the Oklahoma Occupational Health and Safety Standards Act, except for those indoor air quality issues specifically authorized to be regulated by another agency.

Such programs shall be a function of the Department's occupational safety and health jurisdiction.

K. Oklahoma Department of Emergency Management. The Oklahoma Department of Emergency Management shall have the following jurisdictional areas of environmental responsibilities:

1. Coordination of all emergency resources and activities relating to threats to citizens' lives and property pursuant to the Oklahoma Emergency Resources Management Act of 1967;
2. Administer and enforce the planning requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 and develop such other emergency operations plans that will enable the state to prepare for, respond to, recover from and mitigate potential environmental emergencies and disasters pursuant to the Oklahoma Hazardous Materials Planning and Notification Act;
3. Administer and conduct periodic exercises of emergency operations plans provided for in this subsection pursuant to the Oklahoma Emergency Resources Management Act of 1967;
4. Administer and facilitate hazardous materials training for state and local emergency planners and first responders pursuant to the Oklahoma Emergency Resources Management Act of 1967; and
5. Maintain a computerized emergency information system allowing state and local access to information regarding hazardous materials' location, quantity and potential threat.

Added by Laws 1992, c. 398, § 6, eff. July 1, 1993. Amended by Laws 1993, c. 145, § 11, eff. July 1, 1993. Renumbered from § 6 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 6, eff. July 1, 1993; Laws 1994, c. 140, § 24, eff. Sept. 1, 1994; Laws 1997, c. 217, § 1, eff. July 1, 1997; Laws 1999, c. 413, § 4, eff. Nov. 1, 1999; Laws 2000, c. 364, § 1, emerg. eff. June 6, 2000; Laws 2002, c. 397, § 1, eff. Nov. 1, 2002; Laws 2004, c. 100, § 2, eff. July 1, 2004; Laws 2004, c. 430, § 11, emerg. eff. June 4, 2004; Laws 2009, c. 429, § 8, emerg. eff. June 1, 2009.

§27A-2-2-104. Board rules incorporating by reference federal provisions - No effect on rules from subsequent changes in federal provisions.

Insofar as permitted by law and upon recommendation from the appropriate Council, rules promulgated by the Environmental Quality Board may incorporate a federal statute or regulation by reference. Any Board rule which incorporates a federal provision by reference incorporates the language of the federal provision as it existed at the time of the incorporation by reference. Any subsequent modification, repeal or invalidation of the federal provision shall not be deemed to affect the incorporating Board rule.

Added by Laws 1994, c. 353, § 3, eff. July 1, 1994.

§27A-2-3-101. Creation - Powers and duties - Disclosure of interests - Employee classification - Programs - Departmental offices and divisions - Annual report - Environmental Quality Report - Environmental services contracts.

A. There is hereby created the Department of Environmental Quality.

B. Within its jurisdictional areas of environmental responsibility, the Department of Environmental Quality, through its duly designated employees or representatives, shall have the power and duty to:

1. Perform such duties as required by law; and

2. Be the official agency of the State of Oklahoma, as designated by law, to cooperate with federal agencies for point source pollution, solid waste, hazardous materials, pollution, Superfund, water quality, hazardous waste, radioactive waste, air quality, drinking water supplies, wastewater treatment and any other program authorized by law or executive order.

C. Any employee of the Department in a technical, supervisory or administrative position relating to the review, issuance or enforcement of permits pursuant to this Code who is an owner, stockholder, employee or officer of, or who receives compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department of Environmental Quality shall disclose such interest to the Executive Director. Such disclosure shall be submitted for Board review and shall be made a part of the Board minutes available to the public. This subsection shall not apply to financial interests occurring by reason of an employee's participation in the Oklahoma State Employees Deferred Compensation Plan or publicly traded mutual funds.

D. The Executive Director, Deputy Director, and all other positions and employees of the Department at the Division Director level or higher shall be in the unclassified service.

E. The following programs are hereby established within the Department of Environmental Quality:

1. An air quality program which shall be responsible for air quality;

2. Water programs which shall be responsible for water quality, including, but not limited to point source and nonpoint source pollution within the jurisdiction of the Department, public and private water supplies, public and private wastewater treatment, water protection and discharges to waters of the state;

3. Land protection programs which shall be responsible for hazardous waste, solid waste, radiation, and municipal, industrial, commercial and other waste within its jurisdictional areas of environmental responsibility pursuant to Section 1-3-101 of this title; and

4. Special projects and services programs which shall be responsible for duties related to planning, interagency coordination, technical assistance programs, laboratory services and laboratory certification, recycling, education and dissemination of information.

F. Within the Department there are hereby created:

1. The complaints program which shall be responsible for intake processing, investigation, mediation and conciliation of inquiries and complaints received by the Department and which shall provide for the expedient resolution of complaints within the jurisdiction of the Department; and

2. The customer assistance program which shall be responsible for advising and providing to licensees, permittees and those persons representing businesses or those persons associated with and representing local political subdivisions desiring a license or permit, the necessary forms and the information necessary to comply with the Oklahoma Environmental Quality Code. The customer assistance program shall coordinate with other programs of the Department to

assist businesses and municipalities in complying with state statutes and rules governing environmental areas.

The customer assistance program shall also be responsible for advising and providing assistance to persons desiring information concerning the Department's rules, laws, procedures, licenses or permits, and forms used to comply with the Oklahoma Environmental Quality Code.

G. The Department shall be responsible for holding administrative hearings as defined in Section 2-1-102 of this title and shall provide support services related to them, including, but not limited to, giving required notices, maintaining the docket, scheduling hearings, and maintaining legal records.

H. 1. The Department shall prepare and submit an annual report assessing the status of the Department's programs to the Board, the Governor, the President Pro Tempore of the State Senate, and the Speaker of the Oklahoma House of Representatives by January 1 of each year. The annual status report shall include: the number of environmental inspections made within the various regulatory areas under the Department's jurisdiction; the number of permit applications submitted within the various regulatory areas under the Department's jurisdiction; the number of permits issued within the various regulatory areas under the Department's jurisdiction; the number and type of complaints filed with the Department; the number of resolved and unresolved Department complaints; a list of any permits and complaints which failed to be either completed or resolved within the Department's established time frames and an explanation of why the Department was unable to meet said time frames; the number and kinds of services provided corporations, businesses, cities, towns, schools, citizen groups and individuals by the customer assistance programs; a summary of the Department's environmental education efforts; the number and type of administrative hearings held and their outcomes; a detailed description of any promulgated and pending emergency or permanent rules requested by the Department and the current status of pending rules within the rulemaking process; the number of notices of violations issued by the Department within the various regulatory areas under its jurisdiction; the amount of penalties collected by the Department within the various regulatory areas under its jurisdiction; and any other information which the Department believes is pertinent.

2. Beginning January 1, 1995, and on or before January 1 of every year thereafter, the Department shall prepare an Oklahoma Environmental Quality Report which outlines the Department's annual needs for providing environmental services within its jurisdictional areas. The report shall reflect any new federal mandates and any state statutory or constitutional changes recommended by the Department within its jurisdictional areas. The Oklahoma Environmental Quality Report shall be reviewed, amended, and approved by the Board. The Department shall transmit an approved copy of the Oklahoma Environmental Quality Report to the Governor, President Pro Tempore of the State Senate, and Speaker of the House of Representatives.

3. The Executive Director shall establish such divisions and such other programs and offices as the Executive Director may determine necessary to implement and administer programs and functions within the jurisdiction of the Department pursuant to the Oklahoma Environmental Quality Code.

I. 1. The Department may contract with other governmental entities to provide environmental services. Such contracts may include duties related to providing information to the public regarding state environmental services, resources, permitting requirements and procedures based upon the ability, education and training of state environmental agency employees.

2. The Department, in conjunction with the state environmental agencies, may develop a program for the purpose of training government employees to provide any needed environmental services; provided, that the investigation of complaints regarding, or inspections of, permitted sites or facilities shall not be performed by employees of other agencies, unless otherwise authorized by law.

Added by Laws 1992, c. 398, § 9, eff. Jan. 1, 1993. Amended by Laws 1993, c. 145, § 16, eff. July 1, 1993. Renumbered from § 9 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 5, eff. July 1, 1993; Laws 1995, c. 246, § 1, eff. Nov. 1, 1995; Laws 2002, c. 139, § 1, emerg. eff. April 29, 2002.

§27A-2-5-105. Administrative agency - Powers and duties.

The Department of Environmental Quality is hereby designated the administrative agency for the Oklahoma Clean Air Act for the state. The Department is empowered to:

1. Establish, in accordance with its provisions, those programs specified elsewhere in the Oklahoma Clean Air Act;
2. Establish, in accordance with the Oklahoma Clean Air Act, a permitting program for the state which will contain the flexible source operation provisions required by Section 502(b)(10) of the Federal Clean Air Act Amendments of 1990;
3. Prepare and develop a general plan for proper air quality management in the state in accordance with the Oklahoma Clean Air Act;
4. Enforce rules of the Board and orders of the Department and the Council;
5. Advise, consult and cooperate with other agencies of the state, towns, cities and counties, industries, other states and the federal government, and with affected groups in the prevention and control of new and existing air contamination sources within the state;
6. Encourage and conduct studies, seminars, workshops, investigations and research relating to air pollution and its causes, effects, prevention, control and abatement;
7. Collect and disseminate information relating to air pollution, its prevention and control;
8. Encourage voluntary cooperation by persons, towns, cities and counties, or other affected groups in restoring and preserving a reasonable degree of purity of air within the state;
9. Represent the State of Oklahoma in any and all matters pertaining to plans, procedures or negotiations for the interstate compacts in relation to the control of air pollution;
10. Provide such technical, scientific or other services, including laboratory and other facilities, as may be required for the purpose of carrying out the provisions of the Oklahoma Clean Air Act, from funds available for such purposes;
11. Employ and compensate, within funds available therefor, such consultants and technical assistants and such other employees on a full- or part-time basis as may be necessary to carry out the provisions of the Oklahoma Clean Air Act and prescribe their powers and duties;
12. Accept and administer grants or other funds or gifts for the purpose of carrying out any of the functions of the Oklahoma Clean Air Act;
13. Budget and receive duly appropriated monies and all other monies available for expenditures to carry out the provisions and purposes of the Oklahoma Clean Air Act;
14. Bring appropriate court action to enforce the Oklahoma Clean Air Act and final orders of the Department, and to obtain injunctive or other proper relief in the district court of the county where any alleged violation occurs or where such relief is determined necessary. The Department, in furtherance of its statutory powers, shall have the independent authority to file an

action pursuant to the Oklahoma Clean Air Act in district court. Such action shall be brought in the name of the Department of Environmental Quality;

15. Take such action as may be necessary to abate the alleged pollution upon receipt of evidence that a source of pollution or a combination of sources of pollution is presenting an immediate, imminent and substantial endangerment to the health of persons;

16. Periodically enter and inspect at reasonable times or during regular business hours, any source, facility or premises permitted or regulated by the Department, for the purpose of obtaining samples or determining compliance with the Oklahoma Clean Air Act or any rule promulgated thereunder or permit condition prescribed pursuant thereto, or to examine any records kept or required to be kept pursuant to the Oklahoma Clean Air Act. Such inspections shall be conducted with reasonable promptness and shall be confined to those areas, sources, facilities or premises reasonably expected to emit, control, or contribute to the emission of any air contaminant;

17. Require the submission or the production and examination, within a reasonable amount of time, of any information, record, document, test or monitoring results or emission data, including trade secrets necessary to determine compliance with the Oklahoma Clean Air Act or any rule promulgated thereunder, or any permit condition prescribed or order issued pursuant thereto. The Department shall hold and keep as confidential any information declared by the provider to be a trade secret and may only release such information upon authorization by the person providing such information, or as directed by court order. Any documents submitted pursuant to the Oklahoma Clean Air Act and declared to be trade secrets, to be so considered, must be plainly labeled by the provider, and be in a form whereby the confidential information may be easily removed intact without disturbing the continuity of any remaining documents. The remaining document, or documents, as submitted, shall contain a notation indicating, at the place where the particular information was originally located, that confidential information has been removed. Nothing in this section shall preclude an in-camera examination of confidential information by an Administrative Law Judge during the course of a contested hearing;

18. Maintain and update at least annually an inventory of air emissions from stationary sources;

19. Accept any authority delegated from the federal government necessary to carry out any portion of the Oklahoma Clean Air Act; and

20. Carry out all other duties, requirements and responsibilities necessary and proper for the implementation of the Oklahoma Clean Air Act and fulfilling the requirements of the Federal Clean Air Act.

Added by Laws 1992, c. 215, § 4, emerg. eff. May 15, 1992. Amended by Laws 1993, c. 145, § 42, eff. July 1, 1993. Renumbered from § 1-1805.1 of Title 63 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1998, c. 314, § 6, eff. July 1, 1998; Laws 2002, c. 397, § 2, eff. Nov. 1, 2002.

NOTE: Laws 1993, c. 47, § 1 repealed by Laws 1994, c. 2, § 34, emerg. eff. March 2, 1994.

§27A-2-5-106. Rules and regulations.

The Board is hereby authorized, after public rulemaking hearing and approval by the Council, to:

1. Promulgate, amend or repeal rules for the prevention, control and abatement of air pollution and for establishment of health and safety tolerance standards for discharge of air contaminants to the atmosphere; and

2. Promulgate such additional rules including but not limited to permit fees, as it deems necessary to protect the health, safety and welfare of the public and fulfill the intent and purpose of these provisions.

Added by Laws 1992, c. 215, § 5, emerg. eff. May 15, 1992. Amended by Laws 1993, c. 145, § 43, eff. July 1, 1993. Renumbered from Title 63, § 1-1806.1 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

§27A-2-5-107. Air Quality Council - Powers and duties.

The powers and duties of the Council shall be as follows:

1. The Council shall recommend to the Board rules or amendments thereto for the prevention, control and prohibition of air pollution and for the establishment of health and safety tolerances for discharge of air contaminants in the state as may be consistent with the general intent and purposes of the Oklahoma Clean Air Act. The recommendations may include, but need not be limited to, rules required to implement the following:

- a. a comprehensive state air permitting program,
- b. an accidental release prevention program,
- c. a program for the regulation and control of toxic and hazardous air contaminants,
- d. a program for the regulation and control of acid deposition,
- e. a small business program, and
- f. a system of assessing and collecting fees;

2. The Council shall recommend rules of practice and procedure applicable to proceedings before the Council;

3. Before recommending any permanent rules, or any amendment or repeal thereof to the Board, the Council shall hold a public rulemaking hearing. The Council shall have full authority to conduct such hearings, and may appoint a hearing officer;

4. A rule, or any amendment thereof, recommended by the Council may differ in its terms and provisions as between particular conditions, particular sources, and particular areas of the state. In considering rules, the Council shall give due recognition to the evidence presented that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere, which may cause a need for air control in one area of the state, may not cause need for air control in another area of the state. The Council shall take into consideration, in this connection, all factors found by it to be proper and just, including but not limited to existing physical conditions, economic impact, topography, population, prevailing wind directions and velocities, and the fact that a rule and the degrees of conformance therewith which may be proper as to an essentially residential area of the state may not be proper either as to a highly developed industrial area of the state or as to a relatively unpopulated area of the state;

5. Recommendations to the Board shall be in writing and concurred upon by at least five members of the Council;

6. The Council shall have the authority and the discretion to provide a public forum for the discussion of issues it considers relevant to the air quality of the state, and to:

- a. pass nonbinding resolutions expressing the sense of the Council,
- b. make recommendations to the Department concerning the need and the desirability of conducting public meetings, workshops and seminars, and
- c. hold public hearings to receive public comment in fulfillment of federal requirements regarding the State Implementation Plan and make recommendations to the Department concerning the plan; and

7. The Council shall have the authority to conduct individual proceedings, to issue notices of hearings and subpoenas requiring the attendance of witnesses and the production of evidence, to administer oaths, and to take testimony and receive such pertinent and relevant proof as it may deem to be necessary, proper or desirable in order that it may effectively discharge its duties and responsibilities under the Oklahoma Clean Air Act. The Council is also empowered to appoint an Administrative Law Judge to conduct individual proceedings and prepare such findings of fact, conclusions of law and proposed orders as they may require. Upon issuance of a proposed order, the Council shall request that the Executive Director issue a final order in accordance with their findings or take such action as indicated and notify the respondent thereof in writing.

Added by Laws 1992, c. 215, § 7, emerg. eff. May 15, 1992. Amended by Laws 1993, c. 145, § 44, eff. July 1, 1993. Renumbered from Title 63, § 1-1808.1 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 7, eff. July 1, 1994.

§27A-2-5-110. Violations - Compliance orders - Administrative penalties - Notice and hearing - Burden of proof - Settlements or consent orders.

A. In addition to any other remedy provided for by law, the Department may issue a written order to any person whom the Department has reason to believe has violated, or is presently in violation of, the Oklahoma Clean Air Act or any rule promulgated by the Board, any order of the Department or Council, or any condition of any permit issued by the Department pursuant to the Oklahoma Clean Air Act, and to whom the Department has served, no less than fifteen (15) days previously, a written notice of violation. The Department shall by conference, conciliation and persuasion provide the person a reasonable opportunity to eliminate such violations, but may, however, reduce the fifteen-day notice period as in the opinion of the Department may be necessary to render the order reasonably effectual.

B. Such order may require compliance immediately or within a specified time period or both. The order, notwithstanding any restriction contained in subsection A of this section, may also assess an administrative penalty for past violations occurring no more than five (5) years prior to the date the order is filed with the Department, and for each day or part of a day that such person fails to comply with the order.

C. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations, and may impose such requirements, procedures or conditions as may be necessary to correct the violations. The Department may also order any environmental contamination having the potential to adversely affect the public health, when caused by the violations, to be corrected by the person or persons responsible.

D. Any penalty assessed in the order shall not exceed Ten Thousand Dollars (\$10,000.00) per day for each violation. In assessing such penalties, the Department shall consider the seriousness of the violation or violations, any good faith efforts to comply, and other factors determined by rule to be relevant. A final order following an enforcement hearing may assess an administrative penalty of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.

E. Any order issued pursuant to this section shall become a final order, unless no later than fifteen (15) days after the order is served the person or persons named therein request in writing an enforcement hearing. Said order shall contain language to that effect. Upon such request, the Department shall promptly schedule the enforcement hearing before an Administrative Law Judge for the Department and notify the respondent.

F. At all proceedings with respect to any alleged violation of the Oklahoma Clean Air Act, or any rule promulgated thereunder, the burden of proof shall be upon the Department.

G. Nothing in this section shall be construed to limit the authority of the Department to enter into an agreed settlement or consent order with any respondent.

Added by Laws 1992, c. 215, § 10, emerg. eff. May 15, 1992. Amended by Laws 1993, c. 145, § 47, eff. July 1, 1993. Renumbered from § 1-1811 of Title 63 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 13, eff. July 1, 1993; Laws 1999, c. 131, § 1, eff. Nov. 1, 1999; Laws 2001, c. 109, § 1, emerg. eff. April 18, 2001.

§27A-2-5-112. Comprehensive permitting program - Issuance, denial or renewal.

A. Upon the effective date of permitting rules promulgated pursuant to the Oklahoma Clean Air Act, it shall be unlawful for any person to construct any new source, or to modify or operate any new or existing source of emission of air contaminants except in compliance with a permit issued by the Department of Environmental Quality, unless the source has been exempted or deferred or is in compliance with an applicable deadline for submission of an application for such permit.

B. The Department shall have the authority and the responsibility, in accordance with rules of the Environmental Quality Board, to implement a comprehensive permitting program for the state consistent with the requirements of the Oklahoma Clean Air Act. Such authority shall include but shall not be limited to the authority to:

1. Expediently issue, reissue, modify and reopen for cause, permits for new and existing sources for the emission of air contaminants, and to grant a reasonable measure of priority to the processing of applications for new construction or modifications. The Department may also revoke, suspend, deny, refuse to issue or to reissue a permit upon a determination that any permittee or applicant is in violation of any substantive provisions of the Oklahoma Clean Air Act, or any rule promulgated thereunder or any permit issued pursuant thereto;

2. Refrain from issuing a permit when issuance has been objected to by the Environmental Protection Agency in accordance with Title V of the Federal Clean Air Act;

3. Revise any permit for cause or automatically reopen it to incorporate newly applicable rules or requirements if the remaining permit term is greater than three (3) years; or incorporate insignificant changes into a permit without requiring a revision;

4. Establish and enforce reasonable permit conditions which may include, but not be limited to:

- a. emission limitations for regulated air contaminants,
- b. operating procedures when related to emissions,
- c. performance standards,
- d. provisions relating to entry and inspections, and
- e. compliance plans and schedules;

5. Require, if necessary, at the expense of the permittee or applicant:

- a. installation and utilization of continuous monitoring devices,
- b. sampling, testing and monitoring of emissions as needed to determine compliance,
- c. submission of reports and test results, and
- d. ambient air modeling and monitoring;

6. Issue:

- a. general permits covering similar sources, and

b. permits to sources in violation, when compliance plans, which shall be enforceable by the Department, are incorporated into the permit;

7. Require, at a minimum, that emission control devices on stationary sources be reasonably maintained and properly operated;

8. Require that a permittee certify that the facility is in compliance with all applicable requirements of the permit and to promptly report any deviations therefrom to the Department;

9. Issue permits to sources requiring permits under Title V of the Federal Clean Air Act for a term not to exceed five (5) years, except that solid waste incinerators may be allowed a term of up to twelve (12) years provided that the permit shall be reviewed no less frequently than every five (5) years;

10. Specify requirements and conditions applicable to the content and submittal of permit applications; set by rule, a reasonable time in which the Department must determine the completeness of such applications; and

11. Determine the form and content of emission inventories and require their submittal by any source or potential source of air contaminant emissions.

C. Rules of the Board may set limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee. Any source so exempted, however, shall remain under jurisdiction of the Department and shall be subject to any applicable rules or general permit requirements. Such rules shall not prohibit sawmill facilities from open burning any wood waste resulting from the milling of untreated cottonwood lumber in areas that have always attained ambient air quality standards.

D. To ensure against unreasonable delay on the part of the Department, the failure of the Department to act in either the issuance, denial or renewal of a permit in a reasonable time, as determined by rule, shall be deemed to be a final permit action solely for purpose of judicial review under the Administrative Procedures Act, with regard to the applicant or any person who participated in the public review process. The Supreme Court or the district court, as the case may be, may require that action be taken by the Department on the application without additional delay. No permit, however, may be issued by default.

E. The Department shall notify, or require that any applicant notify, all states whose air quality may be affected and that are contiguous to the State of Oklahoma, or are within fifty (50) miles of the source of each permit application or proposed permit for those sources requiring permits under Title V of the Federal Clean Air Act, and shall provide an opportunity for such states to submit written recommendations respecting the issuance of the permit and its terms and conditions.

F. No person, including but not limited to the applicant, shall raise any reasonably ascertainable issue in any future proceeding, unless the same issues have been raised and documented before the close of the public comment period on the draft permit.

G. A change in ownership of any facility or source subject to permitting requirements under this section shall not necessitate any action by the Department not otherwise required by the Oklahoma Clean Air Act. Any permit applicable to such source at the time of transfer shall be enforceable in its entirety against the transferee in the same manner as it would have been against the transferor, as shall any requirement contained in any rule, or compliance schedule set forth in any variance or order regarding or applicable to such source. Provided, however, no transferee in good faith shall be held liable for penalties for violations of the transferor unless the transferee assumes all assets and liabilities through contract or other means. For the purposes of this subsection, good faith shall be construed to mean neither having actual knowledge of a previous violation nor constructive knowledge which would lead a reasonable person to know of

the violation. It shall be the responsibility of the transferor to notify the Department in writing within thirty (30) days of the change in ownership.

H. Operating permits may be issued to new sources without public review upon a proper determination by the Department that:

1. The construction permit was issued pursuant to the public review requirements of the Code and rules promulgated thereunder; and

2. The operating permit, as issued, does not differ from the construction permit in any manner which would otherwise subject the permit to public review.

Added by Laws 1992, c. 215, § 12, emerg. eff. May 15, 1992. Amended by Laws 1993, c. 145, § 49, eff. July 1, 1993. Renumbered from § 1-1813 of Title 63 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 373, § 16, eff. July 1, 1994; Laws 1995, c. 285, § 2, eff. July 1, 1996; Laws 1999, c. 284, § 1, emerg. eff. May 27, 1999; Laws 2000, c. 6, § 7, emerg. eff. March 20, 2000; Laws 2004, c. 83, § 1, emerg. eff. April 13, 2004; Laws 2004, c. 381, § 4, emerg. eff. June 3, 2004.

NOTE: Laws 1999, c. 131, § 2 repealed by Laws 2000, c. 6, § 33, emerg. eff. March 20, 2000.

§27A-2-5-114. Implementation and enforcement of federal emission standards - Oil and gas well and equipment emissions.

A. The Department shall have the authority to establish a program for the implementation and enforcement of the federal emission standards and other requirements under Section 112 of the Federal Clean Air Act for hazardous air pollutants and for the prevention and mitigation of accidental releases of regulated substances under Section 112(r) of the Federal Clean Air Act.

1. Except as otherwise provided by paragraph 2 of this subsection, to assure that such program shall be consistent with, and not more stringent than, federal requirements:

a. any rule recommended by the Council and promulgated by the Board regarding hazardous air pollutants and regulated substances shall only be by adoption by reference of final federal rules, and

b. shall include the federal early reduction program under Section 112(i) (5) of the Federal Clean Air Act.

2. The Board may promulgate, pursuant to recommendation by the Council, rules which establish emission limitations for hazardous air pollutants which are more stringent than the applicable federal standards, upon a determination by the Council that more stringent standards are necessary to protect the public health or the environment.

B. The Department shall also have the authority to establish a separate and distinct program only for the control of the emission of those toxic air contaminants not otherwise regulated by a final emission standard under Section 112(d) of the Federal Clean Air Act.

1. Such program shall consist of permanent rules establishing:

a. appropriate emission limitations, work practice standards, maximum acceptable ambient concentrations or control technology standards necessary for the protection of the public health or the environment, and

b. emissions monitoring or process monitoring requirements necessary to assure compliance with the requirements of this section.

2. Paragraph 1 of this subsection shall not be construed as requiring readoption of existing rules regarding toxic air contaminants.

C. Regulation of any hazardous air pollutant pursuant to a final emission standard promulgated under Section 112(d) of the Federal Clean Air Act, shall preclude its regulation as a toxic air contaminant under subsection B of this section.

D. Emissions from any oil or gas exploration or production well with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well with its associated equipment, such emissions shall not be aggregated for any purpose under this section.

E. The Department shall not list oil and gas production wells with their associated equipment as an area source category, except that the Department may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of one million (1,000,000) if the Department determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

F. Nothing in this section shall be construed to limit authority established elsewhere in the Oklahoma Clean Air Act.

Added by Laws 1992, c. 215, § 14, emerg. eff. May 15, 1992. Amended by Laws 1993, c. 145, § 51, eff. July 1, 1993. Renumbered from Title 63, § 1-1815 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

§27A-2-5-117. Civil actions - Injunctions - Abatement - Civil penalties.

A. The Department shall have the authority to commence a civil action for a permanent or temporary injunction or other appropriate relief, or to require abatement of any emission or correction of any contamination, or to seek and recover a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) per day for each violation, or all of the above, in any of the following instances:

1. Whenever any person has violated or is in violation of any applicable provision of the Oklahoma Clean Air Act, or any rule promulgated thereunder;
2. Whenever any person has commenced construction, modification or operation of any source, or operates any source in violation of the requirement to have a permit, or violates or is in violation of any substantive provision or condition of any permit issued pursuant to the Oklahoma Clean Air Act; or
3. Whenever any person has violated any order of the Department or the Council or any requirement to pay any fee, fine or penalty owed to the state pursuant to the Oklahoma Clean Air Act.

B. The district attorney or attorneys having jurisdiction shall have primary authority and responsibility for prosecution of any civil or criminal violations under the Oklahoma Clean Air Act and for the collection of any delinquent fees, penalties or fines assessed pursuant to the Oklahoma Clean Air Act and shall be entitled to recover reasonable costs of collection, including attorney fees, and an appropriate fee of up to fifty percent (50%) for collecting delinquent fees, penalties or fines.

Added by Laws 1992, c. 215, § 17, emerg. eff. May 15, 1992. Amended by Laws 1993, c. 145, § 54, eff. July 1, 1993. Renumbered from Title 63, § 1-1818 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

OPEN RECORDS ACT

§51-24A.1. Short title.

Section 24A.1 et seq. of this title shall be known and may be cited as the "Oklahoma Open Records Act".

Added by Laws 1985, c. 355, § 1, eff. Nov. 1, 1985. Amended by Laws 1988, c. 68, § 1, eff. Nov. 1, 1988; Laws 1988, c. 187, § 1, emerg. eff. June 6, 1988; Laws 1996, c. 247, § 41, eff. July 1, 1996; Laws 1997, c. 2, § 10, emerg. eff. Feb. 26, 1997.

NOTE: Laws 1996, c. 209, § 1 repealed by Laws 1997, c. 2, § 26, emerg. eff. Feb. 26, 1997.

§51-24A.2. Public policy - Purpose of act.

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act.

Added by Laws 1985, c. 355, § 2, eff. Nov. 1, 1985. Amended by Laws 1988, c. 187, § 2, emerg. eff. June 6, 1988.

§51-24A.3. Definitions.

As used in this act:

1. "Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not mean:

- a. computer software,
- b. nongovernment personal effects,

- c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system,
- d. personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body,
- e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority,
- f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department or the Board of Trustees of the Quartz Mountain Arts and Conference Center and Nature Park to obtain any service at the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department or the Quartz Mountain Arts and Conference Center and Nature Park,
- g. a Department of Defense Form 214 (DD Form 214) filed with a county clerk, including any DD Form 214 filed before the effective date of this act, or
- h. except as provided for in Section 2-110 of Title 47 of the Oklahoma Statutes,
 - (1) any record in connection with a Motor Vehicle Report issued by the Department of Public Safety, as prescribed in Section 6-117 of Title 47 of the Oklahoma Statutes,
 - (2) personal information within driver records, as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, which are stored and maintained by the Department of Public Safety, or
 - (3) audio or video recordings of the Department of Public Safety;

2. "Public body" shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a trust, county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A.4 of this title, "public body" does not mean judges, justices, the Council on Judicial Complaints, the Legislature, or legislators;

3. "Public office" means the physical location where public bodies conduct business or keep records;

4. "Public official" means any official or employee of any public body as defined herein; and

5. "Law enforcement agency" means any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions, including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation.

Added by Laws 1985, c. 355, § 3, eff. Nov. 1, 1985. Amended by Laws 1987, c. 222, § 117, operative July 1, 1987; Laws 1988, c. 187, § 3, emerg. eff. June 6, 1988; Laws 1993, c. 39, § 1, eff. Sept. 1, 1993; Laws 1996, c. 209, § 2, eff. Nov. 1, 1996; Laws 1998, c. 315, § 4, emerg. eff. May 28, 1998; Laws 1998, c. 368, § 11, eff. July 1, 1998; Laws 2001, c. 355, § 1, emerg. eff. June 1, 2001; Laws 2002, c. 478, § 2, eff. July 1, 2002; Laws 2003, c. 3, § 42, emerg. eff. March 19, 2003; Laws 2004, c. 328, § 1, eff. July 1, 2004; Laws 2005, c. 199, § 4, eff. Nov. 1, 2005.

NOTE: Laws 2002, c. 293, § 3 repealed by Laws 2003, c. 3, § 43, emerg. eff. March 19, 2003.

§51-24A.4. Record of receipts and expenditures.

In addition to other records which are kept or maintained, every public body and public official has a specific duty to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto, except that such records may be disposed of as provided by law.

Added by Laws 1985, c. 355, § 4, eff. Nov. 1, 1985.

§51-24A.5. Inspection, copying and/or mechanical reproduction of records - Exemptions.

All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.28 of this title, does not apply to records specifically required by law to be kept confidential including:

- a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,
- b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes,
- c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or
- d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions; provided however, the Department of Public Safety shall not be required to assemble for the requesting person specific information, in any format, from driving records relating to any person whose name and date of birth or whose driver license number is not furnished by the requesting person.

The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names, dates of birth, and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule are not furnished by the requesting person.

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law,

the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents (\$0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However, if the request:

- a. is solely for commercial purpose, or
- b. would clearly cause excessive disruption of the essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, the index shall not be copied or mechanically reproduced for the purpose of sale of the information.

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one person shall be available at all times to release records during the regular business hours of the public body.

Added by Laws 1985, c. 355, § 5, eff. Nov. 1, 1985. Amended by Laws 1986, c. 213, § 1, emerg. eff. June 6, 1986; Laws 1986, c. 279, § 29, operative July 1, 1986; Laws 1988, c. 187, § 4, emerg. eff. June 6, 1988; Laws 1992, c. 231, § 2, emerg. eff. May 19, 1992; Laws 1993, c. 97, § 7, eff. Sept. 1, 1993; Laws 1996, c. 209, § 3, eff. Nov. 1, 1996; Laws 2000, c. 342, § 8, eff. July 1, 2000; Laws 2001, c. 137, § 1, emerg. eff. April 24, 2001; Laws 2005, c. 199, § 5, eff. Nov. 1, 2005; Laws 2006, c. 16, § 34, emerg. eff. March 29, 2006.

NOTE: Laws 2005, c. 223, § 1 repealed by Laws 2006, c. 16, § 35, emerg. eff. March 29, 2006.

§51-24A.6. Public body maintaining less than 30 hours of regular business per week - Inspection, copying or mechanical reproduction of records.

A. If a public body or its office does not have regular business hours of at least thirty (30) hours a week, the public body shall post and maintain a written notice at its principal office and with the county clerk where the public body is located which notice shall:

1. Designate the days of the week when records are available for inspection, copying or mechanical reproduction;
2. Set forth the name, mailing address, and telephone number of the individual in charge of the records; and
3. Describe in detail the procedures for obtaining access to the records at least two days of the week, excluding Sunday.

B. The person requesting the record and the person authorized to release the records of the public body may agree to inspection, copying, or mechanical reproduction on a day and at a time other than that designated in the notice.

Added by Laws 1985, c. 355, § 6, eff. Nov. 1, 1985.

§51-24A.7. Personnel records - Confidentiality - Inspection and copying.

A. A public body may keep personnel records confidential:

1. Which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation; or
2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum on the transcripts of certified public school employees.

B. All personnel records not specifically falling within the exceptions provided in subsection A of this section shall be available for public inspection and copying including, but not limited to, records of:

1. An employment application of a person who becomes a public official;
2. The gross receipts of public funds;
3. The dates of employment, title or position; and
4. Any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.

C. Except as may otherwise be made confidential by statute, an employee of a public body shall have a right of access to his own personnel file.

D. Public bodies shall keep confidential the home address, telephone numbers and social security numbers of any person employed or formerly employed by the public body.

Added by Laws 1985, c. 355, § 7, eff. Nov. 1, 1985. Amended by Laws 1990, c. 257, § 6, emerg. eff. May 23, 1990; Laws 1994, c. 177, § 1, eff. Sept. 1, 1994; Laws 2005, c. 116, § 2, eff. Nov. 1, 2005.

§51-24A.8. Law enforcement records - Disclosure.

A. Law enforcement agencies shall make available for public inspection, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;
2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;
3. A chronological list of all incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred;
4. Radio logs, including a chronological listing of the calls dispatched;
5. Conviction information, including the name of any person convicted of a criminal offense;
6. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;
7. A crime summary, including an agency summary of crimes reported and public calls for service by classification or nature and number; and
8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner.

B. Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

C. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.

D. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act shall be made available for public inspection in a manner to be determined by the Department.

E. The Council on Law Enforcement Education and Training (C.L.E.E.T.) shall keep confidential all records it maintains pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and deny release of records relating to any employed or certified full-time officer, reserve officer, retired officer or other person; teacher lesson plans, tests and other teaching materials; and personal communications concerning individual students except under the following circumstances:

1. To verify the current certification status of any peace officer;
2. As may be required to perform the duties imposed by Section 3311 of Title 70 of the Oklahoma Statutes;
3. To provide to any peace officer copies of the records of that peace officer upon submitting a written request;
4. To provide, upon written request, to any law enforcement agency conducting an official investigation, copies of the records of any peace officer who is the subject of such investigation;
5. To provide final orders of administrative proceedings where an adverse action was taken against a peace officer; and
6. Pursuant to an order of the district court of the State of Oklahoma.

F. The Department of Public Safety shall keep confidential:

1. All records it maintains pursuant to its authority under Title 47 of the Oklahoma Statutes relating to the Oklahoma Highway Patrol Division, the Communications Division, and other divisions of the Department relating to:

- a. training, lesson plans, teaching materials, tests, and test results,
- b. policies, procedures, and operations, any of which are of a tactical nature, and
- c. the following information from radio logs:
 - (1) telephone numbers,
 - (2) addresses other than the location of incidents to which officers are dispatched, and
 - (3) personal information which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725; and

2. For the purpose of preventing identity theft and invasion of law enforcement computer systems, except as provided in Title 47 of the Oklahoma Statutes, all driving records.

Added by Laws 1985, c. 355, § 8, eff. Nov. 1, 1985. Amended by Laws 1989, c. 212, § 8, eff. Nov. 1, 1989; Laws 2000, c. 349, § 2, eff. Nov. 1, 2000; Laws 2001, c. 5, § 29, emerg. eff. March 21, 2001; Laws 2005, c. 199, § 6, eff. Nov. 1, 2005; Laws 2006, c. 16, § 36, emerg. eff. March 29, 2006; Laws 2009, c. 36, § 1, eff. Nov. 1, 2009.

NOTE: Laws 2000, c. 226, § 1 repealed by Laws 2001, c. 5, § 30, emerg. eff. March 21, 2001. Laws 2005, c. 35, § 1 repealed by Laws 2006, c. 16, § 37, emerg. eff. March 29, 2006.

§51-24A.9. Personal notes and personally created material - Confidentiality.

Prior to taking action, including making a recommendation or issuing a report, a public official may keep confidential his or her personal notes and personally created materials other than departmental budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project.

Added by Laws 1985, c. 355, § 9, eff. Nov. 1, 1985.

§51-24A.10. Voluntarily supplied information - Records providing unfair competitive advantage - Department of Commerce, Department of Career and Technology Education, technology center school districts, and Oklahoma Film and Music Office records - Public utility records - Confidentiality - Disclosure.

A. Any information, records or other material heretofore voluntarily supplied to any state agency, board or commission which was not required to be considered by that agency, board or commission in the performance of its duties may, within thirty (30) days from June 6, 1988, be removed from the files of such agency, board or commission by the person or entity which originally voluntarily supplied such information. Provided, after thirty (30) days from the effective date of this act, any information voluntarily supplied shall be subject to full disclosure pursuant to this act.

B. If disclosure would give an unfair advantage to competitors or bidders, a public body may keep confidential records relating to:

1. Bid specifications for competitive bidding prior to publication by the public body; or
2. Contents of sealed bids prior to the opening of bids by a public body; or
3. Computer programs or software but not data thereon; or

4. Appraisals relating to the sale or acquisition of real estate by a public body prior to award of a contract; or

5. The prospective location of a private business or industry prior to public disclosure of such prospect except for records otherwise open to inspection such as applications for permits or licenses.

C. Except as set forth hereafter, the Oklahoma Department of Commerce, the Oklahoma Department of Career and Technology Education, the technology center school districts, and the Oklahoma Film and Music Office may keep confidential:

1. Business plans, feasibility studies, financing proposals, marketing plans, financial statements or trade secrets submitted by a person or entity seeking economic advice, business development or customized training from such Departments or school districts;

2. Proprietary information of the business submitted to the Department or school districts for the purpose of business development or customized training, and related confidentiality agreements detailing the information or records designated as confidential; and

3. Information compiled by such Departments or school districts in response to those submissions.

The Oklahoma Department of Commerce, the Oklahoma Department of Career and Technology Education, the technology center school districts, and the Oklahoma Film and Music Office may not keep confidential that submitted information when and to the extent the person or entity submitting the information consents to disclosure.

D. Although they must provide public access to their records, including records of the address, rate paid for services, charges, consumption rates, adjustments to the bill, reasons for adjustment, the name of the person that authorized the adjustment, and payment for each customer, public bodies that provide utility services to the public may keep confidential credit information, credit card numbers, telephone numbers, social security numbers, bank account information for individual customers, and utility supply and utility equipment supply contracts for any industrial customer with a connected electric load in excess of two thousand five hundred (2,500) kilowatts if public access to such contracts would give an unfair advantage to competitors of the customer; provided that, where a public body performs billing or collection services for a utility regulated by the Corporation Commission pursuant to a contractual agreement, any customer or individual payment data obtained or created by the public body in performance of the agreement shall not be a record for purposes of this act.

