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BRAD HENRY
GOVERNOR

STATE OF OKLAHOMA
OFFICE OF THE EXTERNAL AFFAIRS DIVISION
SECRETARY OF ENVIRONMENT

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AIR PLANNING SEC
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June 24, 2010

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

Subject: Revisions to Major Source Permitting Requirements in the State Implementation Plan for the State of Oklahoma

Dear Dr. Armendariz:

In his letter dated April 8, 2009, Governor Brad Henry appointed me as his designee for the purpose of submitting documents to the U. S. Environmental Protection Agency (EPA) 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 C.F.R. Part 51 these revisions to the Oklahoma SIP and the associated evidence as required by 40 C.F.R. 51, Appendix V, 2.1.

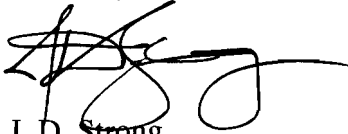
This submittal covers amendments to Subchapter 8 in OAC 252:100 that became effective between June 31, 2002 and July 1, 2009. All changes and additions to Oklahoma's plan were accomplished by adopting new or amended permanent rules of the Department of Environmental Quality (DEQ). These rules were promulgated in compliance with the Oklahoma Administrative Procedures Act and published in the *Oklahoma Register*, the official state publication for rule making actions.

This proposed SIP revision addresses EPA's official finding of deficiency as published in the *Federal Register* on March 27, 2008 (73 FR 16205), which stated that Oklahoma had "failed to submit a SIP addressing changes to the part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NOx a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21." The submission remedies the deficiency as noted by EPA.

As required by 40 CFR 51.103(a), five hard copies of the submittal have been included.

If you have questions concerning this matter, please contact Eddie Terrill, Director, Air Quality Division, Oklahoma Department of Environmental Quality at 405-702-4154.

Sincerely,

A handwritten signature in black ink, appearing to read "J. D. Strong", with a long horizontal line extending to the right.

J. D. Strong
Secretary of Environment

Enclosures

c: The Honorable Brad Henry, Governor of Oklahoma
Steve Thompson, Executive Director, Oklahoma Department of Environmental Quality
Eddie Terrill, Director, Air Quality Division, Oklahoma DEQ



AIR QUALITY DIVISION

2010

State Implementation Plan

Oklahoma Administrative Code
252:100

Subchapter 8. Permits for Part 70 Sources

Submitted to EPA
June 2010



STEVEN A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

BRAD HENRY
Governor

June 24, 2010

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: 2009 Revisions to the Oklahoma State Implementation Plan (SIP) – OAC 252:100-8.
Permits for Part 70 Sources

Dear Dr. Armendariz:

We certify that the rule making procedures for the rule 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).

The rule and its public hearing history are listed in the table below:

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

NOTICE	PUBLIC HEARING	GOVERNING BOARD
July 16, 2001	August 15, 2001	Air Quality Advisory Council
August 1, 2001 (revised)	August 21, 2001	Environmental Quality Board
June 17, 2002	July 17, 2002	Air Quality Advisory Council
	September 10, 2002	Environmental Quality Board
September 16, 2002	October 16, 2002	Air Quality Advisory Council
	November 14, 2002	Environmental Quality Board
March 15, 2004	April 14, 2004	Air Quality Advisory Council
	June 22, 2004	Environmental Quality Board
June 15, 2007	July 18, 2007	Air Quality Advisory Council
	November 15, 2007	Environmental Quality Board
June 16, 2008	July 16, 2008	Air Quality Advisory Council
	August 19, 2008	Environmental Quality Board



Dr. Alfredo Armendariz, Regional Administrator
June 24, 2010

All 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 at 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 Advisory 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 E. Bradley, Environmental Programs Manager, Rules and Planning Section at (405) 702-4100.

Sincerely,

A handwritten signature in black ink, appearing to read "Eddie Terrill". The signature is written in a cursive, flowing style.

Eddie Terrill, Director
Air Quality Division

ET:NM

TITLE 252

OKLAHOMA ADMINISTRATIVE CODE CHAPTER 100

AIR POLLUTION CONTROL INCLUDES EMERGENCY LANGUAGE



2009 EDITION

OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY
707 NORTH ROBINSON, P.O. BOX 1677
OKLAHOMA CITY, OKLAHOMA 73101-1677

The format of the following rules is not in strict compliance with the requirements of the Secretary of State's Office of Administrative Rules, but has been compressed to reduce the expense of copying and to save paper.

- 252:100-7-60.2. Grain elevators
See 252:100-24-7.
- 252:100-7-60.3. Particulate matter emissions
See 252:100-19-13.
- 252:100-7-60.4. VOC storage and loading facilities
See 252:100-37, Part 9.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

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- 252:100-8-31. Definitions
- 252:100-8-32. Source applicability determination [REVOKED]
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- 252:100-8-32.2. Exclusion from increment consumption
- 252:100-8-32.3. Stack heights
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- 252:100-8-53. Exemptions
- 252:100-8-54. Requirements for sources located in nonattainment areas
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- ~~252:100-8-71. Definitions~~
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PART 1. GENERAL PROVISIONS

252:100-8-1. Purpose

This Subchapter sets forth permit application fees and the substantive requirements for permits for Part 70 sources.

252:100-8-1.1. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this section, terms used in this Subchapter retain the meaning accorded them under the applicable requirements of the Act.

(n/a)

"A stack in existence" means for purposes of OAC 252:100-8-1.5 that the owner or operator had:

- (A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or
- (B) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

"Actual emissions" means, except for Parts 7 and 9 of this Subchapter, the total amount of any regulated air pollutant emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

"Adverse impact on visibility" means, for purposes of Parts 7 and 11, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made by the DEQ on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

"Dispersion technique" means for purposes of OAC 252:100-8-1.5 any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height; varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters or combining exhaust gases from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceding sentence does not include:

- (A) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
- (B) The merging of exhaust gas streams where:
 - (i) the source owner or operator documents that the facility was originally designed and constructed with such merged streams;
 - (ii) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from "dispersion technique" applicability shall apply only to the

emission limitation for the pollutant affected by such change in operation; or

(iii) before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation existed prior to the merging, there was an increase in the quantity of pollutants actually emitted prior to the merging, it shall be presumed that merging was primarily intended as a means of gaining emissions credit for greater dispersion. Before such credit can be allowed, the owner or operator must satisfactorily demonstrate that merging was not carried out for the primary purpose of gaining credit for greater dispersion.

(C) Manipulation of exhaust gas parameters, merging of exhaust gas streams from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise in those cases where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emission limitations and emission standards" means for purposes of OAC 252:100-8-1.5 requirements that limit the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to assure continuous reduction.

"Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

"Secondary emissions" means, for purposes of Parts 7 and 9 of this Subchapter, emissions which occur as a result of the construction or operation of a major stationary source or modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

- (A) emissions from trains coming to or from the new or modified stationary source; and,
- (B) emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or modification.

"Stack" means for purposes of OAC 252:100-8-1.5 any point in a source designed to emit solids,

liquids or gases into the air, including a pipe or duct but not including flares.

"Visibility impairment" means any humanly perceptible reduction in visibility (light extinction, visual range, contrast, and coloration) from that which would have existed under natural conditions.

252:100-8-1.2. General information

(a) **Permit categories.** Two types of construction and operating permits are available: general permit and individual permit.

(1) General permit.

(A) A general permit may be issued for an industry if there are a sufficient number of facilities that have the same or substantially similar operations, emissions and activities which are subject to the same standards, limitations and operating and monitoring requirements.

(B) Facilities may be eligible for authorization under a general permit if the following criteria are met:

(i) The facility has actual emissions of 100 tpy or more of any one regulated air pollutant emitted and/or is a Part 70 source.

(ii) The DEQ has issued a general permit for the industry.

(2) **Individual permit.** Facilities requiring permits under this Subchapter that do not qualify for a general permit shall obtain individual permits. An owner or operator may apply for an individual permit even if the facility qualifies for a general permit.

(b) **Applicability determination.** Any person may submit a request in writing that the DEQ make a determination as to whether a particular source or installation, which that person operates or proposes to operate, is subject to the permit requirements of this Subchapter. The request must contain sufficient information for the DEQ to make the requested determination and the required fee. The DEQ may request any additional information that it needs for purposes of making the determination.