Added by Laws 1985, c. 355, § 10, eff. Nov. 1, 1985. Amended by Laws 1988, c. 187, § 5, emerg. eff. June 6, 1988; Laws 1996, c. 209, § 4, eff. Nov. 1, 1996; Laws 2004, c. 186, § 1, emerg. eff. May 3, 2004; Laws 2006, c. 18, § 1, eff. Nov. 1, 2006; Laws 2007, c. 6, § 1, eff. Nov. 1, 2007; Laws 2008, c. 284, § 1, eff. Nov. 1, 2008; Laws 2009, c. 158, § 1, eff. Nov. 1, 2009; Laws 2010, c. 161, § 1.

§51-24A.11. Library, archive or museum materials - Confidentiality.

A. A public body may keep confidential library, archive, or museum materials donated to the public body to the extent of any limitations imposed as a condition of the donation and any information which would reveal the identity of an individual who lawfully makes a donation to or on behalf of a public body including, but not limited to, donations made through a foundation operated in compliance with Sections 5-145 and 4306 of Title 70 of the Oklahoma Statutes.

B. If library, archive, or museum materials are donated to a public body and the donation may be claimed as a tax deduction, the public body may keep confidential any information

required as a condition of the donation except the date of the donation, the appraised value claimed for the donation, and a general description of the materials donated and their quantity.

Added by Laws 1985, c. 355, § 11, eff. Nov. 1, 1985. Amended by Laws 1992, c. 231, § 3, emerg. eff. May 19, 1992.

§51-24A.12. Litigation files and investigatory files of Attorney General, district or municipal attorney - Confidentiality.

Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.

Added by Laws 1985, c. 355, § 12, eff. Nov. 1, 1985. Amended by Laws 1988, c. 187, § 6, emerg. eff. June 6, 1988.

§51-24A.13. Federal records - Confidentiality.

Records coming into the possession of a public body from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law.

Added by Laws 1985, c. 355, § 13, eff. Nov. 1, 1985.

§51-24A.14. Personal communications relating to exercise of constitutional rights - Confidentiality.

Except for the fact that a communication has been received and that it is or is not a complaint, a public official may keep confidential personal communications received by the public official from a person exercising rights secured by the Constitution of the State of Oklahoma or the Constitution of the United States. The public official's written response to this personal communication may be kept confidential only to the extent necessary to protect the identity of the person exercising the right.

Added by Laws 1985, c. 355, § 14, eff. Nov. 1, 1985.

§51-24A.15. Crop and livestock reports - Public warehouse financial statements - Confidentiality.

A. The Division of Agricultural Statistics, Oklahoma Department of Agriculture, also known as the Oklahoma Crop and Livestock Reporting Service, may keep confidential crop and livestock reports provided by farmers, ranchers, and agribusinesses to the extent the reports individually identify the providers.

B. The State Board of Agriculture is authorized to provide for the confidentiality of any financial statement filed pursuant to Section 9-22 of Title 2 of the Oklahoma Statutes. Copies of such financial statements may only be obtained upon written request to the Commissioner of Agriculture.

Upon good cause shown, and at the discretion of the Commissioner of Agriculture, such financial statements may be released.

Added by Laws 1985, c. 355, § 15, eff. Nov. 1, 1985. Amended by Laws 1988, c. 259, § 14, emerg. eff. June 29, 1988.

§51-24A.16. Educational records and materials - Confidentiality.

A. Except as set forth in subsection B of this section, public educational institutions and their employees may keep confidential:

1. Individual student records;
2. Teacher lesson plans, tests and other teaching material; and
3. Personal communications concerning individual students.

B. If kept, statistical information not identified with a particular student and directory information shall be open for inspection and copying. "Directory information" includes a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational institution attended by the student. Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as directory information with respect to each student attending the institution or agency and shall allow a reasonable period of time after the notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without prior consent of the parent or guardian or the student if the student is eighteen (18) years of age or older.

C. A public school district may release individual student records for the current or previous school year to a school district at which the student was previously enrolled for purposes of evaluating educational programs and school effectiveness.

Added by Laws 1985, c. 355, § 16, eff. Nov. 1, 1985. Amended by Laws 1986, c. 116, § 1, emerg. eff. April 9, 1986; Laws 2003, c. 430, § 1, eff. July 1, 2003.

§51-24A.17. Violations - Penalties - Civil liability.

A. Any public official who willfully violates any provision of the Oklahoma Open Records Act, upon conviction, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both such fine and imprisonment.

B. Any person denied access to records of a public body or public official:

1. May bring a civil suit for declarative or injunctive relief, or both, but such civil suit shall be limited to records requested and denied prior to filing of the civil suit; and
2. If successful, shall be entitled to reasonable attorney fees.

C. If the public body or public official successfully defends a civil suit and the court finds that the suit was clearly frivolous, the public body or public official shall be entitled to reasonable attorney fees.

D. A public body or public official shall not be civilly liable for damages for providing access to records as allowed under the Oklahoma Open Records Act.

Added by Laws 1985, c. 355, § 17, eff. Nov. 1, 1985. Amended by Laws 2005, c. 199, § 7, eff. Nov. 1, 2005.

§51-24A.18. Additional recordkeeping not required.

Except as may be required in Section 24A.4 of this title, this act does not impose any additional recordkeeping requirements on public bodies or public officials.

Added by Laws 1985, c. 355, § 18, eff. Nov. 1, 1985. Amended by Laws 2005, c. 199, § 8, eff. Nov. 1, 2005.

§51-24A.19. Research records - Confidentiality.

In addition to other records that a public body may keep confidential pursuant to the provisions of the Oklahoma Open Records Act, a public body may keep confidential:

1. Any information related to research, the disclosure of which could affect the conduct or outcome of the research, the ability to patent or copyright the research, or any other proprietary rights any entity may have in the research or the results of the research including, but not limited to, trade secrets and commercial or financial information obtained from an entity financing or cooperating in the research, research protocols, and research notes, data, results, or other writings about the research; and

2. The specific terms and conditions of any license or other commercialization agreement relating to state owned or controlled technology or the development, transfer, or commercialization of the technology. Any other information relating to state owned or controlled technology or the development, transfer, or commercialization of the technology which, if disclosed, will adversely affect or give other persons or entities an advantage over public bodies in negotiating terms and conditions for the development, transfer, or commercialization of the technology. However, institutions within The Oklahoma State System of Higher Education shall:

- a. report to the Oklahoma State Regents for Higher Education as requested, on forms provided by the Regents, research activities funded by external entities or the institutions, the results of which have generated new intellectual property, and
- b. report to the Oklahoma State Regents for Higher Education annually on forms provided:
 - (1) expenditures for research and development supported by the institution,
 - (2) any financial relationships between the institution and private business entities,
 - (3) any acquisition of an equity interest by the institution in a private business,
 - (4) the receipt of royalty or other income related to the sale of products, processes, or ideas by the institution or a private business entity with which the institution has established a financial arrangement,
 - (5) the gains or losses upon the sale or other disposition of equity interests in private business entities, and
 - (6) any other information regarding technology transfer required by the Oklahoma State Regents for Higher Education.

The reports required in subparagraphs a and b of this paragraph shall not be deemed confidential and shall be subject to full disclosure pursuant to the Oklahoma Open Records Act.

Added by Laws 1988, c. 68, § 2, eff. Nov. 1, 1988. Amended by Laws 1999, c. 287, § 1, emerg. eff. May 27, 1999.

§51-24A.20. Records in litigation or investigation file - Access.

Access to records which, under the Oklahoma Open Records Act, would otherwise be available for public inspection and copying, shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in a litigation or investigation file. However, a law enforcement agency may deny access to a copy of such a record in an investigative file if the record or a true and complete copy thereof is available for public inspection and copying at another public body.

Added by Laws 1988, c. 187, § 7, emerg. eff. June 6, 1988.

§51-24A.21. Increment district reports - Exemption from copying fees.

The fees that may be charged by a public body pursuant to the provisions of paragraph 3 of Section 24A.5 of Title 51 of the Oklahoma Statutes shall not be charged when a state agency or taxing entity located within the boundaries of any district created pursuant to the provisions of the Local Development Act request a copy of the reports required by subsections A and B of Section 18 of this act.

Added by Laws 1992, c. 342, § 21.

§51-24A.22. Public utilities - Confidential books, records and trade secrets.

A. The Corporation Commission shall keep confidential those records of a public utility, its affiliates, suppliers and customers which the Commission determines are confidential books and records or trade secrets.

B. As used in this section, "public utility" means any entity regulated by the Corporation Commission, owning or operating for compensation in this state equipment or facilities for:

1. Producing, generating, transmitting, distributing, selling or furnishing electricity;
2. The conveyance, transmission, or reception of communication over a telephone system;

or

3. Transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public.

Added by Laws 1994, c. 315, § 12, eff. July 1, 1994.

§51-24A.25. Order of court for removal of materials from public record.

Any order of the court for removal of materials from the public record shall require compliance with the provisions of paragraphs 2 through 7 of subsection C of Section 3226 of Title 12 of the Oklahoma Statutes.

Added by Laws 2000, c. 172, § 4, eff. Nov. 1, 2000.

§51-24A.26. Intergovernmental self-insurance pools.

An intergovernmental self-insurance pool may keep confidential proprietary information, such as actuarial reports, underwriting calculations, rating information and records that are

created based on conclusions of such information that are developed through the operation of the intergovernmental self-insurance pool.

Added by Laws 2000, c. 226, § 2, eff. Nov. 1, 2000.

NOTE: Editorially renumbered from § 24A.25 of this title to avoid duplication in numbering.

§51-24A.27. Vulnerability assessments of critical assets in water and wastewater systems.

A. Any state environmental agency or public utility shall keep confidential vulnerability assessments of critical assets in both water and wastewater systems. State environmental agencies or public utilities may use the information for internal purposes or allow the information to be used for survey purposes only. The state environmental agencies or public utilities shall allow any public body to have access to the information for purposes specifically related to the public bodies function.

B. For purposes of this section:

1. "State environmental agencies" includes the:

- a. Oklahoma Water Resources Board,
- b. Oklahoma Corporation Commission,
- c. State Department of Agriculture,
- d. Oklahoma Conservation Commission,
- e. Department of Wildlife Conservation,
- f. Department of Mines, and
- g. Department of Environmental Quality;

2. "Public Utility" means any individual, firm, association, partnership, corporation or any combination thereof, municipal corporations or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for:

- a. producing, generating, transmitting, distributing, selling or furnishing electricity,
- b. the conveyance, transmission, reception or communications over a telephone system,
- c. transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public, or
- d. the transportation, delivery or furnishing of water for domestic purposes or for power.

Added by Laws 2003, c. 166, § 1, emerg. eff. May 5, 2003.

AIR QUALITY DIVISION

2011

State Implementation Plan

Oklahoma Administrative Code

252:100-1

252:100-3

252:100-7

252:100-8

Submitted to EPA
March 2012

Notices of Rulemaking Intent

Prior to adoption and gubernatorial/legislative review of a proposed PERMANENT rulemaking action, an agency must publish a Notice of Rulemaking Intent in the *Register*. In addition, an agency may publish a Notice of Rulemaking Intent in the *Register* prior to adoption of a proposed EMERGENCY or PREEMPTIVE rulemaking action.

A Notice of Rulemaking Intent announces a comment period, or a comment period and public hearing, and provides other information about the intended rulemaking action as required by law, including where copies of proposed rules may be obtained.

For additional information on Notices of Rulemaking Intent, see 75 O.S., Section 303.

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #10-1316]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:100-1-3. Definitions [AMENDED]

252:100-1-4. Units, abbreviations and acronyms [AMENDED]

Subchapter 2. Incorporation By Reference

252:100-2-1. Purpose [AMENDED]

252:100-2-3. ~~Reference to Title 40, Code of Federal Regulations (40 CFR) Incorporation by reference~~ [AMENDED]

Subchapter 3. Air Quality Standards and Increments

252:100-3-4. Significant deterioration increments [AMENDED]

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

252:100-5-2.3. Annual operating fees for toxics emissions [NEW]

Subchapter 7. Permits for Minor Facilities

Part 1. General Provisions

252:100-7-2.1. Minor permits for greenhouse gas (GHG) emitting facilities [NEW]

Part 2. Permit Application Fees

252:100-7-3. Permit application fees [AMENDED]

Subchapter 8. Permits for Part 70 Sources

Part 3. Permit Application Fees

252:100-8-1.7. Permit application fees [AMENDED]

Part 5. Permits for Part 70 Sources

252:100-8-2. Definitions [AMENDED]

Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas

252:100-8-31. Definitions [AMENDED]

252:100-8-33. Exemptions [AMENDED]

252:100-8-35. Air quality impact evaluation [AMENDED]

Part 9. Major Sources Affecting Nonattainment Areas

252:100-8-50.1. Incorporation by reference [AMENDED]

252:100-8-51. Definitions [AMENDED]

252:100-8-51.1. Emissions reductions and offsets [AMENDED]

252:100-8-52. Applicability determination for sources in attainment areas causing or contributing to NAAQS violation [AMENDED]

Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [REVOKED]

Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [NEW]

Appendix E. Primary Ambient Air Quality Standards [REVOKED]

Appendix E. Primary Ambient Air Quality Standards [NEW]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

SUMMARY:

The Department is proposing to modify Subchapters 7 and 8 to ensure that State rules affected by recent changes to the U.S. Environmental Protection Agency's (EPA's) policies and programs for greenhouse gas (GHG) emissions are not perceived to be more stringent than the corresponding federal requirements. GHG, an aggregate group of six gases (carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride), will become subject to regulation as an air pollutant on January 2, 2011, when the EPA and the U.S. Department of Transportation joint light-duty vehicle GHG emission standards become effective. If GHG emission sources are required to obtain Prevention of Significant Deterioration (PSD) and Part 70 permits at the current applicability thresholds of 100 or 250 tons per year, the number of PSD and Part 70 permits would increase to the point that the Department would be unable to deal with them in a timely fashion. These requirements could be interpreted to include agricultural, commercial, and residential sources that have not previously been subject to air quality permitting. In order to avoid this, EPA promulgated its GHG Tailoring Rule in the *Federal Register* on June 3, 2010 (75 FR 31514). EPA's rule defines the term "subject to regulation" to establish thresholds of 100,000 tons per year CO₂ equivalent (CO₂e) for PSD and Part 70 applicability and a significant level of 75,000 tons per year CO₂e for PSD. Although the Department accepts EPA's mechanism for implementing the GHG tailoring rule's higher GHG thresholds by accepting EPA's definition of "subject to regulation," the federal modification to the applicability of these permitting thresholds is not directly reflected in the Department's current rules. Consequently, the general public and many smaller sources not familiar with the interdependence of State Clean Air Act requirements and federal Clean Air Act requirements may interpret the lower PSD and Part 70 applicability thresholds set forth in

Notices of Rulemaking Intent

the Department's rules to apply to sources emitting lower levels of GHG. The proposed modification to Parts 5 and 7 of Subchapter 8 of the Air Pollution Control Rules clarifies the change in pollutants subject to regulation and the applicability thresholds for GHG based on the GHG Tailoring Rule. This should prevent smaller sources of GHG from expending resources in preparing unnecessary permit applications for GHG emissions. This will also prevent the State rule from being perceived to be more stringent than the corresponding federal rule.

The Department is also proposing to add a new section to Subchapter 7 to clarify that GHG is excluded from the minor facility permitting program except if necessary to set enforceable limits to keep GHG emission levels at a facility below the applicability threshold levels for the PSD construction permit program and/or the Part 70 operating permit program. At this time, EPA does not have a GHG permitting program for minor facilities.

In conjunction with the proposed changes to Subchapters 7 and 8 to address the federal Greenhouse Gas Tailoring Rule, the Department is proposing to modify Subchapter 1, General Provisions, by the addition of the definition of "greenhouse gas" or "GHG" to OAC 252:100-1-3. Also, modifications are proposed to OAC 252:100-1-4, relating to units, abbreviations, and acronyms, to correct scribes' errors that inadvertently resulted in removal of superscripts and subscripts from the terms in subsection (a) of that Section.

The Department is proposing modifications to Parts 7 and 9 of Subchapter 8 to implement the New Source Review program (PSD and Nonattainment NSR) for the fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS) which were published on July 18, 1997 (62 FR 38652) and revised on October 17, 2006 (71 FR 61144). In the May 16, 2008 *Federal Register* (73 FR 28321), EPA finalized the major source threshold, significant emissions rate, and offset ratios for PM_{2.5}, interpollutant trading for offsets and applicability of NSR to PM_{2.5} precursors. In the October 20, 2010 *Federal Register* (75 FR 64864), EPA finalized the PSD increments, the Significant Impact Levels (SILs), and the Significant Monitoring Concentration (SMC) for PM_{2.5}. The proposed rule changes will establish provisions for a major source threshold, significant emissions rate, offset ratios for PM_{2.5} NAAQS, interpollutant trading for offsets, SILs, and SMC that are consistent with those in the federal regulations set forth in 40 CFR § 51.165 and 40 CFR § 51.166.

The Department also proposes to correct an error in the definition of "major stationary source" in OAC 252:100-8-31. The current definition relating to municipal incinerators is more stringent than the federal definition set forth in 40 CFR § 51.166(b)(1).

The Department is proposing to modify Subchapter 3, Air Quality Standards and Increments, by the addition of the annual and 24-hour PM_{2.5} increments to OAC 252:100-3-4, Significant deterioration increments. In the October 20, 2010 *Federal Register* (75 FR 64864), EPA finalized the PSD increments for PM_{2.5}.

The Department is proposing to clarify language in Subchapter 2, Incorporation By Reference, and to update OAC 252:100, Appendix Q, Incorporation By Reference, to incorporate the latest changes to EPA regulations. Included are changes or additions to 40 CFR Part 61, New Source Performance Standards (NSPS), and Part 63, National Emissions Standards for Hazardous Air Pollutants (NESHAP).

The Department is proposing to add a new section OAC 252:100-5-2.3 to Subchapter 5 of the air pollution control rules that will alter the Air Quality Division's current fee structure. The new section would allow the agency to invoice for emissions of hazardous air pollutants, lead, and lead compounds at a rate different from other regulated air pollutants and would require area sources subject to a NESHAP to pay an annual operating fee. In addition, the Department is considering an increase to permit application fees for both minor facilities and Part 70 sources by amending OAC 252:100-7, Part 2 and OAC 252:100-8, Part 3. The changes are designed to offset legislative budgetary shortfalls and cover current and anticipated staffing requirements in administering the Department's air pollution control programs.

The Department is proposing to amend Appendix A of OAC 252:100-17, Incinerators, to correct inaccuracies in Appendix A.

The Department proposes changing Appendix E to maintain consistency with the NAAQS. Specifically, the nitrogen dioxide (NO₂) and sulfur dioxide (SO₂) primary standards would be modified to reflect recent changes made by the EPA.

AUTHORITY:

Generally, Environmental Quality Board powers and duties, 27A O.S. § 2-2-101, and 27A O.S. § 2-5-106; Air Quality Advisory Council powers and duties, 27A O.S. § 2-2-201 and 27A O.S. § 2-5-107; and Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 through -117, and specifically 27A O.S. §§ 2-5-105 (OAC 252:100, Subchapters 1, 2, 3, 5, 7, 8, and Appendices A and E), -112 (Subchapters 1, 2, 3, 7, 8, and 31, and Appendices A and Q), -113 (Subchapters 5, 7, and 8), and -114 (Subchapter 5 and Appendix Q).

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on January 19, 2011. For comments received at least five (5) business days prior to the Council meeting, staff will post written responses on the Department's web page at least one (1) day prior to the Council meeting. Oral comments may be made at the January 19, 2011 hearing and at the February 25, 2011 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, January 19, 2011, at the DEQ headquarters, 707 N. Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on Friday, February 25, 2011, at the DEQ headquarters, 707 N. Robinson, Oklahoma City, Oklahoma.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State

Implementation Plan (SIP) under the requirements of 40 CFR § 51.102 and 27A O.S. § 2-5-107(6)(c), and to the State Title V (Part 70) Implementation Plan under the requirements of 40 CFR Part 70 and 27A O.S. § 2-5-107(3).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

The proposed rules are available for review 30 days prior to the hearing on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AODnew/council_mtgs/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

RULE IMPACT STATEMENTS:

The rule impact statements are available for review 30 days prior to the hearing on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AODnew/council_mtgs/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100. Please send written comments on the proposed rule changes to Ms. Bradley at cheryl.bradley@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl E. Bradley. The Air Quality Division FAX number is (405) 702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4216. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #10-1316; filed 11-22-10]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 110. LEAD-BASED PAINT MANAGEMENT**

[OAR Docket #10-1317]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1, General Provisions

- 252:110-1-1. Purpose [AMENDED]
- 252:110-1-2. Basis and authority [AMENDED]
- 252:110-1-7. Reference to 40 CFR [REVOKED]
- Subchapter 5. Incorporation by Reference
- 252:110-5-1. Incorporation by reference [AMENDED]
- Subchapter 15. Additional Renovation, Repair, and Painting (RRP) Requirements [NEW]
- 252:110-15-1. Definitions [NEW]
- 252:110-15-2. Scope [NEW]
- 252:110-15-3. Applicable dates [NEW]
- 252:110-15-4. Training programs accredited by other states or agencies [NEW]
- 252:110-15-5. Renovator certification requirements [NEW]
- 252:110-15-6. Certification of firms conducting renovation services [NEW]
- 252:110-15-7. Fees [NEW]

SUMMARY:

The Department is proposing to amend OAC 252:110, Lead-Based Paint Management, to add a new Subchapter, 15, Additional Renovation, Repair, and Painting (RRP) Requirements. The proposed rule would establish state requirements that are consistent with those established by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 745 and affect contractors who perform renovation, repair, and painting projects in homes, child-care facilities, and schools built before 1978. This rule revision is essential to the Department's efforts to obtain EPA authorization to administer the Lead-Based Paint Renovation Program in Oklahoma. The proposal would establish fees for obtaining and renewing firm certifications and other associated services, which would be assessed after EPA has delegated the Department authority for the program. This proposed state rule is no more stringent than the federal rule and would incorporate changes to be consistent with the Department's current rules. In addition, the proposal includes amending OAC 252:110-5, Incorporation by Reference, to be consistent with the new subchapter.

The Department is proposing to revoke OAC 252:110-1-7, General Provisions, Reference to 40 CFR because it is a duplication of language already included in Subchapter 5, Incorporation by Reference. It is also proposing to amend OAC 252:110-1-1, Purpose, and OAC 252:110-1-2, Basis of Authority, to clarify regulatory language.

AUTHORITY:

Environmental Quality Board and Air Quality Advisory Council powers and duties, 27A O.S. §§ 2-2-101 and 2-2-201; and Oklahoma Lead-Based Paint Management Act, 27A O.S. §§ 2-12-101 and 2-12-201.

COMMENT PERIOD:

Written comments on the proposed rulemaking will be accepted prior to and at the hearing on January 19, 2011. For comments received at least five (5) business days prior to the Council meeting, staff will post written responses on the Department's web page at least one (1) day prior to the Council meeting. Oral comments may be made at the January 19, 2011

January 7, 2011

MEMORANDUM

TO: Members of the Air Quality Advisory Council

FROM: Eddie Terrill, Director
Air Quality Division

SUBJECT: Proposed Amendments to OAC 252:100-8, Permits for Part 70 Sources; 252:100-7, Permits for Minor Facilities; 252:100-3, Air Quality Standards and Increments; and 252:100-1, General Provisions

Enclosed are proposed amendments to Subchapters 1, 3, 7, and 8 relating to greenhouse gas (GHG) emissions; proposed amendments to Subchapters 3 and 8 relating to the PM_{2.5} NSR implementation; proposed amendments to Subchapter 1 to correct scrivener's errors; and proposed amendment to Subchapter 8 to correct an error in the definition of "major stationary source." The Rule Impact Statements are also enclosed along with a summary of comments and responses.

GHG AMENDMENTS

On January 2, 2011, GHG became subject to regulation as an air pollutant under the federal Clean Air Act. EPA's GHG tailoring rule (75 FR 31514, June 3, 2010) deferred applicability of the PSD and Part 70 (Title V) permitting programs for a large number of smaller GHG sources. The tailoring rule raised the PSD and Part 70 permit threshold levels from 100 or 250 tons per year (tpy) to 100,000 tpy CO₂ equivalent (CO₂e) for GHG emissions and set a threshold of 75,000 tpy CO₂e of GHG for PSD modifications. The proposed amendments to Subchapter 8 will clarify the deferral of the applicability of the PSD program in Part 7 and the Part 70 program in Part 5. The Department proposes to make this clarification by adding and amending definitions in OAC 252:100-8-2 for Part 70 and in 252:100-8-31 for PSD to reflect the change in pollutants subject to regulation and the higher GHG applicability thresholds contained in the GHG tailoring rule.

In conjunction with the proposed GHG amendment to Subchapter 8, the Department is proposing to modify Part 1 of Subchapter 7 by the addition of OAC 252:100-7-2.1, which makes clear that the State's minor facility permit program does not include GHG emissions unless the owner or operator of a facility requests that the Department issue a permit with enforceable limits to keep GHG emission levels at the facility below the applicability threshold levels for the PSD construction permit and the Part 70 operating permit programs. Federal regulations do not require that minor source programs apply to GHG. Without the proposed clarifying modification, the State's permitting requirements could be interpreted to apply to industrial, commercial, and residential sources that emit or have the potential to emit more than 40 tons of GHG per year, which is far more stringent than the federal permitting programs.

As part of GHG amendments, the Department proposes to modify OAC 252:100-1-3 by the addition of a definition of "greenhouse gas" or "GHG."

It should be noted that the amendments to Subchapters 1, 7, and 8 regarding GHG do not make any facility or source subject to GHG regulations, but only ensure that as far as GHG is concerned, the State's permitting programs are not perceived to be more stringent than the corresponding federal programs.

PM_{2.5} AMENDMENTS

The Department proposes to modify Parts 7 and 9 of Subchapter 8 to incorporate EPA's PSD and Nonattainment NSR implementation rule for the PM_{2.5} National Ambient Air Quality Standards (NAAQS) which were published in the *Federal Register* on July 18, 1997 (62 FR 38652) and revised on October 17, 2006 (71 FR 61144). Phase 1 of the NSR implementation rule was published in the May 16, 2008 *Federal Register* (73 FR 28321) and phase 2 was published in the October 20, 2010 *Federal Register* (75 FR 64864). The proposed amendments will establish a major source threshold, significant emissions rate, offset ratios, interpollutant trading for offsets, applicability of NSR to PM_{2.5} precursors, Significant Impact Levels (SILs), and a Significant Monitoring Concentration (SMC) that are consistent with those in the federal regulations set forth in 40 CFR §§ 51.165 and 51.166.

In conjunction with the proposed PM_{2.5} amendments to Subchapter 8, the Department proposes to add the 24-hour and annual PM_{2.5} PSD increments to OAC 252:100-3-4. This is part of phase 2 of the implementation of the NSR program.

These proposed amendments to Subchapters 3 and 8 will bring the State's PSD and Nonattainment NSR programs up to date with respect to PM_{2.5} and will enable the Department to maintain its delegated authority for the full NSR program.

OTHER AMENDMENTS

The Department is also proposing to correct scrivener's errors in OAC 252:100-1-4(a) by restoring the superscript and subscript formatting and to modify the list of acronyms in 252:100-1-4(b) by the deletion of the word "Annotated" in renumbered paragraph (27).

The Department also proposes to correct an error in the definition of "major stationary source" in OAC 252:100-8-31 so that the requirements relating to municipal incinerators are not more stringent than those in the federal definition set forth in 40 CFR § 51.166(b)(1).

In addition, the Department is taking this opportunity to make some format changes (e.g., PM-10 is being changed to PM₁₀) in the sections that are open for amendment.

Notice of the proposed permanent rule changes was published in the *Oklahoma Register* on December 15, 2010. The notice requested written comments from the public and other interested parties.

The proposed GHG, PM_{2.5}, and correction amendments to Subchapter 8; the proposed GHG amendment to Subchapter 7; and the proposed modification to Section 3 of Subchapter 1 were first presented to the Air Quality Advisory Council at the October 27, 2010 meeting. At that time the

Council forwarded the GHG modifications to Subchapter 1, Subchapter 7, and Subchapter 8 to the Environmental Quality Board with a recommendation that they be adopted as emergency rule changes. The hearings on the permanent GHG amendments to Subchapter 7 and Subchapter 8; phase 1 of the PM_{2.5} implementation; and the correcting amendments to Subchapter 8 were continued until the next Council meeting. The Board approved the emergency rule changes at its meeting on November 16, 2010, and the amendments became effective on December 27, 2011, when signed by Governor Henry. The proposed permanent GHG amendments are substantively the same as the emergency rules except for the addition of the proposed revisions to OAC 252:100-1-4.

This is the first time the phase 2 PM_{2.5} amendments to Subchapters 3 and 8, and the corrections and additions to Section 4 of Subchapter 1 have been brought before the Council. However, the State is required to submit a SIP revision to EPA in 2011 incorporating phase 1 of the PM_{2.5} NSR implementation rule. The Department requests that the phase 2 amendments be promulgated with the phase 1 amendments to the NSR program so that they can be forwarded to EPA in the same SIP submittal. Because the GHG modification and the PM_{2.5} modification both include changes to the same section (OAC 252:100-8-31) and even to the same definition ("Regulated NSR pollutant"), the GHG and PM_{2.5} modifications to Subchapter 8 must be processed together or the PM_{2.5} modification may be delayed by a year. For these reasons and because the emergency changes to Subchapters 1, 7, and 8 will expire in July 2011, Staff intends to request that the proposed GHG, PM_{2.5}, and correction amendments to Subchapters 1, 3, 7, and 8 be forwarded to the Environmental Quality Board with the recommendation that they be adopted as permanent rule changes.

Enclosures: Proposed Amendments to OAC 252:100-8
Proposed Amendments to OAC 252:100-7
Proposed Amendments to OAC 252:100-3
Proposed Amendments to OAC 252:100-1
Rule Impact Statements
Summary of Comments and Responses

**REGULAR MEETING/HEARING AGENDA
AIR QUALITY ADVISORY COUNCIL**

**January 19, 2011, 9:00 a.m.
DEQ Multipurpose Room
707 North Robinson Avenue
Oklahoma City, OK**

Please turn off cell phones.

1. **Call to Order** - Laura Lodes, Chair
2. **Roll Call** - Myrna Bruce
3. **Approval of Minutes** - October 27, 2010 Regular Meeting
4. **Election of Officers** - Discussion and action by Council
5. **Public Rulemaking Hearings**
 - A. **OAC 252:100-5. Registration, Emission Inventory and Annual Operating Fees [AMENDED]**
OAC 252:100-7. Permits for Minor Facilities [AMENDED]
OAC 252:100-8. Permits for Part 70 Sources [AMENDED]

The Department is proposing to add a new section OAC 252:100-5-2.3 that would allow the Department to assess certain area sources of hazardous air pollutants annual operating fees. In addition, the Department is proposing increases to permit application fees for both minor facilities and Part 70 sources by amending OAC 252:100-7, Part 2 and OAC 252:100-8, Part 3.

1. Presentation - Pat Sullivan, Environmental Programs Specialist, Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

- B. **OAC 252:100-1. General Provisions [AMENDED]**
OAC 252:100-3. Air Quality Standards and Increments [AMENDED]
OAC 252:100-7. Permits for Minor Facilities [AMENDED]
OAC 252:100-8. Permits for Part 70 Sources [AMENDED]

The Department is proposing to modify Subchapters 1, 7, and 8 to ensure that State rules affected by recent changes to EPA's policies and programs for greenhouse gas emissions are not perceived to be more stringent than the corresponding federal requirements.

Also, the Department is proposing modifications to Subchapter 8 to implement the New Source Review (NSR) program for the fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The Department is proposing to modify Subchapter 3, Air Quality Standards and Increments, by the addition of the annual and 24-hour PM_{2.5} increments to OAC 252:100-3-4, Significant deterioration increments.

1. Presentation - Dr. Joyce Sheedy, Engineer, Air Quality Division
2. Questions and discussion by the Council

3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

**C. Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [REVOKED]
Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [NEW]**

The Department is proposing to amend Appendix A to correct inaccuracies.

1. Presentation - Diana Hinson, Environmental Programs Specialist, Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

**D. APPENDIX E. Primary Ambient Air Quality Standards [REVOKED]
APPENDIX E. Primary Ambient Air Quality Standards [NEW]**

The Department proposes changing Appendix E to maintain consistency with the NAAQS. Specifically, the nitrogen dioxide (NO₂) and sulfur dioxide (SO₂) primary standards would be modified to reflect recent changes made by the EPA.

1. Presentation - Leon Ashford, Environmental Programs Specialist, Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

**E. OAC 252:100-2. Incorporation By Reference [AMENDED]
Appendix Q. Incorporation By Reference [REVOKED]
Appendix Q. Incorporation By Reference [NEW]**

The Department is proposing to update Subchapter 2 to clarify language and Appendix Q, Incorporation By Reference, to incorporate by reference the latest changes to EPA regulations.

1. Presentation - Nancy Marshment, Environmental Programs Specialist, Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

**F. OAC 252:110. Lead-Based Paint Management
Subchapter 1. General Provisions [AMENDED]
Subchapter 5. Incorporation by Reference [AMENDED]
Subchapter 15. Additional Renovation, Repair and Painting (RRP) Requirements [NEW]**

The Department is proposing to amend OAC 252:110, Lead-Based Paint Management, to add a new Subchapter 15, Additional Renovation, Repair, and Painting (RRP) Requirements. The proposed rule would establish state requirements that are consistent with those established by EPA and affect contractors who perform renovation, repair, and painting projects in homes, child-care facilities, and schools built before 1978. In addition, the proposal would establish fees to be charged by the Department for RRP firm certifications and other associated services.

1. Presentation - Trevor Hammons, Attorney, Legal Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

6. **Division Director's Report** - Eddie Terrill
7. **New Business** - Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda.
8. **Adjournment** - The next regular meeting is tentatively scheduled for Wednesday, April 20, 2011, in Tulsa, Oklahoma.

Lunch break if necessary

Should you have a disability and need an accommodation, please notify the DEQ Air Quality Division three days in advance at 405-702-4216. Hearing impaired persons may call the text telephone (TDD) Relay Number at 1-800-722-0353 for TDD machine use only.

DRAFT MINUTES
AIR QUALITY COUNCIL
 - Department of Environmental Quality
 707 North Robinson, Oklahoma City, OK
 January 19, 2011

For EQB February 25, 2011
 For AQC Approval ~~April 20, 2011~~ July 20, 2011

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. on January 19, 2011 at the Department of Environmental Quality in Oklahoma City. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on December 7, 2010. 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 Advisory 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. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Bruce called roll stating that a quorum was present.

MEMBERS PRESENT

David Branecky
 Montelle Clark
 Gary Collins
 David Gamble
 Jim Haught
 Laura Lodes
 Bob Lynch
 Sharon Myers
 Pete White

DEQ STAFF PRESENT

Eddie Terrill
 Beverly Botchlet-Smith
 Scott Thomas
 Cheryl Bradley
 Rob Singletary
 Trevor Hammons
 Randy Ward
 Dawson Lasseter

DEQ STAFF PRESENT

Pat Sullivan
 Joyce Sheedy
 Nancy Marshment
 Diana Hinson
 Leon Ashford
 Myrna Bruce

MEMBERS ABSENT

OTHERS PRESENT

Christy Myers, Court Reporter

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

Approval of Minutes – October 27, 2010 Regular Meeting Ms. Lodes called for a motion for approval. Ms. Myers moved to approve and Mr. Collins made the second.

See Transcript pages 4 - 5

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Branecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

Election of Officers Ms. Myers made motion that Laura Lodes and Jim Haught to remain as the officers. Mr. Branecky made the second.

See Transcript pages 5 - 6

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Branecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

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

OAC 252:100-7. Permits for Minor Facilities [AMENDED]

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

Ms. Pat Sullivan provided a slide presentation of the proposal which would add a new section OAC 252:100-5-2.3 that would allow the Department to assess certain area sources of hazardous air pollutants annual operating fees. In addition, the proposal would increase permit application fees for both minor facilities and Part 70 sources by amending OAC 252:100-7, Part 2 and OAC 252:100-8, Part 3. Staff fielded comments and questions from Council and the public. Ms. Cheryl Bradley read into the record alternative language that was suggested regarding the existing area sources. Ms. Lodes explained that there had been a number of discussions and called for a motion to adopt the rule package. Mr. Branecky made the motion to adopt as proposed with the revisions discussed with the caveat that DEQ provides a progress report of the income and expenditures at Council's October meeting. Mr. White made the second.

See Transcript pages 8 - 93

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Branecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

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

OAC 252:100-3. Air Quality Standards and Increments [AMENDED]

OAC 252:100-7. Permits for Minor Facilities [AMENDED]

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

Dr. Joyce Sheedy advised that the proposal would modify Subchapters 1, 7, and 8 to ensure that State rules affected by recent changes to EPA's policies and programs for greenhouse gas emissions are not perceived to be more stringent than the corresponding federal requirements. Also, modifications to Subchapter 8 to implement the New Source Review (NSR) program for the fine particulate matter (PM2.5) National Ambient Air Quality Standards (NAAQS). The proposal would also modify Subchapter 3, Air Quality Standards and Increments, by the addition of the annual and 24-hour PM2.5 increments to OAC 252:100-3-4, Significant deterioration increments. Dr. Sheedy explained that the proposed modifications to these four subchapters are being presented in one hearing because both the greenhouse gas modifications and the PM2.5 modifications involve changes to Section 31 of Subchapter 8. She identified the changes being proposed. Staff fielded questions and comments from the public. Mr. Branecky moved to postpone the hearing in order that staff could develop the suggested language that could be incorporated into the rule. Ms. Myers made the second.

See Transcript Pages 3 - 28 Part 2

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Branecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

Ms. Lodes called for a motion to continue the discussion on the greenhouse gas rules. Ms. Myers made the motion and Mr. Gamble made the second.

See Transcript Pages 56

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Branecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

Ms. Cheryl Bradley presented the additional language for Council's consideration. Following discussion, Mr. Collins made motion to accept the proposed amendments as amended. Mr. Haught made the second.

See Transcript Pages 58 - 69

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Brancecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [REVOKED]
Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [NEW]

Ms. Diana Hinson advised that the proposal would revoke Appendix A and adopt a new Appendix A to correct inaccuracies. Hearing no discussion, Ms. Lodes called for a motion. Mr. Haught moved to accept as recommended and Mr. Clark made the second.

See Transcript Pages 28-31

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Brancecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

APPENDIX E. Primary Ambient Air Quality Standards [REVOKED]
APPENDIX E. Primary Ambient Air Quality Standards [NEW]

Mr. Leon Ashford advised that the proposal was to revoke Appendix E and adopt a new Appendix E to maintain consistency with the NAAQS. Specifically, the nitrogen dioxide (NO2) and sulfur dioxide (SO2) primary standards would be modified to reflect recent changes made by the EPA. Following comments, Ms. Lodes called for a motion to pass the rule as proposed. Mr. Haught made the motion and Mr. Gamble made the second.

See Transcript Pages 31 - 37

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Brancecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

OAC 252:100-2. Incorporation By Reference [AMENDED]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

Ms. Nancy Marshment advised that the proposal would update Subchapter 2 to clarify language and Appendix Q, Incorporation By Reference, to incorporate by reference the latest changes to EPA regulations. She identified the changes that were being proposed. Staff requested that the Council table the hearing for this rulemaking until the Department is certain it has adequate resources to assume delegation for any additional federal standards. Following discussion, Mr. Pete White made motion to continue the hearing. Ms. Myers made the second.

See Transcript Pages 37 - 56

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Brancecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

OAC 252:110. Lead-Based Paint Management

Subchapter 1. General Provisions [AMENDED]

Subchapter 5. Incorporation by Reference [AMENDED]

Subchapter 15. Additional Renovation, Repair and Painting (RRP) Requirements [NEW]

Mr. Trevor Hammons advised that the Department's proposal would amend OAC 252:110, Lead-Based Paint Management, to add a new Subchapter 15, Additional Renovation, Repair, and Painting (RRP) Requirements. The proposed rule would establish state requirements that are consistent with those established by EPA and affect contractors who perform renovation, repair, and painting projects in homes, child-care facilities, and schools built before 1978. In addition, the proposal would establish fees to be charged by the Department for RRP firm certifications and other associated services. After much discussion, Mr. Branecky made motion to continue the hearing. Ms. Myers made the second.

See transcript pages Item F page 2 - 53

Bob Lynch	Yes	Sharon Myers	Yes
Pete White	Yes	Gary Collins	Yes
David Gamble	Yes	Montelle Clark	Yes
David Branecky	Yes	Laura Lodes	Yes
Jim Haught	Yes		

Division Director's Report - Eddie Terrill mentioned EPA initiatives and the upcoming Legislative session.

New Business - None

Adjournment - Ms. Lodes adjourned the meeting adjourned at 1:00 p.m.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

* * * * *
TRANSCRIPT OF PROCEEDINGS
OF THE AIR QUALITY COUNCIL MEETING
ITEMS 5B THROUGH 5E
ON JANUARY 19, 2011, AT 9:00 AM
IN OKLAHOMA CITY, OKLAHOMA
* * * * *

MYERS REPORTING SERVICE
Christy Myers, CSR
P.O. Box 721532
Oklahoma City, Oklahoma 73172-1532
(405) 721-2882

1 MEMBERS OF THE COUNCIL
 2 LAURA LODES, CHAIR
 3 JIM HAUGHT, VICE-CHAIR
 4 PETE WHITE, MEMBER
 5 SHARON MYERS, MEMBER
 6 MONTELLE CLARK, MEMBER
 7 DAVID GAMBLE, MEMBER
 8 GARY COLLINS, MEMBER
 9 ROBERT LYNCH, MEMBER
 10 DAVID BRANECKY, MEMBER
 11 DEQ STAFF
 12 MYRNA BRUCE
 13 BEVERLY BOTCHLET-SMITH
 14 EDDIE TERRILL
 15 CHERYL BRADLEY
 16 ROBERT SINGLETARY
 17 PAT SULLIVAN
 18 NANCY MARSHMENT
 19 DIANA HINSON
 20 LEON ASHFORD
 21 TREVOR HAMMONS
 22 DIANA HINSON
 23 JOYCE SHEEDY
 24 PROCEEDINGS
 25 ITEM NUMBER 5B

1 MS. BOTCHLET-SMITH: Since
 2 it's been awhile since we got here
 3 I'd just like to remind everyone if
 4 you wish to comment you can fill out
 5 one of the forms at the registration
 6 table for any of these future rules
 7 that are on the Agenda. And also to
 8 remind everyone that when they come
 9 to the podium to please state your
 10 name, because that really helps out
 11 our court reporter.
 12 The next item on the Agenda is
 13 5B. This is OAC 252:100-1, General
 14 Provisions. OAC 252:100-3, Air
 15 Quality Standards and Increments.
 16 OAC 252:100-7, Permits for Minor
 17 Facilities. OAC 252:100-8, Permits
 18 for Part 70 Sources. And Dr. Joyce
 19 Sheedy of the DEQ Air Quality
 20 Division will be giving the staff
 21 presentation today.
 22 DR. SHEEDY: Okay.
 23 Madam Chair, Members of the
 24 Council, ladies and gentlemen. The
 25 Department is proposing greenhouse

1 gas or GHG modifications to
 2 Subchapters 1, 7, and 8; and PM2.5,
 3 which is also known as fine
 4 particulate matter, modifications to
 5 Subchapters 3 and 8.
 6 The proposed modifications to
 7 these four subchapters are being
 8 presented in one hearing because
 9 both the greenhouse gas
 10 modifications and the PM2.5
 11 modifications involve changes to
 12 Section 31 of Subchapter 8.
 13 Under the State's rulemaking
 14 procedures a section of rules may
 15 only be modified once in a year and
 16 the state is required to submit a
 17 state implementation plan known as a
 18 SIP revision to EPA in 2011
 19 incorporating Phase 1 of the PM2.5
 20 NSR implementation rule. And the
 21 greenhouse gas emergency rule
 22 changes to Subchapter 1, Subchapter
 23 7, and Subchapter 8 incorporating
 24 EPA's Tailoring Rule provisions will
 25 expire on July the 14th, 2011.

1 Therefore it's important that both
 2 the greenhouse gas modifications and
 3 the PM2.5 modifications be
 4 considered together.
 5 The Department is proposing
 6 modifications to the General
 7 Provisions in Subchapter 1, the
 8 Minor Facility Permitting Program in
 9 Subchapter 7, and the Part 70 and
 10 PSD permitting programs in
 11 Subchapter 8. These modifications
 12 will clarify that the State's
 13 permitting rules implement the
 14 provisions of EPA's Greenhouse Gas
 15 Tailoring Rule and are no more
 16 stringent than the federal
 17 permitting rules.
 18 The Council first considered
 19 the greenhouse gas modifications at
 20 its last meeting on October 27,
 21 2010. At that meeting, the Council
 22 voted to forward these modifications
 23 to the Environmental Quality Board
 24 with the recommendation that they be
 25 adopted as emergency rule changes.

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1 At that same meeting, the Council
 2 voted to continue the hearing on the
 3 proposed permanent rules to today's
 4 meeting. The Board approved the
 5 proposed emergency rules at its
 6 meeting on November 16, 2010, and
 7 the amendments became effective on
 8 December 27, 2010, when signed by
 9 Governor Henry. These emergency
 10 rules are in effect until July 14,
 11 2011, or until superseded by
 12 permanent rules, whichever date is
 13 earlier. The proposed greenhouse
 14 gas modifications to Subchapters 1,
 15 7, and 8 are substantively identical
 16 to the emergency rule changes, but
 17 they are not word for word the same.
 18 We've cleaned it up a bit. We added
 19 a few commas for consistency in
 20 punctuation; we've added a word or
 21 two for clarity; and we've deleted a
 22 redundant word or two, but we
 23 believe the meaning remains
 24 unchanged.
 25 Staff proposes to change the

Page 7

1 last sentence in proposed new
 2 Section 2.1 of Subchapter 7 that was
 3 posted on our website and was
 4 included in the Council packets. I
 5 believe a copy of that revised
 6 wording has been included in the
 7 Council's folders today.
 8 Staff recommends that the
 9 sentence should be, quote -- well
 10 there are no quotes in it -- it
 11 should be, physical or operational.
 12 limitations may include, but are not
 13 limited to, air pollution control
 14 equipment, restrictions on hours of
 15 operation, and/or restrictions on
 16 the type or amount of material
 17 combusted, stored, or processed.
 18 This is not a substantive change.
 19 The Department is also
 20 proposing some minor changes to
 21 Subchapter 1 that are being
 22 presented to the Council for the
 23 first time today.
 24 The Department is proposing
 25 modifications to the State's PSD and

Page 8

1 Nonattainment New Source Review or
 2 NNSR permitting programs to
 3 implement the changes in federal
 4 requirements brought about by the
 5 new National Ambient Air Quality
 6 Standards or NAAQS for PM2.5
 7 published in 1997 and revised in
 8 2006.
 9 These proposed changes will
 10 update the PSD increments in
 11 Subchapter 3 and the NSR program in
 12 Subchapter 8, and enable the
 13 Department to maintain its delegated
 14 authority for the full NSR program.
 15 Phase 1 of the implementation
 16 rule -- of the NSR implementation
 17 rule was published on May 16, 2008
 18 and established a major source
 19 threshold, significant emission
 20 rates, offset ratios, interpollutant
 21 trading for offsets, and
 22 applicability of NSR to PM2.5
 23 precursors. These modifications
 24 were proposed at the October 27,
 25 2010, Council meeting. In October

Page 9

1 the Council continued the hearing on
 2 the proposed PM2.5 modifications to
 3 Subchapter 8 until today's meeting.
 4 These proposed modifications have
 5 not been changed.
 6 Phase 2 of the NSR
 7 implementation rule was published in
 8 the Federal Register on October 20,
 9 2010 and contains PM2.5 increments,
 10 Significant Impact Level or SILs,
 11 and a Significant Monitoring
 12 Concentration or SMC.
 13 Staff is proposing for the
 14 first time changes to Subchapter 3
 15 and Subchapter 8 to incorporate
 16 these provisions. The proposed
 17 modifications to OAC 252:100-3-4(b)
 18 adds the new 24-hour and annual
 19 PM2.5 PSD increments.
 20 The proposed changes to
 21 Subchapter 8 modify the definition
 22 of "baseline area" and "baseline
 23 date" in OAC 252:100-8-31 to include
 24 PM2.5. Excuse me. Modifies Section
 25 33 Subsection (c) to include a

Page 10

1 significant monitoring concentration
 2 for PM2.5 and it modifies 8-33(g) to
 3 reflect the change that was made in
 4 252:100-8-35(a) regarding air
 5 quality impact evaluation. It
 6 modifies 252:100-8-35(a) to add
 7 significant impact levels for PM2.5
 8 and update -- it updates the
 9 incorporation by reference date in
 10 Section 52 to December 20, 2010, to
 11 include the revision to 40 CFR
 12 51.165(b)(2) regarding sources in
 13 attainment areas that cause or
 14 contribute to NAAQS violation. This
 15 last modification adds a
 16 significance level for PM2.5.

17 We propose to change the
 18 incorporation by reference date for
 19 40 CFR 51.165(b)(2) from July 1,
 20 2011, to December 20, 2010, the
 21 effective date of the federal rule
 22 modification. This will ensure that
 23 there is no prospective
 24 incorporation of reference for this
 25 federal rule. A copy of the

Page 11

1 proposed change is included in the
 2 Council's folder today.
 3 While these Sections are open
 4 for revision, the Department also
 5 proposes to make some additional
 6 corrections and non-substantive
 7 clarifications and format changes to
 8 Subchapter 8.

9 The Department proposes to
 10 correct a reference error in the
 11 definition of "administratively
 12 complete" in OAC 252:100-8-2 to
 13 Paragraph (b). The reference to OAC
 14 252:2-15-20(b)(3) needs to be
 15 changed to OAC 252:4-7-13(b) since
 16 Chapter 2 has been changed to
 17 Chapter 4. This was brought to our
 18 attention -- I'm running out of
 19 voice -- after the Council packets
 20 were mailed. This is not a
 21 substantive change. And a copy of
 22 this change has been included in the
 23 Council folder today.

24 As presented in the October
 25 27, 2010 Council meeting, the

Page 12

1 Department proposes to correct an
 2 error in the definition of "major
 3 stationary source" in Section 31 by
 4 changing the charging rate for
 5 municipal incinerators in
 6 (A)(i)(XIV) of the definition from
 7 50 tons of refuse per day to 250
 8 tons of refuse per day to match the
 9 federal definition in 40 CFR
 10 51.166(b)(1). This is a substantive
 11 change.

12 The Department also proposes
 13 to make some format and
 14 non-substantive language changes to
 15 Subchapter 8 for clarity. For
 16 example, PM dash 10 (PM-10) is now
 17 being replaced by PM subscript 10.

18 Notice of the proposed
 19 permanent rule changes was published
 20 in the Oklahoma Register on December
 21 15, 2010. The notice requested
 22 written comments from the public and
 23 other interested parties.

24 On January 18, 2011, the
 25 Department received a letter from

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1 Jeff Robinson, Chief, Air Permits
 2 Section of EPA Region 6. Mr.
 3 Robinson encouraged the Department
 4 to expeditiously adopt the proposed
 5 greenhouse gas modifications to
 6 Subchapter 8 permanent rules. He
 7 did not comment on the greenhouse
 8 gas modification to Subchapter 7 or
 9 the PM2.5 modifications.

10 EPA has, in the latest on the
 11 continuing saga of greenhouse gas,
 12 EPA made public notice on the 12th
 13 of January in which they announced
 14 they were deferring greenhouse gas
 15 permitting requirements for CO2
 16 emissions from biomass-fired and
 17 other biogenic sources for 3 years
 18 for further study. The sources
 19 covered would, at least as they
 20 announced, would be facilities that
 21 emit CO2 as a result of burning
 22 forest or agricultural products for
 23 energy, wastewater treatment and
 24 livestock management facilities,
 25 landfills, and fermentation

Condensed Transcript

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1 processes for ethanol production.
2 EPA announced that they plan to
3 complete the rulemaking by July 2011
4 that will accomplish this deferral
5 and they plan to issue guidance
6 shortly that will provide a basis
7 that permitting authorities can use
8 to conclude that the use of biomass
9 as fuel is BACT for GHG emissions
10 until EPA can complete its deferral
11 rulemaking.

12 Staff requests that the
13 proposed greenhouse gas, and PM2.5,
14 and miscellaneous amendments to
15 Subchapters 1, 3, 7, and 8, as we
16 modified at this meeting, be
17 forwarded to the Environmental
18 Quality Board with the
19 recommendation that they be adopted
20 as permanent rule changes.

21 Thank you.
22 MS. BOTCHLET-SMITH: Do we
23 have any questions from the Council
24 for Dr. Sheedy? David.
25 MR. BRANECKY: Yes. Under

Page 15

1 Subchapter 8 on Page 9 on the
2 definition of baseline date.
3 DR. SHEEDY: Hang on a
4 minute.
5 MR. BRANECKY: I'm trying
6 to understand. You've got the major
7 source baseline date.
8 DR. SHEEDY: Okay.
9 MR. BRANECKY: You've got
10 -- for major source in the case of
11 PM2.5 on October 20, 2010 in (a) --
12 DR. SHEEDY: Uh-huh.
13 MR. BRANECKY: -- and then
14 in (b) we talk about 2.5 being
15 October 20, 2011.
16 DR. SHEEDY: The minor
17 source baseline date.
18 MR. BRANECKY: How did you
19 come up with 2011?
20 DR. SHEEDY: Well, these
21 are EPA's dates that are in the
22 Federal Register -- in the
23 rulemaking Federal Register, these
24 are the dates that they have.
25 MR. BRANECKY: Well, if you

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1 look at (b) it says the minor source
2 baseline date --
3 DR. SHEEDY: Uh-huh.
4 MR. BRANECKY: -- which I
5 guess (b) refers to --
6 DR. SHEEDY: Uh-huh.
7 MR. BRANECKY: -- is the
8 earliest date after the trigger date
9 on which a major stationary source
10 or a major modification submits a
11 completed application. So I'm --
12 DR. SHEEDY: Okay.
13 MR. BRANECKY: -- trying to
14 understand how you came up with
15 October 20, 2011, it's depended upon
16 when a major stationary source
17 submits a completed application.
18 DR. SHEEDY: No. The
19 trigger date -- the trigger date is
20 -- is different. The baseline date
21 is the earliest date after the
22 trigger date.
23 MR. BRANECKY: Okay.
24 DR. SHEEDY: And EPA has
25 set that trigger date.

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1 MR. BRANECKY: Okay. I
2 understand. There's a baseline date
3 and a trigger date.
4 DR. SHEEDY: Right.
5 MR. BRANECKY: Okay.
6 DR. SHEEDY: Not the same.
7 MR. BRANECKY: Okay. Thank
8 you.
9 DR. SHEEDY: Baseline date
10 is nothing if not confusing, at
11 least to me.
12 MS. BOTCHLET-SMITH:
13 Sharon.
14 MS. MYERS: On some of the
15 definitions the carbon dioxide
16 equivalent is not defined until you
17 start finding it buried under the
18 subject to regulation. I'm just
19 kind of curious as to why that's
20 structured like that. Greenhouse
21 gas has its own definition but the
22 carbon dioxide equivalent does not;
23 it's buried underneath another
24 definition.
25 DR. SHEEDY: Well, we

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1 basically echoed EPA's method of
 2 doing this which was, I think, based
 3 on an approach they were using to be
 4 able to do these changes in a much
 5 more rapid manner than usual and
 6 they stuck it there. I don't
 7 suppose there is any thing that
 8 would keep us from taking it out of
 9 there and putting it into a
 10 definition of its own.
 11 MS. MYERS: It seems like
 12 it would be a little cleaner. If
 13 you're looking through this trying
 14 to figure out what a carbon dioxide
 15 equivalent is, it seems like it
 16 would be a little cleaner approach
 17 --
 18 DR. SHEEDY: Yeah.
 19 MS. MYERS: -- for it to
 20 have its own designation just like
 21 GHG does.
 22 DR. SHEEDY: Yeah. It
 23 might be easier to find.
 24 MS. MYERS: Just an
 25 observation.

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1 DR. SHEEDY: Yeah. I think
 2 that could be -- I think that could
 3 be done without destroying the
 4 meaning of the modification.
 5 MR. BRANECKY: So you're
 6 saying put it in the definition
 7 section up front?
 8 MS. LODES: In Subchapter
 9 1?
 10 MR. BRANECKY: Or in
 11 subchapter --
 12 MS. MYERS: It's referenced
 13 in Subchapter 1 as an acronym --
 14 MR. BRANECKY: Right.
 15 MS. MYERS: -- and then you
 16 go back into --
 17 DR. SHEEDY: Uh-huh.
 18 MS. MYERS: -- where you
 19 get into the calculations in
 20 Subchapter 8.
 21 DR. SHEEDY: Uh-huh.
 22 MS. MYERS: But it doesn't
 23 have its own definition in
 24 Subchapter 8, it's buried underneath
 25 subject to regulation.

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1 DR. SHEEDY: Uh-huh. Yes.
 2 MS. MYERS: That's my
 3 question. Why is it --
 4 DR. SHEEDY: We use it
 5 basically -- I think the only place
 6 we're using it at this time is in
 7 two sections in Subchapter 8. The
 8 two parts -- the Part 70 program in
 9 Part 5 and then we use it again in
 10 Part 8 -- no, I mean Part 7, for
 11 the PSD program. So we could put it
 12 in Subchapter 1 or we could put it
 13 somewhere in Subchapter 8.
 14 MS. MYERS: Well, I don't
 15 know if you could put a reference in
 16 Subchapter 1 to refer it to being
 17 defined in Subchapter 8 or
 18 something. I mean it's --
 19 DR. SHEEDY: Well, I don't
 20 know that we won't be using it
 21 somewhere else later in the
 22 subchapter -- in the chapter.
 23 MR. BRANECKY: I don't
 24 think you want to put it in
 25 Subchapter 1 --

Page 21

1 MS. LODES: I think
 2 Subchapter 1 would make more sense.
 3 MR. BRANECKY: -- the
 4 definition of --
 5 DR. SHEEDY: Uh-huh.
 6 MR. BRANECKY: -- carbon
 7 dioxide equivalent in Subchapter 1.
 8 MS. MYERS: Because that's
 9 where most of the definitions are.
 10 MR. BRANECKY: Right. And
 11 you refer to it in Subchapter 1.
 12 MS. LODES: We've been
 13 trying to move all of the
 14 definitions to Subchapter 1, it
 15 seems like over the last several
 16 years. So that would make the most
 17 sense to put it there.
 18 DR. SHEEDY: Well,
 19 certainly we've been trying to put
 20 all the definitions in Subchapter 1
 21 that apply to more than one
 22 subchapter, certainly. So -- okay.
 23 I can't see any reason not to. Rob?
 24 MS. MYERS: Does that
 25 require opening up Subchapter 1

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1 again?
2 DR. SHEEDY: Well,
3 Subchapter 1 is open.
4 MR. TERRILL: What we're
5 talking about is whether or not we
6 might want to take a short break,
7 fix this today so you can pass it so
8 we don't have to bring it back.
9 DR. SHEEDY: Uh-huh.
10 MR. TERRILL: Actually,
11 they are already working on it.
12 We'd really like to get this done
13 and clean this up (inaudible).
14 MS. MYERS: I think it
15 would be cleaner to have the
16 definition with the other major
17 definitions. That's going to be a
18 big one for regulated folks to be
19 looking up.
20 DR. SHEEDY: Uh-huh.
21 MS. MYERS: And to have it
22 buried down within another
23 definition seems to be a little bit
24 --
25 MR. TERRILL: You don't

Page 23

1 like EPA's approach?
2 MS. MYERS: You know how I
3 feel about that.
4 MR. BRANECKY: Eddie, in
5 the interest of time can we continue
6 this one and go on to the next one
7 and come back?
8 MS. LODES: Let's
9 definitely continue any questions or
10 comments we've got on this.
11 DR. SHEEDY: Okay. So --
12 MS. BOTCHLET-SMITH: They'll
13 have that done in just a minute.
14 Are there other questions from the
15 Council?
16 Okay. While the Council
17 thinks about any other questions, I
18 haven't received any Notice of
19 Comment from the public. Is there
20 anyone here that wishes to make a
21 comment on the rules as they're
22 being presented?
23 Seeing no hands, it's back to
24 the Council to have further
25 discussion other than what we're

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1 getting ready to read into the
2 record.
3 MS. LODES: I don't know
4 that -- I mean that's what I was
5 asking.
6 MR. BRANECKY: Yeah. Why
7 can't we just -- we've got carbon
8 dioxide equivalent defined
9 somewhere, can't we just take that
10 and move it to 1.
11 DR. SHEEDY: Yeah. It's
12 defined in two places, I believe.
13 It's defined in the definition of
14 subject to regulation in 8-2 and in
15 8-31.
16 MR. BRANECKY: Well, we
17 could just leave those definitions
18 there and then just add one in
19 Subchapter 1.
20 DR. SHEEDY: Uh-huh.
21 MR. BRANECKY: If you all
22 would agree to do that I don't
23 necessarily need to see it.
24 DR. SHEEDY: Yeah. It
25 would echo what's in the other two.

Page 25

1 MS. LODES: Yeah. We don't
2 -- I don't need to see it.
3 DR. SHEEDY: Okay.
4 MS. MYERS: I agree with
5 that.
6 DR. SHEEDY: Yeah. I don't
7 see any problem in doing that unless
8 legal counsel or my boss has a
9 problem.
10 MS. LODES: So is it
11 different in the two places?
12 MS. BOTCHLET-SMITH: It's a
13 little different and we're trying to
14 reconcile that difference.
15 DR. SHEEDY: Well, I think
16 basically -- doesn't it mean the
17 same?
18 MR. SINGLETARY: Yeah.
19 DR. SHEEDY: Okay.
20 MR. SINGLETARY: Well,
21 they're written --
22 (Comments)
23 MS. LODES: Can we pause
24 this for a minute and maybe go on to
25 the next item on the Agenda?

Condensed Transcript

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1 MS. BOTCHLET-SMITH: We can
2 postpone it to a few minutes and
3 come back to it to a certain time.
4 MS. LODES: Okay. Do we
5 need a motion to postpone it?
6 MS. BOTCHLET-SMITH: Yes.
7 Yes. You need a motion.
8 MS. LODES: Okay. I need a
9 motion to postpone this for a
10 certain length of time while they
11 work on the definitions. So we can
12 move on to the next item on the
13 Agenda.
14 MR. BRANECKY: How much
15 time?
16 (Multiple Discussions)
17 MR. BRANECKY: I move.
18 MS. MYERS: Okay. I'll
19 second it, then.
20 MR. BRANECKY: I move that
21 we do what they said to do.
22 MS. MYERS: I'll second
23 whatever David said.
24 MR. BRANECKY: I move that
25 we postpone -- that we continue this

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1 to give the staff enough time to
2 develop some language before we come
3 back to this item on the Agenda and
4 continue on to the next item.
5 MS. MYERS: Second.
6 MS. LODES: I have a motion
7 and a second. I am assuming we need
8 to call the roll, Myrna.
9 MS. BRUCE: Bob Lynch.
10 DR. LYNCH: Yes.
11 MS. BRUCE: Pete White
12 MR. WHITE: Yes.
13 MS. BRUCE: David Gamble.
14 MR. GAMBLE: Yes.
15 MS. BRUCE: David Branecky.
16 MR. BRANECKY: Yes.
17 MS. BRUCE: Jim Haught.
18 MR. HAUGHT: Yes.
19 MS. BRUCE: Sharon Myers.
20 MS. MYERS: Yes.
21 MS. BRUCE: Gary Collins.
22 MR. COLLINS: Yes.
23 MS. BRUCE: Montelle Clark.
24 MR. CLARK: Yes.
25 MS. BRUCE: Laura Lodes.

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1 MS. LODES: Yes.
2 MS. BRUCE: Motion passed.
3 (Item Number 5B Continued)
4 ITEM NUMBER 5C
5 MS. BOTCHLET-SMITH: The
6 next item on the Agenda is Number
7 5C. This is Appendix A, Allowable
8 Particulate Matter Emission Rate for
9 Incinerators.
10 This presentation is being
11 given by Ms. Diana Hinson of our
12 staff.
13 MS. HINSON: Good morning,
14 Madam Chair, Members of the Council,
15 ladies and gentlemen. I'm Diana
16 Hinson, an Environmental Program
17 Specialist in the Rules and Planning
18 Section of Air Quality, Department
19 of Environmental Quality.
20 The Department is proposing to
21 revoke Appendix A, allowable
22 emissions for incinerators and adopt
23 a new Appendix A in order to correct
24 inaccuracies.
25 Notice of the proposed rule

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1 changes was published in the
2 Oklahoma Register on December 15,
3 2010 and comments were requested
4 from members of the public. No
5 comments have been received at this
6 date.
7 This is the first time the
8 Council has been notified of the
9 proposed revisions. The Department
10 suggests that the Council consider
11 voting to send the modification to
12 the Environmental Quality Board with
13 a recommendation that it be adopted
14 as a permanent rule.
15 Thank you.
16 MS. BOTCHLET-SMITH: Are
17 there any questions from the Council
18 for Ms. Hinson? Any questions from
19 the public?
20 Hearing none, if there is not
21 any discussion by the Council,
22 Laura, I ask for a motion.
23 MS. LODES: We have no
24 discussion. The Agency has
25 recommended that we pass this. Do I

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1 have a motion?
 2 MR. HAUGHT: I'll make the
 3 motion that we accept the
 4 modifications to Appendix A as
 5 recommended by staff.
 6 MR. CLARK: I'll second it.
 7 MS. LODES: I have a motion
 8 and a second. Myrna, would you
 9 please call roll.
 10 MS. BRUCE: Bob Lynch.
 11 DR. LYNCH: Yes.
 12 MS. BRUCE: Pete White.
 13 MR. WHITE: Yes.
 14 MS. BRUCE: David Gamble.
 15 MR. GAMBLE: Yes.
 16 MS. BRUCE: David Branecky.
 17 MR. BRANECKY: Yes.
 18 MS. BRUCE: Jim Haught.
 19 MR. HAUGHT: Yes.
 20 MS. BRUCE: Sharon Myers.
 21 MS. MYERS: Yes.
 22 MS. BRUCE: Gary Collins.
 23 MR. COLLINS: Yes.
 24 MS. BRUCE: Montelle Clark.
 25 MR. CLARK: Yes.

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1 MS. BRUCE: Laura Lodes.
 2 MS. LODES: Yes.
 3 MS. BRUCE: Motion passed.
 4 (Item Number 5C Concluded)
 5 ITEM NUMBER 5D
 6 MS. BOTCHLET-SMITH: The
 7 next item on the Agenda is Number
 8 5D. This is Appendix E, Primary
 9 Ambient Air Quality Standards and
 10 the presentation will be given by
 11 Mr. Leon Ashford of the Air Quality
 12 staff.
 13 MR. ASHFORD: Hello. I'm
 14 Leon Ashford of the Oklahoma DEQ.
 15 Good morning, Madam Chair, Members
 16 of the Council, ladies and
 17 gentlemen.
 18 Staff proposes to revoke
 19 Appendix E, Primary Air Quality
 20 Standards, and replace it with a new
 21 Appendix E that includes recent
 22 changes to the National Ambient Air
 23 Quality Standards or NAAQS for the
 24 nitrogen dioxide or NO2, and sulfur
 25 dioxide, SO2 Standards.

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1 The Clean Air Act requires
 2 that the EPA periodically review and
 3 revise the NAAQS. On February 9,
 4 2010, EPA promulgated a new one-hour
 5 NO2 primary standard of 100 parts
 6 per billion. EPA promulgated a new
 7 one-hour SO2 primary standard of 75
 8 parts per billion and revoked the
 9 24-hour and annual standards on June
 10 2, 2010. EPA is expected to revise
 11 the secondary standard for NO2 and
 12 SO2 next year.
 13 Appendix E is currently part
 14 of Oklahoma's EPA-approved State
 15 Implementation Plan or SIP. The
 16 proposed changes are necessary to
 17 update the primary ambient air
 18 quality standards in the state rule
 19 to make them consistent with and as
 20 protective as the federal standards.
 21 Upon promulgation, the new Appendix
 22 E will be submitted to EPA as a
 23 revision to the SIP.
 24 Notice of the proposed
 25 permanent rule changes was published

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1 in the Oklahoma Register on December
 2 15, 2010. The notice requested
 3 written comments from the public and
 4 other interested parties. The only
 5 comment made was received from EPA
 6 Region 6, and they concurred with
 7 the changes.
 8 Staff requests that the
 9 Council vote to recommend the
 10 proposed rule change and be
 11 forwarded to the Environmental
 12 Quality Board for adoption as a
 13 permanent rule.
 14 MS. BOTCHLET-SMITH: Is
 15 there any questions for Mr. Ashford?
 16 David.
 17 MR. BRANECKY: Yes. Well,
 18 in the -- on the new proposal in the
 19 footnotes 8 and 9 that referred to
 20 the new SO2 and NO2 standard, the
 21 language says that -- refers to
 22 within an area -- at each monitor
 23 within an area that's not exceeding
 24 a given amount. Is that --
 25 MR. ASHFORD: Yes.

App E
↓

Condensed Transcript

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1 MR. BRANECKY: -- defined
2 area, is that defined in the
3 appendix --
4 MR. ASHFORD: In the
5 appendix, yes.
6 MR. BRANECKY: -- or what
7 is an area -- for the state?
8 MR. ASHFORD: That is
9 lifted directly from the footnotes
10 that EPA had and I'm not -- I'm not
11 sure that it's defined anywhere.
12 General assumption would be -- would
13 possibly be determined by how the
14 monitoring site is cited. There is
15 a designation for each monitoring
16 site whether it's a neighborhood or
17 urban scale or rural scale and that
18 area might go along with that
19 definition that each site has.
20 MR. BRANECKY: And then
21 another question. Maybe you don't
22 know the answer because this is EPA
23 language, but in 8 it talks about
24 maximum one-hour average at each
25 monitor and in 9 it says maximum

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1 one-hour average concentration at
2 each monitor. Is there a difference
3 or a reason for the difference in
4 language?
5 One says average concentration
6 and the other one just says average.
7 MR. ASHFORD: I don't
8 believe there is an intended
9 difference.
10 MR. BRANECKY: Blame it on
11 the lawyers.
12 MR. ASHFORD: Right.
13 MR. BRANECKY: All right.
14 It's just different language. I
15 didn't know if there was a reason
16 for that difference.
17 MR. ASHFORD: It's probably
18 different people writing the
19 footnotes at different times.
20 MR. BRANECKY: Okay. Thank
21 you.
22 MR. ASHFORD: You're
23 welcome.
24 MS. BOTCHLET-SMITH: Other
25 questions from the Council? Any

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1 questions or comments from the
2 public?
3 Hearing none, Laura.
4 MS. LODES: We have no
5 further comments or questions. The
6 Agency has recommended that we pass
7 the proposed changes. Do I have a
8 motion?
9 MR. HAUGHT: I move that we
10 accept the staff's recommendations
11 to the modifications to Appendix E
12 to reflect the changes in primary
13 ambient air quality standards.
14 MS. MYERS: Which appendix,
15 Jim?
16 MR. HAUGHT: E.
17 MS. MYERS: Okay.
18 MS. LODES: I have a
19 motion. Do I have a second?
20 MR. GAMBLE: Second.
21 MS. LODES: I have a motion
22 and a second. Myrna, would you
23 please call the roll.
24 MS. BRUCE: Bob Lynch.
25 DR. LYNCH: Yes.

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1 MS. BRUCE: Pete White.
2 MR. WHITE: Yes.
3 MS. BRUCE: David Gamble.
4 MR. GAMBLE: Yes.
5 MS. BRUCE: David Branecky.
6 MR. BRANECKY: Yes.
7 MS. BRUCE: Jim Haught.
8 MR. HAUGHT: Yes.
9 MS. BRUCE: Sharon Myers.
10 MS. MYERS: Yes.
11 MS. BRUCE: Gary Collins.
12 MR. COLLINS: Yes.
13 MS. BRUCE: Montelle Clark.
14 MR. CLARK: Yes.
15 MS. BRUCE: Laura Lodes.
16 MS. LODES: Yes.
17 MS. BRUCE: Motion passed.
18 (Item Number 5D Concluded)
19 ITEM NUMBER 5E
20 ~~MS. BOTCHLET-SMITH: The~~
21 ~~next item on the Agenda is Number~~
22 ~~5E, OAC 252:100-2, Incorporation by~~
23 ~~Reference; and Appendix Q,~~
24 ~~Incorporation by Reference.~~
25 Ms. Nancy Marsment of our

Condensed Transcript

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1 MR. HAUGHT: And I'm okay
 2 with tabling it too, but I think
 3 it's a bigger issue I was bringing
 4 up, and that is who's going to get
 5 caught in the middle if it's a
 6 shoving match about who takes
 7 authority because they're both short
 8 on fees. Who ultimately could be at
 9 risk on that?

10 MR. TERRILL: And --
 11 MR. HAUGHT: And so I just
 12 wanted to put that in as part of the
 13 discussion going forward.

14 MS. LODES: Okay.
 15 MR. TERRILL: And we'll see
 16 if that doesn't happen. And if it
 17 turns out that -- we've got to
 18 figure out what we're going to do
 19 with what we've got today that we'll
 20 probably come back to the Council
 21 with a -- it wouldn't be a
 22 rulemaking it would just be a
 23 discussion of here's how -- here's
 24 what we think we're going to do and
 25 here's how those sources would know

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1 who they going to have to deal with
 2 and the best way we can help. So
 3 we'll come back and do that at the
 4 Council meeting after July either a
 5 proposal to adopt in October and
 6 move forward or here's what we're
 7 not going to be able to do and
 8 here's what we think the
 9 implications are.

10 MS. LODES: Okay.
 11 MS. BOTCHLET-SMITH: I know
 12 you've got a motion on the table
 13 without a second. Typically, we at
 14 least give the public an opportunity
 15 to comment. So I'd like to do that
 16 at this time and then you can call
 17 for your second.

18 MS. LODES: That's fine.
 19 MS. BOTCHLET-SMITH: Is
 20 there anyone from the public wishing
 21 to comment? Hearing none, now.
 22 MS. LODES: Okay. I have a
 23 motion on the -- to carry this
 24 forward. Do I have a second?
 25 MS. MYERS: I'll second it.

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1 MS. LODES: I have a motion
 2 and a second. Myrna, will you
 3 please call the roll.

4 MS. BRUCE: Bob Lynch.
 5 DR. LYNCH: Yes.
 6 MS. BRUCE: Pete White.
 7 MR. WHITE: Yes.
 8 MS. BRUCE: David Gamble.
 9 MR. GAMBLE: Yes.
 10 MS. BRUCE: David Branecky.
 11 MR. BRANECKY: Yes.
 12 MS. BRUCE: Jim Haught.
 13 MR. HAUGHT: Yes.
 14 MS. BRUCE: Sharon Myers.
 15 MS. MYERS: Yes.
 16 MS. BRUCE: Gary Collins.
 17 MR. COLLINS: Yes.
 18 MS. BRUCE: Montelle Clark.
 19 MR. CLARK: Yes.
 20 MS. BRUCE: Laura Lodes.
 21 MS. LODES: Yes.
 22 MS. BRUCE: Motion passed.
 23 (Item Number 50 Concluded)
 24 (GREENHOUSE GAS RULES CONTINUED)
 25 MS. BOTCHLET-SMITH: Okay.

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1 We're ready to go back to the
 2 greenhouse gas rules. But Laura,
 3 we're going to need a motion --
 4 since that was postponed to a
 5 certain time we now need a motion
 6 from the Council to bring that back
 7 for discussion or presentation.

8 MS. LODES: Council, I need
 9 a motion to bring the proposed
 10 changes to Subchapter 8 -- 7 -- 1
 11 and 3, since we didn't -- since it's
 12 listed in the subject line on. Back
 13 up for discussion.

14 MS. MYERS: I so move.
 15 MS. LODES: I have a
 16 motion. Do I have a second?
 17 MR. GAMBLE: Second.
 18 MS. LODES: I have a motion
 19 and a second. Myrna, please call
 20 the roll.

21 MS. BRUCE: Bob Lynch.
 22 DR. LYNCH: Yes.
 23 MS. BRUCE: Pete White.
 24 MR. WHITE: Yes.
 25 MS. BRUCE: David Gamble.

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Cont'd
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1 MR. GAMBLE: Yes.
 2 MS. BRUCE: David Branecky.
 3 MR. BRANECKY: Yes.
 4 MS. BRUCE: Jim Haught.
 5 MR. HAUGHT: Yes.
 6 MS. BRUCE: Sharon Myers.
 7 MS. MYERS: Yes.
 8 MS. BRUCE: Gary Collins.
 9 MR. COLLINS: Yes.
 10 MS. BRUCE: Montelle Clark.
 11 MR. CLARK: Yes.
 12 MS. BRUCE: Laura Lodes.
 13 MS. LODES: Yes.
 14 MS. BRUCE: Motion passed.
 15 MS. BOTCHLET-SMITH: Okay.
 16 Cheryl, are you going to present the
 17 new language or is Joyce?
 18 DR. SHEEDY: Joyce was, but
 19 you can do it if you would like.
 20 MS. BRADLEY: Okay. I can.
 21 DR. SHEEDY: You're sitting
 22 right there with it.
 23 MS. BRADLEY: I just want
 24 to turn the machine on, right?
 25 MS. SULLIVAN: I think I

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1 98-Global Warming Potentials and
 2 summing the resultant value for each
 3 to compute a TPY CO2E.
 4 DR. SHEEDY: Cheryl, may I
 5 make just one correction? Just put
 6 in the format that we're currently
 7 using in Subchapter 1.
 8 We would probably say,
 9 quotation marks, I believe, carbon
 10 dioxide equivalent emissions, end
 11 quotation marks, are, quotation
 12 marks, CO2E, close quotation marks,
 13 means.
 14 MS. BRADLEY: Okay.
 15 DR. SHEEDY: And that's
 16 just a format.
 17 MS. BRADLEY: Okay.
 18 MS. SULLIVAN: I didn't see
 19 the end quote. I'm sorry. I
 20 thought it was an arrow when I read
 21 it and then took it out again.
 22 MS. BRADLEY: Okay. So we
 23 need --
 24 MR. SINGLETARY: Quotations
 25 after the 's' in "emissions".

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1 moved it so it wouldn't be right in
 2 Laura's face.
 3 (Multiple Conversations)
 4 MS. BOTCHLET-SMITH: Okay.
 5 Just for the benefit of the Court
 6 Reporter, Ms. Cheryl Bradley of the
 7 Air Quality staff will be presenting
 8 some additional language for this
 9 rulemaking.
 10 MS. BRADLEY: And to
 11 address a comment from Council
 12 Member Myers, we are proposing to
 13 add to Subchapter 1, general
 14 provisions, Section OAC 252:100-1-3,
 15 Definitions, the following
 16 definition.
 17 Carbon dioxide equivalent
 18 emissions (CO2E) means an amount of
 19 GHG emitted and shall be computed by
 20 multiplying mass amount of emissions
 21 (TPY) for each of the six greenhouse
 22 gases in the pollutant GHG by the
 23 gasses associated Global Warming
 24 Potential (GWP) published in Table
 25 8-1 to Subpart (a) of 40 CFR Part

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1 DR. SHEEDY: And you can
 2 take the parentheses away from it.
 3 MS. BRADLEY: Means --
 4 DR. SHEEDY: Well, that's
 5 not --
 6 MS. BRADLEY: Okay.
 7 DR. SHEEDY: That's how we
 8 do it.
 9 MS. BRADLEY: Okay. So
 10 we've got --
 11 DR. SHEEDY: End of quotes
 12 after carbon dioxide equivalent
 13 emissions.
 14 MS. BRADLEY: There.
 15 DR. SHEEDY: Now put an
 16 "or".
 17 MS. BRADLEY: Okay, o-r.
 18 DR. SHEEDY: Now put some
 19 more quotes.
 20 MS. BRADLEY: And do we
 21 need -- we don't need the
 22 parentheses, do we?
 23 DR. SHEEDY: Now take away
 24 the parentheses.
 25 MS. BRADLEY: Okay.