252:100-8-1.3. Duty to comply

(a) An owner or operator who applies for a permit or authorization, upon notification of coverage, shall be bound by the terms and conditions therein.

(b) An owner or operator who violates any condition of a permit or authorization is subject to enforcement under the Oklahoma Clean Air Act.

252:100-8-1.4. Cancellation or extension of a construction permit or authorization under a general construction permit

(a) **Cancellation of permit or authorization to construct or modify.** A duly issued permit or authorization to construct or modify will terminate and become null and void (unless extended as provided in Subsection (b) of this Section) if the construction is not commenced within 18 months after the date the permit or authorization was issued, or if work is suspended for more than 18 months after it has commenced.

(b) Extension of permit or authorization to construct or modify.

(1) Prior to the expiration date of the permit or authorization, a permittee may apply for extension of the permit or authorization by written request of the DEQ stating the reasons for the delay or suspension and providing justification for the extension. The DEQ may grant:

(A) One extension of 18 months or less, or

(B) One extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site, or

(C) One extension of up to 72 months will be granted to major industrial facilities (project cost greater than \$100,000,000.00), where the applicant proposes to construct at an existing site and demonstrates that the existing site was originally designed and constructed to accommodate the proposed new facilities. The applicant shall show a commitment to the site by having purchased land necessary to construct facilities covered by this extension and expended \$1,000,000.00 or more on engineering and/or site development.

(2) If construction has not commenced within three (3) years of the effective date of the original permit or authorization, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

(3) Upon formal request of any applicant whose permit has been denied for lack of increment, the DEQ may require any permittee under OAC 252:100-8-1.4(b)(1)(B) or (C), to furnish a complete air quality analysis and/or an appropriate available control technology review if such review is required in order to provide new or current information.

252:100-8-1.5. Stack height limitations

(a) **Stack height exclusion.** Air quality modeling or ambient impact evaluation shall exclude the effect of that portion of the height of any stack which exceeds good engineering practice or the effect of any other dispersion techniques.

(b) **Determination of good engineering practice (GEP) stack height.** GEP stack height shall be the greater of:

(1) 65 meters, measured from the ground-level elevation at the base of the stack; or

(2) The height under either OAC 252:100-8-1.5(b)(2)(A) or (B):

- (A) for stacks in existence on January 12, 1979 and for which the owner or operator had obtained all applicable permits or approvals required under OAC 252:100-8 or 40 CFR Part 52, $H_g = 2.5H$, provided the owner or operator can demonstrate that this equation was relied upon in establishing an emission limitation;
- (B) for all other stacks, $H_g = H + 1.5L$, where:

- (i) H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,
- (ii) H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,
- (iii) L = lesser dimension (height or projected width) of nearby structure(s), provided that the owner or operator may be required to verify such GEP stack height by the use of a field study or fluid model as the Executive Director shall determine; or

(3) The height demonstrated by a fluid model or a field study approved by the reviewing agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.

(c) **Nearby.**

(1) **For the formulae in OAC 252:100-8-1.5(b)(2).** A structure or terrain feature shall be considered nearby if it is located within a distance of up to five times the lesser of the height or the width of a structure, but not more than 0.5 miles (0.8 km).

(2) **For demonstration in OAC 252:100-8-1.5(b)(3).**

(A) A structure or terrain feature shall be considered nearby if located at a distance not greater than 0.5 mile (0.8 km), except that

(B) A portion of a terrain feature may be considered nearby if:

- (i) It falls within a distance (not to exceed 2 miles) of up to 10 times the maximum height (H_t) of the feature, and
- (ii) At a distance of 0.5 mile, the height of such feature is at least 40 percent of the GEP stack height determined by the formulae provided in OAC 252:100-8-1.5(b)(2)(B) or 85.3 feet (26 meters), whichever is greater, as measured from the base of the stack.

(3) **Measurement of height of structure or terrain.** The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(d) **Excessive concentrations.** When utilized for the purpose of determining GEP stack height under OAC 252:100-8-1.5(b)(3), excessive concentrations shall be as follows:

(1) For sources seeking credit for stack height exceeding that calculated under OAC 252:100-8-1.5(b)(2), a maximum ground-level pollutant concentration from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which, when combined with the impacts due to all sources, produces a concentration in excess of an ambient air quality standard. For sources subject to the prevention of significant deterioration program (Part 7 of this Subchapter or Federal 40 CFR 52.21), the same criteria apply except that a concurrent exceedance of a prevention of significant deterioration increment is experienced. In making demonstrations under this part, the allowable emission rate shall conform to the new source performance standard that is applicable to the source category unless the owner or operator can demonstrate that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the owner or operator;

(2) For sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under OAC 252:100-8-1.5(b)(2) either:

- (A) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as specified in OAC 252:100-8-1.5(b)(2), except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or
- (B) the actual presence of a local nuisance caused by the existing stack, as determined by the Director; and

(3) For sources seeking credit after January 12, 1979 for a stack height determined under OAC 252:100-8-1.5(b)(2) where the Director requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the formulae in OAC 252:100-8-1.5(b)(2), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes or eddy effects.

PART 3. PERMIT APPLICATION FEES

252:100-8-1.7. Permit application fees

A permit application or a request for an applicability determination received after the effective date of this subsection will be assessed a one-time fee, which must accompany the application or request. Applications received without appropriate fees are administratively incomplete. Fees must be paid by check or money order made payable to the Oklahoma Air Quality Division in accordance with the following fee schedule:

- (1) **Applicability determination.** \$250, to be credited against the construction or operating permit application fee, if a permit is required. If no permit is required, the fee will be retained to cover the cost of making the determination.
- (2) **Construction permit application.**
 - (A) New Part 70 source - \$2,000.
 - (B) Modification of a Part 70 source - \$1,500.
 - (C) Authorization under a general permit - \$900.
- (3) **Operating permit application.**
 - (A) Initial Part 70 permit - \$2,000.
 - (B) Authorization under a general permit - \$900.
 - (C) Renewal Part 70 permit - \$1,000.
 - (D) Significant modification of Part 70 permit - \$1,000.
 - (E) Minor modification of Part 70 permit - \$500.
 - (F) Part 70 Temporary Source Relocation - \$500.

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);
- (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)(l) 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) (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) non-attainment areas classified as "serious," sources with the potential to emit 70 TPY or more of PM-10.

"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.

"**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.

252:100-8-3. Applicability

(a) **Covered sources.** Except as exempted from the requirement to obtain a permit under subsection (b) of this Section or elsewhere in this Subchapter, the sources listed below are subject to the permitting requirements under this Subchapter. A major source or major stationary source shall remain a Part 70 source until a federally enforceable permit is obtained which contains emission limitations and/or conditions to limit the operation of the facility to below that which would define it as a covered source pursuant to this section.

(1) Any major source (as defined in OAC 252:100-8-2);

(2) Any source subject to a NSPS;

(3) Any source, including an area source, subject to a NESHAP;

(4) Any affected source (as defined in OAC 252:100-8-2);

(5) Any source in a source category designated by the Administrator pursuant to 40 CFR §70.3; and

(6) Any major stationary source required to have a permit under Parts 7 or 9 of this Subchapter.

(b) Source category exemptions.

(1) All sources listed in subsection (a) of this section that are not major sources, major stationary sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act, are exempt from the obligation to obtain a Part 70 permit unless required to do so by appropriate implementation of EPA administrative rulemaking for non-major sources. Any such exempt source may opt to apply for a permit under these rules and shall be issued a permit if the applicant otherwise satisfies all of the requirements of this Chapter.

(2) If the Administrator determines after appropriate rulemaking that an exemption is applicable to non-major sources when

adopting standards or other requirements under section 111 or section 112 of the Act after July 21, 1992, then at that time the exemption will apply.

(3) Unless otherwise required to obtain a Part 70 permit, the following source categories are exempted from the obligation to obtain a Part 70 permit:

- (A) All sources in source categories that would be required to obtain a permit solely because they are subject to part 60, subpart AAA -- Standards of Performance for New Residential Wood Heaters; and
- (B) All sources in source categories that would be required to obtain a permit solely because they are subject to part 61, subpart M -- National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation.