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1 DR. SHEEDY: That's it.
2 MS. BRADLEY: That's it.
3 MS. MYERS: And then is the
4 rest of the definition staying in
5 those two different places that we
6 talked about?
7 MS. BRADLEY: Yes.
8 MS. MYERS: Okay. I'm good
9 with that.
10 MS. BOTCHLET-SMITH: Other
11 questions or discussion from the
12 Council? Any comments from the
13 public? Don Whitney.
14 MR. WHITNEY: Yes. I'm Don
15 Whitney from Trinity Consultants.
16 I'd like to suggest just a further
17 refinement of the definition. And
18 that's the units. The tons per year
19 is traditionally what we think of in
20 DEQ but there is other contexts, of
21 course. The federal standard is
22 metric tons and I would suggest
23 removing the TPY in the two places
24 would still work just as well as the
25 definition and not tie it in to any

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1 let's don't, for goodness sakes, put
2 them in the same terms.
3 MR. WHITNEY: Who?
4 DR. SHEEDY: EPA.
5 MS. LODES: So that's what
6 we're adding. I think -- I don't
7 remember how it is exactly in the
8 Tailoring Rule which is what we're
9 trying to incorporate here, but I
10 think this is what's in the
11 Tailoring Rule. Am I right on that?
12 DR. SHEEDY: Yes. Yes.
13 MS. LODES: Okay.
14 MS. BOTCHLET-SMITH: Any
15 other comments from the public?
16 Discussion from the Council?
17 MR. COLLINS: Are we going
18 to remove that tons per year --
19 MS. BOTCHLET-SMITH: Rob,
20 are you looking that up?
21 MR. COLLINS: I don't have
22 the Tailoring Rule here.
23 MR. SINGLETARY: I'm
24 checking.
25 DR. SHEEDY: No, we don't

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1 one units of measure. It's just a
2 little cleaner. None of our other
3 pollutants have units in there. So
4 I'd suggest taking the tons per year
5 out two places where it is there.
6 The first TPY on the third line and
7 last take out "a TPY". Thank you.
8 MS. LODES: On that, is the
9 federal rule -- I think the Federal
10 Tailoring Rule is in English tons
11 per year, not metric tons per year.
12 Am I not correct on that?
13 DR. SHEEDY: I thought it
14 was. Yes.
15 MS. LODES: Okay.
16 MR. WHITNEY: Yes. But
17 greenhouse gas reporting is metric.
18 MS. LODES: Mandatory
19 reporting rules in metric.
20 MR. WHITNEY: Yes.
21 MS. LODES: The Tailoring
22 Rule is in, which is what this is
23 subject to, is in English.
24 MR. WHITNEY: Well --
25 DR. SHEEDY: Uh-huh. And

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1 do that.
2 MS. BRADLEY: Have we got
3 that Tailoring Rule?
4 DR. SHEEDY: No. I'm
5 sorry; I didn't bring a copy of the
6 Federal Register. But I do think
7 we're pretty much --
8 MR. BRANECKY: I think what
9 Mr. Whitney is saying is if you
10 remove the TPY then it's --
11 irregardless of what the units are
12 this is going to cover it. You're
13 going to have MACT -- you're talking
14 about mass amount of emissions
15 irregardless of whether it's metric
16 or English this is going to cover
17 it.
18 MS. LODES: And that makes
19 sense. My only question would be do
20 we cause a problem as to which units
21 it should be in for the Tailoring
22 Rule, if the Tailoring is in English
23 and the mandatory reporting rule is
24 in metric.
25 DR. SHEEDY: Well, would it

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1 be --
2 MS. LODES: Which is
3 incredibly confusing to begin with.
4 DR. SHEEDY: Would it --
5 MR. BRANECKY: Use whatever
6 is applicable.
7 DR. SHEEDY: You know, it
8 would be defined by the fact that
9 the threshold levels in the
10 Tailoring Rule are in tons -- you
11 know, just regular tons per year.
12 MR. HAUGHT: So if that's
13 the way it's written in Subchapter
14 8, is this with the TPY in there
15 then that would be appropriate. I
16 think the problem would be to put
17 this in Subchapter 1 and then later
18 on it refers to something else.
19 DR. SHEEDY: Yes. Because
20 Subchapter 1 applies to the whole
21 chapter --
22 MR. HAUGHT: Subchapter 1
23 applies across the board and if --
24 and if the reporting does become
25 part of the state rule in the

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1 future, then -- but the specific
2 reference for 8 which is where the
3 Tailoring Rule is does have the
4 definition in there; does have the
5 TPY in it --
6 DR. SHEEDY: Uh-huh.
7 MR. HAUGHT: -- without the
8 metric implication here refers to
9 the English.
10 DR. SHEEDY: Okay. Yeah.
11 MR. HAUGHT: Since we're
12 not deleting the other --
13 DR. SHEEDY: Right. We've
14 left it in --
15 MR. HAUGHT: -- I would be
16 okay with it.
17 MS. LODES: Yeah. I agree
18 with Don. Let's just go ahead and
19 take it out.
20 DR. SHEEDY: Okay.
21 MS. LODES: Because it
22 doesn't really add value otherwise.
23 DR. SHEEDY: And so then we
24 need to take it out again down at
25 the bottom.

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1 MS. BOTCHLET-SMITH: Okay.
2 Any further questions, comments, or
3 discussion?
4 MS. LODES: Seeing no
5 further questions or comments, the
6 Agency has asked that we adopt this
7 regulation and then we've got this
8 change to it. Do I have a motion?
9 MR. COLLINS: I'll make a
10 motion that we accept the proposed
11 amendments to OAC 252:100-8, 7, 3,
12 and 1, General Provisions, and the
13 changes presented to Chapter 1,
14 Definition of Carbon Dioxide
15 Equivalent and the changes
16 distributed in the packet.
17 MS. LODES: Okay. I have a
18 motion. Do I have a second?
19 MR. HAUGHT: I'll second
20 it.
21 MS. LODES: I have a motion
22 --
23 (Comment for clarification)
24 MS. LODES: I have a motion
25 and a second. Myrna, would you

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1 please call roll.
2 MS. BRUCE: Bob Lynch.
3 DR. LYNCH: Yes.
4 MS. BRUCE: Pete White.
5 MR. WHITE: Yes.
6 MS. BRUCE: David Gamble.
7 MR. GAMBLE: Yes.
8 MS. BRUCE: David Branecky.
9 MR. BRANECKY: Yes.
10 MS. BRUCE: Jim Haught.
11 MR. HAUGHT: Yes.
12 MS. BRUCE: Sharon Myers.
13 MS. MYERS: Yes.
14 MS. BRUCE: Gary Collins.
15 MR. COLLINS: Yes.
16 MS. BRUCE: Montelle Clark.
17 MR. CLARK: Yes.
18 MS. BRUCE: Laura Lodes.
19 MS. LODES: Yes.
20 MS. BRUCE: Motion passed.
21 MS. BOTCHLET-SMITH: Okay.
22 (Item Number 5E Concluded)



O K L A H O M A
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY COUNCIL

Attendance Record

January 19, 2011

Oklahoma City, Oklahoma

NAME and/or AFFILIATION

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O K L A H O M A
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY COUNCIL

Attendance Record

January 19, 2011

Oklahoma City, Oklahoma

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Randy Ward	ODEQ	
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Jim Bennett	EFD	
MARK GIBBS	DEQ	
Blair Brown	Stantec Env.	

THE AIR QUALITY COUNCIL
-RULEMAKING RECOMMENDATION
TO THE ENVIRONMENTAL QUALITY BOARD

Identification of Proposed Rulemaking:

Chapter Number and Title: OAC 252:100

- OAC 252:100-1. General Provisions [AMENDED]
- OAC 252:100-3. Air Quality Standards and Increments [AMENDED]
- OAC 252:100-7. Permits for Minor Facilities [AMENDED]
- OAC 252:100-8. Permits for Part 70 Sources [AMENDED]

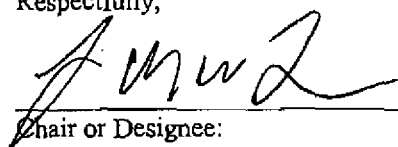
On January 19, 2011, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

- permanent [take effect after legislative review]
- emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,


Chair or Designee:

Date Signed: 1-19-11

	VOTING TO APPROVE	VOTING AGAINST	ABSTAIN	ABSENT
David Branecky	X			
Montelle Clark	X			
Gary Collins	X			
David Gamble	X			
Jim Haught	X			
Laura Lodes	X			
Robert Lynch	X			
Sharon Myers	X			
Pete White	X			

**REGULAR MEETING AGENDA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OKLAHOMA ENVIRONMENTAL QUALITY BOARD**

A Public Meeting: 9:30 a.m. Friday, February 25, 2011
DEQ Multipurpose Room
Oklahoma City, Oklahoma

Please turn off cell phones.

1. **Call to Order** – Brita Cantrell, Chair
2. **Roll Call** – Myrna Bruce, Secretary, Board & Councils
3. **Approval of Minutes** of the November 16, 2010, Regular Meeting
4. **Election of Officers** – Election of Chair and Vice-Chair for Calendar Year 2011
5. **Rulemaking - OAC 252:100 Air Pollution Control**
 - A. The DEQ proposes to amend Subchapter 5 by adding a new section at OAC 252:100-5-2.3 that would allow the Department to assess annual operating fees to certain area sources of hazardous air pollutants. Additionally, the DEQ proposes to amend OAC 252:100-7, Part 2 and OAC 252:100-8, Part 3 to increase permit application fees for both minor facilities and Part 70 sources.
 - B. The DEQ proposes to amend Subchapters 1, 7, and 8 to ensure that State rules affected by recent changes to the U.S. Environmental Protection Agency's (EPA's) policies and programs for greenhouse gas (GHG) emissions are not perceived to be more stringent than the corresponding federal requirements.
 - C. The DEQ proposes to amend Subchapter 3 by adding the annual and 24-hour fine particulate matter (PM_{2.5}) increments to OAC 252:100-3-4, Significant deterioration increments. Additionally, the DEQ proposes to amend Subchapter 8 to implement the New Source Review (NSR) program for PM_{2.5} National Ambient Air Quality Standards (NAAQS), which includes updating the incorporation by reference of certain federal rules from July 1, 2009 to December 20, 2010.
 - D. The DEQ proposes to revoke the existing Appendix A and replace it with a new Appendix A to correct an inaccuracy pertaining to the allowable particulate matter emission rate for certain incinerators.
 - E. The DEQ proposes to revoke the existing Appendix E and replace it with a new Appendix E to maintain consistency with the NAAQS. Specifically, the nitrogen dioxide (NO₂) and sulfur dioxide (SO₂) primary standards would be amended to reflect recent changes made by EPA.
 - Presentation – Laura Lodes, Chair, Air Quality Advisory Council
 - Questions and discussion by the Board
 - Questions, comments and discussion by the public
 - Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

6. Rulemaking – OAC 252:302 Field Laboratory Accreditation

The DEQ proposes to adopt a new Chapter 302 in order to provide standards for accreditation of privately and publicly owned laboratories for performance of analysis of wastewater. This new Chapter would apply to laboratories accredited or applying to be accredited by the DEQ as a field laboratory. A field laboratory is a small laboratory whose owner does not wish to participate in The NELAC Institute accreditation standards in the proposed new Chapter 303 (TNI Laboratory Accreditation) and is limited to analysis for pH, residual chlorine (total residual chlorine, free chlorine, total oxidants or free oxidants), turbidity, temperature and dissolved oxygen.

- Presentation – Brian Duzan, Chair, Laboratory Certification Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote on permanent adoption

7. Rulemaking – OAC 252:303 TNI Laboratory Accreditation

The DEQ proposes to adopt a new Chapter 303 to provide standards for accreditation of privately and publicly owned laboratories for performance of analysis of water and wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons. Chapter 303 would apply to laboratories accredited or applying to be accredited by the DEQ consistent with The NELAC Institute (TNI) standards.

- Presentation – Brian Duzan, Chair, Laboratory Certification Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote on permanent adoption

8. Rulemaking – OAC 252:301 Laboratory Accreditation

The DEQ proposes to revoke the current Chapter 301, Laboratory Accreditation, and replace it with the new Chapter 303 in order to be consistent with The NELAC¹ Institute (TNI) standards and for ease of reference for the regulated community. In doing so, two subchapters in the current Chapter 301 (Proficiency Testing and Quality Assurance/Quality Control) are proposed to be eliminated in their entirety because TNI standards are to be incorporated by reference. The other subchapters will be included but amended in the new Chapter 303 to come into compliance with TNI standards. This revocation process is progressing in tandem with rulemaking for the new Chapter 303 (TNI Laboratory Accreditation) as well as the new Chapter 302 (Field Laboratory Accreditation).

- Presentation – Brian Duzan, Chair, Laboratory Certification Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote on permanent revocation

¹ “NELAC” is the acronym for National Environmental Laboratory Accreditation Conference.

9. Rulemaking – OAC 252:410 Radiation Management

The DEQ proposes to amend Subchapter 5 (Certification of Industrial Radiographers), Subchapter 7 (Radiation Management Authorizations), Subchapter 10 (Radioactive Materials Program), Subchapter 11 (Use of X-Rays and/or Particles for Therapeutic Purposes in the Healing Arts and Veterinary Medicine). Additionally, the DEQ proposes to revoke the current Appendix A and replace it with an amended Appendix A (Application and Annual Fee Schedule for Radiation Machines). The purpose of the proposed amendments is to increase fees to meet program costs and to provide an annual fee adjustment to assist in meeting rising costs to the DEQ for implementation of radiation management programs.

- Presentation – Steve Woods, Chair, Radiation Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote on permanent adoption

10. Rulemaking – OAC 252:606 Oklahoma Pollutant Discharge Elimination System (OPDES) Standards

A. The DEQ proposes to amend its rules to increase OPDES annual fees and establish OPDES permit application fees. (Subchapter 3; Appendices B, C, D, and E)

B. The DEQ also proposes to amend Chapter 606 to: (1) define categorical industries; (2) allow certain stormwater and discharge monitoring report documents to be submitted electronically, provided the submission meets federal requirements; (3) require additional information in applications from facilities that generate or land apply biosolids in the watershed of an Outstanding Resource Water; (4) move the requirements for closure of a biosolids land application site to the biosolids subchapter; (5) establish minimum control testing requirements for industrial wastewater discharging facilities with permit limits for oxygen demanding substances similar to the currently adopted control tests for municipal wastewater discharging facilities (Appendix A); and (6) establish stream monitoring requirements for industrial wastewater discharging facilities with permit limits for oxygen demanding substances similar to the currently adopted stream monitoring requirements for municipal wastewater discharging facilities.

C. The DEQ proposes to amend Subchapter 1 to update the date of incorporation by reference of certain federal regulations from July 1, 2009, to July 1, 2010.

- Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

11. Rulemaking – OAC 252:611 General Water Quality

- A. The DEQ proposes to establish application fees for certifications required to be issued by the State pursuant to Section 401 of the Clean Water Act. Previously, the DEQ reviewed applications for and issued these certifications at no cost to the regulated community. Additionally, the DEQ proposes to have fees increase automatically each year based on the rate of inflation.
- B. The DEQ proposes to amend its rules to update the date of incorporation by reference of certain federal regulations from July 1, 2009, to July 1, 2010.
 - Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
 - Questions and discussion by the Board
 - Questions, comments and discussion by the public
 - Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

12. Rulemaking – OAC 252:616 Industrial Wastewater Systems

The DEQ proposes to increase annual fees for industrial tank systems, surface impoundments, and land application systems, and to make these fees applicable to all industrial wastewater systems. Additionally, the DEQ proposes to establish a permit application fee for industrial tank systems, surface impoundments and land application systems.

- Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

13. Rulemaking – OAC 252:619 Operation and Maintenance of Non-Industrial Total Retention Lagoon Systems and Land Application

The DEQ proposes to increase annual fees for non-industrial total retention lagoon systems and land application sites covered by Chapter 619. The proposed rules include a waiver of 50 percent of the annual fee for public entities. Additionally the DEQ proposes to have the fees increase automatically each year based on the rate of inflation.

- Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

14. Rulemaking – OAC 252:621 Non-Industrial Flow-Through and Public Water Supply Impoundments Including Land Application

The DEQ proposes to amend Chapter 621 to: (1) reduce the maximum slope of a wastewater land application site from 10% to no more than 5%; (2) implement Senate Bill 1695, enacted during the 2010 legislative session, concerning ownership of shared sewage systems; (3) remove references to total retention lagoons now covered in OAC 252:619; (4) replace the words “flow-through” with “discharging” and “impoundments” with “lagoons” throughout Chapter 621, including the Chapter title; and (5) amend the title of the fees section in Chapter 621, without changing the existing fee schedule.

- Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

15. Rulemaking – OAC 252:623 Pretreatment for Central Treatment Trusts

A. The DEQ proposes to establish a fee for the review and issuance of permits to industries that discharge to a Central Treatment Trust [Oklahoma Ordnance Works Authority (OOWA)]. Additionally, the DEQ proposes to increase fees automatically each year based on the rate of inflation.

B. The DEQ proposes to amend Chapter 623 to update the date of incorporation by reference of certain federal regulations from July 1, 2009, to July 1, 2010.

- Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

16. Rulemaking – OAC 252:624 Minor Public Water Supply Systems

The DEQ proposes to amend Chapter 624 to establish a fee schedule to help cover the costs of operating the program, which has historically been supported entirely by appropriated funds. Additionally, the Department proposes to have fees increase automatically each year based on the rate of inflation.

- Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

17. Rulemaking – OAC 252:626 Public Water Supply Construction Standards

- A. The DEQ proposes to increase permitting fees for public water supply construction permits and fees for household well inspections.
- B. The DEQ proposes to amend the requirements for variances from construction standards in this Chapter so that they are consistent with the proposed variance requirements in OAC 252:656 (Water Pollution Control Facility Construction Standards) and to provide additional options in obtaining variances.
 - Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
 - Questions and discussion by the Board
 - Questions, comments and discussion by the public
 - Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

18. Rulemaking – OAC 252:631 Public Water Supply Operation

- A. The DEQ proposes to amend Chapter 631 to modify annual fees for public water supply systems.
- B. The DEQ proposes to amend Chapter 631 to update the date of incorporation by reference of certain federal regulations from July 1, 2009, to July 1, 2010.
 - Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
 - Questions and discussion by the Board
 - Questions, comments and discussion by the public
 - Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

19. Rulemaking – OAC 252:641 Individual and Small Public On-Site Sewage Treatment Systems

The DEQ proposes to amend Chapter 641 to implement requirements of Senate Bill 1765, enacted during the 2010 legislative session, and which requires the person hiring another to install an on-site sewage treatment system to certify in writing the actual wastewater flow from the residence or business that the proposed system will serve. Additionally, the proposed amendments implement Senate Bill 1695, also passed during the 2010 legislative session, concerning ownership of shared sewage systems.

- Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

20. Rulemaking – OAC 252:656 Water Pollution Control Facility Construction Standards

- A. The DEQ proposes to amend Chapter 656 to increase municipal wastewater construction permit application fees.
- B. The DEQ proposes to amend Chapter 656 to (1) implement legislation modifying 27A O.S. § 2-6-401, effective April 2010, concerning ownership of shared sewage systems; (2) make the requirement for variances from construction standards in this Chapter consistent with the proposed variance requirements in Chapter 626 (Public Water Supply Standards) and provide additional options in obtaining variances; (3) create Appendix E, which contains a county rainfall table that includes data from the Oklahoma Geological Survey; and (4) update Chapter 656 concerning various technical requirements related to construction standards.
- Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
 - Questions and discussion by the Board
 - Questions, comments and discussion by the public
 - Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

21. Rulemaking – OAC 252:690 Water Quality Standards Implementation

- A. The DEQ proposes to amend Chapter 690 to: (1) establish Appendix B as a list of required minimum quantifiable levels; (2) require facilities that have Whole Effluent Toxicity (WET) limits to pass three consecutive retests within a six-month period following a WET testing failure; (3) require that WET retests cannot substitute for regularly scheduled WET testing; (4) require that WET testing will continue once per quarter for the life of the permit in the event of a sublethal test failure; and (5) clarify that WET biomonitoring frequencies cannot be reduced during the first permit cycle.
- B. The DEQ also proposes to amend Chapter 690 to: (1) allow DEQ to use site specific data to produce a more accurate model for dissolved oxygen criteria; (2) establish secondary body-contact recreational parameters for primary body-contact recreational water bodies during winter months; (3) require industries with permit limits for oxygen demanding substances to conduct control tests that are similar to those currently established for municipalities; (4) require both municipalities and industries to report appropriate control tests in accordance with federal regulations.
- C. The DEQ proposes to amend Chapter 690 to update the date of incorporation by reference of certain federal regulations from July 1, 2009, to July 1, 2010, and to make other minor corrections and clarifications.
- Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
 - Questions and discussion by the Board
 - Questions, comments and discussion by the public
 - Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

22. **Executive Director's Report** – Steve Thompson, DEQ Executive Director
23. **New Business** (Any matter not known about and which could not have been reasonably foreseen prior to the time of posting of agenda)
24. **Next meeting:** June 14, 2011, Enid, Oklahoma
25. **Adjournment**

Public Forum – Following Adjournment – The Board meets several times a year at different locations across the State to hear the views and concerns of all Oklahomans about environmental issues. This opportunity is informal, and we invite you to sign the register to speak.

Should you desire to attend but have a disability and need an accommodation, please notify the DEQ three days in advance at 405-702-7100. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

Some members of the Board and senior staff members from DEQ will meet for dinner in Oklahoma City the evening of February 24, 2011. This is a social occasion. It is uncertain whether a majority of the Board will be present, but no Board or DEQ business will be conducted.

**TITLE 252. OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

**SUBCHAPTER 1. GENERAL PROVISIONS
SUBCHAPTER 3. AIR QUALITY STANDARDS AND INCREMENTS
SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES
SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES**

Before the Air Quality Advisory Council on October 27, 2010 and January 19, 2011
Before the Environmental Quality Board on February 25, 2011

EXECUTIVE SUMMARY:

On January 2, 2011, GHG became subject to regulation as an air pollutant under the federal Clean Air Act. EPA's GHG tailoring rule (75 FR 31514, June 3, 2010) deferred applicability of the Prevention of Significant Deterioration (PSD) and Part 70 (Title V) permitting programs for a large number of smaller GHG sources. The tailoring rule raised the PSD and Part 70 permit threshold levels from 100 or 250 tons per year (tpy) to 100,000 tpy CO₂ equivalent (CO₂e) for GHG emissions and sets a threshold of 75,000 tpy CO₂e of GHG for PSD modifications. The proposed amendments to Subchapter 8 will clarify the deferral of the applicability of the PSD program in Part 7 and the Part 70 program in Part 5. The Department proposes to make this clarification by adding and amending definitions in OAC 252:100-8-2 for Part 70 and in 252:100-8-31 for PSD to reflect the change in pollutants subject to regulation and the higher GHG applicability thresholds contained in the GHG tailoring rule.

The federal Clean Air Act does not require that minor source programs apply to GHG. The Department is proposing to add a new section OAC 252:100-7-2.1 to Subchapter 7 to clarify that GHG is excluded from the State's minor facility permitting program except if necessary to set enforceable limits to keep GHG emission levels at a facility below the applicability threshold levels for the PSD construction permit program and/or the Part 70 operating permit program.

As part of GHG amendments, the Department proposes to modify OAC 252:100-1-3 by the addition of definitions of "greenhouse gas" or "GHG" and "carbon dioxide equivalent emissions" or "CO₂e." At this time the Department is also proposing to add the abbreviation of carbon dioxide equivalent (CO₂e) to OAC 252:100-1-4(a) and the acronym of greenhouse gas (GHG) to 252:100-1-4(b). In addition some scrivener's errors in OAC 252:100-1-4 relating to units of measure, abbreviations, and acronyms will be corrected.

It should be noted that the amendments to Subchapters 1, 8, and 7 regarding GHG do not make any facility or source subject to GHG regulations, but only ensure that as far as GHG is concerned, the State's permitting programs are not perceived to be more stringent than the corresponding federal programs.

The Department proposes to modify Parts 7 and 9 of Subchapter 8 to incorporate EPA's PSD and Nonattainment NSR implementation rule for the PM_{2.5} National Ambient Air Quality Standards (NAAQS) which were published in the *Federal Register* on July 18, 1997 (62 FR 38652) and revised on October 17, 2006 (71 FR 61144). Phase 1 of the NSR implementation rule was published in the

May 16, 2008 *Federal Register* (73 FR 28321) and phase 2 was published in the October 20, 2010 *Federal Register* (75 FR 64864). The proposed amendments will establish a major source threshold, significant emissions rate, offset ratios for PM_{2.5}, interpollutant trading for offsets, applicability of NSR to PM_{2.5} precursors, Significant Impact Levels (SILs), and a Significant Monitoring Concentration (SMC) that are consistent with those in the federal regulations set forth in 40 CFR 51.165 and 40 CFR 51.166.

While the section is open for revision, the Department proposes to correct an error in the definition of "major stationary source" in OAC 252:100-8-31 by changing the charging rate for municipal incinerators in (A)(i)(XIV) of the definition from 50 tons of refuse per day to 250 tons of refuse per day to match the federal definition at 40 CFR § 51.166(b)(1). The Department also proposed to make some format and non-substantive language changes to Subchapter 8 for clarity (for example PM dash 10 is being replaced by PM subscript 10).

The Department is also proposing to modify Subchapter 3, Air Quality Standards and Increments, to add the 24-hour and annual PM_{2.5} PSD increments to OAC 252:100-3-4. In conjunction with the proposed amendment to Part 7 of Subchapter 8, the amendment to Subchapter 3 will bring the State's PSD program up to date with respect to PM_{2.5} and will enable the Department to maintain its delegated authority for the full NSR program.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

The proposed substantive amendments to OAC 252:100-1-3 and 252:100-8-2, 31, 33, 35, 50.1, 51, 51.1, and 52 echo the analogous federal GHG tailoring rule (75 FR 31514, June 3, 2010) and/or the analogous federal PM_{2.5} NSR implementation rule (73 FR 28321, May 16, 2008 and 75 FR 64864, October 20, 2010). The proposed amendment to Subchapter 7 clarifies that the State's minor facility permitting program does not apply to GHG emissions and is thus not more stringent than the federal permitting programs.

ENVIRONMENTAL BENEFIT STATEMENT:

The proposed amendments to Subchapters 1, 3, 7, and 8 are not more stringent than the corresponding federal programs. Therefore, an Environmental Benefit Statement is not required.

COMMENTS:

See Attachment.

**SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO SUBCHAPTER 1, GENERAL PROVISIONS;
SUBCHAPTER 3, AIR QUALITY STANDARDS AND INCREMENTS; SUBCHAPTER
7, PERMITS FOR MINOR-FACILITIES; AND SUBCHAPTER 8, PERMITS FOR PART
70 SOURCES**

**COMMENTS RECEIVED PRIOR TO AND AT THE *OCTOBER 27, 2010*
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

The Air Permitting Forum (APF or the Forum) - E-mail received on October 25, 2010 from Shannon S. Broome

1. **COMMENT:** Regarding greenhouse gas (GHG) revisions to Subchapter 8, the Forum recommended that DEQ include in the definitions of "subject to regulation" in OAC 252:100-8-2 and 252:100-8-31 an "expiration" or "sunsetting" of the provisions regulating GHG under the PSD and Title V programs, in light of the current litigation challenging EPA's decision to regulate GHG under the federal Clean Air Act.

RESPONSE: Staff feels that the problem pointed out by the Forum is already resolved by the introductory language to the definitions of "subject to regulation." As a result if a court was to invalidate for any reason the underlying applicable regulation that makes GHG regulated, then GHG would automatically not be contained in the definition of subject to regulation. However, to make the rule very clear on the matter, we have added "rescission" or "sunsetting" language to the definitions of "subject to regulation" in OAC 252:100-8-2 and 252:100-8-31 to stress that the State's GHG permitting requirements will not exceed those of EPA.

2. **COMMENT:** Regarding GHG revisions to Subchapter 8, the Forum also stated that Oklahoma's (and EPA's) definition of the term "regulated NSR pollutant" in OAC 252:100-8-31 includes not only "any pollutant that otherwise is 'subject to regulation' under the Act" but also "any pollutant for which a NAAQS has been promulgated" and "any pollutant that is subject to any standard promulgated under section 111 of the Act." EPA has received petitions to issue a NAAQS for GHGs, and EPA is also in the process of adopting NSPS for certain source categories under section 111 that would regulate GHGs. The "subject to regulation" qualifier, however, is not part of the "regulated NSR pollutant" definition for NAAQS and NSPS, which means that if EPA proceeds to issue a NAAQS or NSPS covering GHGs, the thresholds in the "subject to regulation" definition would no longer apply. One way to address this problem would be for the Department to limit subsections (A)(i) [for NAAQS] and (A)(ii) [for NSPS] of its definition of regulated NSR pollutant not to include GHGs above the thresholds specified in the "subject to regulation" definition. This could be accomplished by adding a new subsection (B)(iii) to the definition that would state "regulated NSR pollutant does not include ... (iii) GHGs emitted below the thresholds in Subparagraphs (C) through (E) in the definition of the term 'subject to regulation' in this section." This approach would give Oklahoma time to address any regulation of GHGs under the NSPS or NAAQS rules if EPA proceeds with such rulemakings.

RESPONSE: Staff will give further consideration to this comment before the permanent rulemaking is proposed in January 2011.

RESPONSE UPDATED JANUARY 4, 2011: Staff agrees that there appears to be some ambiguity in the definition of "regulated NSR pollutant." The federal and proposed State definitions are substantively the same. By definition any pollutant that is subject to any standard promulgated under section 111 of the federal Clean Air Act is a "regulated NSR pollutant." The definition of "regulated NSR pollutant" also references the definition of "subject to regulation," which states that GHG is subject to regulation only if GHG emissions from a source exceed the PSD GHG applicability thresholds of 75,000 tpy CO_{2e} for modifications or 100,000 tpy CO_{2e} for new sources. It is unclear which definition would take precedence if an NSPS for GHG is promulgated. However, this is a national problem and Staff prefers to allow EPA the opportunity to clarify the relationship between "regulated NSR pollutant" and "subject to regulation." EPA has announced their intention to propose NSPS and emission guidelines for GHG emissions from electric generating units and refineries in 2011 and to finalize these standards in 2012. This gives the Department time to address the problem, if it is not resolved by EPA, before any NSPS for GHG becomes effective.

EPA Region 6 - Fax received on October 26, 2010 from Jeff Robinson, Chief, Air Permits Section

3. **COMMENT:** Mr. Robinson expressed support of the proposed emergency rule revisions to Subchapters 1, 7, and 8 relating to GHG emissions and encouraged the Department to expeditiously adopt the revisions as proposed to implement the GHG tailoring rule provisions by January 2, 2011.

OIPA (Oklahoma Independent Petroleum Association) and MOGA (Mid-Continent Oil and Gas Association of Oklahoma) - E-mail received on October 26, 2010 from Angie Burckhalter, V.P. Regulatory Affairs, OIPA and Michael Bernard, President, MOGA

4. **COMMENT:** OIPA and MOGA expressed concern that if the GHG requirements are vacated or delayed at the federal level, it would appear that the proposed revisions to Subchapter 8 would still require regulated entities in Oklahoma to comply with DEQ's GHG requirements. This would place Oklahoma in an economic disadvantage to other states that may not have GHG rules in place or that have language in place to address such a situation. OIPA and MOGA recommend that DEQ include language in the rules that would address this issue.

RESPONSE: Staff does not believe this is the case, but to make the rule very clear on the matter, "rescission" or "sunsetting" language has been added to the definitions of "subject to regulation" in OAC 252:100-8-2 and 252:100-8-31 to stress that the State's GHG permitting requirements will not exceed those of EPA.

5. **COMMENT:** OIPA and MOGA pointed out that the State of Texas raised some significant questions regarding state's right as it relates to an expedited GHG rule implementation in relation to the SIP revision process under the CAA Section 166(a), the normal SIP revisions procedures under Section 110, and EPA's authority to impose a FIP on GHG without finding that a state has failed to make a required submission. They suggested that DEQ carefully consider these issues before moving forward with GHG regulations.

RESPONSE: Staff is aware of the Texas letter and awaits EPA's response to it with interest. However, staff feels it is in the best interest of the GHG emitting sources in Oklahoma to provide the protections afforded by the GHG tailoring rule in the event that EPA prevails. This proposed revision is an emergency rule and as such is temporary and will not become part of the State's SIP. The hearing on the permanent rulemaking regarding GHG was continued at the October 27, 2010 Council meeting until the January 2011 Council meeting. Staff hopes that by that time some of the issues surrounding GHG permitting will be resolved. Staff will amend the current proposed GHG rule revisions as appropriate prior to that meeting.

RESPONSE UPDATED JANUARY 19, 2011: Staff is aware of the Texas letter and awaits EPA's response to it with interest. However, staff feels it is in the best interest of the GHG emitting sources in Oklahoma to provide the protections afforded by the GHG tailoring rule in the event that EPA prevails.

6. **COMMENT:** OIPA and MOGA recommended that OAC 252:100-7-2.1, relating to minor permits for GHG emitting facilities, be modified by the addition of "but are not limited to" in the last sentence so that it reads: "Physical or operational limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation, and/or restrictions on the type or amount of material combusted, stored, or processed."

RESPONSE: Staff agrees with this request and the suggested language has been added to the rule.

Oral Comments at the Council Meeting

Steve Mason, DEQ Board Member commented at the October 27, 2010 Air Quality Advisory Council meeting.

7. **COMMENT:** Mr. Mason asked why a permanent rule was not linked to the proposed GHG emergency revisions to Subchapter 8. Mr. Mason also stated that the Board could consider an emergency rule without a permanent rule submitted at the same time.

RESPONSE: A permanent rule is being proposed separately, however, the Department requested that the Council continue the hearing on the permanent rule proposal to its January 2011 Council meeting. This will allow the inclusion of EPA's PM_{2.5} PSD implementation requirements in the same proposal. In October, EPA promulgated the last part of its PM_{2.5} rules so these recent changes could not be included in the proposed rule for the October 2010 Council meeting. Because the GHG modification and the PM_{2.5} modification change the same section (OAC 252:100-8-31) and even the same definition ("Regulated NSR Pollutant"), the GHG, and PM_{2.5} modifications must be processed together or the PM_{2.5} modification could be delayed by a year.

8. **COMMENT:** Mr. Mason stated that Texas sent a letter to EPA refusing to promulgate GHG rules and questioning EPA's authority to regulate GHG under the federal Clean Air Act. Mr. Mason wondered if Texas was just not going to promulgate GHG rules and asked if Oklahoma has that opportunity also.

RESPONSE: It is our understanding that Texas is taking the position that EPA does not have the authority to regulate GHG and intends to litigate the issue. After looking at a lot of different scenarios, Staff felt that DEQ owes it to the regulated community to provide some clarity on GHG permitting and to have an avenue for them to continue to obtain necessary permits from DEQ instead of EPA. The GHG tailoring rule does not require that sources obtain PSD or Part 70 permits. That is required by other existing federal and State rules and regulations and will automatically occur when GHG becomes a pollutant subject to regulation on January 2, 2011. The GHG tailoring rule exempts a large number of smaller GHG sources from the requirement to obtain PSD and Part 70 permits by raising the applicability thresholds for GHG in the PSD and Part 70 programs. The proposed emergency rule change to Subchapter 8 includes a rescission provision to address subsequent legislative or judicial actions on GHG and to ensure that the State's GHG permitting requirements will not exceed those of EPA.

Angie Burckhalter, V.P. Regulatory Affairs, OIPA commented at the October 27, 2010 Air Quality Advisory Council meeting.

9. **COMMENT:** Ms. Burckhalter repeated the request she made in the October 26, 2010 e-mail from OIPA and MOGA. She asked that the last sentence in new Section OAC 252:100-7-2.1 be revised to include "but are not limited to." The sentence would read: "Physical or operational limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation, and/or restrictions on the type or amount of material combusted, stored, or processed.

RESPONSE: The requested change has been made to 252:100-7-2.1.

Grover Campbell with Chesapeake Energy commented at the October 27, 2010 Air Quality Advisory Council meeting.

10. **COMMENT:** Mr. Campbell stated that one of the reasons to add the language suggested by Ms. Burckhalter is that energy efficiency will be one of the main BACT requirements for GHG emissions.

**COMMENTS RECEIVED PRIOR TO AND AT THE *JANUARY 19, 2011*
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

EPA Region 6 - Letter received via email on January 18, 2011, from Jeff Robinson, Chief, Air Permits Section

11. **COMMENT:** Mr. Robinson encouraged the Department to expeditiously adopt the proposed GHG modifications to Subchapter 8 as permanent rules. He did not comment on the GHG modification to Subchapter 7 or the PM_{2.5} modifications to Subchapters 3 and 8.

Oral Comments at the Council Meeting

Don Whitney, Trinity commented at the January 19, 2011 Air Quality Advisory Council meeting.

12. **Comment:** Mr. Whitney suggested that TPY should be left out of the definition of carbon dioxide equivalent that the Council requested be added to OAC 252:100-1-3. Mr. Whitney felt that would make it a more flexible definition that could apply not only to GHG emissions in the PSD and Part 70 programs in Subchapter 8, but to any rule that applies to or references the federal GHG reporting requirements which require that GHG emissions be reported in metric tons.

RESPONSE: Staff agreed and the change was made as suggested by Mr. Whitney.

October 26, 2010

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

Re: ODEQ's Proposed Rulemaking Regarding OAC 252:100-1 (Definitions), OAC 252:100-5 (Registration, Emission Inventory and Annual Operating Fees), OAC 252:100-7 (Permits for Minor Facilities), and OAC 252:100-8 (Permits for Part 70 Sources)

Dear Mr. Terrill:

The Oklahoma Independent Petroleum Association (OIPA) and the Mid-Continent Oil and Gas Association (MOGA) are providing comments in regards to the Oklahoma Department of Environmental Quality's (ODEQ's) proposed changes to OAC 252:100.

We greatly appreciate the opportunity to provide input into ODEQ's rulemaking process, and the following information provides our comments.

General:

1. ODEQ is proposing to include greenhouse gas (GHG) regulations in its rules based on the new federal GHG requirements. If the GHG requirements are vacated or delayed at the Federal level, it would appear that regulated entities in Oklahoma would still be required to comply with ODEQ's GHG requirements. This would place Oklahoma in an economic disadvantage to other states that may not have GHG rules in place or with states that have language in place to address such a situation. We recommend ODEQ include language in the rules that would address this issue if it were to occur.
2. ODEQ is proposing rules to regulate GHGs based on new federal regulations under Subchapter 7 and 8. It is assumed GHGs would be considered a regulated pollutant under Subchapter 5 as no language has been proposed to exclude those pollutants in OAC 252:100-5-1.1 (see definitions of "Regulated pollutant (for fee calculation)"). In addition, minor sources would be paying for every ton of GHG generated as OAC 252:100-5-2.2(d) does not provide any limitations on regulated pollutants from minor sources as compared to the limitations provided for Part 70 sources. We request ODEQ include language exempting GHGs from annual operating fees.
3. In reviewing the August 2, 2010 letter from the State of Texas to EPA, Texas raises some significant questions regarding a state's right as it relates to an expedited GHG rule implementation in relation to the State Implementation Plan (SIP) revision process under the CAA Section 166(a), the normal SIP revisions procedures under Section 110, and EPA's authority to impose a Federal Implementation Plan on GHG without finding that a state has

failed to make a required submission. We think ODEQ should carefully consider these issues before moving forward with GHG regulations.

Specific Comments

252:100-5-2.3. Annual operating fees for toxics emissions (regulated toxic air pollutants).


1. It is not clear from the rule impact statement the amount of funds currently being generated for the toxics program, what the proposed fees and increases will generate for each item listed, and the total amount of funds the proposed rule is expected to generate. We request this information be made public.
2. In regards to OAC 252:100-5-2.3(b)(6), ODEQ is proposing an annual operating fee of \$250; however, on page 4 of the rule impact statement, it states these sources would pay an annual fee of \$250-\$750. We request ODEQ clarify this issue.
3. EPA's area source NESHAP has required the permitting of many small sources in rural areas where health impacts are minimal. What is the basis for ODEQ's proposal to raise annual operating fees for toxics on minor sources from \$25.12 to \$50 per ton?

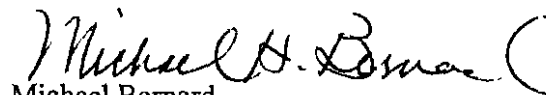
252:100-7-2.1. Minor permits for greenhouse gas (GHG) emitting facilities. We recommend the following text be added to the last sentence of this section as follows:

“Physical or operational limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation, and/or restrictions on the type or amount of material combusted, stored, or processed.”

Again, we appreciate the opportunity to provide comments on ODEQ's proposed rules. Thank you in advance for your consideration of these matters.

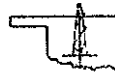
Sincerely,


Angie Burckhalter
V.P., Regulatory Affairs


Michael Bernard
President



Oklahoma Independent
Petroleum Association



MID-CONTINENT OIL AND GAS
ASSOCIATION OF OKLAHOMA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

JAN 18 2011

Oklahoma Department of Environmental Quality
Air Quality Division
P.O. Box 1677
Oklahoma City, OK 73101-1677
ATTN: Ms. Cheryl Bradley

RE: EPA Comments on Proposed Revisions to the Oklahoma Air Pollution Control Rules to Implement GHG Tailoring Rule

Dear Ms. Bradley:

Thank you for providing us the opportunity to review and comment on the proposed revisions to the Oklahoma Air Code, Title 252, Chapter 100, Subchapter 8, Parts 5 and 7. The proposed rulemaking revises the Oklahoma PSD and title V programs to establish the greenhouse gas-specific permitting thresholds in EPA's final rule "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" published on June 3, 2010 (see 75 FR 31514).

We are supportive of the proposed rule revisions. We encourage the Oklahoma Department of Environmental Quality (ODEQ) to expeditiously adopt these revisions as proposed to permanently implement the GHG Tailoring Rule provisions in the State of Oklahoma.

We look forward to working with you this year as you promulgate and implement these GHG Tailoring Rule revisions. Please note that our comments today do not constitute final determinations concerning approvability of the revisions to the Oklahoma State Implementation Plan or Part 70 Program. Additionally, our comments do not address the proposed rule revisions to implement PM2.5 permitting requirements or the revisions to the Oklahoma Minor Source Permitting Program.

We appreciate the timely efforts by the ODEQ to update the PSD and title V programs and its willingness to consult EPA Region 6 throughout this process. We look forward to future collaboration with ODEQ on the implementation of the GHG Tailoring Rule. If you have any questions about the GHG Tailoring Rule, or about EPA's review of your proposed rulemaking, please feel free to contact me at 214-665-6435 or contact Ms. Adina Willey of my staff at 214-665-2115.

Sincerely yours,

A handwritten signature in black ink that reads "Jeff Robinson".

Jeff Robinson
Chief
Air Permits Section

**Comments of the Air Permitting Forum on Proposed Changes to Oklahoma's
Prevention of Significant Deterioration and Part 70 Regulations to
Implement EPA's Greenhouse Gas Tailoring Rule**

The Oklahoma Department of Environmental Quality (DEQ) has prepared a rulemaking proposal to address the U.S. EPA's decision to regulate greenhouse gases (GHGs) from stationary sources under the Prevention of Significant Deterioration (PSD) construction permit program and the Title V (Part 70) operating permit program. These proposed changes would incorporate EPA's Tailoring Rule provisions that raise the major source threshold to 100,000 tons per year (tpy) carbon dioxide equivalents (CO₂e) and the PSD significance level to 75,000 tpy CO₂e. In addition, DEQ proposes to clarify that GHGs are not regulated under the minor new source review permitting provisions in the state unless a source voluntarily wishes to accept a limit on its GHG emissions.

The Air Permitting Forum (APF or Forum) is a trade association that focuses on implementation of Clean Air Act permitting and other environmental requirements. Forum members operate facilities in Oklahoma and therefore are affected by the proposed regulations.

The Forum appreciates that DEQ is trying to ensure that facilities in Oklahoma will not become subject to permitting at a major source level of 100 tpy or 250 tpy and that modifications will not be subject to a 0 tpy significance level. At the same time, we believe that DEQ could interpret its regulations such that only criteria pollutants can trigger PSD although pollutants "subject to regulation" would be subject to the best available control technology requirement. Since DEQ has indicated however that it is interpreting its rules to allow GHGs to trigger PSD, it would also be appropriate for DEQ to include in its rules an "expiration" or "sunsetting" of the provisions regulating GHGs under the PSD and Title V program in light of the current litigation challenging EPA's decisions to regulate greenhouse gases under the Clean Air Act.

As DEQ is surely aware, US EPA has taken several actions that have led to the federal Tailoring Rule establishing the 100,000 ton per year CO₂e threshold for major sources under PSD and Title V and the 75,000 ton per year significance level. Each of these actions is being challenged in the U.S. Court of Appeals for the D.C. Circuit. These challenges raise several issues, most important of which for this proposed rule are whether GHGs are intended to be within the term "subject to regulation" and whether GHGs can trigger the requirement to obtain a PSD permit when EPA has not even established a NAAQS for GHGs. The validity of EPA's actions will be judged by the courts over the course of the next year. In addition, on September 15, 2010, a motion to stay the stationary source effects of the GHG rules was also filed seeking to prevent the triggering of PSD and Title V until EPA's authority can be addressed by the courts.

In light of these pending actions, it is important that the state's adoption of the EPA Tailoring Rule thresholds not put it in a position where the federal government is *not implementing* the tailoring rule but DEQ is forced to follow its own regulations applying those thresholds and regulating greenhouse gases under the stationary source

programs. We recommend, therefore, that the DEQ include a provision in the regulations directly that conditions the application of PSD and Title V to stationary sources within the state on the continued validity of the provisions at the federal level. For example, the following language could be included at the end of the “subject to regulation” definition to ensure that the state is not implementing PSD or Title V for GHGs in such a case:

The provisions of this rule establish specified thresholds for determining if a source is major and if an increase in emissions is significant under these rules. The determination that these rules require sources to obtain a permit for GHG emissions is contingent on the continued implementation of the federal determination that GHG emissions can trigger the requirement to obtain a permit under Part C of Title I or under Title V of the federal Clean Air Act. If a court stays or otherwise invalidates applicability of Part C of Title I or Title V to stationary sources of GHGs, these regulations shall not operate to require stationary source permits for such sources beyond the extent to which the court validates and authorizes implementation of the federal rules.

This provision (or a provision like it) is especially important to the extent that EPA acts on a proposed state implementation plan or part 70 program revision. Under *General Motors Company v. U.S.*, 496 U.S. 530 (1990), and a new case *U.S. v. Cinergy*, Nos. 09/3344, 09-3350, 09-3351, Slip Op. (7th Cir. Oct. 12, 2010), even if a state revises its regulations, unless the EPA has actually acted to approve the SIP revision, the existing SIP regulations are enforceable. This is why EPA has stated its commitment to act quickly on these tailoring rule SIP revisions. If EPA does approve these state rules into the SIP quickly, however, and EPA’s rules are later determined to have inappropriately imposed PSD and Title V on stationary sources of GHGs, sources in this state will be forced to comply with these rules until the state adopts a revision and EPA approves that revision. Given the current SIP backlog and EPA’s desire to regulate GHGs under the Clean Air Act, it is likely that EPA action on SIP revisions to eliminate GHG regulation will take much longer than its revisions to ensure GHGs will be regulated. By including a sunset provision in the regulation itself, EPA’s initial action to approve regulating GHGs under this state’s SIP will be self-limiting.

Such a provision will place Oklahoma in the same position as a state that is delegated for PSD and is therefore implementing the federal rules. Moreover, it will prevent any later claims that eliminating GHGs from regulation under PSD in this state might constitute backsliding. Finally, we note that several other states are looking at similar provisions and Colorado adopted one last week. The Colorado provision that was adopted states:

If there is a change in federal law or the District of Columbia Circuit Court of Appeals or the United States Supreme Court directs or issues an order, which limits or renders ineffective the regulation of GHG emissions at stationary sources under the New Source Review Prevention of Significant

Deterioration (PSD) or Title V provisions of the Federal Act, the regulation of GHG emissions under the corresponding programs in this Regulation Number 3 shall be limited or rendered ineffective to the same extent.

We strongly encourage the Department to ensure that if the federal application of PSD and/or Title V to GHGs is stayed or otherwise abated, the DEQ's rules will automatically be limited in the same manner.

Finally, we want to raise an issue that should be considered for the permanent rulemaking to the extent it cannot be addressed now. Oklahoma's (and EPA's) definition of the term "regulated NSR pollutant" includes not only "any pollutant that otherwise is 'subject to regulation' under the Act" but also "any pollutant for which a NAAQS has been promulgated" and "any pollutant that is subject to any standard promulgated under section 111 of the Act." EPA has received petitions to issue a NAAQS for GHGs and EPA is also in the process of adopting NSPS standards for certain source categories under Section 111 that would regulate GHGs. The "subject to regulation" qualifier however is not a part of the "regulated NSR pollutant" definition for NAAQS and NSPS, which means that if EPA proceeds to issue a NAAQS or NSPS covering GHGs, the thresholds in the "subject to regulation" definition would no longer apply. One way to address this problem would be for the Department to limit subsections (A)(i) [for NAAQS] and (A)(ii) [for NSPS] of its definition of regulated NSR pollutant not to include GHGs above the thresholds specified in the "subject to regulation" definition. This could be accomplished by adding a new subsection (B)(iii) to the definition that would state "regulated NSR pollutant does not include ... (iii) GHGs emitted below the thresholds in Subparagraphs (C) through (E) in the definition of the term 'subject to regulation' in this section." This approach would give Oklahoma time to address any regulation of GHGs under the NSPS or NAAQS rules if EPA proceeds with such rulemakings.

The Forum appreciates the opportunity to submit these comments and requests that any questions be directed to Shannon Broome, Executive Director, Air Permitting Forum at 510-985-1710 or sbroome@pacbell.net.

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Pages 1079 - 1880

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

[OAR Docket #11-698]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 252:100-1-3. Definitions [AMENDED]
- 252:100-1-4. Units, abbreviations and acronyms [AMENDED]
- Subchapter 3. Air Quality Standards and Increments
- 252:100-3-4. Significant deterioration increments [AMENDED]
- Subchapter 7. Permits for Minor Facilities
- Part 1. General Provisions
- 252:100-7-2.1. Minor permits for greenhouse gas (GHG) emitting facilities [NEW]
- Subchapter 8. Permits for Part 70 Sources
- Part 5. Permits for Part 70 Sources
- 252:100-8-2. Definitions [AMENDED]
- Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
- 252:100-8-31. Definitions [AMENDED]
- 252:100-8-33. Exemptions [AMENDED]
- 252:100-8-35. Air quality impact evaluation [AMENDED]
- Part 9. Major Sources Affecting Nonattainment Areas
- 252:100-8-50.1. Incorporation by reference [AMENDED]
- 252:100-8-51. Definitions [AMENDED]
- 252:100-8-51.1. Emissions reductions and offsets [AMENDED]
- 252:100-8-52. Applicability determination for sources in attainment areas causing or contributing to NAAQS violation [AMENDED]

AUTHORITY:

Environmental Quality Board and Air Quality Advisory Council powers and duties, 27A O.S., §§2-2-101, 2-2-201; and Oklahoma Clean Air Act, 27A O.S., §§2-5-101 *et seq.*

DATES:

Comment period:

- September 15, 2010 through October 27, 2010
- December 15, 2010 through January 19, 2011
- February 25, 2011

Public hearings:

- October 27, 2010
- January 19, 2011
- February 25, 2011

Adoption:

- February 25, 2011

Submitted to Governor:

- March 4, 2011

Submitted to House:

- March 4, 2011

Submitted to Senate:

- March 4, 2011

Gubernatorial approval:

- April 12, 2011

Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 3, 2011

Final adoption:

- May 3, 2011

Effective:

- July 1, 2011

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 1. General Provisions
- 252:100-1-3. Definitions [AMENDED]
- Subchapter 8. Permits for Part 70 Sources
- Part 5. Permits for Part 70 Sources
- 252:100-8-2. Definitions [AMENDED]
- Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
- 252:100-8-31. Definitions [AMENDED]

(B) If voters in the district are not eligible to vote in another election on the same date, ~~proceed to the next step~~ the request to close the split precinct shall be approved.

(c) Upon receiving a request to close a split precinct in which 100 or fewer voters are registered at addresses within the district's boundaries and when some voters in the precinct are not assigned to a school district in the Street Guide, the Secretary of the County Election Board shall follow these steps to approve or disapprove the request.

(1) Follow the steps outlined in (b) (1) and (2) of this Section, then proceed with the following steps.

(3-2) Send a copy of the Registered Voter Mailing List or of a Precinct Registry for the precinct and a copy of the precinct map showing the district's boundary to the district superintendent.

(4-3) The superintendent shall be required to examine the residence addresses of voters in the precinct who are not assigned to a school district. The superintendent shall mark the list to indicate which voters, if any, are believed to be registered at addresses located within the boundaries of the district. The superintendent shall return the marked list to the Secretary of the County Election Board within five business days.

(5-4) Upon receiving the list of unassigned voters back from the superintendent, the Secretary shall count the voters marked by the superintendent. Add the number of voters marked on the list to the number of voters assigned to the school district by ~~OEMS~~ MESA.

(A) If the total number is 100 or less, the precinct may be closed for the election.

(B) If the total number is more than 100, the request must be denied and the precinct must remain open for the election.

(C) Even if the number is 100 or less, the precinct must remain open if voters in the district are eligible to vote in another election in the precinct on the same date.

(6-5) The Secretary shall notify district officials whether the precinct will be closed or must remain open.

(7-6) The Secretary shall prepare and mail to each voter identified in the district a notice that the precinct will be closed for the election. A yellow application for absentee ballots shall be enclosed with the notice, as well as information about in-person absentee voting for the election. These notices shall be mailed to voters not less than 30 days prior to the election.

(8-7) The Secretary shall monitor voter registration activity in the precinct. If a new voter is assigned by ~~OEMS~~ in the Street Guide to the school or technology center district in the split precinct, the Secretary shall mail the notice and information described in ~~(8)-(6)~~ of this subsection to the new voter immediately.

[OAR Docket #11-765; filed 5-24-11]

Permanent Final Adoptions

Gubernatorial approval:

December 27, 2010

Register publication:

28 Ok Reg 443

Docket number:

11-27

Superseded rules:

Subchapter 7. Permits for Minor Facilities

Part 1. General Provisions

252:100-7-2.1. Minor permits for greenhouse gas (GHG) emitting facilities [NEW]

Gubernatorial approval:

December 27, 2010

Register publication:

28 Ok Reg 458

Docket number:

11-26

INCORPORATION BY REFERENCE:

Incorporated standards:

40 CFR § 51.165(a)(1) with some exceptions, as it exists on July 1, 2010

40 CFR § 51.165(a)(9), dealing with offset ratios, not added or amended as it exists on July 1, 2010

40 CFR § 51.165(b), as it exists on December 20, 2010

Incorporating rules:

252:100-8-50

252:100-8-51

252:100-8-52

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.

ANALYSIS:

Greenhouse gases (GHG), an aggregate group of six gases (carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride), became subject to regulation as an air pollutant on January 2, 2011, when the U.S. Environmental Protection Agency (EPA) and the federal Department of Transportation joint-light duty vehicle GHG emission standards became effective. The proposed amendments to Subchapter 8 will clarify the deferral of the applicability of the Prevention of Significant Deterioration (PSD) program in Part 7 and the Part 70 program (Title V) in Part 5 for a large number of smaller GHG sources. The proposed modifications mirror the federal GHG tailoring rule (75 FR 31514, June 3, 2010) that raised the PSD and Part 70 permit threshold levels from 100 or 250 tons per year (tpy) to 100,000 tpy CO₂ equivalent (CO₂e) for GHG emissions and set a threshold of 75,000 tpy CO₂e of GHG for PSD modifications. The Department is proposing to make this clarification by adding and amending definitions in OAC 252:100-8-2 for Part 70 and in 252:100-8-31 for PSD to reflect the change in pollutants subject to regulation and the higher GHG applicability thresholds contained in the GHG tailoring rule.

The federal Clean Air Act does not require that minor source programs apply to GHG. The Department is proposing to add a new section OAC 252:100-7-2.1 to Subchapter 7 to clarify that GHG is excluded from the State's minor facility permitting program except if necessary to set enforceable limits to keep GHG emission levels at a facility below the applicability threshold levels for the PSD construction permit program and/or the Part 70 operating permit program.

As part of GHG amendments, the Department proposes to modify OAC 252:100-1-3 by the addition of definitions of "greenhouse gas" or "GHG" and "carbon dioxide equivalent emissions" or "CO₂e." At this time the Department is also proposing to add the abbreviation of carbon dioxide equivalent (CO₂e) to OAC 252:100-1-4(a) and the acronym of greenhouse gas (GHG) to 252:100-1-4(b). In addition some scrivener's errors in OAC 252:100-1-4 relating to units of measure, abbreviations, and acronyms will be corrected.

It should be noted that the proposed amendments to Subchapters 1, 7, and 8 do not make any facility or source subject to GHG regulations, but only ensure that the State's permitting programs are not perceived to be more stringent than the corresponding federal programs.

The Department proposes to modify Parts 7 and 9 of Subchapter 8 to incorporate EPA's New Source Review (NSR) implementation rule for the PM_{2.5} (fine particulate matter) National Ambient Air Quality Standards (NAAQS) which was published in the *Federal Register* on July 18, 1997 (62 FR 38652) and revised on October 17, 2006 (71 FR 61144). Phase 1 of the NSR implementation rule was published in the May 16, 2008 *Federal*

Register (73 FR 28321) and phase 2 was published in the October 20, 2010 *Federal Register* (75 FR 64864). The proposed amendments will establish a major source threshold, significant emissions rate, offset ratios for PM_{2.5}, interpollutant trading for offsets, applicability of NSR to PM_{2.5} precursors, Significant Impact Levels (SILs), and a Significant Monitoring Concentration (SMC) that are consistent with those in the federal regulations set forth in 40 CFR §§ 51.165 and 51.166.

The Department is also proposing to modify Subchapter 3, Air Quality Standards and Increments, to add the 24-hour and annual PM_{2.5} PSD increments to OAC 252:100-3-4. In conjunction with the proposed amendment to Part 7 of Subchapter 8, the amendment to Subchapter 3 will bring the State's PSD program up to date with respect to PM_{2.5} and will enable the Department to maintain its delegated authority for the full NSR program.

The proposed amendments to Subchapters 1, 3, 7, and 8 will ensure that the State's PSD and Part 70 permitting programs are not perceived to be more stringent than the federal regulations regarding GHG emissions and that the State's NSR program will implement the federal regulations relating to PM_{2.5}.

CONTACT PERSON:

Cheryl E. Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

252:100-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

"Act" means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

"Administrator" means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

"Air contaminant source" means any and all sources of emission of air contaminants (pollutants), whether privately or publicly owned or operated, or person contributing to emission of air contaminants. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

"Air pollution abatement operation" means any operation which has as its essential purpose a significant reduction in:

- (A) the emission of air contaminants, or
- (B) the effect of such emission.

"Air pollution episode" means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion.

Other factors such as humidity may also affect the episode conditions.

"Ambient air standards" or **"Ambient air quality standards"** means levels of air quality as codified in OAC 252:100-3.

"Atmosphere" means the air that envelops or surrounds the earth.

"Best available control technology" or **"BACT"** means the best control technology that is currently available as determined by the Division Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs of alternative control systems.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

"Carbon dioxide equivalent emissions" or "CO₂e" means an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions, for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 B Global Warming Potentials, and summing the resultant value for each to compute a CO₂e.

"Catalytic cracking unit" means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the catalyst during cracking are removed by burning off in the regenerator.

"Combustible materials" means any substance which will readily burn and shall include those substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

"Commence" means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

"Complete" means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Director from requesting or accepting any additional information.

"Construction" means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

"Crude oil" means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

"Direct fired" means that the hot gasses produced by the flame or heat source come into direct contact with the material being processed or heated.

"Division" means Air Quality Division, Oklahoma State Department of Environmental Quality.

"Dust" means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

"Existing source" means, unless specifically defined otherwise, an air contaminant source which is in being on the effective date of the appropriate Subchapter, section, or paragraph of these rules.

"Facility" means all of the pollutant-emitting activities that meet all the following conditions:

- (A) Are under common control.
- (B) Are located on one or more contiguous or adjacent properties.
- (C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

"Fuel-burning equipment" means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.

"Fugitive dust" means solid airborne particulate matter emitted from any source other than a stack or chimney.

"Fugitive emissions" means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Fume" means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

Permanent Final Adoptions

"Greenhouse gas" or "GHG" means the air pollutant defined in 40 CFR § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).

"Gross particulate matter" or "GPM" means particulate matter with an aerodynamic diameter greater than 10 micrometers.

"In being" means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

"Incinerator" means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

"Indirect fired" means that the hot gasses produced by the flame or heat source do not come into direct contact with the material, excluding air, being processed or heated.

"Installation" means an identifiable piece of process equipment.

"Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) LAER means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) LAER means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

"Major source" means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Mist" means a suspension of any finely divided liquid in any gas or atmosphere excepting uncombined water.

"Modification" means any physical change in, or change in the method of operation of, a source which increases the

amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) an increase in hours of operation;

(iii) use of alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such source the affected facility is designed to accommodate such alternative use.

"National Emission Standards for Hazardous Air Pollutants" or "NESHAP" means those standards found in 40 CFR Parts 61 and 63.

"New installation", "New source", or "New equipment" means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

"New Source Performance Standards" or "NSPS" means those standards found in 40 CFR Part 60.

"Nonmethane organic compounds" or "NMOC" means nonmethane organic compounds, as defined in 40 CFR 60.754.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Open burning" means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

"Organic compound" means any chemical compound containing the element carbon.

"Owner or operator" means any person who owns, leases, operates, controls or supervises a source.

"Part 70 permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Part 70 program" means a program approved by the Administrator under 40 CFR Part 70.

"Part 70 source" means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

"PM-10 emissions" means particulate matter emitted to the ambient air with an aerodynamic diameter of 10 micrometers or less as measured by applicable reference methods, or an equivalent or alternative method.

"PM-10" means particulate matter with an aerodynamic diameter of 10 micrometers or less.

"PM-2.5" means particulate matter with an aerodynamic diameter of 2.5 micrometers or less.

"Particulate matter" or **"PM"** means any material that exists in a finely divided form as a liquid or a solid.

"Particulate matter emissions" means particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

"Potential to emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

"Prevention of significant deterioration" or **"PSD"** means increments for the protection of attainment areas as codified in OAC 252:100-3.

"Process equipment" means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

"Process weight" means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

"Reasonably available control technology" or **"RACT"** means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

"Reconstruction" means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

(i) the fixed capital cost (the capital needed to provide all the depreciable components of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);

(ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,

(iii) the extent to which the components being replaced cause or contribute to the emissions from the source.

(B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

"Refinery" means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

"Refuse" means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

"Refuse-burning equipment" means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

"Regulated air pollutant" means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive

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officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

- (i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
- (ii) The designated representative for any other purposes under this Chapter.

"Shutdown" means the cessation of operation of any process, process equipment, or air pollution control equipment.

"Smoke" means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

"Source operation" means the last operation preceding the emission of an air contaminant, which operation:

- (A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,
- (B) is not an air pollution abatement operation.

"Stack" means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

"Standard conditions" means a gas temperature of 68 degrees Fahrenheit (20° Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

"Startup" means the setting into operation of any process, process equipment, or air pollution control equipment.

"Stationary source" means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

"Total Suspended Particulates" or **"TSP"** means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

"Temperature inversion" means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

"Visible emission" means any air contaminant, vapor or gas stream which contains or may contain an air contaminant which is passed into the atmosphere and which is perceptible to the human eye.

"Volatile organic compound" or **"VOC"** means any organic compound that participates in atmospheric photochemical reactions resulting in the formation of tropospheric ozone. Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonates, tert-butyl acetate and compounds listed in 40 CFR 51.100(s)(1) are presumed to have negligible photochemical reactivity and are not considered to be VOC.

252:100-1-4. Units, abbreviations, and acronyms

(a) Abbreviations and symbols of units of measure.

- (1) Btu - British thermal unit
- (2) cm/sec - centimeter per second
- (3) CO₂e - carbon dioxide equivalent
- (34) dscf - dry cubic feet at standard conditions
- (45) dscm - dry cubic meter at standard conditions
- (56) ft/min - feet per minute
- (67) gal - gallon
- (78) gal/d - gallons per day
- (89) gal/yr - gallons per year
- (910) gr/dscf - grains per dry standard cubic foot
- (4011) hr - hour
- (412) Hg - mercury
- (4213) hp - horsepower
- (4314) H₂O-H₂O - water
- (4415) H₂S-H₂S - hydrogen sulfide
- (4516) H₂SO₄-H₂SO₄ - sulfuric acid
- (4617) kg - kilogram
- (4718) kg/metric ton - kilograms per metric ton
- (4819) kPa - kilopascals
- (4920) l - liter
- (2021) l/yr - liters per year
- (2122) LT/D - long tons per day
- (2223) lb/wk - pounds per week
- (2324) lb - pound
- (2425) lbs/hr - pounds per hour
- (2526) m³-m³ - cubic meter
- (2627) mg/dscm - milligrams per dry standard cubic meter
- (2728) MMBTU/hr - million british thermal units per hour
- (2829) Mg - megagram --~~406~~ 10⁶ gram
- (2930) Mg/yr - megagrams per year
- (3031) mg/l - milligrams per liter
- (3132) m/min - meter per minute
- (3233) ng/dscm - nanograms per dry standard cubic meter
- (3334) ng/J - nanograms per Joule
- (3435) oz/in²-oz/in² - ounce per square inch
- (3536) ppm - parts per million
- (3637) psia - pounds per square inch absolute
- (3738) psig - pounds per square inch gage
- (3839) ppmv - parts per million by volume
- (3940) SO₂-SO₂ - sulfur dioxide
- (4041) TPY - tons per year
- (4142) ug/m³-ug/m³ - micrograms per cubic meter

(b) Acronyms.

- (1) A.I.S.I. - American Iron and Steel Institute
- (2) A.S.M.E. - American Society of Mechanical Engineers
- (3) A.S.T.M. - American Society for Testing and Materials
- (4) BACT - Best Available Control Technology
- (5) CEM - Continuous Emission Monitor
- (6) CFR - Code of Federal Regulations
- (7) COM - Continuous Opacity Monitor
- (8) DEQ - Department of Environmental Quality

- (9) EPA - Environmental Protection Agency
- (10) GHG - Greenhouse Gas
- ~~(1011)~~ HAP - Hazardous Air Pollutants
- ~~(1112)~~ HMIWI - Hospital/Medical/Infectious Waste Incinerator
- ~~(1213)~~ MACT - Maximum Achievable Control Technology
- ~~(1314)~~ MSW - Municipal Solid Waste
- ~~(1415)~~ MWC - Municipal Waste Combustors
- ~~(1516)~~ NAAQS - National Ambient Air Quality Standards
- ~~(1617)~~ NESHAP - National Emissions Standards for Hazardous Air Pollutants
- ~~(1718)~~ NSPS - New Source Performance Standards
- ~~(1819)~~ OAC - Oklahoma Administrative Code
- ~~(1920)~~ PBR - Permit by Rule
- ~~(2021)~~ PM - Particulate Matter
- ~~(2122)~~ PSD - Prevention of Significant Deterioration
- ~~(2223)~~ SIC - Standard Industrial Classification
- ~~(2324)~~ SIP - State Implementation Plan
- ~~(2425)~~ TSP - Total Suspended Particulates
- ~~(2526)~~ VOC - Volatile Organic Compound
- ~~(2627)~~ 27A O.S. - Title 27A Oklahoma Statutes ~~Annotated~~

SUBCHAPTER 3. AIR QUALITY STANDARDS AND INCREMENTS

252:100-3-4. Significant deterioration increments

- (a) Significant deterioration, as used in the phrase Prevention of Significant Deterioration (PSD), means an increase in ambient air pollution above a baseline plus a specific increment allowed for one of three classes of areas. See OAC 252:100-8, Part 7.
- (b) The allowable increments are as follows:
 - (1) Class I Areas:
 - (A) ~~Particulate matter-PM_{2.5}~~ (effective October 20, 2011):
 - (i) annual arithmetic mean: maximum allowable increase is 1 microgram per cubic meter.
 - (ii) twenty-four hour maximum: maximum allowable increase is 2 micrograms per cubic meter.
 - (B) PM₁₀:
 - (i) ~~PM-10~~,—annual arithmetic mean: maximum allowable increase is 4 micrograms per cubic meter.
 - (ii) ~~PM-10~~, twenty-four hour maximum: maximum allowable increase is 8 micrograms per cubic meter.
 - (C) Sulfur dioxide:
 - (i) annual arithmetic mean: maximum allowable increase is 2 micrograms per cubic meter.
 - (ii) twenty-four hour maximum: maximum allowable increase is 5 micrograms per cubic meter.
 - (iii) three-hour maximum: maximum allowable increase is 25 micrograms per cubic meter.

- (C) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 2.5 micrograms per cubic meter.
- (2) Class II Areas:
 - (A) ~~Particulate matter-PM_{2.5}~~ (effective October 20, 2011):
 - (i) annual arithmetic mean: maximum allowable increase is 4 micrograms per cubic meter.
 - (ii) twenty-four hour maximum: maximum allowable increase is 9 micrograms per cubic meter.
 - (B) PM₁₀:
 - (i) ~~PM-10~~,—annual arithmetic mean: maximum allowable increase is 17 micrograms per cubic meter.
 - (ii) ~~PM-10~~, twenty-four hour maximum: maximum allowable increase is 30 micrograms per cubic meter.
 - (C) Sulfur dioxide:
 - (i) annual arithmetic mean: maximum allowable increase is 20 micrograms per cubic meter.
 - (ii) twenty-four hour maximum: maximum allowable increase is 91 micrograms per cubic meter.
 - (iii) three-hour maximum: maximum allowable increase is 512 micrograms per cubic meter.
 - (D) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 25 micrograms per cubic meter.
- (3) Class III Areas:
 - (A) ~~Particulate matter-PM_{2.5}~~ (effective October 20, 2011):
 - (i) annual arithmetic mean: maximum allowable increase is 8 micrograms per cubic meter.
 - (ii) twenty-four hour maximum: maximum allowable increase is 18 micrograms per cubic meter.
 - (B) PM₁₀:
 - (i) ~~PM-10~~,—annual arithmetic mean: maximum allowable increase is 34 micrograms per cubic meter.
 - (ii) ~~PM-10~~, twenty-four hour maximum: maximum allowable increase is 60 micrograms per cubic meter.
 - (C) Sulfur dioxide:
 - (i) annual arithmetic mean: maximum allowable increase is 40 micrograms per cubic meter.
 - (ii) twenty-four hour maximum: maximum allowable increase is 182 micrograms per cubic meter.
 - (iii) three-hour maximum: maximum allowable increase is 700 micrograms per cubic meter.
 - (D) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 50 micrograms per cubic meter.

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 1. GENERAL PROVISIONS

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252:100-7-2.1. Minor permits for greenhouse gas (GHG) emitting facilities

Greenhouse gas (GHG) emissions shall not be included in a minor facility permit nor cause a facility to be subject to minor facility permitting requirements contained in OAC 252:100-7, unless the owner or operator of that facility requests that GHG emission limits and/or physical or operational limitations be included in a minor permit for the facility to set enforceable limits to keep potential GHG emission levels below the applicability threshold levels for the PSD construction permit program and/or the Part 70 operating permit program. Physical or operational limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation, and/or restrictions on the type or amount of material combusted, stored, or processed.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-2. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this Section, terms used in this Part retain the meaning accorded them under the applicable requirements of the Act.

"**Administratively complete**" means an application that provides:

- (A) All information required under OAC 252:100-8-5(e), (d), or (e);
- (B) A landowner affidavit as required by—~~OAC 252:2-15-20(b)(3)~~ OAC 252:4-7-13(b);
- (C) The appropriate application fees as required by OAC 252:100-8-1.7; and
- (D) Certification by the responsible official as required by OAC 252:100-8-5(f).

"**Affected source**" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"**Affected states**" means:

- (A) all states:
 - (i) That are one of the following contiguous states: Arkansas, Colorado, Kansas, Missouri, New Mexico and Texas, and
 - (ii) That in the judgment of the DEQ may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or
- (B) all states that are within 50 miles of the permitted source.

"**Affected unit**" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"**Applicable requirement**" means all of the following as they apply to emissions units in a Part 70 source subject to this

Chapter (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

- (A) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act;
- (C) Any standard or other requirement under section 111 of the Act, including section 111(d);
- (D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under 112(r) of the Act;
- (E) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
- (F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
- (G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
- (H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
- (I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
- (J) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and
- (K) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

"**Begin actual construction**" means for purposes of this Part, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

"**Designated representative**" means with respect to affected units, a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

"**Draft permit**" means the version of a permit for which the DEQ offers public participation under 27A O.S. §§ 2-14-101 through 2-14-401 and OAC 252:4-7 or affected State review under OAC 252:100-8-8.

"Emergency" means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

"Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. Fugitive emissions from valves, flanges, etc. associated with a specific unit process shall be identified with that specific emission unit. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act.

"Final permit" means the version of a part 70 permit issued by the DEQ that has completed all review procedures required by OAC 252:100-8-7 through 252:100-8-7.5 and OAC 252:100-8-8.

"Fugitive emissions" means those emissions of regulated air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"General permit" means a part 70 permit that meets the requirements of OAC 252:100-8-6.1.

"Insignificant activities" means individual emissions units that are either on the list approved by the Administrator and contained in Appendix I, or whose actual calendar year emissions do not exceed any of the limits in (A) and (B) of this definition. Any activity to which a State or federal applicable requirement applies is not insignificant even if it meets the criteria below or is included on the insignificant activities list.

(A) 5 tons per year (TPY) of any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAPs, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

"MACT" means maximum achievable control technology.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subparagraph (A), (B), or (C) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single

industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987.

(A) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 TPY or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 TPY or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or-

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 TPY or more of any regulated air pollutant (except gross particulate matter) subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;

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- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories which, as of August 7, 1980, are being regulated by a standard promulgated under section 111 or 112 of the Act.

(C) A major stationary source as defined in part D of Title I of the Act, including:

- (i) For ozone non-attainment areas, sources with the potential to emit 100 TPY or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 TPY or more in areas classified as "serious," 25 TPY or more in areas classified as "severe," and 10 TPY or more in areas classified as "extreme"; except that the referenees in this paragraph to 100, 50, 25, and 10 TPY of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;
- (ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 TPY or more of volatile organic compounds;
- (iii) For carbon monoxide non-attainment areas:
 - (I) that are classified as "serious"; and
 - (II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 TPY or more of carbon monoxide; and
- (iv) For particulate matter ~~(PM-10)~~ (PM₁₀) non-attainment areas classified as "serious," sources with the potential to emit 70 TPY or more of ~~PM-10-PM₁₀~~.

"**Maximum capacity**" means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity

or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

"**Permit**" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"**Permit modification**" means a revision to a Part 70 construction or operating permit that meets the requirements of OAC 252:100-8-7.2(b).

"**Permit program costs**" means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in OAC 252:100-5-2.2 (whether such costs are incurred by the DEQ or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

"**Permit revision**" means any permit modification or administrative permit amendment.

"**Potential to emit**" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

"**Proposed permit**" means the version of a permit that the DEQ proposes to issue and forwards to the Administrator for review in compliance with OAC 252:100-8-8.

"**Regulated air pollutant**" means the following:

- (A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in OAC 252:100-1-3, 252:100-37-2, and 252:100-39-2, except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);
- (B) Any pollutant for which a national ambient air quality standard has been promulgated;
- (C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
- (D) Any Class I or II ozone-depleting substance subject to a standard promulgated under or established by Title VI of the Act;
- (E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act (Hazardous Air Pollutants), including sections 112(g) (Modifications), (j) (Equivalent Emission Limitation by Permit), and (r) (Prevention of Accidental Releases), including the following:

- (i) any pollutant subject to the requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act (Schedule for Standards and Review), any pollutant for which a subject source would be major shall be considered to be regulated as to that source

on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and,

(ii) any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement; or

(F) Any other substance for which an air emission limitation or equipment standard is set by an existing permit or regulation.

"**Renewal**" means the process by which a permit is reissued at the end of its term.

"**Section 502(b)(10) changes**" means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"**Small unit**" means a fossil fuel fired combustion device which serves a generator with a name plate capacity of 25 MWe or less.

"**State-only requirement**" means any standard or requirement pursuant to Oklahoma Clean Air Act (27A O.S. §§ 2-5-101 through 2-5-118, as amended) that is not contained in the State Implementation Plan (SIP).

"**State program**" means a program approved by the Administrator under 40 CFR Part 70.

"**Stationary source**" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act as it existed on January 2, 2006.

"**Subject to regulation**" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the EPA Administrator in subchapter C of Chapter I of 40 CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(A) Greenhouse gases (GHG) shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 TPY CO₂ equivalent emissions (CO₂e) and are otherwise subject to regulation as previously described in this definition.

(B) The term TPY CO₂ equivalent emissions (CO₂e) shall represent an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions (TPY), for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 B Global Warming Potentials, and summing the resultant value for each to compute a TPY CO₂e.

(C) If federal legislation or a federal court stays, invalidates, delays the effective date, or otherwise renders unenforceable by the EPA, in whole or in part,

the EPA's tailoring rule (75 FR 31514, June 3, 2010), endangerment finding (74 FR 66496, December 15, 2009), or light-duty vehicle greenhouse gas emission standard (75 FR 25686, May 7, 2010), this definition shall be enforceable only to the extent that it is enforceable by the EPA.

"**Trivial activities**" means any individual or combination of air emissions units that are considered inconsequential and are on a list approved by the Administrator and contained in Appendix J.

"**Unit**" means, for purposes of Title IV, a fossil fuel-fired combustion device.

PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

252:100-8-31. Definitions

The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise. All terms used in this Part that are not defined in this Section shall have the meaning given to them in OAC 252:100-1-3, 252:100-8-1.1, or in the Oklahoma Clean Air Act.

"**Actual emissions**" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (A) through (C) of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under OAC 252:100-8-38. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

(A) In general, actual emissions as of a particular date shall equal the average rate in TPY at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(B) The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(C) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"**Allowable emissions**" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

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- (A) the applicable standards as set forth in 40 CFR Parts 60 and 61;
- (B) the applicable State rule allowable emissions;
- or,
- (C) the emissions rate specified as an enforceable permit condition.

"Baseline actual emissions" means the rate of emissions, in TPY, of a regulated NSR pollutant, as determined in accordance with paragraphs (A) through (E) of this definition.

(A) The baseline actual emissions shall be based on current emissions data and the unit's utilization during the period chosen. Current emission data means the most current and accurate emission factors available and could include emissions used in the source's latest permit or permit application, the most recent CEM data, stack test data, manufacturer's data, mass balance, engineering calculations, and other emission factors.

(B) For any existing electric utility steam generating unit (EUSGU), baseline actual emissions means the average rate, in TPY, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Director for a permit required under OAC 252:100-8. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units affected by the project. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (B)(ii) of this definition.

(C) For an existing emissions unit (other than an EUSGU), baseline actual emissions means the average rate in TPY, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete

permit application is received by the Director for a permit required either under this Part or under a plan approved by the Administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a MACT standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if DEQ has taken credit for such emissions reduction in an attainment demonstration or maintenance plan consistent with requirements of 40 CFR 51.165(a)(3)(ii)(G).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (C)(ii) and (iii) of this definition.

(D) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(E) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing EUSGU in accordance with the procedures contained in paragraph (B) of this definition, for other existing emissions units in accordance with the procedures contained in Paragraph (C) of this definition, and for a new emissions unit in accordance with the procedures contained in paragraph (D) of this definition.

"Baseline area" means any intrastate areas (and every part thereof) designated as attainment or unclassifiable under section ~~107(d)(1)(D)~~ or ~~(E)~~ 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing

the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: ~~equal~~ Equal to or greater than 1 Fg/m³ (annual average) of the pollutant for which the minor source baseline date is established, for SO₂, NO₂, or PM₁₀; or equal or greater than 0.3 Fg/m³ (annual average) for PM_{2.5}.

(A) Area redesignations under section ~~107(d)(1)(D)~~ or ~~(E)~~ 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

- (i) establishes a minor source baseline date; or
- (ii) is subject to 40 CFR 52.21 or OAC 252:100-8, Part 7, and would be constructed in the same State as the State proposing the redesignation.

(B) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available ~~PM-10~~ PM₁₀ increments, except that such baseline area shall not remain in effect if the Director rescinds the corresponding minor source baseline date in accordance with paragraph (D) of the definition of "baseline date".

"Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(A) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

- (i) the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in (B) of this definition.
- (ii) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(B) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

- (i) actual emissions from any major stationary source on which construction commenced after the major source baseline date; and,
- (ii) actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date" means:

(A) Major source baseline date means:

- (i) in the case of ~~particulate matter~~ PM₁₀ and sulfur dioxide, January 6, 1975, ~~and~~;
- (ii) in the case of nitrogen dioxide, February 8, 1988; ~~and~~
- (iii) in the case of PM_{2.5}, October 20, 2010.

(B) Minor source baseline date means the earliest date after the trigger date on which a major stationary source or major modification (subject to 40 CFR

52.21 or OAC 252:100-8, Part 7) submits a complete application. The trigger date is:

- (i) in the case of ~~particulate matter~~ PM₁₀ and sulfur dioxide, August 7, 1977, ~~and~~;
- (ii) in the case of nitrogen dioxide, February 8, 1988; ~~and~~
- (iii) in the case of PM_{2.5}, October 20, 2011.

(C) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

- (i) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section ~~107(d)(1)(D)~~ or ~~(E)~~ 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under OAC 252:100-8, Part 7; and
- (ii) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(D) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available ~~PM-10~~ PM₁₀ increments, except that the Director may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Director, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of ~~PM-10~~ PM₁₀ emissions.

"Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature.

(A) Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

(B) With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

"Best available control technology" or **"BACT"** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and

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61. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The Federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or,

(B) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or **"CEMS"** means all of the equipment that may be required to meet the data acquisition and availability requirements to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or **"CERMS"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or **"CPMS"** means all of the equipment necessary to meet the data acquisition and availability requirements to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂, or CO₂

concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" or **"EUSGU"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an EUSGU. There are two types of emissions units as described in paragraphs (A) and (B) of this definition.

(A) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(B) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (A) of this definition. A replacement unit is an existing emissions unit.

"Federal Land Manager" means with respect to any lands in the United States, the Secretary of the department with authority over such lands.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

"Low terrain" means any area other than high terrain.

"Major modification" means:

(A) Any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source is a major modification.

(i) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for VOC or NO_x shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(I) routine maintenance, repair and replacement;

(II) use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any

superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(III) use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(IV) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(V) use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, (unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975) or the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 252:100-8;

(VI) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975;

(VII) any change in source ownership;

(VIII) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided the project complies with OAC 252:100 and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated;

(IX) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant (on a pollutant-by-pollutant basis) emitted by the unit; or

(X) the reactivation of a very clean coal-fired EUSGU.

(B) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under OAC 252:100-8-38 for a PAL for that pollutant. Instead, the definition of "PAL major modification" at 40 CFR 51.166(w)(2)(viii) shall apply.