252:100-8-4. Requirements for construction and operating permits

(a) Construction permits.

(1) **Construction permit required.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit. A construction permit is also required prior to reconstruction of a major affected source under 40 CFR Part 63, reconstruction of a major source if it would then become a major affected source under 40 CFR 63, or for any physical change that would be a significant modification under OAC 252:100-8-7.2(b)(2). In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

(2) Requirement for case-by-case MACT determinations.

(A) **Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

(B) **Exclusions.** The following sources are not subject to this subsection.

- (i) Electric utility steam generating units unless and until these units are added to the source category list.
- (ii) Stationary sources that are within a source category that has been deleted from the source category list.
- (iii) Research and development activities as defined in 40 CFR § 63.41.

(C) **MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

(b) Operating permits.

(1) **Operating permits required.** Except as provided in subparagraphs (A) and (B) of this section, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

(A) If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

(B) If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

(C) Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.** Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in OAC 252:100-8-4(b)(4). A timely application is one that is postmarked on or before the relevant date listed below. In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.

(4) **Application submittal schedule.** The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule.

- (A) No later than September 5, 1996:
- (i) Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act, §407.
 - (ii) Any owner or operator shall submit no less than one-third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):
 - (I) Petroleum and Natural Gas, 1311;
 - (II) Natural Gas Liquids, 1321;
 - (III) Electric Services, 4911, 4961;
 - (IV) Natural Gas Transmission, 4922;
 - (V) Natural Gas Transmission and Distribution, 4923; and
 - (VI) Petroleum Bulk Stations and Terminals, 5171.
- (B) All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.
- (C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:
- (i) Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,
 - (ii) Brick Plants, 3251, 3297,
 - (iii) Commercial Printing, 2752, 2761.
- (D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:
- (i) Refineries, 2911;
 - (ii) Cement Plants, 3241;
 - (iii) Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;
 - (i v) P e t r o l e u m Transportation/Terminals/Storage, 4612, 4613;
 - (v) Food Products, 2013, 2074, 2095.
- (E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.

(5) **Newly regulated sources.** A source that becomes subject to the operating permit program established by this Chapter at any time following the effective date shall file an administratively complete operating permit application within 180 days of commencement of operation.

(6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.

(7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.

(8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least 180 days before the date of permit expiration, unless a longer period (not to exceed 540 days) is specified in the permit. Renewal periods greater than 180 days are subject to negotiation on a case-by-case basis.

(9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).

(10) **Application completeness.** See Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.

252:100-8-5. Permit applications

(a) **Confidential information.** If a source submits information to the DEQ under a claim of confidentiality, the source shall also submit a copy of such information directly to the Administrator, if the DEQ requests that the source do so.

(b) **Duty to supplement or correct application.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) **Standard application form and required information.** Sources that are subject to the Part 70 permit program established by this Chapter

shall file applications on the standard application form that the DEQ makes available for that purpose. The application must include information needed to determine the applicability of any applicable requirement, or state-only requirement, or to evaluate the fee amount required under the schedule approved pursuant to OAC 252:100-5-2.2(b)(2). The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted. The source must provide a list of any insignificant activities that are exempted because of size or production rate. Trivial activities need not be listed. The standard application form and any attachments shall require that the information required by OAC 252:100-8-5(d) and/or (e) be provided.

(d) Construction permit applications.

(1) An application for a construction permit shall provide data and information required by this Chapter and/or requested on the application form available from the DEQ pursuant to the requirements of this Chapter. Such data and information shall include but not be limited to site information, process description, emission data and when required, BACT, modeling and sampling point data as follows:

(A) **BACT determination.** To be approved for a construction permit, a major source must demonstrate that the control technology to be applied is the best that is available for each pollutant that would cause the source to be defined as a major source. This determination will be made on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternative control systems. Unless required under Part 7 of this Subchapter, a BACT determination is not required for a modification that will result in an increase of emissions of less than 100 tons per year of any regulated air pollutant.

(B) **Modeling.** Any air quality modeling or ambient impact evaluation that is required shall be prepared in accordance with procedures acceptable to the DEQ and accomplished by the applicant.

(C) **Sampling points.** If required by the DEQ an application shall show how the new source will be equipped with sampling ports, instrumentation to monitor and record emission data and other sampling and/or testing equipment.

(2) Construction permit applications for new sources must also include the requirements for operating permits contained in OAC 252:100-8-5(e) to the extent they are applicable.

(e) Operating permit applications.

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone

number and names of plant site manager/contact.

(2) A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(A) All emissions of pollutants for which the source is major, and all emissions (including fugitive emissions) of regulated air pollutants. Fugitive emissions shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under OAC 252:100-8-5(c) or OAC 252:100-8-3(b).

(B) Identification and description of all points of emissions described in OAC 252:100-8-5(e)(3)(A) in sufficient detail to establish the basis for fees and applicability of the Act's requirements.

(C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard.

(D) The following information to the extent it is needed to determine or regulate emissions:

- (i) fuels,
- (ii) fuel use,
- (iii) raw materials,
- (iv) production rates, and
- (v) operating schedules.

(E) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(F) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source.

(G) Other information required by any applicable requirement, or state-only requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(H) Calculations on which the information in items (A) through (G) of this paragraph is based.

(4) The following air pollution control requirements:

(A) Citation and description of all applicable requirements and all state-only requirements.

(B) Description of or reference to any applicable test method for determining compliance with each applicable requirement and state-only requirement.

(5) Other specific information required under the DEQ's rules and statutes to implement and enforce other applicable requirements of the Act or of this Chapter or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements and state-only requirements.

(7) Additional information as determined to be necessary by the DEQ to define alternative operating scenarios identified by the source pursuant to OAC 252:100-8-6(a)(9) or to define permit terms and conditions implementing OAC 252:100-8-6(f) or 252:100-8-6(a)(10).

(8) A compliance plan for all covered sources that contains all the following:

(A) A description of the compliance status of the source with respect to all applicable requirements and state-only requirements as follows:

(i) For applicable requirements and state-only requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements and state-only requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(B) For sources not in complete compliance, a compliance schedule as follows:

(i) A schedule of compliance for sources that are not in compliance with all applicable requirements and state-only requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements and state-only requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the

applicable requirements on which it is based.

(ii) A schedule for submission of certified progress reports no less frequently than every 6 months.

(C) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(A) A certification of compliance with all applicable requirements and state-only requirements by a responsible official consistent with OAC 252:100-8-5(f) and section 114(a)(3) of the Act;

(B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(C) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement state-only requirements or by the permitting authority; and

(D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.

(f) **Certification.** Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Chapter shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

252:100-8-6. Permit content

(a) **Standard permit requirements.** Part 70 permits issued under this Chapter shall include all applicable requirements and state-only requirements (as defined in OAC 252:100-8-2) that apply to the permitted source at the time of issuance. Each permit shall include the elements in paragraphs (1) through (4) of subsection (a) of this Section.

(1) **Emission limitations and standards.** The permit shall specify emissions limitations and standards that constitute applicable

requirements and state-only requirements and shall include those operational conditions and limitations necessary to assure compliance with all such requirements.

(A) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement or state-only requirement upon which the term or condition is based.

(B) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by EPA.

(C) If the State implementation plan or an applicable requirement allows a source to comply through an alternative emission limit or means of compliance, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicable procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.

(2) Permit duration.

(A) **Operating permits.** The permit shall specify a fixed term. The DEQ shall issue permits for any fixed period requested in the permit application, not to exceed five years, except as follows:

(i) Permits issued to affected sources shall in all cases have a fixed term of five years.

(ii) Permits issued to solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

(B) **Construction permits.** See OAC 252:100-8-1.4.

(3) Monitoring and related recordkeeping and reporting requirements.

(A) Monitoring requirements.

(i) The permit shall specify all emissions monitoring and analysis procedures or test methods required under applicable requirements and state-only requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act.

(ii) The permit shall specify periodic monitoring during the relevant time period sufficient to yield reliable data that are representative of the source's compliance with the permit, as reported pursuant to (a)(3)(C) of this

section when an applicable requirement or state-only requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement or state-only requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subparagraph.