"Major stationary source" means

(A) A major stationary source is:

(i) any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 TPY or more of a regulated NSR pollutant:

- (I) carbon black plants (furnace process),
- (II) charcoal production plants,
- (III) chemical process plants, (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140),

(IV) coal cleaning plants (with thermal dryers),

(V) coke oven batteries,

(VI) fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,

(VII) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,

(VIII) fuel conversion plants,

(IX) glass fiber processing plants,

(X) hydrofluoric, sulfuric or nitric acid plants,

(XI) iron and steel mill plants,

(XII) kraft pulp mills,

(XIII) lime plants,

(XIV) municipal incinerators capable of charging more than ~~50~~ 250 tons of refuse per day,

(XV) petroleum refineries,

(XVI) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,

(XVII) phosphate rock processing plants,

(XVIII) portland cement plants,

(XIX) primary aluminum ore reduction plants,

(XX) primary copper smelters,

(XXI) primary lead smelters,

(XXII) primary zinc smelters,

(XXIII) secondary metal production plants,

(XXIV) sintering plants,

(XXV) sulfur recovery plants, or

(XXVI) taconite ore processing plants;

(ii) any other stationary source not on the list in (A)(i) of this definition which emits, or has the potential to emit, 250 TPY or more of a regulated NSR pollutant;

(iii) any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under this definition if the change would constitute a major stationary source by itself.

(B) A major source that is major for VOC or NO_x shall be considered major for ozone.

(C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Part whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) the stationary sources listed in (A)(i) of this definition;

(ii) any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under all applicable air quality control laws and rules.

"Net emissions increase" means:

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(A) with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

- (i) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to OAC 252:100-8-30(b); and,
- (ii) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under (A)(ii) of this definition shall be determined as provided in the definition of "baseline actual emissions", except that (B)(iii) and (C)(iv) of that definition shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within 3 years before the date that the increase from the particular change occurs.

(C) An increase or decrease in actual emissions is creditable only if:

- (i) it is contemporaneous; and
- (ii) the Director has not relied on it in issuing a permit for the source under OAC 252:100-8, Part 7, which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(E) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(F) A decrease in actual emissions is creditable only to the extent that it meets all the conditions in (F)(i) through (iii) of this definition.

- (i) It is creditable if the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.
- (ii) It is creditable if it is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
- (iii) It is creditable if it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(G) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(H) Paragraph (A) of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂, or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

"Prevention of Significant Deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

"Project" means a physical change in, or change in method of operation of, an existing major stationary source.

"Projected actual emissions" means

(A) Projected actual emissions means the maximum annual rate, in TPY, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

(B) In determining the projected actual emissions under paragraph (A) of this definition (before beginning actual construction), the owner or operator of the major stationary source:

- (i) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and
- (ii) shall include fugitive emissions to the extent quantifiable and emissions associated with start-ups, shutdowns, and malfunctions; and
- (iii) shall exclude, in calculating any increase in emissions that results from the particular project,

that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) in lieu of using the method set out in (B)(i) through (iii) of this definition, may elect to use the emissions unit's potential to emit, in TPY.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(A) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the Department's emissions inventory at the time of enactment;

(B) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

(C) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(D) is otherwise in compliance with the requirements of the Act.

"Regulated NSR pollutant" means

(A) A regulated NSR pollutant is:

(i) any pollutant for which a NAAQS has been promulgated and any pollutant identified under (A)(i) of this definition as a constituent or precursor for such pollutants identified by the Administrator (e.g., VOC and NO_x are precursors for ozone); constituent or precursor to such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(I) volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(II) sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

(III) nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the State demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(IV) volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the State demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions

of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

(ii) any pollutant that is subject to any standard promulgated under section 111 of the Act;

(iii) any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(iv) any pollutant that otherwise is "subject to regulation" under the Act—as defined in the definition of "subject to regulation" in OAC 252:100-8-31;

(v) PM emissions, PM_{2.5} emissions, and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5} and PM₁₀ in PSD permits.

(B) Regulated NSR pollutant does not include:

(i) any or all HAP either listed in section 112 of the Act or added to the list pursuant to section 112(b)(2) of the Act, which have not been delisted pursuant to section 112(b)(3) of the Act, unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act; or

(ii) any pollutant that is regulated under section 112(r) of the Act, provided that such pollutant is not otherwise regulated under the Act.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met. No creditable emission reduction shall be generated from shutting down the existing emissions unit that is replaced.

(A) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Repowering" means

(A) Repowering shall mean the replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in

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consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(B) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(C) The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Act.

"Significant" means:

(A) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, ~~significant means~~ a rate of emissions that would equal or exceed any of the following significant emission rates:

- (i) carbon monoxide: 100TPY,
- (ii) nitrogen oxides: 40 TPY,
- (iii) sulfur dioxide: 40 TPY,
- (iv) particulate matter: 25 TPY of particulate matter emissions or 15 TPY of ~~PM₁₀~~ PM₁₀ emissions,
- (v) PM_{2.5}: 10 TPY of direct PM_{2.5} emissions; 40 TPY of sulfur dioxide emissions; or 40 TPY of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under the definition of "regulated NSR pollutant",
- (~~v~~vi) ozone: 40 TPY of VOC or NO_x,
- (~~vii~~vii) lead: 0.6 TPY,
- (~~viii~~viii) fluorides: 3 TPY,
- (~~ix~~ix) sulfuric acid mist: 7 TPY,
- (~~x~~x) hydrogen sulfide (H₂S): 10 TPY,
- (~~xi~~xi) total reduced sulfur (including H₂S): 10 TPY,
- (~~xii~~xii) reduced sulfur compounds (including H₂S): 10 TPY,
- (~~xiii~~xiii) municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.5 x 10⁻⁶ TPY,
- (~~xiv~~xiv) municipal waste combustor metals (measured as particulate matter): 15 TPY,
- (~~xv~~xv) municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 40 TPY,
- (~~xvi~~xvi) municipal solid waste landfill emissions (measured as nonmethane organic compounds): 50 TPY.

(B) ~~Notwithstanding (A) of this definition, "significant" means any~~ Any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct

within 6 miles of a Class I area, and have an impact on such area equal to or greater than 1 Fg/m³ (24-hour average).

"**Significant emissions increase**" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"**Significant net emissions increase**" means a significant emissions increase and a net increase.

"**Stationary source**" means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant.

"**Subject to regulation**" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the EPA Administrator in subchapter C of Chapter I of 40 CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(A) Greenhouse gases (GHG) shall not be subject to regulation except as provided in (D) through (E) of this definition.

(B) For purposes of (C) through (E) of this definition, the term TPY CO₂ equivalent emissions (CO₂e) shall represent an amount of GHG emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (in TPY), for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 B Global Warming Potentials.

(ii) Summing the resultant value from (B)(i) of this definition for each gas to compute a TPY CO₂e.

(C) The term emissions increase as used in (D) through (E) of this definition shall mean that both a significant emissions increase (as calculated using the procedures in OAC 252:100-8-30(b)(1) through (5)) and a significant net emissions increase (as defined in the definitions of "net emissions increase" and "significant" in 252:100-8-31) occur. For the pollutant GHG, an emissions increase shall be based on TPY CO₂e, and shall be calculated assuming the pollutant GHG is a regulated NSR pollutant, and "significant" is defined as 75,000 TPY CO₂e and the emissions are otherwise subject to regulation as previously described in this definition.

(D) Beginning January 2, 2011, the pollutant GHG is subject to regulation if it meets the other requirements of this definition and if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHG, and also will emit or will have the potential to emit 75,000 TPY CO₂e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHG, and also will have an emissions

increase of a regulated NSR pollutant, and an emissions increase of 75,000 TPY CO₂e or more.

(E) Beginning July 1, 2011, in addition to the provisions in (D) of this definition, the pollutant GHG shall also be subject to regulation:

- (i) At a new stationary source that will emit or have the potential to emit 100,000 TPY CO₂e; or
- (ii) At an existing stationary source that emits or has the potential to emit 100,000 TPY CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 TPY CO₂e or more.

(F) If federal legislation or a federal court stays, invalidates, delays the effective date, or otherwise renders unenforceable by the EPA, in whole or in part, the EPA's tailoring rule (75 FR 31514, June 3, 2010), endangerment finding (74 FR 66496, December 15, 2009), or light-duty vehicle greenhouse gas emission standard (75 FR 25686, May 7, 2010), this definition shall be enforceable only to the extent that it is enforceable by the EPA.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Oklahoma Air Pollution Control Rules in OAC 252:100 and other requirements necessary to attain and/or maintain the NAAQS during and after the project is terminated.

252:100-8-33. Exemptions

(a) Exemptions from the requirements of OAC 252:100-8-34 through 252:100-8-36. 2.

(1) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a particular major stationary source or major modification if the source or modification is:

- (A) a nonprofit health or nonprofit educational institution; or
- (B) major only if fugitive emissions, to the extent quantifiable, are included in calculating the potential to emit and such source is not one of the categories listed in paragraph (C) of the definition of "Major stationary source"; or
- (C) a portable stationary source which has previously received a permit under the requirements contained in OAC 252:100-8-34 through 252:100-8-36.2 and proposes to relocate to a temporary new location from which its emissions would not impact a Class I area or an area where an applicable increment is known to be violated.

(2) The requirements in OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source or modification is located in an area designated as nonattainment for that pollutant under section 107 of the Act.

(b) Exemption from air quality impact analyses in OAC 252:100-8-35(a) and (c) and 252:100-8-35. 2.

(1) The requirements of OAC 252:100-8-35(a) and (c) and 252:100-8-35.2 are not applicable with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

(2) The requirements of OAC 252:100-8-35(a) and (c) and 252:100-8-35.2 as they relate to any PSD increment for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT, would be less than 50 TPY.

(c) Exemption from air quality analysis requirements in OAC 252:100-8-35(c).

(1) The monitoring requirements of OAC 252:100-8-35(c) regarding air quality analysis are not applicable for a particular pollutant if the emission increase of the pollutant from a proposed major stationary source or the net emissions increase of the pollutant from a major modification would cause, in any area, air quality impacts less than the following amounts significant monitoring concentrations (SMC):

- (A) Carbon monoxide - 575 Fg/m³, 8-hour average,
- (B) Nitrogen dioxide - 14 Fg/m³, annual average,
- (C) PM_{2.5} - 4 µg/m³, 24-hour average.
- ~~(D) Particulate matter PM₁₀ - 10 Fg/m³, TSP or PM₁₀, 24-hour average,~~
- ~~(E) Sulfur dioxide - 13 Fg/m³, 24-hour average,~~
- ~~(F) Ozone - no de minimis air quality level is provided for ozone, however any net increase of 100 TPY or more of VOC or NO_x subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data,~~
- ~~(G) Lead - 0.1 Fg/m³, 24-hour 3-month average,~~
- ~~(H) Fluorides - 0.25 Fg/m³, 24-hour average,~~
- ~~(I) Total reduced sulfur - 10 Fg/m³, 1-hour average,~~
- ~~(J) Hydrogen sulfide - 0.2 Fg/m³, 1-hour average, or~~
- ~~(K) Reduced sulfur compounds - 10Fg/m³, 1-hour average.~~

(2) The monitoring requirements of OAC 252:100-8-35(c) are not applicable for a particular pollutant if the pollutant is not listed in preceding OAC 252:100-8-33(c)(1).

(d) Exemption from monitoring requirements in OAC 252:100-8-35(c)(1)(B) and (D).

(1) The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application was complete except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D). Instead, the requirements in 40 CFR 52.21(m)(2) as in effect on June 19, 1978, shall apply to any such source or modification.

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(2) The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application as submitted was complete, except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D).

(e) Exemption from the preapplication analysis required by OAC 252:100-8-35(c)(1)(A), (B), and (D).

(1) The Director shall determine if the requirements for air quality monitoring of ~~PM₁₀~~ PM₁₀ in OAC 252:100-8-35(c)(1)(A), (B), and (D) may be waived for a particular source or modification when an application for a PSD permit was submitted on or before June 1, 1988, and the Director subsequently determined that the application, except for the requirements for monitoring particulate matter under OAC 252:100-8-35(c)(1)(A), (B), and (D), was complete before that date.

(2) The requirements for air quality monitoring of ~~PM₁₀~~ PM₁₀ in OAC 252:100-8-35(c)(1)(B)(i), 252:100-8-35(c)(1)(D), and 252:100-8-35(c)(3) shall apply to a particular source or modification if an application for a permit was submitted after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application became otherwise complete in accordance with the provisions of OAC 252:100-8-35(c)(1)(C), except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data required by OAC 252:100-8-35(c)(1)(B)(ii) shall have been gathered over that shorter period.

(f) Exemption from BACT requirements and air quality analyses requirements. If a complete permit application for a source or modification was submitted before August 7, 1980 the requirements for BACT in OAC 252:100-8-34 and the requirements for air quality analyses in OAC 252:100-8-35(c)(1) are not applicable to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978. Instead, the federal requirements at 40 CFR 52.21 (j) and (n) as in effect on June 19, 1978, are applicable to any such source or modification.

(g) Exemption from ~~OAC 252:100-8-35(a)(2)~~ OAC 252:100-8-35(a)(1)(B). The permitting requirements of ~~OAC 252:100-8-35(a)(2)~~ OAC 252:100-8-35(a)(1)(B) do not apply to a stationary source or modification with respect to any PSD increment for nitrogen oxides if the owner or operator of the source or modification submitted a complete application for a permit before February 8, 1988.

252:100-8-35. Air quality impact evaluation

(a) Source impact analysis (impact on NAAQS and PSD increment). ~~The owner or operator of the proposed source or modification shall demonstrate that, as of the source's start-up date, allowable emissions increase from that source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions)~~

~~would not cause or contribute to any increase in ambient concentrations that would exceed:~~

(1) Required demonstration. ~~The owner or operator of the proposed source or modification shall demonstrate that, as of the source's start-up date, allowable emissions increases from that source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) would not cause or contribute to any increase in ambient concentrations that would exceed:~~

- ~~(1A) any NAAQS in any air quality control region;~~
- ~~or~~
- ~~(2B) the remaining available PSD increment for the specified air contaminants in any area as determined by the Director.~~

(2) Significant impact levels (SILs). ~~For purposes of PM_{2.5}, the demonstration required in OAC 252:100-8-35(a)(1) is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following significant impact levels (SILs).~~

~~(A) The SILs for PM_{2.5} annual averaging time are 0.06 µg/m³ for a Class I Area, 0.3 µg/m³ for a Class II Area, and 0.3 µg/m³ for a Class III Area.~~

~~(B) The SILs for PM_{2.5} 24-hour averaging time are 0.07 µg/m³ for a Class I Area, 1.2 µg/m³ for a Class II Area, and 1.2 µg/m³ for a Class III Area.~~

(b) Air quality models.

(1) All estimates of ambient concentrations required under this Part shall be based on the applicable air quality models, data bases, and other requirements specified in appendix W of 40 CFR 51 (Guideline on Air Quality Models) as it existed on January 2, 2006.

(2) Where an air quality model specified in appendix W of 40 CFR 51 (Guideline on Air Quality Models) as it existed on January 2, 2006, is inappropriate, the model may be modified or another model substituted, as approved by the Administrator. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Modified or substitute models shall be submitted to the Administrator with written concurrence of the Director. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in Sec. 51.102 as it existed on January 2, 2006.

(c) Air quality analysis.

(1) Preapplication analysis.

(A) Ambient air quality analysis. Any application for a permit under this Part shall contain, as the Director determines appropriate, an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

- (i) for a new source, each regulated pollutant that it would have the potential to emit in a significant amount;

(ii) for a major modification, each regulated pollutant for which it would result in a significant net emissions increase.

(B) Monitoring requirements.

(i) **Non-NAAQS pollutants.** For any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Director determines is necessary to assess the ambient air quality for that pollutant in that area.

(ii) **NAAQS pollutants.** For visibility and any pollutant, other than VOC, for which a NAAQS does exist, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant would cause or contribute to a violation of the NAAQS or any PSD increment.

(C) Monitoring method. With respect to any requirements for air quality monitoring of ~~PM₁₀~~ PM₁₀ under OAC 252:100-8-33(e)(1) and (2), the owner or operator of the source or modification shall use a monitoring method approved by the Director and shall estimate the ambient concentrations of ~~PM₁₀~~ PM₁₀ using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Director.

(D) Monitoring period. In general, the required continuous air monitoring data shall have been gathered over a period of up to one year and shall represent the year preceding submission of the application. Ambient monitoring data gathered over a period shorter than one year (but no less than four months) or for a time period other than immediately preceding the application may be acceptable if such data are determined by the Director to be within the time period that maximum pollutant concentrations would occur, and to be complete and adequate for determining whether the source or modification will cause or contribute to a violation of any applicable NAAQS or consume more than the remaining available PSD increment.

(E) Monitoring period exceptions.

(i) **Exceptions for applications that became effective between June 8, 1981, and February 9, 1982.** For any application which became complete except for the monitoring requirements of OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D), between June 8, 1981, and February 9, 1982, the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over the period from February 9, 1981, to the date the application became otherwise complete, except that:

(I) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over the period required by those regulations.

(II) If the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, not to be less than four months, the data that OAC 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(III) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Director may waive the otherwise applicable requirements of OAC 252:100-8-35(c)(1)(E)(i) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(ii) Monitoring period exception for ~~PM₁₀~~ PM₁₀. For any application that became complete, except for the requirements of OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D) pertaining to monitoring of ~~PM₁₀~~ PM₁₀, after December 1, 1988, and no later than August 1, 1989, the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not less than 4 months), the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(F) Ozone post-approval monitoring. The owner or operator of a proposed major stationary source or major modification of VOC who satisfies all conditions of OAC 252:100-8-54 and 40 CFR 51, Appendix S, Section IV as it existed on January 16, 1979, may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under OAC 252:100-8-35(c)(1).

(2) **Post-construction monitoring.** The owner or operator of a new major stationary source or major modification shall conduct, after construction, such ambient monitoring and visibility monitoring as the Director determines is necessary to determine the effect its emissions may have, or are having, on air quality in any area.

(3) **Operation of monitoring stations.** The operation of monitoring stations for any air quality monitoring required under this Part shall meet the requirements of 40 CFR 58 Appendix B as it existed January 2, 2006.

PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS

252:100-8-50.1. Incorporation by reference

(a) **Inclusion of CFR citations and definitions.** When a provision of Title 40 of the Code of Federal Regulations (40

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CFR) is incorporated by reference, all citations contained therein are also incorporated by reference.

(b) **Terminology related to 40 CFR.** When these terms are used in rules incorporated by reference from 40 CFR, the following terms or definitions shall apply.

(1) "Baseline actual emissions" is synonymous with the definition of "baseline actual emissions" in OAC 252:100-8-31.

(2) "Building, structure, facility, or installation" is synonymous with the definition of "building, structure, facility, or installation" in OAC 252:100-1-3.

(3) "EPA" is synonymous with Department of Environmental Quality (DEQ) unless the context clearly indicates otherwise.

(4) "Major modification" is synonymous with the definition of "major modification" in OAC 252:100-8-51.

(5) "Net emissions increase" is synonymous with the definition of "net emissions increase" in OAC 252:100-8-51.

(6) "Regulated NSR pollutant" is synonymous with the definition of "regulated NSR pollutant" in OAC 252:100-8-51.

(6-7) "Reviewing authority" is synonymous with "Director".

(7-8) "Secondary emissions" is synonymous with the definition of "secondary emissions" in OAC 252:100-8-1.1.

(8-9) "State implementation plan" is synonymous with OAC 252:100.

(9-10) "Volatile organic compound (VOC)" is synonymous with the definition of "volatile organic compound" or "VOC" in OAC 252:100-1-3.

252:100-8-51. Definitions

The definitions in 40 CFR 51.165(a)(1) are hereby incorporated by reference as they exist on ~~July 2, 2007~~ July 1, 2010, except for the definitions found at 40 CFR 51.165(a)(1)(xxxv) "baseline actual emissions"; (ii) "building, structure, facility, or installation"; (xlv) "fixed capital cost"; (xlv) "functionally equivalent component"; (v) "major modification"; (vi) "net emissions increase"; (xliii) "process unit"; (xxxvii) "regulated NSR pollutant"; (xxxviii) "reviewing authority"; (viii) "secondary emissions"; (xlv) "total capital investment"; and (xix) "volatile organic compound (VOC)". With the exception of "reviewing authority", "fixed capital cost", "functionally equivalent component", "process unit", and "total capital investment", these terms are defined in OAC 252:100-8-31, 252:100-8-51, or 252:100-1-3. The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise.

"Major modification" means:

(A) Any physical change in, or change in the method of operation of, a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source is a major modification.

(i) Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for VOC and/or oxides of nitrogen (NO_x) shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(I) routine maintenance, repair and replacement;

(II) use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(III) use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(IV) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(V) use of an alternative fuel or raw material by a source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, or the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 8;

(VI) an increase in the hours of operation or in the production rate unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976;

(VII) any change in source ownership;

(VIII) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with OAC 252:100 and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.

(B) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under OAC 252:100-8-56 for a PAL for that pollutant. Instead the definition at 40 CFR 51.165(f)(2)(viii) shall apply.

(C) For the purpose of applying the requirements of OAC 252:100-8-54.1(a) to modifications at major stationary sources of NO_x located in ozone nonattainment areas or in ozone transport regions (as defined in 42 U.S.C. § 7511c), whether or not subject to subpart 2, part D, title I of the Act, any significant net emissions increase of NO_x is considered significant for ozone.

(D) Any physical change in, or change in the method of operation of, a major stationary source of VOCs that results in any increase in emissions of VOCs from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act.

"Net emissions increase" means:

(A) With respect to any regulated NSR pollutant emitted by a major stationary source, net emissions increase shall mean the amount by which the sum of the following exceeds zero:

(i) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to OAC 252:100-8-50(b); and,

(ii) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under (A)(ii) of this definition shall be determined as provided in the definition of "baseline actual emissions", except that (B)(iii) and (C)(iv) of that definition shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within 3 years before the date that the increase from the particular change occurs.

(C) An increase or decrease in actual emissions is creditable only if:

(i) it is contemporaneous; and
 (ii) the Director has not relied on it in issuing a permit under OAC 252:100-8, Part 9, which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 (ii) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
 (iii) the Director has not relied on it in issuing any permit under OAC 252:100; and,
 (iv) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(F) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational after a reasonable shakedown period, not to exceed 180 days.

(G) Paragraph 40 CFR 51.165(a)(1)(xii)(B) of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"Regulated NSR pollutant" for purposes of this Part, means any or all of the following:

(A) Nitrogen oxides or volatile organic compounds;

(B) Any pollutant for which a NAAQS has been promulgated;

(C) Any pollutant that is identified under this paragraph as a constituent or precursor of a general pollutant listed under paragraph (A) or (B) of this definition, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(i) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(ii) Sulfur dioxide is a precursor to PM_{2.5} in all PM_{2.5} nonattainment areas.

(iii) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(iv) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any PM_{2.5} nonattainment area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations, or

(D) PM_{2.5} emissions and PM₁₀ emissions, including gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in nonattainment major NSR permits.

252:100-8-51.1. Emissions reductions and offsets

(a) The requirements in 40 CFR 51.165(a)(3) regarding emissions reductions and offsets are hereby incorporated by reference as they exist on July 2, 2007.

Permanent Final Adoptions

(b) ~~Meeting the emissions offset requirements in subsection OAC 252:100-8-51.1(a) for ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act shall be in accordance with the requirements in 40 CFR 51.165(a)(9) which is hereby incorporated by reference as it exists on July 2, 2007. The requirements in subsection 40 CFR 51.165(a)(9) dealing with offset ratios are hereby incorporated by reference as they exist on July 1, 2010.~~

(c) The requirements in 40 CFR 51.165(a)(11) regarding emission offsets are hereby incorporated by reference as they exist on July 1, 2011.

252:100-8-52. Applicability determination for sources in attainment areas causing or contributing to NAAQS violation

(a) The requirements in 40 CFR 51.165(b) regarding a source located in an attainment or unclassifiable area but causing or contributing to a NAAQS violation are hereby incorporated by reference as they exist on ~~July 2, 2007~~ December 20, 2010.

(b) Sources of VOC located outside a designated ozone nonattainment area will be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source may be granted its permit since the area has not yet been designated nonattainment.

(c) Sources locating in an attainment area but impacting on a nonattainment area above the significant levels listed in OAC 252:100-8-52(a) are exempted from the condition of OAC 252:100-8-54(4)(A).

(d) The determination whether a source or modification will cause or contribute to a violation of an applicable ambient air quality standard for sulfur dioxide, particulate matter or carbon monoxide will be made on a case-by-case basis as of the proposed new source's start-up date by an atmospheric simulation model. For sources of nitrogen oxides the model can be used for an initial determination assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level, and the initial concentration estimates will be adjusted if adequate data are available to account for the expected oxidation rate.

(e) The determination as to whether a source would cause or contribute to a violation of applicable ambient air quality standards will be made on a case-by-case basis as of the new source's start-up date. Therefore, if a designated nonattainment area is projected to be attainment as part of the state implementation plan control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

[OAR Docket #11-698; filed 5-18-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #11-699]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

252:100-5-2.3. Annual operating fees for area sources of air pollution [NEW]

Subchapter 7. Permits for Minor Facilities

Part 2. Permit Application Fees

252:100-7-3. Permit application fees [AMENDED]

Subchapter 8. Permits for Part 70 Sources

Part 3. Permit Application Fees

252:100-8-1.7. Permit application fees [AMENDED]

AUTHORITY:

Environmental Quality Board and Air Quality Advisory Council powers and duties, 27A O.S., §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S., §§ 2-5-101 *et seq.*

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n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The Department is proposing to add a new section to Subchapter 5 of the Air Pollution Control Rules that will alter the current fee structure to allow the agency to invoice certain "area sources" of hazardous air pollutants. The proposed new section will require area sources that are subject to National Emission Standards for Hazardous Air Pollutants (NESHAP) but not subject to permitting requirements to pay an annual operating fee. (Note that permitted facilities currently pay an annual operating fee based on emissions.) In addition, the Department is proposing increases in permit application fees in Subchapters 7 and 8.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

AIR QUALITY DIVISION

2011

State Implementation Plan

Oklahoma Administrative Code
252:100-1

Submitted to EPA
March 2012

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

SUBCHAPTER 1. GENERAL PROVISIONS

252:100-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

"**Act**" means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

"**Administrator**" means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

"**Air contaminant source**" means any and all sources of emission of air contaminants (pollutants), whether privately or publicly owned or operated, or person contributing to emission of air contaminants. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

"**Air pollution abatement operation**" means any operation which has as its essential purpose a significant reduction in:

- (A) the emission of air contaminants, or
- (B) the effect of such emission.

"**Air pollution episode**" means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion. Other factors such as humidity may also affect the episode conditions.

"**Ambient air standards**" or "**Ambient air quality standards**" means levels of air quality as codified in OAC 252:100-3.

"**Atmosphere**" means the air that envelops or surrounds the earth.

"**Best available control technology**" or "**BACT**" means the best control technology that is currently available as determined by the Division Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs of alternative control systems.

"**Building, structure, facility, or installation**" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

"**Catalytic cracking unit**" means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the catalyst during cracking are removed by burning off in the regenerator.

"**Combustible materials**" means any substance which will readily burn and shall include those

substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

"Commence" means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

"Complete" means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Director from requesting or accepting any additional information.

"Construction" means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

"Crude oil" means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

"Direct fired" means that the hot gasses produced by the flame or heat source come into direct contact with the material being processed or heated.

"Division" means Air Quality Division, Oklahoma State Department of Environmental Quality.

"Dust" means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

"Existing source" means, unless specifically defined otherwise, an air contaminant source which is in being on the effective date of the appropriate Subchapter, section, or paragraph of these rules.

"Facility" means all of the pollutant-emitting activities that meet all the following conditions:

(A) Are under common control.

(B) Are located on one or more contiguous or adjacent properties.

(C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

"Fuel-burning equipment" means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.

"Fugitive dust" means solid airborne particulate matter emitted from any source other than a

stack or chimney.

"Fugitive emissions" means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Fume" means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

"Greenhouse gas" or "GHG" means the air pollutant defined in 40 CFR § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).

"Gross particulate matter" or "GPM" means particulate matter with an aerodynamic diameter greater than 10 micrometers.

"In being" means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

"Incinerator" means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

"Indirect fired" means that the hot gasses produced by the flame or heat source do not come into direct contact with the material, excluding air, being processed or heated.

"Installation" means an identifiable piece of process equipment.

"Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) LAER means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) LAER means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

"Major source" means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Mist" means a suspension of any finely divided liquid in any gas or atmosphere excepting

uncombined water.

"Modification" means any physical change in, or change in the method of operation of, a source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) an increase in hours of operation;

(iii) use of alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such source the affected facility is designed to accommodate such alternative use.

"National Emission Standards for Hazardous Air Pollutants" or **"NESHAP"** means those standards found in 40 CFR Parts 61 and 63.

"New installation", **"New source"**, or **"New equipment"** means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

"New Source Performance Standards" or **"NSPS"** means those standards found in 40 CFR Part 60.

"Nonmethane organic compounds" or **"NMOC"** means nonmethane organic compounds, as defined in 40 CFR 60.754.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Open burning" means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

"Organic compound" means any chemical compound containing the element carbon.

"Owner or operator" means any person who owns, leases, operates, controls or supervises a source.

"Part 70 permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Part 70 program" means a program approved by the Administrator under 40 CFR Part 70.

"Part 70 source" means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

"PM-10 emissions" means particulate matter emitted to the ambient air with an aerodynamic diameter of 10 micrometers or less as measured by applicable reference methods, or an equivalent or alternative method.

"PM-10" means particulate matter with an aerodynamic diameter of 10 micrometers or less.

"PM-2.5" means particulate matter with an aerodynamic diameter of 2.5 micrometers or less.

"Particulate matter" or **"PM"** means any material that exists in a finely divided form as a liquid or a solid.

"Particulate matter emissions" means particulate matter emitted to the ambient air as measured

by applicable reference methods, or an equivalent or alternative method.

"Potential to emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

"Prevention of significant deterioration" or **"PSD"** means increments for the protection of attainment areas as codified in OAC 252:100-3.

"Process equipment" means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

"Process weight" means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

"Reasonably available control technology" or **"RACT"** means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

"Reconstruction" means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

(i) the fixed capital cost (the capital needed to provide all the depreciable components of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);

(ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,

(iii) the extent to which the components being replaced cause or contribute to the emissions from the source.

(B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

"Refinery" means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

"Refuse" means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

"Refuse-burning equipment" means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

"Regulated air pollutant" means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

"Shutdown" means the cessation of operation of any process, process equipment, or air pollution control equipment.

"Smoke" means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

"Source operation" means the last operation preceding the emission of an air contaminant, which operation:

(A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,

(B) is not an air pollution abatement operation.

"Stack" means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

"Standard conditions" means a gas temperature of 68 degrees Fahrenheit (20° Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

"Startup" means the setting into operation of any process, process equipment, or air pollution control equipment.

"Stationary source" means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

"Total Suspended Particulates" or **"TSP"** means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

"Temperature inversion" means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

"Visible emission" means any air contaminant, vapor or gas stream which contains or may contain an air contaminant which is passed into the atmosphere and which is perceptible to the human eye.

"Volatile organic compound" or **"VOC"** means any organic compound that participates in atmospheric photochemical reactions resulting in the formation of tropospheric ozone. Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonates, tert-butyl acetate and compounds listed in 40 CFR 51.100(s)(1) are presumed to have negligible photochemical reactivity and are not considered to be VOC.

252:100-1-4. Units, abbreviations, and acronyms

(a) Abbreviations and symbols of units of measure.

(1) Btu - British thermal unit

(2) cm/sec - centimeter per second

(3) CO₂e - carbon dioxide equivalent

~~(3)~~(4) dscf - dry cubic feet at standard conditions

~~(4)~~(5) dscm - dry cubic meter at standard conditions

~~(5)~~(6) ft/min - feet per minute

~~(6)~~(7) gal - gallon

~~(7)~~(8) gal/d - gallons per day

~~(8)~~(9) gal/yr - gallons per year

~~(9)~~(10) gr/dscf - grains per dry standard cubic foot

~~(10)~~(11) hr - hour

- (11)(12) Hg - mercury
- (12)(13) hp - horsepower
- (13)(14) H_2O-H_2O - water
- (14)(15) H_2S-H_2S - hydrogen sulfide
- (15)(16) $H_2SO_4-H_2SO_4$ - sulfuric acid
- (16)(17) kg - kilogram
- (17)(18) kg/metric ton - kilograms per metric ton
- (18)(19) kPa - kilopascals
- (19)(20) l - liter
- (20)(21) l/yr - liters per year
- (21)(22) LT/D - long tons per day
- (22)(23) lb/wk - pounds per week
- (23)(24) lb - pound
- (24)(25) lbs/hr - pounds per hour
- (25)(26) m^3-m^3 - cubic meter
- (26)(27) mg/dscm - milligrams per dry standard cubic meter
- (27)(28) MMBTU/hr - million british thermal units per hour
- (28)(29) Mg - megagram - 10^6 gram
- (29)(30) Mg/yr - megagrams per year
- (30)(31) mg/l - milligrams per liter
- (31)(32) m/min - meter per minute
- (32)(33) ng/dscm - nanograms per dry standard cubic meter
- (33)(34) ng/J - nanograms per Joule
- (34)(35) $oz/in^2-oz/in^2$ - ounce per square inch
- (35)(36) ppm - parts per million
- (36)(37) psia - pounds per square inch absolute
- (37)(38) psig - pounds per square inch gage
- (38)(39) ppmv - parts per million by volume
- (39)(40) SO_2-SO_2 - sulfur dioxide
- (40)(41) TPY - tons per year
- (41)(42) $\mu g/m^3-\mu g/m^3$ - micrograms per cubic meter

(b) Acronyms.

- (1) A.I.S.I. - American Iron and Steel Institute
- (2) A.S.M.E. - American Society of Mechanical Engineers
- (3) A.S.T.M. - American Society for Testing and Materials
- (4) BACT - Best Available Control Technology
- (5) CEM - Continuous Emission Monitor
- (6) CFR - Code of Federal Regulations
- (7) COM - Continuous Opacity Monitor
- (8) DEQ - Department of Environmental Quality
- (9) EPA - Environmental Protection Agency
- (10) GHG - Greenhouse Gas
- (10)(11) HAP - Hazardous Air Pollutants

- ~~(11)~~(12) HMIWI - Hospital/Medical/Infectious Waste Incinerator
- ~~(12)~~(13) MACT - Maximum Achievable Control Technology
- ~~(13)~~(14) MSW - Municipal Solid Waste
- ~~(14)~~(15) MWC - Municipal Waste Combustors
- ~~(15)~~(16) NAAQS - National Ambient Air Quality Standards
- ~~(16)~~(17) NESHAP - National Emissions Standards for Hazardous Air Pollutants
- ~~(17)~~(18) NSPS - New Source Performance Standards
- ~~(18)~~(19) OAC - Oklahoma Administrative Code
- ~~(19)~~(20) PBR - Permit by Rule
- ~~(20)~~(21) PM - Particulate Matter
- ~~(21)~~(22) PSD - Prevention of Significant Deterioration
- ~~(22)~~(23) SIC - Standard Industrial Classification
- ~~(23)~~(24) SIP - State Implementation Plan
- ~~(24)~~(25) TSP - Total Suspended Particulates
- ~~(25)~~(26) VOC - Volatile Organic Compound
- ~~(26)~~(27) 27A O.S. - Title 27A Oklahoma Statutes ~~Annotated~~

AIR QUALITY DIVISION

2011

State Implementation Plan

Oklahoma Administrative Code
252:100-3

Submitted to EPA
March 2012

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

SUBCHAPTER 3. AIR QUALITY STANDARDS AND INCREMENTS

252:100-3-4. Significant deterioration increments

(a) Significant deterioration, as used in the phrase Prevention of Significant Deterioration (PSD), means an increase in ambient air pollution above a baseline plus a specific increment allowed for one of three classes of areas. See OAC 252:100-8, Part 7.

(b) The allowable increments are as follows:

(1) Class I Areas:

(A) ~~Particulate matter~~ PM_{2.5} (effective October 20, 2011):

(i) annual arithmetic mean: maximum allowable increase is 1 microgram per cubic meter.

(ii) twenty-four hour maximum: maximum allowable increase is 2 micrograms per cubic meter.

(B) PM₁₀:

(i) ~~PM-10~~, annual arithmetic mean: maximum allowable increase is 4 micrograms per cubic meter.

(ii) ~~PM-10~~, twenty-four hour maximum: maximum allowable increase is 8 micrograms per cubic meter.

~~(B)~~(C) Sulfur dioxide:

(i) annual arithmetic mean: maximum allowable increase is 2 micrograms per cubic meter.

(ii) twenty-four hour maximum: maximum allowable increase is 5 micrograms per cubic meter.

(iii) three-hour maximum: maximum allowable increase is 25 micrograms per cubic meter.

~~(C)~~(D) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 2.5 micrograms per cubic meter.

(2) Class II Areas:

(A) ~~Particulate matter~~ PM_{2.5} (effective October 20, 2011):

(i) annual arithmetic mean: maximum allowable increase is 4 micrograms per cubic meter.

(ii) twenty-four hour maximum: maximum allowable increase is 9 micrograms per cubic meter.

(B) PM₁₀:

(i) ~~PM-10~~, annual arithmetic mean: maximum allowable increase is 17 micrograms per cubic meter.

(ii) ~~PM-10~~, twenty-four hour maximum: maximum allowable increase is 30 micrograms per cubic meter.

~~(B)~~(C) Sulfur dioxide:

(i) annual arithmetic mean: maximum allowable increase is 20 micrograms per cubic meter.

(ii) twenty-four hour maximum: maximum allowable increase is 91 micrograms per cubic meter.

(iii) three-hour maximum: maximum allowable increase is 512 micrograms per cubic meter.

~~(E)~~(D) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 25 micrograms per cubic meter.

(3) Class III Areas:

(A) ~~Particulate matter~~ $PM_{2.5}$ (effective October 20, 2011):

(i) annual arithmetic mean: maximum allowable increase is 8 micrograms per cubic meter.

(ii) twenty-four hour maximum: maximum allowable increase is 18 micrograms per cubic meter.

(B) PM_{10} :

(i) ~~PM-10~~, annual arithmetic mean: maximum allowable increase is 34 micrograms per cubic meter.

(ii) ~~PM-10~~, twenty-four hour maximum: maximum allowable increase is 60 micrograms per cubic meter.

~~(B)~~(C) Sulfur dioxide:

(i) annual arithmetic mean: maximum allowable increase is 40 micrograms per cubic meter.

(ii) twenty-four hour maximum: maximum allowable increase is 182 micrograms per cubic meter.

(iii) three-hour maximum: maximum allowable increase is 700 micrograms per cubic meter.

~~(E)~~(D) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 50 micrograms per cubic meter.

AIR QUALITY DIVISION

2011

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**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 1. GENERAL PROVISIONS

252:100-7-2.1. Minor permits for greenhouse gas (GHG) emitting facilities

Greenhouse gas (GHG) emissions shall not be included in a minor facility permit nor cause a facility to be subject to minor facility permitting requirements contained in OAC 252:100-7, unless the owner or operator of that facility requests that GHG emission limits and/or physical or operational limitations be included in a minor permit for the facility to set enforceable limits to keep potential GHG emission levels below the applicability threshold levels for the PSD construction permit program and/or the Part 70 operating permit program. Physical or operational limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation, and/or restrictions on the type or amount of material combusted, stored, or processed.

AIR QUALITY DIVISION

2011

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**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-2. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this Section, terms used in this Part retain the meaning accorded them under the applicable requirements of the Act.

"Administratively complete" means an application that provides:

- (A) All information required under OAC 252:100-8-5(c), (d), or (e);
- (B) A landowner affidavit as required by ~~OAC 252:2-15-20(b)(3)~~ OAC 252:4-7-13(b);
- (C) The appropriate application fees as required by OAC 252:100-8-1.7; and
- (D) Certification by the responsible official as required by OAC 252:100-8-5(f).

"Affected source" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"Affected states" means:

- (A) all states:
 - (i) That are one of the following contiguous states: Arkansas, Colorado, Kansas, Missouri, New Mexico and Texas, and
 - (ii) That in the judgment of the DEQ may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or
- (B) all states that are within 50 miles of the permitted source.

"Affected unit" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source subject to this Chapter (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

- (A) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act;
- (C) Any standard or other requirement under section 111 of the Act, including section 111(d);
- (D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under 112(r) of the Act;
- (E) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
- (F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
- (G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
- (H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
- (I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
- (J) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and
- (K) Any national ambient air quality standard or increment or visibility requirement under

part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

"Begin actual construction" means for purposes of this Part, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

"Designated representative" means with respect to affected units, a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

"Draft permit" means the version of a permit for which the DEQ offers public participation under 27 A.O.S. §§ 2-14-101 through 2-14-401 and OAC 252:4-7 or affected State review under OAC 252:100-8-8.

"Emergency" means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

"Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. Fugitive emissions from valves, flanges, etc. associated with a specific unit process shall be identified with that specific emission unit. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act.

"Final permit" means the version of a part 70 permit issued by the DEQ that has completed all review procedures required by OAC 252:100-8-7 through 252:100-8-7.5 and OAC 252:100-8-8.

"Fugitive emissions" means those emissions of regulated air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"General permit" means a part 70 permit that meets the requirements of OAC 252:100-8-6.1.

"Insignificant activities" means individual emissions units that are either on the list approved by the Administrator and contained in Appendix I, or whose actual calendar year emissions do not exceed any of the limits in (A) and (B) of this definition. Any activity to which a State or federal applicable requirement applies is not insignificant even if it meets the criteria below or is included on the insignificant activities list.

(A) 5 tons per year (TPY) of any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAPs, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

"MACT" means maximum achievable control technology.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subparagraph (A), (B), or (C) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987.

(A) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary

sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 TPY or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 TPY or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or:

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 TPY or more of any ~~regulated~~ air pollutant (except gross particulate matter) subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories which, as of August 7, 1980, are being regulated by a standard promulgated under section 111 or 112 of the Act.

(C) A major stationary source as defined in part D of Title I of the Act, including:

- (i) For ozone non-attainment areas, sources with the potential to emit 100 TPY or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 TPY or more in areas classified as "serious," 25 TPY or more in areas

classified as "severe," and 10 TPY or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 TPY of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 TPY or more of volatile organic compounds;

(iii) For carbon monoxide non-attainment areas:

(I) that are classified as "serious"; and

(II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 TPY or more of carbon monoxide; and

(iv) For particulate matter (~~PM-10~~) (PM₁₀) non-attainment areas classified as "serious," sources with the potential to emit 70 TPY or more of ~~PM-10~~ PM₁₀.

"Maximum capacity" means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

"Permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Permit modification" means a revision to a Part 70 construction or operating permit that meets the requirements of OAC 252:100-8-7.2(b).

"Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in OAC 252:100-5-2.2 (whether such costs are incurred by the DEQ or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

"Permit revision" means any permit modification or administrative permit amendment.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

"Proposed permit" means the version of a permit that the DEQ proposes to issue and forwards to the Administrator for review in compliance with OAC 252:100-8-8.

"Regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in OAC 252:100-1-3, 252:100-37-2, and 252:100-39-2, except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II ozone-depleting substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act (Hazardous Air Pollutants), including sections 112(g) (Modifications), (j) (Equivalent Emission Limitation by Permit, and (r) (Prevention of Accidental Releases), including the following:

(i) any pollutant subject to the requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act (Schedule for Standards and Review), any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date

18 months after the applicable date established pursuant to section 112(e) of the Act; and, (ii) any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement; or

(F) Any other substance for which an air emission limitation or equipment standard is set by an existing permit or regulation.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Section 502(b)(10) changes" means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"Small unit" means a fossil fuel fired combustion device which serves a generator with a name plate capacity of 25 MWe or less.

"State-only requirement" means any standard or requirement pursuant to Oklahoma Clean Air Act (27A O.S. §§ 2-5-101 through 2-5-118, as amended) that is not contained in the State Implementation Plan (SIP).

"State program" means a program approved by the Administrator under 40 CFR Part 70.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act as it existed on January 2, 2006.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the EPA Administrator in subchapter C of Chapter I of 40 CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(A) Greenhouse gases (GHG) shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 TPY CO₂ equivalent emissions (CO₂e) and are otherwise subject to regulation as previously described in this definition.

(B) The term TPY CO₂ equivalent emissions (CO₂e) shall represent an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions (TPY), for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 – Global Warming Potentials, and summing the resultant value for each to compute a TPY CO₂e.

(C) If federal legislation or a federal court stays, invalidates, delays the effective date, or otherwise renders unenforceable by the EPA, in whole or in part, the EPA's tailoring rule (75 FR 31514, June 3, 2010), endangerment finding (74 FR 66496, December 15, 2009), or light-duty vehicle greenhouse gas emission standard (75 FR 25686, May 7, 2010), this definition shall be enforceable only to the extent that it is enforceable by the EPA.

"Trivial activities" means any individual or combination of air emissions units that are considered inconsequential and are on a list approved by the Administrator and contained in Appendix J.

"Unit" means, for purposes of Title IV, a fossil fuel-fired combustion device.

PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

252:100-8-31. Definitions

The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise. All terms used in this Part that are not defined in this Section shall have the meaning given to them in OAC 252:100-1-3, 252:100-8-1.1, or in the Oklahoma Clean Air Act.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (A) through (C) of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under OAC 252:100-8-38. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

(A) In general, actual emissions as of a particular date shall equal the average rate in TPY at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(B) The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(C) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(A) the applicable standards as set forth in 40 CFR Parts 60 and 61;

(B) the applicable State rule allowable emissions; or,

(C) the emissions rate specified as an enforceable permit condition.

"Baseline actual emissions" means the rate of emissions, in TPY, of a regulated NSR pollutant, as determined in accordance with paragraphs (A) through (E) of this definition.

(A) The baseline actual emissions shall be based on current emissions data and the unit's utilization during the period chosen. Current emission data means the most current and accurate emission factors available and could include emissions used in the source's latest permit or permit application, the most recent CEM data, stack test data, manufacturer's data, mass balance, engineering calculations, and other emission factors.

(B) For any existing electric utility steam generating unit (EUSGU), baseline actual emissions means the average rate, in TPY, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Director for a permit required under OAC 252:100-8. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units affected by the project. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (B)(ii) of this definition.

(C) For an existing emissions unit (other than an EUSGU), baseline actual emissions means the average rate in TPY, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Director for a permit required either under this Part or under a plan approved by the Administrator, whichever is

earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a MACT standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if DEQ has taken credit for such emissions reduction in an attainment demonstration or maintenance plan consistent with requirements of 40 CFR 51.165(a)(3)(ii)(G).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (C)(ii) and (iii) of this definition.

(D) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(E) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing EUSGU in accordance with the procedures contained in paragraph (B) of this definition, for other existing emissions units in accordance with the procedures contained in Paragraph (C) of this definition, and for a new emissions unit in accordance with the procedures contained in paragraph (D) of this definition.

"Baseline area" means any intrastate areas (and every part thereof) designated as attainment or unclassifiable under section ~~107(d)(1)(D) or (E)~~ 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1 µg/m³ (annual average) of the pollutant for which the minor source baseline date is established; for SO₂, NO₂, or PM₁₀; or equal or greater than 0.3 µg/m³ (annual average) for PM_{2.5}.

(A) Area redesignations under section ~~107(d)(1)(D) or (E)~~ 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(i) establishes a minor source baseline date; or

(ii) is subject to 40 CFR 52.21 or OAC 252:100-8, Part 7, and would be constructed in the same State as the State proposing the redesignation.

(B) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available ~~PM-10~~ PM₁₀ increments, except that such baseline area shall not remain in effect if the Director rescinds the corresponding minor source baseline date in accordance with paragraph (D) of the definition of "baseline date".

"Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(A) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(i) the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in (B) of this definition.

- (ii) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.
- (B) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):
 - (i) actual emissions from any major stationary source on which construction commenced after the major source baseline date; and,
 - (ii) actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date" means:

- (A) Major source baseline date means:
 - (i) in the case of ~~particulate matter~~ PM₁₀ and sulfur dioxide, January 6, 1975, ~~and~~;
 - (ii) in the case of nitrogen dioxide, February 8, 1988; ~~and~~
 - (iii) in the case of PM_{2.5}, October 20, 2010.
- (B) Minor source baseline date means the earliest date after the trigger date on which a major stationary source or major modification (subject to 40 CFR 52.21 or OAC 252:100-8, Part 7) submits a complete application. The trigger date is:
 - (i) in the case of ~~particulate matter~~ PM₁₀ and sulfur dioxide, August 7, 1977, ~~and~~;
 - (ii) in the case of nitrogen dioxide, February 8, 1988; ~~and~~
 - (iii) in the case of PM_{2.5}, October 20, 2011.
- (C) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:
 - (i) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section ~~107(d)(i)(D) or (E)~~ 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under OAC 252:100-8, Part 7; and
 - (ii) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.
- (D) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available ~~PM-10~~ PM₁₀ increments, except that the Director may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Director, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of ~~PM-10~~ PM₁₀ emissions.

"Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature.

- (A) Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.
- (B) With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

"Best available control technology" or **"BACT"** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard

infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The Federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and either has:

- (A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or,
- (B) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂, or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" or "EUSGU" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an EUSGU. There are two types of emissions units as described in paragraphs (A) and (B) of this definition.

- (A) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.
- (B) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (A) of this definition. A replacement unit is an existing emissions unit.

"Federal Land Manager" means with respect to any lands in the United States, the Secretary of the department with authority over such lands.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

"Low terrain" means any area other than high terrain.

"Major modification" means:

(A) Any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source is a major modification.

(i) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for VOC or NO_x shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(I) routine maintenance, repair and replacement;

(II) use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(III) use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(IV) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(V) use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, (unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975) or the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 252:100-8;

(VI) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975;

(VII) any change in source ownership;

(VIII) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided the project complies with OAC 252:100 and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated;

(IX) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant (on a pollutant-by-pollutant basis) emitted by the unit; or

(X) the reactivation of a very clean coal-fired EUSGU.

(B) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under OAC 252:100-8-38 for a PAL for that pollutant. Instead, the definition of "PAL major modification" at 40 CFR 51.166(w)(2)(viii) shall apply.

"Major stationary source" means

(A) A major stationary source is:

(i) any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 TPY or more of a regulated NSR pollutant:

(I) carbon black plants (furnace process),

(II) charcoal production plants,

(III) chemical process plants, (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140),

- (IV) coal cleaning plants (with thermal dryers),
- (V) coke oven batteries,
- (VI) fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,
- (VII) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,
- (VIII) fuel conversion plants,
- (IX) glass fiber processing plants,
- (X) hydrofluoric, sulfuric or nitric acid plants,
- (XI) iron and steel mill plants,
- (XII) kraft pulp mills,
- (XIII) lime plants,
- (XIV) municipal incinerators capable of charging more than ~~50~~ 250 tons of refuse per day,
- (XV) petroleum refineries,
- (XVI) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,
- (XVII) phosphate rock processing plants,
- (XVIII) portland cement plants,
- (XIX) primary aluminum ore reduction plants,
- (XX) primary copper smelters,
- (XXI) primary lead smelters,
- (XXII) primary zinc smelters,
- (XXIII) secondary metal production plants,
- (XXIV) sintering plants,
- (XXV) sulfur recovery plants, or
- (XXVI) taconite ore processing plants;

- (ii) any other stationary source not on the list in (A)(i) of this definition which emits, or has the potential to emit, 250 TPY or more of a regulated NSR pollutant;
- (iii) any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under this definition if the change would constitute a major stationary source by itself.

(B) A major source that is major for VOC or NO_x shall be considered major for ozone.

(C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Part whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (i) the stationary sources listed in (A)(i) of this definition;
- (ii) any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under all applicable air quality control laws and rules.

"Net emissions increase" means:

(A) with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

- (i) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to OAC 252:100-8-30(b); and,
- (ii) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.

Baseline actual emissions for calculating increases and decreases under (A)(ii) of this definition shall be determined as provided in the definition of "baseline actual emissions", except that (B)(iii) and (C)(iv) of that definition shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within 3 years before the date that the increase from the particular change occurs.

- (C) An increase or decrease in actual emissions is creditable only if:
 - (i) it is contemporaneous; and
 - (ii) the Director has not relied on it in issuing a permit for the source under OAC 252:100-8, Part 7, which permit is in effect when the increase in actual emissions from the particular change occurs.
- (D) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
- (E) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- (F) A decrease in actual emissions is creditable only to the extent that it meets all the conditions in (F)(i) through (iii) of this definition.
 - (i) It is creditable if the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.
 - (ii) It is creditable if it is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
 - (iii) It is creditable if it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- (G) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.
- (H) Paragraph (A) of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂, or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

"Prevention of Significant Deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

"Project" means a physical change in, or change in method of operation of, an existing major stationary source.

"Projected actual emissions" means

- (A) Projected actual emissions means the maximum annual rate, in TPY, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.
- (B) In determining the projected actual emissions under paragraph (A) of this definition (before beginning actual construction), the owner or operator of the major stationary source:
 - (i) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business

activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(ii) shall include fugitive emissions to the extent quantifiable and emissions associated with start-ups, shutdowns, and malfunctions; and

(iii) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) in lieu of using the method set out in (B)(i) through (iii) of this definition, may elect to use the emissions unit's potential to emit, in TPY.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(A) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the Department's emissions inventory at the time of enactment;

(B) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

(C) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(D) is otherwise in compliance with the requirements of the Act.

"Regulated NSR pollutant" means

(A) A regulated NSR pollutant is:

(i) any pollutant for which a NAAQS has been promulgated and any pollutant identified under (A)(i) of this definition as a constituent or precursor for such pollutants identified by the Administrator (e.g., VOC and NO_x are precursors for ozone); constituent or precursor to such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(I) volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(II) sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

(III) nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the State demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(IV) volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the State demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

(ii) any pollutant that is subject to any standard promulgated under section 111 of the Act;

(iii) any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(iv) any pollutant that otherwise is "subject to regulation" under the Act: as defined in the definition of "subject to regulation" in OAC 252:100-8-31;

(v) PM emissions, PM_{2.5} emissions, and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Such condensable particulate matter shall be accounted for in applicability

determinations and in establishing emissions limitations for PM, PM_{2.5}, and PM₁₀ in PSD permits.

- (B) Regulated NSR pollutant does not include:
- (i) any or all HAP either listed in section 112 of the Act or added to the list pursuant to section 112(b)(2) of the Act, which have not been delisted pursuant to section 112(b)(3) of the Act, unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act; or
 - (ii) any pollutant that is regulated under section 112(r) of the Act, provided that such pollutant is not otherwise regulated under the Act.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met. No creditable emission reduction shall be generated from shutting down the existing emissions unit that is replaced.

- (A) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
- (B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- (C) The replacement unit does not alter the basic design parameter(s) of the process unit.
- (D) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Repowering" means

- (A) Repowering shall mean the replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.
- (B) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.
- (C) The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Act.

"Significant" means:

- (A) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, ~~significant means~~ a rate of emissions that would equal or exceed any of the following significant emission rates:
 - (i) carbon monoxide: 100TPY,
 - (ii) nitrogen oxides: 40 TPY,
 - (iii) sulfur dioxide: 40 TPY,
 - (iv) particulate matter: 25 TPY of particulate matter emissions or 15 TPY of ~~PM-10~~ PM₁₀ emissions,
 - (v) PM_{2.5}: 10 TPY of direct PM_{2.5} emissions; 40 TPY of sulfur dioxide emissions; or 40 TPY of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under the definition of "regulated NSR pollutant",
 - ~~(v)~~(vi) ozone: 40 TPY of VOC or NO_x,
 - ~~(vi)~~(vii) lead: 0.6 TPY,
 - ~~(vii)~~(viii) fluorides: 3 TPY,
 - ~~(viii)~~(ix) sulfuric acid mist: 7 TPY,
 - ~~(ix)~~(x) hydrogen sulfide (H₂S): 10 TPY,

- ~~(x)~~(xi) total reduced sulfur (including H₂S): 10 TPY,
- ~~(xi)~~(xii) reduced sulfur compounds (including H₂S): 10 TPY,
- ~~(xii)~~(xiii) municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.5 x 10⁻⁶ TPY,
- ~~(xiii)~~(xiv) municipal waste combustor metals (measured as particulate matter): 15 TPY,
- ~~(xiv)~~(xv) municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 40 TPY,
- ~~(xv)~~(xvi) municipal solid waste landfill emissions (measured as nonmethane organic compounds): 50 TPY.

(B) ~~Notwithstanding (A) of this definition, "significant" means any~~ Any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 6 miles of a Class I area, and have an impact on such area equal to or greater than 1 µg/m³ (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant net emissions increase" means a significant emissions increase and a net increase.

"Stationary source" means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the EPA Administrator in subchapter C of Chapter I of 40 CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(A) Greenhouse gases (GHG) shall not be subject to regulation except as provided in (D) through (E) of this definition.

(B) For purposes of (C) through (E) of this definition, the term TPY CO₂ equivalent emissions (CO₂e) shall represent an amount of GHG emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (in TPY), for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 – Global Warming Potentials.

(ii) Summing the resultant value from (B)(i) of this definition for each gas to compute a TPY CO₂e.

(C) The term emissions increase as used in (D) through (E) of this definition shall mean that both a significant emissions increase (as calculated using the procedures in OAC 252:100-8-30(b)(1) through (5)) and a significant net emissions increase (as defined in the definitions of "net emissions increase" and "significant" in 252:100-8-31) occur. For the pollutant GHG, an emissions increase shall be based on TPY CO₂e, and shall be calculated assuming the pollutant GHG is a regulated NSR pollutant, and "significant" is defined as 75,000 TPY CO₂e and the emissions are otherwise subject to regulation as previously described in this definition.

(D) Beginning January 2, 2011, the pollutant GHG is subject to regulation if it meets the other requirements of this definition and if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHG, and also will emit or will have the potential to emit 75,000 TPY CO₂e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHG, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 TPY CO₂e or more.

(E) Beginning July 1, 2011, in addition to the provisions in (D) of this definition, the pollutant GHG shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 TPY CO₂e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 TPY CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 TPY CO₂e or more.

(F) If federal legislation or a federal court stays, invalidates, delays the effective date, or otherwise renders unenforceable by the EPA, in whole or in part, the EPA's tailoring rule (75 FR 31514, June 3, 2010), endangerment finding (74 FR 66496, December 15, 2009), or light-duty vehicle greenhouse gas emission standard (75 FR 25686, May 7, 2010), this definition shall be enforceable only to the extent that it is enforceable by the EPA.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Oklahoma Air Pollution Control Rules in OAC 252:100 and other requirements necessary to attain and/or maintain the NAAQS during and after the project is terminated.

252:100-8-33. Exemptions

(a) Exemptions from the requirements of OAC 252:100-8-34 through 252:100-8-36.2.

(1) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a particular major stationary source or major modification if the source or modification is:

(A) a nonprofit health or nonprofit educational institution; or

(B) major only if fugitive emissions, to the extent quantifiable, are included in calculating the potential to emit and such source is not one of the categories listed in paragraph (C) of the definition of "Major stationary source"; or

(C) a portable stationary source which has previously received a permit under the requirements contained in OAC 252:100-8-34 through 252:100-8-36.2 and proposes to relocate to a temporary new location from which its emissions would not impact a Class 1 area or an area where an applicable increment is known to be violated.

(2) The requirements in OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source or modification is located in an area designated as nonattainment for that pollutant under section 107 of the Act.

(b) Exemption from air quality impact analyses in OAC 252:100-8-35(a) and (c) and 252:100-8-35.2.

(1) The requirements of OAC 252:100-8-35(a) and (c) and 252:100-8-35.2 are not applicable with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

(2) The requirements of OAC 252:100-8-35(a) and (c) and 252:100-8-35.2 as they relate to any PSD increment for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT, would be less than 50 TPY.

(c) Exemption from air quality analysis requirements in OAC 252:100-8-35(c).

(1) The monitoring requirements of OAC 252:100-8-35(c) regarding air quality analysis are not applicable for a particular pollutant if the emission increase of the pollutant from a proposed major stationary source or the net emissions increase of the pollutant from a major modification would cause, in any area, air quality impacts less than the following amounts significant monitoring concentrations (SMC):

(A) Carbon monoxide - 575 $\mu\text{g}/\text{m}^3$, 8-hour average,

(B) Nitrogen dioxide - 14 $\mu\text{g}/\text{m}^3$, annual average,

(C) PM_{2.5} - 4 $\mu\text{g}/\text{m}^3$, 24-hour average,

~~(C)(D)~~ Particulate matter PM₁₀ - 10 $\mu\text{g}/\text{m}^3$, TSP or PM-10; 24-hour average,

~~(D)(E)~~ Sulfur dioxide - 13 $\mu\text{g}/\text{m}^3$, 24-hour average,

~~(E)(F)~~ Ozone - no de minimis air quality level is provided for ozone, however any net increase of 100 TPY or more of VOC or NO_x subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data,

~~(F)(G)~~ Lead - 0.1 $\mu\text{g}/\text{m}^3$, 24-hour 3-month average,

- ~~(G)~~(H) Fluorides - 0.25 µg/m³, 24-hour average,
- ~~(H)~~(I) Total reduced sulfur - 10 µg/m³, 1-hour average,
- ~~(I)~~(J) Hydrogen sulfide - 0.2 µg/m³, 1-hour average, or
- ~~(J)~~(K) Reduced sulfur compounds - 10µg/m³, 1-hour average.

(2) The monitoring requirements of OAC 252:100-8-35(c) are not applicable for a particular pollutant if the pollutant is not listed in preceding OAC 252:100-8-33(c)(1).

(d) Exemption from monitoring requirements in OAC 252:100-8-35(c)(1)(B) and (D).

(1) The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application was complete except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D). Instead, the requirements in 40 CFR 52.21(m)(2) as in effect on June 19, 1978, shall apply to any such source or modification.

(2) The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application as submitted was complete, except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D).

(e) Exemption from the preapplication analysis required by OAC 252:100-8-35(c)(1)(A), (B), and (D).

(1) The Director shall determine if the requirements for air quality monitoring of ~~PM₁₀~~ PM₁₀ in OAC 252:100-8-35(c)(1)(A), (B), and (D) may be waived for a particular source or modification when an application for a PSD permit was submitted on or before June 1, 1988, and the Director subsequently determined that the application, except for the requirements for monitoring particulate matter under OAC 252:100-8-35(c)(1)(A), (B), and (D), was complete before that date.

(2) The requirements for air quality monitoring of ~~PM₁₀~~ PM₁₀ in OAC 252:100-8-35(c)(1)(B)(i), 252:100-8-35(c)(1)(D), and 252:100-8-35(c)(3) shall apply to a particular source or modification if an application for a permit was submitted after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application became otherwise complete in accordance with the provisions of OAC 252:100-8-35(c)(1)(C), except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data required by OAC 252:100-8-35(c)(1)(B)(ii) shall have been gathered over that shorter period.

(f) Exemption from BACT requirements and air quality analyses requirements. If a complete permit application for a source or modification was submitted before August 7, 1980 the requirements for BACT in OAC 252:100-8-34 and the requirements for air quality analyses in OAC 252:100-8-35(c)(1) are not applicable to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978. Instead, the federal requirements at 40 CFR 52.21 (j) and (n) as in effect on June 19, 1978, are applicable to any such source or modification.

(g) Exemption from ~~OAC 252:100-8-35(a)(2)~~ OAC 252:100-8-35(a)(1)(B). The permitting requirements of ~~OAC 252:100-8-35(a)(2)~~ OAC 252:100-8-35(a)(1)(B) do not apply to a stationary source or modification with respect to any PSD increment for nitrogen oxides if the owner or operator of the source or modification submitted a complete application for a permit before February 8, 1988.

252:100-8-35. Air quality impact evaluation

(a) Source impact analysis (impact on NAAQS and PSD increment). ~~The owner or operator of the proposed source or modification shall demonstrate that, as of the source's start-up date, allowable emissions increase from that source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) would not cause or contribute to any increase in ambient concentrations that would exceed:~~

(1) Required demonstration. The owner or operator of the proposed source or modification

shall demonstrate that, as of the source's start-up date, allowable emissions increases from that source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) would not cause or contribute to any increase in ambient concentrations that would exceed:

~~(1)~~(A) any NAAQS in any air quality control region; or

~~(2)~~(B) the remaining available PSD increment for the specified air contaminants in any area as determined by the Director.

(2) Significant impact levels (SILs). For purposes of $PM_{2.5}$, the demonstration required in OAC 252:100-8-35(a)(1) is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following significant impact levels (SILs).

(A) The SILs for $PM_{2.5}$ annual averaging time are 0.06 $\mu\text{g}/\text{m}^3$ for a Class I Area, 0.3 $\mu\text{g}/\text{m}^3$ for a Class II Area, and 0.3 $\mu\text{g}/\text{m}^3$ for a Class III Area.

(B) The SILs for $PM_{2.5}$ 24-hour averaging time are 0.07 $\mu\text{g}/\text{m}^3$ for a Class I Area, 1.2 $\mu\text{g}/\text{m}^3$ for a Class II Area, and 1.2 $\mu\text{g}/\text{m}^3$ for a Class III Area.

(b) **Air quality models.**

(1) All estimates of ambient concentrations required under this Part shall be based on the applicable air quality models, data bases, and other requirements specified in appendix W of 40 CFR 51 (Guideline on Air Quality Models) as it existed on January 2, 2006.

(2) Where an air quality model specified in appendix W of 40 CFR 51 (Guideline on Air Quality Models) as it existed on January 2, 2006, is inappropriate, the model may be modified or another model substituted, as approved by the Administrator. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Modified or substitute models shall be submitted to the Administrator with written concurrence of the Director. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in Sec. 51.102 as it existed on January 2, 2006.

(c) **Air quality analysis.**

(1) **Preapplication analysis.**

(A) **Ambient air quality analysis.** Any application for a permit under this Part shall contain, as the Director determines appropriate, an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(i) for a new source, each regulated pollutant that it would have the potential to emit in a significant amount;

(ii) for a major modification, each regulated pollutant for which it would result in a significant net emissions increase.

(B) **Monitoring requirements.**

(i) **Non-NAAQS pollutants.** For any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Director determines is necessary to assess the ambient air quality for that pollutant in that area.

(ii) **NAAQS pollutants.** For visibility and any pollutant, other than VOC, for which a NAAQS does exist, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant would cause or contribute to a violation of the NAAQS or any PSD increment.

(C) **Monitoring method.** With respect to any requirements for air quality monitoring of ~~PM-10~~ PM_{10} under OAC 252:100-8-33(e)(1) and (2), the owner or operator of the source or modification shall use a monitoring method approved by the Director and shall estimate the ambient concentrations of ~~PM-10~~ PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Director.

(D) **Monitoring period.** In general, the required continuous air monitoring data shall have been gathered over a period of up to one year and shall represent the year preceding submission of the application. Ambient monitoring data gathered over a period shorter than one year (but no less than four months) or for a time period other than immediately preceding

the application may be acceptable if such data are determined by the Director to be within the time period that maximum pollutant concentrations would occur, and to be complete and adequate for determining whether the source or modification will cause or contribute to a violation of any applicable NAAQS or consume more than the remaining available PSD increment.

(E) Monitoring period exceptions.

(i) Exceptions for applications that became effective between June 8, 1981, and February 9, 1982. For any application which became complete except for the monitoring requirements of OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D), between June 8, 1981, and February 9, 1982, the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over the period from February 9, 1981, to the date the application became otherwise complete, except that:

(I) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over the period required by those regulations.

(II) If the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, not to be less than four months, the data that OAC 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(III) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Director may waive the otherwise applicable requirements of OAC 252:100-8-35(c)(1)(E)(i) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(ii) Monitoring period exception for ~~PM-10~~ PM₁₀. For any application that became complete, except for the requirements of OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D) pertaining to monitoring of ~~PM-10~~ PM₁₀, after December 1, 1988, and no later than August 1, 1989, the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not less than 4 months), the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(F) Ozone post-approval monitoring. The owner or operator of a proposed major stationary source or major modification of VOC who satisfies all conditions of OAC 252:100-8-54 and 40 CFR 51, Appendix S, Section IV as it existed on January 16, 1979, may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under OAC 252:100-8-35(c)(1).

(2) Post-construction monitoring. The owner or operator of a new major stationary source or major modification shall conduct, after construction, such ambient monitoring and visibility monitoring as the Director determines is necessary to determine the effect its emissions may have, or are having, on air quality in any area.

(3) Operation of monitoring stations. The operation of monitoring stations for any air quality monitoring required under this Part shall meet the requirements of 40 CFR 58 Appendix B as it existed January 2, 2006.

PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS

252:100-8-50.1. Incorporation by reference

(a) Inclusion of CFR citations and definitions. When a provision of Title 40 of the Code of Federal Regulations (40 CFR) is incorporated by reference, all citations contained therein are also incorporated by reference.

(b) Terminology related to 40 CFR. When these terms are used in rules incorporated by reference

from 40 CFR, the following terms or definitions shall apply.

- (1) "Baseline actual emissions" is synonymous with the definition of "baseline actual emissions" in OAC 252:100-8-31.
- (2) "Building, structure, facility, or installation" is synonymous with the definition of "building, structure, facility, or installation" in OAC 252:100-1-3.
- (3) "EPA" is synonymous with Department of Environmental Quality (DEQ) unless the context clearly indicates otherwise.
- (4) "Major modification" is synonymous with the definition of "major modification" in OAC 252:100-8-51.
- (5) "Net emissions increase" is synonymous with the definition of "net emissions increase" in OAC 252:100-8-51.
- (6) "Regulated NSR pollutant" is synonymous with the definition of "regulated NSR pollutant" in OAC 252:100-8-51.
- ~~(6)~~(7) "Reviewing authority" is synonymous with "Director".
- ~~(7)~~(8) "Secondary emissions" is synonymous with the definition of "secondary emissions" in OAC 252:100-8-1.1.
- ~~(8)~~(9) "State implementation plan" is synonymous with OAC 252:100.
- ~~(9)~~(10) "Volatile organic compound (VOC)" is synonymous with the definition of "volatile organic compound" or "VOC" in OAC 252:100-1-3.

252:100-8-51. Definitions

The definitions in 40 CFR 51.165(a)(1) are hereby incorporated by reference as they exist on ~~July 2, 2007~~ July 1, 2010, except for the definitions found at 40 CFR 51.165(a)(1)(xxxv) "baseline actual emissions"; (ii) "building, structure, facility, or installation"; (xlv) "fixed capital cost"; (xlv) "functionally equivalent component"; (v) "major modification"; (vi) "net emissions increase"; (xliii) "process unit"; ~~(xxxvii) "regulated NSR pollutant"; (xxxviii) "reviewing authority"; (viii) "secondary emissions"; (xlv) "total capital investment"; and (xix) "volatile organic compound (VOC)".~~ With the exception of "reviewing authority", "fixed capital cost", "functionally equivalent component", "process unit", and "total capital investment", these terms are defined in OAC 252:100-8-31, 252:100-8-51, or 252:100-1-3. The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise.

"Major modification" means:

- (A) Any physical change in, or change in the method of operation of, a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source is a major modification.
 - (i) Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for VOC and/or oxides of nitrogen (NO_x) shall be considered significant for ozone.
 - (ii) A physical change or change in the method of operation shall not include:
 - (I) routine maintenance, repair and replacement;
 - (II) use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
 - (III) use of an alternative fuel by reason of an order or rule under section 125 of the Act;
 - (IV) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
 - (V) use of an alternative fuel or raw material by a source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, or the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 8;

(VI) an increase in the hours of operation or in the production rate unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976;

(VII) any change in source ownership;

(VIII) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with OAC 252:100 and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.

(B) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under OAC 252:100-8-56 for a PAL for that pollutant. Instead the definition at 40 CFR 51.165(f)(2)(viii) shall apply.

(C) For the purpose of applying the requirements of OAC 252:100-8-54.1(a) to modifications at major stationary sources of NO_x located in ozone nonattainment areas or in ozone transport regions (as defined in 42 U.S.C. § 7511c), whether or not subject to subpart 2, part D, title I of the Act, any significant net emissions increase of NO_x is considered significant for ozone.

(D) Any physical change in, or change in the method of operation of, a major stationary source of VOCs that results in any increase in emissions of VOCs from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act.

"Net emissions increase" means:

(A) With respect to any regulated NSR pollutant emitted by a major stationary source, net emissions increase shall mean the amount by which the sum of the following exceeds zero:

- (i) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to OAC 252:100-8-50(b); and,
- (ii) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under (A)(ii) of this definition shall be determined as provided in the definition of "baseline actual emissions", except that (B)(iii) and (C)(iv) of that definition shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within 3 years before the date that the increase from the particular change occurs.

(C) An increase or decrease in actual emissions is creditable only if:

- (i) it is contemporaneous; and
- (ii) the Director has not relied on it in issuing a permit under OAC 252:100-8, Part 9, which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

- (i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
- (ii) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
- (iii) the Director has not relied on it in issuing any permit under OAC 252:100; and,
- (iv) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(F) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational after a reasonable shakedown period, not to exceed 180 days.

(G) Paragraph 40 CFR 51.165(a)(1)(xii)(B) of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"Regulated NSR pollutant" for purposes of this Part, means any or all of the following:

(A) Nitrogen oxides or volatile organic compounds;

(B) Any pollutant for which a NAAQS has been promulgated;

(C) Any pollutant that is identified under this paragraph as a constituent or precursor of a general pollutant listed under paragraph (A) or (B) of this definition, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(i) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(ii) Sulfur dioxide is a precursor to PM_{2.5} in all PM_{2.5} nonattainment areas.

(iii) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(iv) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any PM_{2.5} nonattainment area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations, or

(D) PM_{2.5} emissions and PM₁₀ emissions, including gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.' Such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in nonattainment major NSR permits.

252:100-8-51.1. Emissions reductions and offsets

(a) The requirements in 40 CFR 51.165(a)(3) regarding emissions reductions and offsets are hereby incorporated by reference as they exist on July 2, 2007.

~~(b) Meeting the emissions offset requirements in subsection OAC 252:100-8-51.1(a) for ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act shall be in accordance with the requirements in 40 CFR 51.165(a)(9) which is hereby incorporated by reference as it exists on July 2, 2007. The requirements in subsection 40 CFR 51.165(a) (9) dealing with offset ratios are hereby incorporated by reference as they exist on July 1, 2010.~~

(c) The requirements in 40 CFR 51.165(a)(11) regarding emission offsets are hereby incorporated by reference as they exist on July 1, 2011.

252:100-8-52. Applicability determination for sources in attainment areas causing or contributing to NAAQS violation

(a) The requirements in 40 CFR 51.165(b) regarding a source located in an attainment or unclassifiable area but causing or contributing to a NAAQS violation are hereby incorporated by reference as they exist on ~~July 2, 2007~~ December 20, 2010.

(b) Sources of VOC located outside a designated ozone nonattainment area will be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source may be granted its permit since the area has not yet been designated nonattainment.

(c) Sources locating in an attainment area but impacting on a nonattainment area above the significant levels listed in OAC 252:100-8-52(a) are exempted from the condition of OAC 252:100-8-54(4)(A).

(d) The determination whether a source or modification will cause or contribute to a violation of an applicable ambient air quality standard for sulfur dioxide, particulate matter or carbon monoxide will be made on a case-by-case basis as of the proposed new source's start-up date by an atmospheric simulation model. For sources of nitrogen oxides the model can be used for an initial determination

assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level, and the initial concentration estimates will be adjusted if adequate data are available to account for the expected oxidation rate.

(e) The determination as to whether a source would cause or contribute to a violation of applicable ambient air quality standards will be made on a case-by-case basis as of the new source's start-up date. Therefore, if a designated nonattainment area is projected to be attainment as part of the state implementation plan control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

AIR QUALITY DIVISION

2011

State Implementation Plan

Oklahoma Administrative Code

252:100

Appendix E

Submitted to EPA
March 2012

January 7, 2011

MEMORANDUM

TO: Members of the Air Quality Advisory Council

FROM: Eddie Terrill, Director
Air Quality Division

SUBJECT: Proposed Update of Appendix E, Primary Ambient Air Quality Standards

Enclosed are the proposed rule changes to update Appendix E along with the Rule Impact Statement. As required by the Rules on Rulemaking, the existing Appendix E will be revoked and replaced with a new Appendix E that includes recent changes to the National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO₂) and sulfur dioxide (SO₂).

The federal Clean Air Act requires EPA to establish NAAQS for pollutants considered harmful to public health and the environment. The NAAQS specify the maximum acceptable levels of pollutants in outdoor air and have been established for six primary (criteria) pollutants: carbon monoxide, nitrogen oxides, lead, sulfur dioxides, ozone and particulate matter, which is divided into PM₁₀ and PM_{2.5}.

The Clean Air Act further requires that the EPA periodically review and revise the NAAQS. On February 9, 2010, EPA promulgated the new 1-hour NO₂ primary standard of 100 ppb (75 FR 6473). EPA promulgated the new 1-hour SO₂ primary standard of 75 ppb and revoked the 24-hour and annual standards on June 2, 2010 (75 FR 35519). EPA is expected to revise the secondary standards for NO₂ and SO₂ next year.

Appendix E is currently part of Oklahoma's EPA-approved State Implementation Plan (SIP). The proposed changes are necessary to update the primary ambient air quality standards in the state rule to make them consistent with, and as protective as, the federal standards. Upon promulgation, the new Appendix E will be submitted to EPA as a revision to the SIP.

Notice of the proposed rule changes was published in the *Oklahoma Register* on December 15, 2010. The notice requested written comments from the public and other interested parties. No comments have been received to date.

Staff will request that the Council vote to recommend that the updated rule be forwarded to the Environmental Quality Board for adoption as a permanent rule.

Enclosures: OAC 252:100-3. Appendix E. Primary Ambient Air Quality Standards
[REVOKED]
Proposed OAC 252:100-3. Appendix E. Primary Ambient Air Quality Standards
[NEW]
Rule Impact Statement

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [NEW]

	Sulfur Dioxide	PM-10	PM 2.5	Carbon Monoxide	Ozone	Nitrogen Dioxide	Lead
1-hr. max	(8) 75 ppb			40 mg/m ³ (2) 35 ppm		(9) 100 ppb	
8-hr. max				10 mg/m ³ (2) 9 ppm	(4) 0.075 ppm		
24-hr. max		(7) 150 ug/m ³	(5) 35 ug/m ³				
Rolling 3-month average							(3) 0.15 ug/m ³
Annual			(6) 15 ug/m ³			(1) 53 ppb	

(1) Annual arithmetic mean

(2) Not to be exceeded more than once per year

(3) Not to be exceeded more than once during a 3-year period as provided in 40 CFR 50, Appendix R.

(4) The standard is attained when the computed 3-year average of the annual 4th-highest daily maximum 8-hour average does not exceed 0.075 ppm, as provided in 40 CFR 50.15.

(5) The standard is attained when the 98th percentile concentration is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(6) The standard is attained when the annual arithmetic mean is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(7) The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m³, as determined in accordance with 40 CFR 50, Appendix K is equal to or less than one.

(8) The standard is attained when the 3-year average of the 99th percentile of the daily maximum 1-hour average at each monitor within an area does not exceed 75 ppb, as determined in accordance with 40 CFR 50, Appendix T.

(9) The standard is attained when the 3-year average of the 98th percentile of the daily maximum 1-hour average concentration at each monitor within an area does not exceed 100 ppb as determined in accordance with 40 CFR 50, Appendix S.

THE AIR QUALITY COUNCIL
 RULEMAKING RECOMMENDATION
 TO THE ENVIRONMENTAL QUALITY BOARD

Identification of Proposed Rulemaking:

Chapter Number and Title: OAC 252:100

Appendix E. Primary Ambient Air Quality Standards [REVOKED]

Appendix E. Primary Ambient Air Quality Standards [NEW]

On January 19, 2011, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:


X permanent [take effect after legislative review]

emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,



 Chair or Designee:

Date Signed: 1-19-11

	VOTING TO APPROVE	VOTING AGAINST	ABSTAIN	ABSENT
David Branecky	X			
Montelle Clark	X			
Gary Collins	X			
David Gamble	X			
Jim Haught	X			
Laura Lodes	X			
Robert Lynch	X			
Sharon Myers	X			
Pete White	X			

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

EXECUTIVE SUMMARY

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS

Before the Air Quality Advisory Council on January 19, 2011
Before the Environmental Quality Board on February 25, 2011.

EXECUTIVE SUMMARY:

The proposed amendments to Appendix E would change the primary ambient air quality standards for nitrogen dioxide and sulfur dioxide to be consistent with the National Ambient Air Quality Standards.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

None.

ENVIRONMENTAL BENEFIT STATEMENT:

Not required because these rules are not more stringent than corresponding federal rules.

SUMMARY OF COMMENTS AND RESPONSES:

COMMENT:

EPA Region VI supports this action.

RESPONSE:

None required.

Permanent Final Adoptions

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #11-701]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Appendix E, Primary Ambient Air Quality Standards [REVOKED]

Appendix E, Primary Ambient Air Quality Standards [NEW]

AUTHORITY:

Environmental Quality Board and Air Quality Advisory Council powers and duties, 27A O.S., §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S., §§ 2-5-101 *et seq.*

DATES:

Comment period:

December 15, 2010 through January 19, 2011

February 25, 2011

Public hearing:

January 19, 2011

February 25, 2011

Adoption:

February 25, 2011

Submitted to Governor:

March 4, 2011

Submitted to House:

March 4, 2011

Submitted to Senate:

March 4, 2011

Concurrence approval:

April 12, 2011

Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 3, 2011

Final adoption:

May 3, 2011

Effective:

July 1, 2011

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

To protect the public health and welfare, DEQ proposes to revoke the primary air quality standards in Appendix E and replace it with a new Appendix E that adds a 1-hour nitrogen dioxide standard of 100 ppb, a sulfur dioxide standard of 75 ppb, and removes the 24-hour and annual sulfur dioxide standards. The form of the new nitrogen dioxide primary standard is attained when the three year average of the 98th percentile of the daily maximum 1-hour average concentration at each monitor within an area does not exceed 100 ppb. The form of the new sulfur dioxide primary standard is attained when the three year average of the 99th percentile of the daily maximum 1-hour average concentration at each monitor within an area does not exceed 75 ppb. These modifications mirror the changes made to the National Ambient Air Quality Standards that became effective January 22, 2010 for nitrogen dioxide, and August 23, 2010 for sulfur dioxide.