(iii) The permit shall specify as necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(iv) The permit shall contain provisions for the permittee to request the use of alternative test methods or analysis procedures, and provisions for the DEQ to approve or disapprove the request within 60 days.

(B) Recordkeeping requirements. The permit shall incorporate all applicable recordkeeping requirements.

(i) When applicable the permit shall require records of required monitoring information that include:

(I) the date, place as defined in the permit, and time of sampling or measurements;

(II) the date(s) analyses were performed;

(III) the company or entity that performed the analyses;

(IV) the analytical techniques or methods used;

(V) the results of such analyses; and

(VI) the operating conditions existing at the time of sampling or measurement.

(ii) When applicable, the permit shall require retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. Where appropriate, the permit may specify that records may be maintained in computerized form.

(C) Reporting requirements. The permit shall incorporate all applicable reporting requirements and contain the following requirements.

(i) A permit issued under this Part shall require the permittee to submit a report of any required monitoring at least every six months. To the extent possible, the schedule for submission of such reports shall be timed to coincide with other periodic reports required by the permit, including the permittee's annual compliance certification. However, the reports may be submitted at any time within the reporting period, as stipulated in the permit.

(ii) Each report submitted under (C)(1) of this paragraph shall identify any exceedances from permit requirements since the previous report that have been monitored by the monitoring systems required under the permit, and any exceedances from the monitoring, recordkeeping and reporting requirements under the permit.

(iii) In addition to semiannual monitoring reports, each permittee shall be required to submit the following supplemental reports.

(I) Any exceedance resulting from an emergency as defined in OAC 252:100-8-2 or upset conditions as defined in the permit shall be reported promptly but no later than 4:30 p.m. on the next working day after the permittee first becomes aware of the exceedance. The initial report must contain a description of the emergency or upset conditions, any steps taken to mitigate emissions, and corrective actions taken. Quantification of exceedances attributable to emergencies or upset conditions shall be made by the best available method. If the permittee wishes to assert the affirmative defense authorized under subsection (e) of this Section for emergencies, the permittee shall submit a followup written report within 10 working days of first becoming aware of the exceedance.

(II) Any exceedance that poses an imminent and substantial danger to public health, safety, or the environment shall be reported as soon as is practicable; but under no circumstance shall notification be more than 24 hours after exceedance.

(III) Any other exceedances that are identified in the permit as requiring more frequent reporting than the permittee's semiannual report shall be reported on the schedule specified in the permit.

(IV) All reports of exceedances shall identify the probable cause of the exceedances and any corrective actions or preventive measures taken.

(iv) Every report submitted under this subsection shall be certified by a responsible official, except that if a report of an exceedance required under (C)(iii) of this paragraph must be submitted within ten days of the exceedance, the report may be submitted in the first instance without a certification if an appropriate certification is provided within ten days thereafter, together with any corrected or supplemental information required concerning the exceedance. Reports submitted shall be consistent with the requirements of OAC 252:100-9.

(4) **Risk management plans.** If the source is required to develop and register a risk management plan pursuant to section 112(r) of the Act, the permit need only specify that the permittee will comply with the requirement to register such a plan. Although the requirement to have a risk management plan may be a term of the permit, the risk management plan contents are not part of the permit.

(5) **Title IV allowances.**

(A) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(B) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(C) The permit shall prohibit emissions exceeding any allowance that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder. Compliance with this paragraph will be determined on January 31st of any given year and be based on actual emissions and the number of allowances held for the previous calendar year.

(6) **Severability clause.** The permit shall include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(7) **General requirements.** The permit shall include the following provisions.

(A) The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Oklahoma Clean Air Act and is grounds for:

(i) enforcement action;

- (ii) permit termination, revocation and reissuance, or modification; or
- (iii) denial of a permit renewal application.

(B) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. However, nothing in this subsection shall be construed as precluding consideration of a need to halt or reduce activity as a mitigating factor in assessing penalties for noncompliance if the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations.

(C) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. Except as provided under OAC 252:100-8-7.2(b)(1) for minor permit modifications, the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(D) The permit does not convey any property rights of any sort or any exclusive privilege.

(E) The permittee shall furnish to the DEQ, upon receipt of a written request and within a reasonable time, any information that the DEQ may request to determine whether cause exists for modifying, reopening, or revoking and reissuing or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the DEQ copies of records required to be kept by the permit. The permittee may make a claim of confidentiality pursuant to 27A O.S. § 2-5-105.18 for any information or records submitted under this paragraph.

(8) **Fees.** The permit shall provide that the permittee will pay fees to the DEQ consistent with the fee schedule established under OAC 252:100-5-2.2.

(9) **Emissions trading.** The permit shall provide that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(10) **Operating scenarios.** The permit shall include terms and conditions applicable to all operating scenarios described in the permit application and eligible for approval under applicable requirements and state-only requirements. The permit shall authorize the permittee to make changes among operating scenarios authorized in the permit without notice, but shall require the permittee contemporaneously with making a change

from one operating scenario to another to record in a log at the permitted facility the scenario under which it is operating.

(11) **Emissions averaging.** The permit shall include terms and conditions, if the permit applicant requests them, for the trading or averaging of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading or averaging such increases and decreases. Such terms and conditions shall include terms under subsections (a) and (c) of this Section to determine compliance and shall satisfy all requirements of the applicable requirements authorizing such trading or averaging.

(b) **Federally enforceable requirements.**

(1) Except as provided in paragraph (b)(2) of this Section, all terms and conditions in a permit issued under this Section, including any provisions designed to limit a source's potential to emit, are enforceable by the DEQ, by EPA, and by citizens under section 304 of the Act.

(2) Notwithstanding paragraph (b)(1) of this Section, the DEQ shall designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or any of its applicable requirements, and such terms and conditions shall not be enforceable by EPA and citizens under section 304 of the Act.

(c) **Compliance requirements.** All permits issued under this Part shall contain the following elements with respect to compliance.

(1) Consistent with paragraph (a)(3) of this Section, the permit shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit under this Part shall contain a certification by a responsible official as to the results of the required monitoring.

(2) The permit shall contain inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized officials of the DEQ to:

(A) enter upon the permittee's premises during reasonable/normal working hours where a source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(C) inspect at reasonable times and using reasonable safety practices any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(D) as authorized by the Oklahoma Clean Air Act; sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit.

(3) The permit shall contain a schedule of compliance if required under OAC 252:100-8-5(e)(8)(B).

(4) To the extent required under an applicable schedule of compliance and OAC 252:100-8-5(e)(8), the permit shall contain the requirement for progress reports to be submitted semiannually or more frequently if specified in the applicable requirement or by the DEQ. Such progress reports shall contain:

(A) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(B) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) The permit shall contain requirements for compliance certification with terms and conditions contained in the permit that are federally enforceable, including emission limitations, standards, or work practices. Each permit shall contain all of the following specifications and requirements.

(A) Each permit shall specify the frequency (which shall be annually unless the applicable requirement or state-only requirement specifies submission more frequently) of the submissions of compliance certifications.

(B) Each permit shall specify in accordance with paragraph (a)(3) of this Section, a means for monitoring the compliance of the source with emissions limitations, standards, and work practices.

(C) Each permit shall include a requirement that the compliance certification include:

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) the permittee's current compliance status, as shown by monitoring data and other information available to the permittee;

(iii) whether compliance was continuous or intermittent;

(iv) the method(s) used for determining the compliance status of the source, currently and over the reporting period as required by paragraph (a)(3) of this Section; and

(v) such other facts as the DEQ may require to determine the compliance status of the source.

(D) Each permit shall contain a requirement that all compliance certifications be submitted to EPA as well as to the DEQ.

(E) Each permit shall contain such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(6) Each permit shall contain such other provisions as the DEQ may require.

(d) **Permit shield.**

(1) Each operating permit issued under this Part shall include a "permit shield" provision, which shall state that compliance with the terms and conditions of the permit (including terms and conditions established for alternate operating scenarios, emissions trading, and emissions averaging, but excluding terms and conditions for which the permit shield is expressly prohibited under this Subchapter) shall be deemed compliance with the applicable requirements identified and included in the permit.

(2) Upon request, the DEQ shall include in the permit or in a separate written finding issued with the permit a determination identifying specific requirements that do not apply to the source. The source shall specify in its application for such a determination the requirements for which the determination is requested. If the determination is issued in a separate finding, that finding shall be summarized in the permit. The permit shall state that the permit shield applies to any requirements so identified. A request for a determination to extend the shield to requirements deemed inapplicable to the source may be made either in the original permit application or in a subsequent application for a permit modification.

(3) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(4) Nothing in this Section or in the permit shall alter or affect:

(A) the provisions of section 303 of the Act, including the authority of the Administrator under that section;

(B) the liability of an owner or operator of a source for any violation of applicable requirements or state-only requirements prior to or at the time of permit issuance;

(C) the applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(D) the ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(e) **Emergencies.**

(1) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (e)(3) of this Section and the reporting requirements of OAC 252:100-8-6(a)(3)(C)(iii)(I) are met.

(2) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that:

(A) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(B) the permitted facility was at the time being properly operated;

(C) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.

(3) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(4) The provision in this subsection is in addition to any emergency or upset provision contained in any applicable requirement or OAC 252:100-9.

(f) Operational flexibility.

(1) Applicant's duty to apply for alternative scenarios. A facility may implement any operating scenario allowed for in its Part 70 permit without the need for any permit revision or any notification to the permitting authority. It is incumbent upon the Part 70 permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of initial or renewal permit application.

(2) Changes resulting in no emissions increases. A permitted Part 70 source may make the following changes within the facility.

(A) Such a source may make changes that are not modifications under any provision of Title I of the Act.

(B) Such a source may make changes that do not cause any hourly or annual permitted emission rate of any existing emissions unit to be exceeded.

(C) Such a source may make changes that result in a net change in emissions of zero, provided that the facility notifies the DEQ and EPA in writing at least 7 days in advance of the proposed changes. The source, DEQ, and EPA shall attach each such notice to their copy of the relevant permit. For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield described in OAC 252:100-8-6(d) does not apply to any change made pursuant to this subsection.

252:100-8-6.1. General permits

(a) Applicability.

(1) The DEQ may, after notice and opportunity for public participation, issue a general permit for any source category if it concludes that the category is appropriate for permitting on a generic basis. Any general permit shall comply with all requirements applicable to other Part 70 permits. No general permit may be issued for affected

sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) A general permit may be issued for a source category based upon an application from a source within the source category or upon the DEQ's own initiative. The DEQ shall, following receipt of an application for a general permit, or upon a determination that issuance of a general permit for a category of sources may be appropriate, follow the same procedures for issuance of a general permit as for any other permit issued under this part.

(3) A general permit may be issued to establish:

(A) Terms and conditions to implement applicable requirements and state-only requirements for a source category.

(B) Terms and conditions to implement applicable requirements and state-only requirements for specified categories of changes to permitted sources.

(C) Terms and conditions for new requirements that apply to sources with existing permits.

(D) Federally-enforceable caps on emissions from sources in a specified category.

(4) The DEQ may issue a general permit if it finds that:

(A) There are several permittees, permit applicants, or potential permit applicants who:

(i) Have the same or substantially similar operations, emissions, activities, or facilities.

(ii) Emit the same types of regulated air pollutants.

(B) The operations, emissions, activities, or facilities are subject to the same or similar:

(i) Standards, limitations, and operating requirements.

(ii) Monitoring requirements.

(5) If some, but not all, of a source's operations, activities, and emissions are eligible for coverage under one or more general permits, the source must apply for an individual Part 70 permit for all of its covered sources.

(6) Facilities located in areas that are federally designated as non-attainment are not eligible for coverage under a general permit.

(7) Sites that are not in compliance with all applicable State and Federal air regulations are eligible for a general operating permit only if:

(A) They submit to DEQ an approvable compliance plan, and

(B) The facility submits to Tier II public review.

(8) Facilities with existing state operating permits are eligible for coverage under a general operating permit.

(9) Facilities existing prior to the effective date of any applicable standard that would have created specific quantifiable and enforceable

emission rates are eligible for coverage under a general operating permit.

(b) Authorization.

(1) A general permit issued under this section shall identify criteria by which sources may qualify for the general permit. After a general permit has been issued, any source may submit a request to be covered under the permit in the form of an application for authorization to operate under the general permit. Such application shall identify the source and provide information sufficient to demonstrate that it falls within the source category covered by the general permit, together with any additional information that may be specified in the general permit.

(2) See OAC 252:4-7 for Tier I permitting processes and timelines for individual authorizations under general permits. The DEQ shall act to approve or deny the application within 90 days of filing.

(3) A final action approving an authorization to operate under a general permit shall not be subject to public comment or judicial review.

(4) The DEQ will publish, at least monthly, an updated list of sources approved for inclusion under the general permit and any aggrieved person may petition the DEQ to review the approval of any stationary source for inclusion under a general permit within 30 days after publication of the list.

(5) A copy of the general permit, together with a list of sources approved for coverage under it, shall be kept on file for public review at the offices of the DEQ.

(c) Permit shield. A general permit issued under this section shall provide that any source approved for coverage under a general permit shall be entitled to the protection of the permit shield for all operations, activities, and emissions addressed by the general permit, unless and to the extent that it is subsequently determined that the source does not qualify for the conditions and terms of the general permit.

(d) Revisions.

(1) If an owner or operator of a source(s) makes a change to a source covered by a general permit that affects any applicability information supplied in the general permit application, but the source is still eligible for coverage under a general permit, the owner or operator must revise the general permit application and submit it to the DEQ within 60 days.

(2) After coverage is granted to a source under the general permit, physical changes to the facility which result in the addition of equipment new to the facility, either as a replacement (except like-kind replacements) or net addition, will require a construction permit or a new authorization. Any significant modification to a stationary source included under a general permit shall subject the source to a Tier II review.

(3) If equipment new to the facility is newly purchased or is relocated from another facility where a permit was issued with enforceable

emissions limits on that equipment, then authorization under the general permit shall be modified or amended to include an emissions limit for the newly purchased or relocated equipment. "Grandfathered" emissions sources at the facility will retain only the equipment descriptions as permit conditions. "Grandfathered" means a unit that was in existence prior to the effective date of any applicable regulation that would have created specific quantifiable and enforceable emissions rate limits.

(4) For a general operating permit, if emissions change for any reason that subjects the facility to PSD permitting requirements, then the facility no longer qualifies for a general operating permit. However, the existing general operating permit will remain valid during the time period covered by the PSD construction permit until the facility receives a Part 70 site specific operating permit for the entire facility.

(e) Permit content. Specific terms and conditions that will make the applicable rules and requirements enforceable shall be stipulated in the general permit.

(f) Renewal of general operating permits.

(1) The DEQ will initiate the renewal process for a general operating permit at least 180 days prior to the permit's expiration date and will follow the requirements in 252:100-8-7(a).

(2) Owners or operators shall apply to renew an authorization at least 60 days prior to expiration of the existing authorization. Upon submittal of a timely and administratively complete application, the applicant may continue to operate until such time as the DEQ grants or denies coverage under the general operating permit.

252:100-8-6.2. Temporary sources

The DEQ may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least ten days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

252:100-8-6.3. Special provisions for affected (acid rain) sources

(a) Application binding until permit issuance or denial. A complete acid rain permit application is binding on the applicant and enforceable as a permit until an acid rain permit is issued or denied. For applicable permitting processes, see OAC 252:4-7.

(b) **Exemption petitions.** Applicants with small units that burn low sulfur fuel or sources that retire a unit can petition to have such units exempted from certain permitting and monitoring requirements under the acid rain regulations.

(c) **Permit shield.** The acid rain portion of every operating permit is covered by a permit shield. This shield assures that an applicant operating in accordance with a permit issued in accordance with Title IV of the Act, will be deemed to be operating in compliance with the Acid Rain Program.

(d) **Modifications.** See 40 CFR 72.82.

(e) **Duration.** Acid rain permits will have a term of five years commencing on the permits effective date. The DEQ may issue a permit with a future effective date.