CONTACT PERSON:

Cheryl E. Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTION 308.1(A), WITH AN EFFECTIVE DATE
OF JULY 1, 2011:**

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [REVOKED]

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [NEW]

	Sulfur Dioxide	PM-10	PM 2.5	Carbon Monoxide	Ozone	Nitrogen Dioxide	Lead
1-hr. max	(6) 75 ppb			40 mg/m ³ (2) 35 ppm		(9) 100 ppb	
8-hr. max				10 mg/m ³ (2) 9 ppm	(4) 0.075 ppm		
24-hr. max		(7) 150 ug/m ³	(5) 35 ug/m ³				
Rolling 3-month average							(3) 0.15 ug/m ³
Annual			(6) 15 ug/m ³			(1) 53 ppb	

(1) Annual arithmetic mean

(2) Not to be exceeded more than once per year

(3) Not to be exceeded more than once during a 3-year period as provided in 40 CFR 50, Appendix R.

(4) The standard is attained when the computed 3-year average of the annual 4th-highest daily maximum 8-hour average does not exceed 0.075 ppm, as provided in 40 CFR 50.15.

(5) The standard is attained when the 98th percentile concentration is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(6) The standard is attained when the annual arithmetic mean is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(7) The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m³, as determined in accordance with 40 CFR 50, Appendix K is equal to or less than one.

(8) The standard is attained when the 3-year average of the 99th percentile of the daily maximum 1-hour average at each monitor within an area does not exceed 75 ppb, as determined in accordance with 40 CFR 50, Appendix T.

(9) The standard is attained when the 3-year average of the 98th percentile of the daily maximum 1-hour average concentration at each monitor within an area does not exceed 100 ppb as determined in accordance with 40 CFR 50, Appendix S.

[OAR Docket #11-701; filed 5-18-11]

AIR QUALITY DIVISION

2011

State Implementation Plan

Oklahoma Administrative Code
252:100-3 (2004)

Submitted to EPA
March 2012

3

RECEIVED

JUN 22 2004

DEQ LEGAL

Volume 21
Number 16
June 15, 2004
Pages 1921 - 2642

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules

Notices of Rulemaking Intent

Prior to adoption and gubernatorial/legislative review of a proposed PERMANENT rulemaking action, an agency must publish a Notice of Rulemaking Intent in the *Register*. In addition, an agency may publish a Notice of Rulemaking Intent in the *Register* prior to adoption of a proposed EMERGENCY or PREEMPTIVE rulemaking action.

A Notice of Rulemaking Intent announces a comment period, or a comment period and public hearing, and provides other information about the intended rulemaking action as required by law, including where copies of proposed rules may be obtained.

For additional information on Notices of Rulemaking Intent, see 75 O.S., Section 303.

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #04-1074]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Air Quality Standards and Increments

252:100-3-4 [AMENDED]

Subchapter 7. Permits for Minor Facilities

Part 1. General Provisions

252:100-7-2 [AMENDED]

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

Part 1. General Provisions

252:100-41-1 [REVOKED]

252:100-41-2 [REVOKED]

252:100-41-3 [NEW]

252:100-41-4 [NEW]

Part 5. Toxic Air Contaminants

252:100-41-35 [REVOKED]

252:100-41-36 [REVOKED]

252:100-41-37 [REVOKED]

252:100-41-38 [REVOKED]

252:100-41-39 [REVOKED]

252:100-41-40 [REVOKED]

252:100-41-41 [REVOKED]

252:100-41-42 [REVOKED]

252:100-41-43 [REVOKED]

252:100-41-44 [REVOKED]

Subchapter 42. Control of Toxic Air Pollutants (TAPs)
[NEW]

Appendix O. [NEW]

SUMMARY:

The Department proposes to correct a reference error in subsection (a) of Section 3-4 of Subchapter 3. This citation was overlooked when the PSD requirements that were previously located in Part 5 of Subchapter 7 were moved to Part 7 of Subchapter 8.

The Department proposes to add language to subparagraphs 7-2(b)(1)(B) and (C) of OAC 252:100-7-2 that will make clear that de minimis cotton gins that comply with the requirements of Subchapter 23 Control of Emissions from Cotton Gins and de minimis feed and grain facilities that comply with the requirements of Subchapter 24 Particulate Matter Emissions from Grain, Feed or Seed Operations will not be required

to comply with the requirements of Subchapter 25 Visible Emissions and Particulates and Subchapter 29 Control of Fugitive Dust. Subchapters 23 and 24 set visible emissions standards and fugitive dust standards for cotton gins and feed and grain facilities respectively. It is not the Department's intention that de minimis facilities be held to more stringent standards than facilities with larger emissions that require permits. The added language corrects this problem.

The Department proposes amendments to Subchapter 41 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants to partition the existing Subchapter 41 into two subchapters. The proposed amendments will clarify and modify the state-only requirements for emissions from stationary sources and relocate these requirements into the new Subchapter 42 and Appendix O. Subchapter 41 will contain the federal requirements for HAPs and asbestos. The remaining Sections 15 and 16 of Subchapter 41 that incorporate by reference National Emission Standards for Hazardous Air Pollutants (NESHA) in 40 CFR Parts 61 and 63 and specific asbestos requirements will be retained in Subchapter 41. Also two new sections will be added as 252:100-3 and -4.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101, 2-2-201; and Oklahoma Clean Air Act, §§ 2-5-101 *et seq.*

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the Air Quality Council hearing on July 21, 2004. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by July 14, 2004. Oral comments may be made at the July 21, 2004 hearing and the August 24, 2004 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, July 21, 2004 at the Department of Environmental Quality, Room 101, 707 North Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on August 24, 2004, at the Gordon Cooper Technology Center, One John C. Bruton Blvd., Shawnee, Oklahoma 74804

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or

Notices of Rulemaking Intent

costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

The proposed rules are available for review at the Air Quality Division of DEQ and on the DEQ website (www.deq.state.ok.us), Air Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Joyce Sheedy (e-mail: joyce.sheedy@deq.state.ok.us) for Subchapters 3 and 7; Lisa Donovan (e-mail: lisa.donovan@deq.state.ok.us) for Subchapter 41; and Brad Cook (e-mail: brad.cook@deq.state.ok.us) for Subchapter 42 and Appendix O, at the Department of Environmental Quality, Air Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-4100, fax (405) 702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4100.

[OAR Docket #04-1074; filed 5-28-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 110. LEAD-BASED PAINT MANAGEMENT

[OAR Docket #04-1073]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 3. Definitions
- 252-110-3-1 [AMENDED]
- Subchapter 5. Incorporation By Reference
- 252:110-5-1 [AMENDED]
- Subchapter 9. Additional Accreditation Requirements
- 252:110-9-1.1 [NEW]
- 252:110-9-3 [AMENDED]
- 252:110-9-4 [AMENDED]
- 252:110-9-6 [AMENDED]
- Subchapter 11. Additional LBP Certification Requirements
- 252:110-11-1 [AMENDED]
- 252:110-11-4 [AMENDED]
- 252:110-11-6 [AMENDED]
- Subchapter 13. Additional Work Practice Standards
- 252:110-13-3 [REVOKED]
- 252:110-13-5 [AMENDED]

SUMMARY:

The Department proposes to amend Subchapter 3, Definitions, and Subchapter 5, Incorporation By Reference, to update the incorporations by reference of 40 CFR 745. The Department also proposes to amend Subchapter 9, Additional Accreditation Requirements, and Subchapter 11, Additional LBP Certification Requirements, to clarify requirements for accredited lead-based paint training programs and certificate requirements, respectively. The Department proposes to revoke OAC 252:110-13-3, Additional Work Practice Standards, since the specifications contained therein will be incorporated by reference, and to amend OAC 252:110-13-5 to update the reference to the Department's Radiation Management Rules.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101, 2-2-201; and the Lead-Based Paint Management Act, §§ 2-12-101 *et seq.*

COMMENT PERIOD:

Written comments will be accepted prior to and at the hearing on July 21, 2004. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by July 14, 2004.

Oral comments may be made at the July 21, 2004 Air Quality Council hearing and the August 24, 2004 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, July 21, 2004 at Oklahoma Department of Environmental Quality, Multipurpose Room, 707 N. Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on August 24, 2004, at the Gordon Cooper Technology Center, One John Bruton Blvd., Shawnee, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

The proposed rules are available for review at the Air Quality Division of DEQ and on the DEQ website (www.deq.state.ok.us), Air Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person.

CONTACT PERSON:

Send written comments to Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 N.

July 1, 2004

MEMORANDUM

TO: Air Quality Council *CI.*
FROM: Eddie Terrill, Director
Air Quality Division
RE: Modifications to Subchapter 3

Enclosed are copies of the proposed amendments to OAC 252:100-3, Air Quality Standards and Increments and the rule impact statement.

The Department proposes to correct a reference error in subsection (a) of Section 3-4 of Subchapter 3. This citation was overlooked when the PSD requirements that were previously located in Part 5 of Subchapter 7 were moved to Part 7 of Subchapter 8.

Notice of the proposed rule changes was published in the Oklahoma Register on June 15, 2004, and comments were requested from members of the public.

At the July 21, 2004, Air Quality Council Meeting, staff will ask the Council to recommend these changes to the Environmental Quality Board for adoption as a permanent rule.

Enclosure: 2

SUBCHAPTER 3. AIR QUALITY STANDARDS AND INCREMENTS

252:100-3-4. Significant deterioration increments

(a) Significant deterioration, as used in the phrase Prevention of Significant Deterioration (PSD), means an increase in ambient air pollution above a baseline plus a specific increment allowed for one of three classes of areas. See ~~OAC 252:100-7, Part 5~~ 252:100-8, Part 7.

(b) The allowable increments are as follows:

	Maximum allowable increase (micrograms per cubic meter)
--	--

Class I Areas

Particulate matter:	
PM-10, annual arithmetic mean	4
PM-10, twenty-four hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
Twenty-four hour maximum	5
Three-hour maximum	25
Nitrogen dioxide:	
(effective May 11, 1991)	
Annual arithmetic mean	2.5

Class II Areas

Particulate matter:	
PM-10, annual arithmetic mean	17
PM-10, twenty-four hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four hour maximum	91
Three-hour maximum	512
Nitrogen dioxide:	
(effective May 11, 1991)	
Annual arithmetic mean	25

Class III Areas

Particulate matter:	
PM-10, annual arithmetic mean	34
PM-10, twenty-four hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40

Twenty-four hour maximum	182
Three-hour maximum	700
Nitrogen dioxide: (effective May 11, 1991)	
Annual arithmetic mean	50

REGULAR MEETING/ HEARING AGENDA
AIR QUALITY COUNCIL
July 21, 2004, 9:00 a.m.
Multi-Purpose Room DEQ Building
707 N. Robinson
Oklahoma City, Oklahoma

Please turn off your cell phones.

1. Call to Order – Sharon Myers
2. Roll Call – Myrna Bruce
3. Approval of Minutes – April 14, 2004 Regular Meeting
4. Resolution for Mr. Kilpatrick – Sharon Myers
5. Public Rulemaking Hearings
 - A. Chapter 110. Lead-Based Paint.
 - OAC 252:110-3. Definitions [AMENDED]
 - OAC 252:110-5. Incorporation By Reference [AMENDED]
 - OAC 252:110-9. Additional Accreditation Requirements [AMENDED]
 - OAC 252:110-11. Additional LBP Certification Requirements [AMENDED]
 - OAC 252:110-13. Additional Work Practice Standards [AMENDED]

The Department proposes to amend Subchapter 3, Definitions, and Subchapter 5, Incorporation By Reference, to update the incorporations by reference of 40 CFR 745. Additional amendment is proposed to Subchapter 9, Additional Accreditation Requirements, and Subchapter 11, Additional LBP Certification Requirements, to clarify requirements for accredited lead-based paint training programs and certificate requirements respectively.

1. Presentation – Cheryl Bradley
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

B. OAC 252:100-3. Air Quality Standards and Increments [AMENDED]

The Department proposes to correct a reference error in subsection (a) of Section 3-4 of Subchapter 3. This citation was overlooked when the PSD requirements that were previously located in Part 5 of Subchapter 7 were moved to Part 7 of Subchapter 8.

1. Presentation – Joyce Sheedy
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

C. OAC 252:100-7. Permits for Minor Facilities [AMENDED]

The Department proposes to add language to subparagraphs 7-2(b)(1)(B) and (C) of OAC 252:100-7-2 that will make clear that de minimis cotton gins that comply with the requirements of Subchapter 23 Control of Emissions from Cotton Gins and de minimis feed and grain facilities that comply with the requirements of Subchapter 24 Particulate Matter Emissions from Grain, Feed or Seed Operations will not be required to

comply with the requirements of Subchapter 25 Visible Emissions and Particulates and Subchapter 29 Control of Fugitive Dust. Subchapters 23 and 24 set visible emissions standards and fugitive dust standards for cotton gins and feed and grain facilities respectively. It is not the Department's intention that de minimis facilities be held to more stringent standards than facilities with larger emissions that require permits. The added language corrects this problem.

1. Presentation – Joyce Sheedy
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

D. OAC 252:100-41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants [AMENDED]

OAC 252:100-42. Control of Toxic Air Pollutants (TAPS) [NEW]

Appendix O. [NEW]

The Department proposes amendments to Subchapter 41 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants to partition the existing Subchapter 41 into two subchapters. The proposed amendments will clarify and modify the state-only requirements for emissions from stationary sources and relocate these requirements into the new Subchapter 42 and Appendix O. Subchapter 41 will contain the federal requirements for HAPs and asbestos. The remaining Sections 15 and 16 of Subchapter 41 that incorporate by reference National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Parts 61 and 63 and specific asbestos requirements will be retained in Subchapter 41. Also, two new sections will be added as 252:100-41-3 and -4.

1. Presentation – Staff
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

6. Division Director's Report – Eddie Terrill

7. New Business – (Any matter not known about, or which could not have been reasonably foreseen prior to the time of posting the Agenda.)

8. Adjournment – The next regular meeting is scheduled for 9 a.m. October 20, 2004 at the Forest Heritage Center, Cedar-Cypress Room, Beaver's Bend State Park, near Broken Bow, Oklahoma.

Lunch Break, if necessary.

Should you have a disability and need an accommodation, please notify the DEQ Air Quality Division three days in advance at 405-702-4212. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

**DRAFT MINUTES
AIR QUALITY COUNCIL
July 21, 2004
Department of Environmental Quality
707 North Robinson
Oklahoma City Oklahoma**

Draft for EQB August 24, 2004
For AQC Approval October 20, 2004

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. July 21, 2004 in the Multipurpose Room of the DEQ, 707 North Robinson, Oklahoma 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 October 13, 2003; and agendas were posted on the entrance doors at the meeting facility and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting.

As protocol officer, 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. Dr. Robert Lynch, Vice-Chair, called the meeting to order. Roll was called and a quorum confirmed.

MEMBERS PRESENT

David Branecky - *Elmer W. Wilson*
Bill Breisch - *Emeril*
Bob Curtis -
Bob Lynch -
Gary Martin -
Rick Treeman - *Aggi*
Joel Wilson - *Jefferson*

MEMBERS ABSENT

Sharon Myers -
Don Smith -

OTHERS PRESENT Sign-in sheet is attached
as an official part of these Minutes

DEQ STAFF PRESENT

Eddie Terrill
Beverly Botchlet-Smith
Scott Thomas
Joyce Sheedy
Brad Cook
Pat Sullivan
Cheryl Bradley
Kerra Rondebush
Kendall Stegmann
Matt Paque
Dawson Lasseter
Rhonda Jeffries
David Dyke
Myma Bruce

Mr. Terrill introduced the newest Council member, Mr. Bob Curtis and advised that the other new member, Mr. Don Smith, was unable to attend.

Approval of Minutes Dr. Lynch called for approval of the April 14, 2004 Minutes. Hearing no discussion, he called for a motion to approve the Minutes as presented. Mr. Breisch made the motion with Mr. Martin making the second.

Roll call.		Bill Breisch	Yes
Joel Wilson	Yes	Bob Curtis	Yes
Gary Martin	Yes	Sharon Myers	Yes
David Branecky	Yes	Bob Lynch	Yes
Rick Treeman	Yes		Motion carried.

Resolution for Mr. Kilpatrick - Mr. Terrill read a resolution honoring Mr. Kilpatrick's retirement from his Council duties and presented him with a Governor's Commendation and a plaque from Air Quality. Mr. Kilpatrick accepted and complimented staff for all the hard work and achievements he had seen through his years of service.

Director's Report Since Mr. Dyke had another meeting to attend, Mr. Terrill changed the order of the Agenda and asked Mr. David Dyke, Assistant Director, Administrative Services Division, to provide an update on the last Finance Committee meeting and other budget information. Comments and questions were acknowledged.

OAC 252:110 Lead-Based Paint

- OAC 252:110-3. Definitions [AMENDED]
- OAC 252:110-5. Incorporation By Reference [AMENDED]
- OAC 252:110-9. Additional Accreditation Requirements [AMENDED]
- OAC 252:110-11. Additional LBP Certification Requirements [AMENDED]
- OAC 252:110-13. Additional Work Practice Standards [AMENDED]

Ms. Beverly Botchlet-Smith convened the hearings and called upon Ms. Cheryl Bradley to provide staff presentation for these rules. Ms. Bradley advised that proposal for SC 3 and SC 5 would update the incorporations by reference of the federal regulations. She added that amendments to SC 9 would clarify requirements for accredited lead-based paint training programs and that amendments to SC 13 would clarify certificate requirements. Ms. Bradley explained that the Department proposes to revoke OAC 252:110-13-3 because these requirements will now be included in OAC 252:110-5-1(4) and they will be incorporated with the federal rules. Ms. Bradley pointed out other changes that would be made and entered two letters of comment into the record. With little discussion, Dr. Lynch called for a motion. Mr. Treeman made motion to approve the amendments as presented by Ms. Cheryl Bradley. Mr. Branecky made the second.

Roll call.		Bill Breisch	Yes
Joel Wilson	Yes	Bob Curtis	Yes
Gary Martin	Yes	Sharon Myers	Yes
David Branecky	Yes	Bob Lynch	Abstain
Rick Treeman	Yes		Motion carried.

OAC 252:100-3. Air Quality Standards and Increments [AMENDED] Dr. Joyce Sheedy advised that staff's proposal would correct a reference error in OAC 252:100-3-4(a) that had been overlooked when the PSD requirements were moved from Part 5 of SC 7 to Part 7 of SC 8. She related that no comments had been received and requested that Council forward the revision to the Environmental Quality Board for permanent adoption. With no discussion, Dr. Lynch called for a motion. Mr. Martin moved approval and Mr. Treeman seconded.

Roll call.		Bill Breisch	Yes
Joel Wilson	Yes	Bob Curtis	Yes
Gary Martin	Yes	Sharon Myers	Yes
David Branecky	Yes	Bob Lynch	Yes
Rick Treeman	Yes		Motion carried.

OAC 252:100-7. Permits for Minor Facilities [AMENDED] Dr. Joyce Sheedy related proposed language to be added to OAC 252:100-7-2 that would clarify that de minimis cotton gins that comply with the requirements of SC 23; and de minimis grain, feed or seed facilities that comply with the requirements of SC 24 would not have to comply with the requirements of SC 25 for visible emissions and particulates and SC 29 for control of fugitive dust. She advised that it was not the Department's intention that de minimis facilities be held to more stringent standards than facilities requiring permits. Dr. Sheedy entered into the record a letter of comment from Trinity Consultants. Staff recommended that Council forward this rulemaking to the Environmental Quality Board for permanent adoption. Mr. Branecky moved for adoption and Mr. Breisch seconded.

Roll call.		Bill Breisch	Yes
Joel Wilson	Yes	Bob Curtis	Yes
Gary Martin	Yes	Sharon Myers	Yes
David Branecky	Yes	Bob Lynch	Yes
Rick Treeman	Abstain		Motion carried.

OAC 252:100-41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants [AMENDED]

OAC 252:100-42. Control of Toxic Air Pollutants (TAPS) [NEW]
Appendix O. [NEW]

This draft is being prepared for the August 24 Environmental Quality Board meeting, therefore transcripts for SC 41/SC 42 are not yet available. Motion was made and seconded to continue these hearings to the next regular Council meeting. A summary and transcript will be available for the October 20, 2004 Council meeting.

Roll call.		Bill Breisch	Yes
Joel Wilson	Yes	Bob Curtis	Yes
Gary Martin	Yes	Sharon Myers	Yes
David Branecky	Yes	Bob Lynch	Yes
Rick Treeman	Yes		Motion carried.

Division Director's Report Continued Mr. Terrill provided updates on possibility of special meetings for the toxics rule, EAC, and NSR. He related that all members of the Council would be invited to an Orientation on September 14. He also spoke about CAIR and BART.

NEW BUSINESS - None

ADJOURNMENT - 10:37 a.m. Next meeting scheduled for October 20, 2004 in Broken Bow, Oklahoma.

The transcripts and attendance sheet are attached and made an official part of these Minutes.

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS

OF REGULAR MEETING - ITEM 1 - 5A

PRESENTED BY: CHERYL BRADLEY

HELD ON JULY 21, 2004, AT 9:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE
(405) 721-2882

ORIGINAL

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS

OF REGULAR MEETING - ITEM 5B

PRESENTED BY: DR. JOYCE SHEEDY

OAC 252:100-3

AIR QUALITY STANDARDS AND INCREMENTS

[AMENDED]

HELD ON JULY 21, 2004, AT 9:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

ORIGINAL

Page 2

1 MEMBERS OF THE COUNCIL

2

3 DAVID BRANECKY - MEMBER

4 BILL BREISCH - MEMBER

5 BOB LYNCH - VICE CHAIRMAN

6 GARY MARTIN - MEMBER

7 SHARON MYERS - CHAIR

8 RICK TREEMAN - MEMBER

9 JOEL WILSON - MEMBER

10

11 STAFF MEMBERS

12 MYRNA BRUCE - SECRETARY

13 EDDIE TERRILL - DIVISION DIRECTOR

14 SCOTT THOMAS - AQD

15 JOYCE SHEEDY - AQD

16 BEVERLY BOTCHLET-SMITH - AQD

17 CHERYL BRADLEY - AQD

18 PAT SULLIVAN - AQD

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Page 4

1 change and is not substantive.

2 Therefore, we ask that the Council

3 recommend this revision to the

4 Environmental Quality Board for adoption as

5 a permanent rule.

6 MS. BOTCHLET-SMITH: Questions

7 from the Council for Dr. Sheedy? Any

8 questions from the public for Dr. Sheedy?

9 DR. LYNCH: Okay. Do I have a

10 motion to approve the changes as written by

11 the staff?

12 MR. MARTIN: Move approval.

13 DR. LYNCH: Second?

14 MR. TREEMAN: I'll second it.

15 DR. LYNCH: Myrna, would you call

16 roll, please.

17 MS. BRUCE: Mr. Wilson.

18 MR. WILSON: Yes.

19 MS. BRUCE: Mr. Martin.

20 MR. MARTIN: Yes.

21 MS. BRUCE: Mr. Branecky.

22 MR. BRANECKY: Yes.

23 MS. BRUCE: Mr. Treeman.

24 MR. TREEMAN: Yes.

25 MS. BRUCE: Mr. Curtis.

Page 3

1 PROCEEDINGS

2

3 MS. BOTCHLET-SMITH: So the next

4 item on our agenda is Item 5B, OAC 252:100-

5 3, and it's the Air Quality Standards and

6 Increments. And we call upon Dr. Joyce

7 Sheedy, she'll give the staff position on

8 the proposed rule.

9 DR. SHEEDY: Mr. Vice-Chairman,

10 Members of the Council, ladies and

11 gentlemen, the Department proposes to

12 correct a reference error in Subsection A

13 of Section 4 of Subchapter 3, Air Quality

14 Standards and Increments.

15 When the PSD requirements were moved

16 from Part 5 of Subchapter 7 to Part 7 of

17 Subchapter 8, this reference in Subsection

18 3-4(a) was overlooked. We've not received

19 any comments regarding this proposed

20 revision.

21 And although this is the first time

22 this revision has been presented to the

23 Council, it's basically a housekeeping

24

25

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1 MR. CURTIS: Yes.

2 MS. BRUCE: Mr. Breisch.

3 MR. BREISCH: Yes.

4 MS. BRUCE: Dr. Lynch.

5 DR. LYNCH: Yes.

6

7 (END OF PROCEEDINGS)

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C E R T I F I C A T E

1 STATE OF OKLAHOMA)
2)
3 COUNTY OF OKLAHOMA) ss:

4 I, CHRISTY A. MYERS, Certified
5 Shorthand Reporter in and for the State of
6 Oklahoma, do hereby certify that the above
7 proceedings is the truth, the whole truth,
8 and nothing but the truth; that the
9 foregoing proceedings were tape recorded by
10 me and thereafter transcribed under my
11 direction; that said proceedings were taken
12 on the 21st day of July, 2004, at Oklahoma
13 City, Oklahoma; and that I am neither
14 attorney for nor relative of any of said
15 parties, nor otherwise interested in said
16 action.

17 IN WITNESS WHEREOF, I have hereunto
18 set my hand and official seal on this, the
19 21st day of July, 2004.

21 CHRISTY A. MYERS, C.S.R.
22 Certificate No. 00310

20
23
24
25

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O K L A H O M A
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY COUNCIL

Attendance Record

July 21, 2004

Oklahoma City, Oklahoma

Page One

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O K L A H O M A
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY COUNCIL

Attendance Record

July 21, 2004

Page Two

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DEQ - AQ

7/21/04
+2
8/24/04

THE AIR QUALITY COUNCIL
RULEMAKING RECOMMENDATION
TO THE ENVIRONMENTAL QUALITY BOARD

Identification of Proposed Rulemaking:

Chapter Number and Title:
OAC 252-100-3 Air Quality Standards and Increments

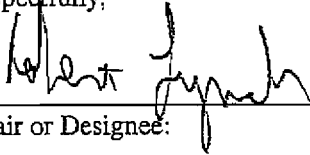
On July 21, 2004, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

permanent [take effect after legislative review]
 emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,



Chair or Designee:

Date Signed: 7-21-04

VOTING TO APPROVE:

- Joel Wilson
- Gary Martin
- David Branecky
- Rick Treeman
- Bob Curtis
- Bill Breisch
- Bob Lynch

VOTING AGAINST:

ABSTAINING:

ABSENT:

**REGULAR MEETING AGENDA
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL QUALITY BOARD**

A Public Meeting: 9:30 a.m., Tuesday, August 24, 2004
Seminar Center – Gordon Cooper Technology Center
One John C. Bruton Blvd.
Shawnee, Oklahoma

1. Call to Order – Richard Wuerflein, Chair
2. Roll Call – Myrna Bruce, Secretary, Board & Councils
3. Approval of Minutes of the June 22, 2004 Regular Meeting
4. **Rulemaking - OAC 252:100 Air Pollution Control**
Two sets of rule amendments are proposed:
 - The DEQ proposes to correct a reference error in Section 3-4. This citation was overlooked when the Prevention of Significant Deterioration (PSD) requirements that were previously located in Part 5 of Subchapter 7 were moved to Part 7 of Subchapter 8.
 - The DEQ proposes to add language to Section 7-2 to make clear that de minimis cotton gins that comply with the requirements of Subchapter 23 (Control of Emissions from Cotton Gins) and de minimis feed and grain facilities that comply with the requirements of Subchapter 24 (Particulate Matter Emissions from Grain, Feed or Seed Operations) are not required to comply with the requirements of Subchapter 25 (Visible Emissions and Particulates) and Subchapter 29 (Control of Fugitive Dust). Subchapters 23 and 24 set visible emissions standards and fugitive dust standards for cotton gins and feed and grain facilities, respectively. It is not the DEQ's intention that de minimis facilities be held to more stringent standards than facilities with larger emissions that require permits.
 - A. Presentation – David Branecky, Vice-Chair, Air Quality Advisory Council
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion and action by the Board, which may include a roll call vote on permanent adoption
5. **Rulemaking - OAC 252:110 Lead-Based Paint Management**
The DEQ proposes to amend Subchapters 3 and 5 to update the incorporations by reference of 40 CFR 745, and to amend Subchapter 3 to make corresponding definitional changes. Amendments are proposed to Subchapter 9 and Subchapter 11 to clarify requirements for accredited lead-based paint training programs and certificate requirements, respectively. Amendments to Subchapter 13 are for consistency with DEQ Radiation Management Rules and EPA standards.
 - A. Presentation – David Branecky, Vice-Chair, Air Quality Advisory Council
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion and action by the Board, which may include a roll call vote on permanent adoption
6. **DEQ Operational Budget Request**
DEQ budget requests to the Governor through the Office of State Finance (OSF) require approval of the Board. The operational budget request for State Fiscal Year (SFY) 2006 (beginning July 1, 2005) must be submitted to the OSF by October 1, 2004. The law requires that all state agencies submit a five-year budget plan. The request for the coming year, in this case SFY 2006, is the

most critical. Included in the request for SFY 2006 are funds for equipment, analyses and community assistance to help meet the new and expanded requirements of the federal Safe Drinking Water Act; for air quality toxics monitoring; for the air quality mobile source program; and for enhanced monitoring of mercury in fish.

- A. Presentation – Craig Kennamer, Deputy Executive Director
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion and action by the Board, which may include a roll call vote on approval
7. Calendar Year 2005 Board meeting dates and locations: Discussion and vote by the Board
 8. New Business (any matter not known about, or which could not have been reasonably foreseen, prior to the time of posting of agenda)
 9. Executive Director's Report – Steve Thompson
 10. Adjournment

Public Forum (after adjournment): The Board meets four times a year at different locations across the State to hear the views and concerns of all Oklahomans about environmental issues. This opportunity is informal, and we invite you to sign the register to speak.

Should you desire to attend but have a disability and need an accommodation, please notify the DEQ three days in advance at 405-702-7100. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

Some members of the Board, as well as senior staff members from the DEQ, will meet for dinner in Shawnee the evening of August 23. This is a social occasion. No Board or DEQ business will be conducted or discussed.

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL RULES

252:100-3. AIR QUALITY STANDARDS AND INCREMENTS [AMENDED]

EXECUTIVE SUMMARY:

The Department proposes to correct a reference error in subsection (a) of Section 3-4 of Subchapter 3. This citation was overlooked when the PSD requirements that were previously located in Part 5 of Subchapter 7 were moved to Part 7 of Subchapter 8.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

There are no differences from analogous federal rules.

ENVIRONMENTAL BENEFIT STATEMENT:

Not required because there are no differences from analogous federal rules.

SUMMARY OF COMMENTS AND RESPONSES:

There were no written or oral comments from the public.

AUTHORITY:

Environmental Quality Board Powers and Duties, 27A O.S. §§ 1-3-101, 2-2-101 and 2-2-201

DATES:

Comment period:

May 17 through June 22, 2004

Public hearing:

June 22, 2004

Adoption:

June 22, 2004

Submitted to Governor:

June 23, 2004

Submitted to House:

June 23, 2004

Submitted to Senate:

June 23, 2004

Gubernatorial approval:

August 5, 2004

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 30, 2005

Final adoption:

March 30, 2005

Effective:

June 15, 2005

SUPERCEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

Incorporated standards:

40 CFR Parts 355, 370 and 372 as of July, 2003

Incorporating rules:

252:20-1-3

Availability:

From the contact person

ANALYSIS:

On February 11, 1999, EPA raised the thresholds that trigger Material Safety Data Sheet (MSDS) reporting and annual chemical inventory reporting under sections 311 and 312 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), for gasoline and diesel fuel stored entirely underground at retail gas stations that comply with requirements for underground storage tanks (USTs). The final rule, 40 CFR 370.20, promulgated new threshold levels of 75,000 gallons for gasoline and 100,000 gallons for diesel fuel. The purpose of these new thresholds was to relieve most retail gas stations from reporting gasoline and diesel fuel under EPCRA. The change reduced reporting burdens while preserving the important public health and safety benefits of the hazardous chemical reporting requirements. The DEQ has followed the federal rule change but did not update its rule to reflect this change. The proposed amendment in OAC 252:20-1-3 changes the date of incorporation by reference to include EPA's 1999 changes. However, since the Code of Federal Regulations is published in July each year, we have used the most current CFR date of July 1, 2003 in our incorporation by reference. Other proposed amendments involve changing addresses.

CONTACT PERSON:

Please send written comments to Monty Elder, Customer Services Division, Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, 73102. Mailing address: P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677. Telephone (405) 702-1000. Fax (405) 702-1001. E-mail address: monty.elder@deq.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005.

252:20-1-3. Incorporations by reference

(a) Reference to CFR. Reference to Title 40 of the Code of Federal Regulations (40 CFR) shall mean (unless otherwise specifically provided) the Superfund, Emergency Planning,

and Community Right-to-Know Regulations, revised as of July 1, 1995-July, 2003.

(b) Incorporation. The following Parts of 40 CFR are, unless otherwise specified, incorporated by reference in their entirety:

- (1) Part 355 (Emergency Planning and Notification);
- (2) Part 370 (Hazardous Chemical Reporting: Community Right-to-Know);
- (3) Part 372 (Toxic Chemical Release Reporting: Community Right-to-Know).

(c) Interface with CFR. In the Parts of 40 CFR incorporated by reference, the term "Commission" shall mean the Department.

(d) References incorporated. Incorporation by reference of a provision of the Code of Federal Regulations also incorporates all citations and definitions contained therein.

(e) Penalties. Penalties cited in 40 CFR are subject to limitations under Oklahoma law.

252:20-1-6. Address for submitting reporting forms—

(a) Non-confidential. All non-confidential forms, sanitized versions of materials submitted under a Claim of confidentiality, and separate Tier Two Confidential Location Information Sheets (see 40 CFR 370.41), shall be submitted to the Oklahoma Department of Environmental Quality, 1000 N.E. Tenth Street, Oklahoma City, OK 73117-1212 P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

(b) Confidential. All materials submitted under a Claim of confidentiality, except separate Tier Two Confidential Location Information Sheets, shall be submitted as described in 40 CFR 350.16 to: ~~Title III Reporting Center, Environmental Protection Agency, P.O. Box 23779, Washington, D.C. 20026-3779 EPCRA Substantiation Packets, P.O. Box 1515, Lanham-Seabrook, MD 20703-1515 or FedEx and courier packages to EPCRA Substantiation Packets, c/o Computer Sciences Corp., Suite 300, 8400 Corporate Dr., New Carrollton, MD 20785.~~

[OAR Docket #05-682, filed 4-20-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #05-683]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Air Quality Standards and Increments
252:100-3-4. [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, et seq.

DATES:

Comment period:

June 15, 2004 through July 21, 2004

Public hearing:

July 21, 2004 and August 24, 2004

Permanent Final Adoptions

Adoption: August 24, 2004
 Submitted to Governor: August 30, 2004
 Submitted to House: August 30, 2004
 Submitted to Senate: August 30, 2004
 Gubernatorial approval: October 6, 2004
 Legislative approval: Failure of the Legislature to disapprove the rules resulted in approval on March 30, 2005
 Final adoption: March 30, 2005
 Effective: June 15, 2005
SUPERSEDED EMERGENCY ACTIONS:
 None
INCORPORATIONS BY REFERENCE:
 None
ANALYSIS:
 The Department proposes to correct a reference error in subsection (a) of Section 3-4 of Subchapter 3. This citation was overlooked when the PSD requirements that were previously located in Part 5 of Subchapter 7 were moved to Part 7 of Subchapter 8.
CONTACT PERSON:
 Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 3. AIR QUALITY STANDARDS AND INCREMENTS

252:100-3-4. Significant deterioration increments
 (a) Significant deterioration, as used in the phrase Prevention of Significant Deterioration (PSD), means an increase in ambient air pollution above a baseline plus a specific increment allowed for one of three classes of areas. See OAC 252:100-7, Part 5-252:100-8, Part 7.
 (b) The allowable increments are as follows:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I Areas	
Particulate matter:	
PM-10, annual arithmetic mean	4
PM-10, twenty-four hour maximum	8
Sulfur dioxide:	

Annual arithmetic mean	2
Twenty-four hour maximum	5
Three hour maximum	25
Nitrogen dioxide:	
(effective May 11, 1991)	
Annual arithmetic mean	2.5

Class II Areas

Particulate matter:	
PM-10, annual arithmetic mean	17
PM-10, twenty-four hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four hour maximum	91
Three hour maximum	512
Nitrogen dioxide:	
(effective May 11, 1991)	
Annual arithmetic mean	25

Class III Areas

Particulate matter:	
PM-10, annual arithmetic mean	34
PM-10, twenty-four hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
Twenty-four hour maximum	182
Three-hour maximum	700
Nitrogen dioxide:	
(effective May 11, 1991)	
Annual arithmetic mean	50

(1) Class I Areas:

(A) Particulate matter:

(i) PM-10, annual arithmetic mean: maximum allowable increase is 4 micrograms per cubic meter.

(ii) PM-10, twenty-four hour maximum: maximum allowable increase is 8 micrograms per cubic meter.

(B) Sulfur dioxide:

(i) annual arithmetic mean: maximum allowable increase is 2 micrograms per cubic meter.

(ii) twenty-four hour maximum: maximum allowable increase is 5 micrograms per cubic meter.

(iii) three-hour maximum: maximum allowable increase is 25 micrograms per cubic meter.
 (C) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 2.5 micrograms per cubic meter.

(2) Class II Areas:

(A) Particulate matter:

- (i) PM-10, annual arithmetic mean: maximum allowable increase is 17 micrograms per cubic meter.
- (ii) PM-10, twenty-four hour maximum: maximum allowable increase is 30 micrograms per cubic meter.

(B) Sulfur dioxide:

- (i) annual arithmetic mean: maximum allowable increase is 20 micrograms per cubic meter.
- (ii) twenty-four hour maximum: maximum allowable increase is 91 micrograms per cubic meter.
- (iii) three-hour maximum: maximum allowable increase is 512 micrograms per cubic meter.

(C) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 25 micrograms per cubic meter.

(3) Class III Areas:

(A) Particulate matter:

- (i) PM-10, annual arithmetic mean: maximum allowable increase is 34 micrograms per cubic meter.
- (ii) PM-10, twenty-four hour maximum: maximum allowable increase is 60 micrograms per cubic meter.

(B) Sulfur dioxide:

- (i) annual arithmetic mean: maximum allowable increase is 40 micrograms per cubic meter.
- (ii) twenty-four hour maximum: maximum allowable increase is 182 micrograms per cubic meter.
- (iii) three-hour maximum: maximum allowable increase is 700 micrograms per cubic meter.

(C) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 50 micrograms per cubic meter.

[OAR Docket #05-683; filed 4-20-05]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
 CHAPTER 100. AIR POLLUTION CONTROL**

[OAR Docket #05-684]

RULEMAKING ACTION:
 PERMANENT final adoption
RULES:
 Subchapter 7. Permits for Minor Facilities
 Part I. General Provisions
 252-100-7-2. [AMENDED]

AUTHORITY:
 Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, *et seq.*

DATES:
Comment period:
 June 15, 2004 through July 21, 2004
Public hearing:
 July 21, 2004 and August 24, 2004

Adoption:
 August 24, 2004
Submitted to Governor:
 August 30, 2004
Submitted to House:
 August 30, 2004
Submitted to Senate:
 August 30, 2004
Gubernatorial approval:
 October 6, 2004

Legislative approval:
 Failure of the Legislature to disapprove the rules resulted in approval on March 30, 2005
Final adoption:
 March 30, 2005

Effective:
 June 15, 2005
SUPERSEDED EMERGENCY ACTIONS:
 None

INCORPORATIONS BY REFERENCE:
 None
ANALYSIS:

The Department proposes to add language to subparagraphs 7-2(b)(1)(B) and (C) of OAC 252:100-7-2 that will make clear that de minimis cotton gins that comply with the requirements of Subchapter 23 Control of Emissions from Cotton Gins and de minimis grain, feed or seed facilities that comply with the requirements of Subchapter 24 Particulate Matter Emissions from Grain, Feed or Seed Operations will not be required to comply with the requirements of Subchapter 25 Visible Emissions and Particulates and Subchapter 29 Control of Fugitive Dust. Subchapters 23 and 24 set visible emissions standards and fugitive dust standards for cotton gins and grain, feed or seed facilities respectively. It is not the Department's intention that de minimis facilities be held to more stringent standards than facilities with emissions large enough to require permits. The added language corrects this inequity.

CONTACT PERSON:
 Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART I. GENERAL PROVISIONS

252:100-7-2. Requirement for permits for minor facilities
 (a) **Permit required.** Except as provided in OAC 252:100-7-2, no person may commence construction or modification of any minor facility, may operate any new minor facility, or may relocate any minor portable source without obtaining a permit from the DEQ. For additional application