(f) **Right of intervention.** The Administrator may intervene as a matter of right in any administrative appeal involving an Acid Rain permit or denial of an Acid Rain permit.

(g) **Administrative appeal.** The administrative appeal period shall be no more than 90 days following the issuance of the Acid Rain permit and the judicial appeal period shall be no more than 90 days following a final agency action.

(h) **Adoption of 40 CFR Part 72 by reference.** DEQ hereby adopts and incorporates by reference the provisions of 40 CFR Part 72, as published in the Federal Register on January 11, 1993, on March 23, 1993, and on October 24, 1997, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Act. The term "permitting authority" shall mean the Oklahoma Department of Environmental Quality and the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in 252:100-8, the Part 72 provisions and requirements shall apply and take precedence.

252:100-8-7. Permit issuance

(a) **Criteria for issuance.** A permit, permit modification, or renewal may be issued only if the applicable requirements of 27A O.S. §§ 2-14-101 through 2-14-401; OAC 252:4-7; and this Chapter have been met and the DEQ has determined that the conditions of the permit provide for compliance with all applicable requirements and, for applications subject to OAC 252:100-8-8, that the requirements of that Section have been satisfied.

(b) **Draft permits and notice thereof.** See OAC 252:4-7. A statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions) shall accompany the draft permit.

(c) **EPA review.** See OAC 252:100-8-8.

(d) **DEQ final action.** See OAC 252:4-7 and 252:100-8-8 when applicable.

(e) **Timeline for technical review and issuance.** The DEQ shall take final action on each application for a permit within 18 months after beginning its technical review in accordance with

OAC 252:4-7-4 through 252:4-7-12 and OAC 252:4-7-31; and OAC 252:100-8-4(b)(7).

252:100-8-7.1. Permit renewal and expiration

(a) Timely application for permit renewal.

(1) Applications for permit renewal and for permits for new Part 70 sources or amendments, shall be considered timely if the applicant meets the requirements of this subsection.

(2) Stationary sources operating under permits issued by the DEQ under this Subchapter shall apply for permit reissuance at least 180 days before the expiration of the existing permit, unless the permit specifies that the application must be submitted sooner. The DEQ shall require in a permit that a reissuance application be submitted sooner if it determines that an earlier application is needed to minimize the possibility of expiration prior to reissuance. The DEQ may make the determination if it anticipates a relatively lengthy permit review process due to the complexity of the stationary source or anticipated involvement of the public. In no event shall the permit require application for reissuance sooner than eighteen months prior to the expiration of the permit.

(b) **Application content for renewal of expiring permit.** In submitting an application for renewal of a Part 70 operating permit, a source may identify and incorporate by reference terms and conditions in its previous permit and permit application(s) that should remain unchanged. In addition, a renewal application must contain:

(1) information specified in 252:100-8-5(e) for those products, processes, operations, and emissions:

(A) That are not addressed in the existing permit;

(B) That are subject to applicable requirements or state-only requirements that are not addressed in the existing permit; or

(C) For which the source seeks permit terms and conditions that differ from those in the existing permit; and

(2) a compliance plan and certification as required in 252:100-8-5(e)(8) and (9).

(c) **Issuance of renewal permit.** Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, affected State comment, and EPA review, that apply to initial permit issuance under 252:100-8-7(a).

(d) Expiration of permit.

(1) A source's right to operate shall terminate upon the expiration of its permit unless a timely and complete renewal application has been submitted at least 180 days before the date of expiration.

(2) If a timely and complete application for a permit renewal is submitted, but the DEQ fails to take final action to issue or deny the renewal permit before the end of the term of the previous permit, then the permit shall not expire until the renewal permit has been

issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

252:100-8-7.2. Administrative permit amendments and permit modifications

(a) Administrative permit amendments.

- (1) An administrative permit amendment:
 - (A) Corrects typographical errors;
 - (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - (C) Requires more frequent monitoring or reporting by the permittee;
 - (D) Allows for a change in ownership or operational control of a source where no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the DEQ;
 - (E) Incorporates into the permit the requirements from preconstruction review permits issued by the DEQ under this Part.
 - (2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.
 - (3) An administrative permit amendment shall be made by the DEQ in accordance with the following:
 - (A) The DEQ shall take final action on a request for an administrative permit amendment within 60 days from the date of receipt of such a request, and may incorporate the proposed changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.
 - (B) The DEQ shall submit a copy of the revised permit to the Administrator.
 - (C) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
 - (4) The DEQ shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAC 252:100-8-6(d) for administrative permit amendments made pursuant to OAC 252:100-8-7.2(a)(1)(E).
- (b) **Permit modification.** A permit modification is any revision to a permit that cannot be accomplished under OAC 252:100-8-7.2(a). A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

(1) Minor permit modification procedures.

(A) Criteria.

- (i) Minor permit modification procedures may be used only for those permit modifications that:

- (I) Do not violate any applicable requirement, or state-only requirements;

- (II) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;

- (III) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

- (IV) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include federally-enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I and alternative emissions limits approved pursuant to regulations promulgated under § 112(i)(5) of the Act; and

- (V) Are not modifications under any provision of Title I of the Act.

- (ii) Notwithstanding OAC 252:100-8-7.2(b)(1)(A)(i) and 252:100-8-7.2(b)(2)(A), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State's implementation plan or in applicable requirements promulgated by EPA.

(B) **Application.** To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the permit application requirements of Tier I under OAC 252:4-7 and shall include the following:

- (i) A description of the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs;

- (ii) The source's suggested modification language;

- (iii) Certification by a responsible official, that the application and the proposed modification meet the criteria for use of minor permit modification procedures; and

(iv). Completed forms for any notices required by OAC 252:4-7 and OAC 252:100-8-7.2(b)(1)(C).

(C) **EPA and affected state notification.** If the proposed minor modification is of a permit that underwent EPA review in accordance with OAC 252:100-8-8, the provisions of that section shall apply to the minor modification application.

(D) **Timetable for issuance.** Within 90 days of the DEQ's receipt of a complete application under OAC 252:4-7 the DEQ shall:

- (i) Issue the minor permit modification as approved;
- (ii) Deny the minor permit modification application; or
- (iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures or administrative amendment procedures.

(E) **Source's ability to make change.** Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change and until the DEQ takes any of the actions specified in OAC 252:100-8-7.2(b)(1)(D)(i) through (iii), the source must comply with the applicable requirements and state-only requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(F) **Permit shield.** The permit shield under OAC 252:100-8-6(d) will not extend to minor permit modifications.

(G) **Permittee's risk in commencing construction.** The permittee assumes the risk of losing any investment it makes toward implementing a modification prior to receiving a permit amendment authorizing the modification. The DEQ will not consider the possibility of the permittee suffering financial loss due to such investment when deciding whether to approve, deny, or approve in modified form a minor permit amendment.

(2) **Significant modification procedures.**

(A) **Criteria.** Significant modification procedures shall be used for applications requesting permit modifications that:

- (i) Involve any significant changes in existing monitoring requirements in the permit;.

(ii) Relax any reporting or recordkeeping requirements.

(iii) Change any permit condition that is required to be based on a case-by-case determination of an emission limitation or other standard, on a source-specific determination of ambient impacts, or on a visibility or increment analysis;

(iv) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include:

(I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;

(II) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act; and

(v) Are modifications under any provision of Title I of the Act; and,

(vi) Do not qualify as minor permit modifications or administrative amendments.

(B) **Procedures for processing.**

Significant permit modifications shall meet all requirements of these rules that are applicable to Tier II applications. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs.

(C) **Issuance.** The DEQ shall complete review of significant permit modifications within nine months after receipt of a complete application, but shall be authorized to extend that date by up to three months for cause.

252:100-8-7.3. Reopening of operating permits for cause

(a) **Mandatory reopening.** Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration date of the permit. A permit shall be reopened and revised under any of the following circumstances:

- (1) Additional federal applicable requirements become applicable to a stationary source with a remaining permit term of three or more years. Such a reopening and amendment shall be completed not later than 18 months after promulgation of the federal applicable requirement. Reopening is allowed if an applicable requirement becomes effective and the original permit or any of its terms and conditions has been extended pursuant to the

application shield provided at 252:100-8-7.1(d)(2) beyond the 18-month timeframe for revision. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire.

(2) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(3) The DEQ or the EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards, limitations, or other terms or conditions of the permit.

(4) The Administrator or the DEQ determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(b) **Discretionary reopening.** The DEQ may reopen and amend a permit when:

(1) additional state-only requirements become applicable to a permitted stationary source and the effective date of the requirement is at least 18 months prior to the date on which the permit is due to expire;

(2) alterations or modifications to the permitted facility will result in or have the potential to result in significant alteration of the nature or quantity of regulated air pollutants to be emitted by the permittee;

(3) the DEQ receives information previously unavailable to the DEQ that shows that the terms and conditions of the permit do not accurately represent the actual circumstances relating to the permitted facility;

(4) a court of competent jurisdiction invalidates or modifies an Oklahoma or federal statute or rule or federal guideline upon which a condition of the permit is based; or

(5) an event occurs that is beyond the control of the permittee that necessitates modification of a compliance schedule in the permit.

(c) **Reopening procedures.** To reopen and amend a permit, the DEQ shall follow the procedures that apply to significant permit modifications under this Subchapter, unless the amendment can be made as an administrative amendment under 252:100-8-7.2(a). Mandatory reopenings under 252:00-8-7.3(a) shall be made as expeditiously as practicable. In lieu of an application, the significant permit modification process will commence when the DEQ gives the permittee written notice of its intent to amend the permit. The DEQ shall not issue the amendment, or make public notice of the amendment where public notice is required, until at least thirty days after the DEQ has given the permittee written notice of its intent to amend the permit, unless the permittee consents to less notice, or in the case of an emergency. In cases where public participation is required, only those portions of the permit that the DEQ proposes to amend shall be open for public comment or consideration at a meeting or hearing.

(d) **Reopenings for cause by EPA.**

(1) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit, the Administrator shall notify the DEQ and the permittee of such findings in writing.

(2) The DEQ shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the DEQ must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the DEQ within 90 days of receipt.

(4) The DEQ shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the DEQ fails to submit a proposed determination pursuant to this subsection, or fails to resolve any objection pursuant to this subsection, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(A) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action.

(B) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

252:100-8-7.4. Revocations of operating permits

(a) **Revocation of a permit or authorization under a general permit without reissuance.** The DEQ may revoke permits or authorizations under a general permit and not reissue them when:

(1) there exists at the permitted facility unresolved noncompliance with applicable requirements or a condition of the permit or authorization, and the permittee refuses to undertake an enforceable schedule of compliance to resolve the noncompliance;

(2) the permittee fails to disclose fully the facts relevant to issuance of the permit or authorization or submits false or misleading information to the DEQ or the Administrator;

(3) the permittee has failed to comply with any requirement under 252:100-5 to pay fees; or

(4) the permittee has failed to pay a penalty owed pursuant to court order, consent decree, stipulation agreement, or schedule of compliance.

(b) **Revocation procedures.** The DEQ shall give notice to the permittee of its intention to revoke a permit without reissuance. This notice must state that within 30 days of the receipt of the notice the permittee may request a contested case hearing be held on the proposed action, except that the DEQ may provide less notice in case of an

emergency. If the permittee requests a contested case hearing, the DEQ shall hold the hearing in accordance with the Oklahoma Administrative Procedures Act.

252:100-8-7.5. Judicial review

Any final action in granting or denying an application for a permit, permit amendment or modification, or permit renewal shall be subject to judicial review in the court of appropriate jurisdiction upon an application filed by the applicant or permittee, or by any affected state or other person who participated in the public comment process. Except for authorizations under General Permits, judicial review is available to all affected parties for all final permit actions including minor modifications and administrative actions. If no public comment procedure was employed for the action under challenge, an application for review may be filed by the permittee or an affected state. The opportunity for judicial review provided for in this subsection shall be the exclusive means for obtaining judicial review of any permit action.

(1) No application for judicial review may be filed more than 90 days following the final action on which review is sought, unless the grounds for review arose at a later time, in which case the application for review shall be filed within 90 days of the date on which the grounds for review first arose and review shall be limited to such later-arising grounds.

(2) Any application for judicial review shall be limited to issues that:

- (A) were raised in comments filed with the DEQ or during a public hearing on the proposed permit action (if the grounds on which review is sought were known at that time), except that this restriction shall not apply if the person seeking review was not afforded an advance opportunity to comment on the challenged action; and
- (B) are germane and material to the permit action at issue.

(3) For purposes of this section, "final action" shall include a failure by the DEQ to take final action to grant or deny an application within the time specified in this Chapter.

252:100-8-8. Permit review by EPA and affected states

(a) **Applicability.** This Section applies to all Subchapter 8 permit actions except administrative permit amendments.

(b) **Format.** To the extent practicable, information provided to the EPA by applicants shall be in computer-readable format compatible with EPA's national database management system.

(c) **Recordkeeping.** The DEQ will keep for 5 years records required by this Section and will submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this Chapter.

(d) **Transmission of information to EPA.** The DEQ shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit,

and each final permit, unless waived by the Administrator for a category of sources other than major sources. In the alternative, the DEQ may require an applicant upon filing to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the DEQ may submit a permit application summary form and any relevant portion of the permit application and compliance plan, in place thereof.

(e) **Transmission of notice of draft permit to affected states.** The DEQ shall give notice of each draft permit to any affected State on or before the time that this notice is provided to the public under 27A O.S. § 2-14-302, except to the extent that paragraph 8-7.2(b)(1) regarding minor permit modification applications, and 40 CFR § 70.7(e)(3)(iii) regarding group processing of minor permit modifications, requires the timing of the notice to be different.

(f) **Timelines for submission of EPA review copy.**

The DEQ shall review public comments, revise the draft permit as appropriate and submit the proposed permit to EPA for review no later than 60 days before the issuance deadline established in OAC 252:4-7-31, except as provided in OAC 252:4-7-9 through 4-7-11, which stop the review timeline and provide additional time for permit review.

(g) **Notice of non-acceptance.** The DEQ shall notify the Administrator and any affected State in writing of any refusal by the DEQ to accept all recommendations for the proposed permit that the affected State submitted during the review period. The notice will include the DEQ's reasons for not accepting any such recommendation. The DEQ is not required to accept recommendations that are not based on applicable requirements of the Oklahoma Clean Air Act or 40 CFR Part 70.

(h) **EPA review and non-objection.** Upon receipt of notice from the EPA that it will not object to a proposed permit, the DEQ shall issue the proposed permit as final unless an administrative permit hearing has been timely and properly requested.

(i) **EPA review and objection.**

(1) **Timing.** No permit for which an application must be transmitted to the Administrator under subsection (a) of this Section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) **Form of objection.** An EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections.

(3) **Additional grounds.** Failure of the DEQ to do any of the following also shall constitute grounds for an objection:

- (A) Comply with subsections (d) or (e) of this Section;
- (B) Submit any information necessary to review adequately the proposed permit; or

(C) Process the permit application according to the uniform permitting requirements of OAC 252:4-7 Part 1.

(4) **Copy.** The Administrator will provide the permit applicant a copy of the objection.

(5) **DEQ response.** The DEQ shall consult with EPA and the applicant and shall amend the permit and submit for approval an amended proposed permit to EPA within 90 days after the date of EPA's objection.

(6) **Failure of DEQ to respond.** If the DEQ fails, within 90 days after the date of the EPA objection, to amend and resubmit the amended proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of EPA's Part 71 regulations.

(j) **Public petitions to the Administrator.** If the Administrator does not object in writing under subsection (h) of this Section, any person that meets the requirements of this subsection may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that the petitioner raised with reasonable specificity during the public comment period provided for in 27A O.S. § 2-14-302.A.2., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the DEQ shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the DEQ has issued a permit prior to receipt of an EPA objection under this subsection, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) except in unusual circumstances. If the DEQ revokes the permit, it may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(k) **Effect on administrative permit hearing.** When a public petition or an EPA objection is registered on a proposed permit on which an administrative permit hearing has been requested in accordance with the Oklahoma Uniform Environmental Permitting Act, 27A O.S. §§ 2-14-101 through 2-14-401, the DEQ may stay the evidentiary part of the hearing involving cross-examination until EPA objections are resolved.

252:100-8-9. Permit fees

[252:100-8-9(a), (b), (c), (d)(1), (d)(3) and (d)(4) amended and renumbered to 252:100-5. 252:100-8-9(d)(2) amended and renumbered to 252:100-8-1.7]

PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

252:100-8-30. Applicability

(a) General applicability.

(1) The requirements of this Part shall apply to the construction of any new major stationary source or any project that is a major modification at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(2) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Part otherwise provides.

(3) No new major stationary source or major modification to which the requirements of OAC 252:100-8-34 through 252:100-8-36.2(b) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

(4) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of all new major stationary sources and major modifications.

(b) Major modification.

(1) Major modification applicability determination.

(A) Except as otherwise provided in OAC 252:100-8-30(c), and consistent with the definition of "major modification", a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases:

- (i) a significant emissions increase and
- (ii) a significant net emissions increase.

(B) The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) **Calculating significant emissions increase and significant net emissions increase before beginning actual construction.** The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, according to OAC 252:100-8-30(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase". This is the second step in the process of determining if a proposed modification is a major modification. Both

steps occur prior to the beginning of actual construction. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.

(5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in OAC 252:100-8-30(b)(3) or (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant.

(6) **Actual-to-potential test for projects that only involve existing emissions units.** In lieu of using the actual-to-projected-actual test, owners or operators may choose to use the actual-to-potential test to determine if a significant emissions increase of a regulated NSR pollutant will result from a proposed project. A significant emissions increase of a regulated NSR pollutant will occur if the sum of the difference between the potential emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant. Owners or operators who use the actual to potential test will not be subject to the recordkeeping requirements in OAC 252:100-8-36.2(c).

(c) **Plantwide applicability limitation (PAL).** Major stationary sources seeking to obtain or maintain a PAL shall comply with the requirements under OAC 252:100-8-38.

2 252:100-8-31. 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—~~of~~ 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) 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 equal to or greater than 1 $\mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(A) Area redesignations under section 107(d)(1)(D) or (E) 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 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 and sulfur dioxide, January 6, 1975, and
- (ii) in the case of nitrogen dioxide, February 8, 1988.

(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 and sulfur dioxide, August 7, 1977, and

(ii) in the case of nitrogen dioxide, February 8, 1988.

(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) 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 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 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:

- (l) 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 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 constituents or precursors for such pollutants identified by the Administrator (e.g., VOC and NO_x are precursors for ozone);

(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.

(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 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 emissions,
- (v) ozone: 40 TPY of VOC or NO_x,
- (vi) lead: 0.6 TPY,
- (vii) fluorides: 3 TPY,
- (viii) sulfuric acid mist: 7 TPY,
- (ix) hydrogen sulfide (H₂S): 10 TPY,
- (x) total reduced sulfur (including H₂S): 10 TPY,
- (xi) reduced sulfur compounds (including H₂S): 10 TPY,
- (xii) municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.5×10^{-6} TPY,
- (xiii) municipal waste combustor metals (measured as particulate matter): 15 TPY,
- (xiv) municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 40 TPY,
- (xv) municipal solid waste landfill emissions (measured as nonmethane organic compounds): 50 TPY.

(B) Notwithstanding (A) of this definition, "significant" means 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.

"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.

252:100-8-32. Source applicability determination [REVOKED]

252:100-8-32.1. Ambient air increments and ceilings

(a) **Ambient air increments.** Increases in pollutant concentration over the baseline concentration in Class I, II, or III areas shall be limited to those listed in OAC 252:100-3-4 regarding significant deterioration increments.

(b) **Ambient air ceilings.** No concentration of a pollutant shall exceed whichever of the following concentrations is lowest for the pollutant for a period of exposure:

- (1) the concentration allowed under the secondary NAAQS, or
- (2) the concentration permitted under the primary NAAQS.

252:100-8-32.2. Exclusion from increment consumption

The following cases are excluded from increment consumption.

- (1) Concentrations from an increase in emissions from any stationary source converting from the use of petroleum products, natural gas, or both 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 shall be excluded.

(A) Such exclusion is limited to five years after the effective date of the order or plan whichever is applicable.

(B) If both an order and a plan are applicable, the exclusion shall not apply more than five years after the later of the effective dates.

(2) Emissions of particulate matter from construction or other temporary emission-related activities of new or modified sources shall be excluded.

(3) A temporary increase of sulfur dioxide, particulate matter, or nitrogen oxides from any stationary source by order or authorized variance shall be excluded. For purposes of this exclusion any such order or variance shall:

(A) specify the time over which the temporary emissions increase would occur (not to exceed 2 years in duration unless a longer time is approved by the Director);

(B) specify that the exclusion is not renewable;

(C) allow no emissions increase from a stationary source which would impact a Class I area or an area where an applicable increment is known to be violated or cause or contribute to the violation of a NAAQS; and

(D) require limitations to be in effect by the end of the time period specified in such order or variance, which would ensure that the emissions levels from the stationary source affected would not exceed those levels occurring from such source before the order or variance was issued.

252:100-8-32.3. Stack heights

(a) Emission limitation of any air pollutant under this Part shall not be affected in any manner by:

(1) stack height of any source that exceeds good engineering practice, or

(2) any other dispersion technique.

(b) OAC 252:100-8-32.3(a) shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

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:

(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) Particulate matter - 10 $\mu\text{g}/\text{m}^3$, TSP or PM-10, 24-hour average,

(D) Sulfur dioxide - 13 $\mu\text{g}/\text{m}^3$, 24-hour average,

(E) 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) Lead - 0.1 $\mu\text{g}/\text{m}^3$, 24-hour 3-month average,

(G) Fluorides - 0.25 $\mu\text{g}/\text{m}^3$, 24-hour average,

(H) Total reduced sulfur - 10 $\mu\text{g}/\text{m}^3$, 1-hour average,

(I) Hydrogen sulfide - 0.2 $\mu\text{g}/\text{m}^3$, 1-hour average, or

(J) Reduced sulfur compounds - 10 $\mu\text{g}/\text{m}^3$, 1-hour average.

(2) 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 PM-10 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 PM-10 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). The permitting requirements of OAC 252:100-8-35(a)(2) 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.

252:100-8-34. Control technology review

(a) Requirement to comply with rules and regulations. A major stationary source or major modification shall meet each applicable emissions limitation under OAC 252:100 and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61.

(b) Requirement to apply best available control technology (BACT).

(1) A new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(2) A major modification shall apply BACT for each regulated NSR pollutant for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(3) For phased construction projects the determination of BACT shall be reviewed and modified at the discretion of the Director at a reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time the owner or operator may be required to demonstrate the adequacy of any previous determination of BACT.

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) any NAAQS in any air quality control region; or

(2) the remaining available PSD increment for the specified air contaminants as determined by the Director.

(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 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 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.**

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, 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.

252:100-8-35.1. Source information

(a) The permit application for a proposed new major stationary source or major modification subject to this Part shall contain the construction permit application content required in OAC 252:100-8-4.

(b) In addition to the requirements of OAC 252:100-8-35.1(a), the owner or operator of a proposed new major stationary source or major modification subject to this Part shall supply the following information in the permit application.

(1) The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this Part.

(2) The permit application shall contain a detailed description of the system of continuous emission reduction planned for the source or modification, emission estimates, and any other information necessary to determine that BACT as applicable would be applied.

(3) Upon request of the Director, the owner or operator shall also provide information on:

(A) the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(B) the air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

252:100-8-35.2. Additional impact analyses

(a) Growth analysis. The permit application shall provide an analysis of the projected air quality impact and impairment to visibility, soils, and vegetation as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification.

(b) Visibility monitoring. The Director may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Director deems necessary and appropriate.

252:100-8-36. Source impacting Class I areas

(a) Class I area variance. Permits may be issued at variance to the limitations imposed on a Class I area in compliance with the procedures and limitations established in State and Federal Clean Air Acts.

(b) Notice to Federal Land Managers.

(1) The Director shall notify any affected Federal Land Manager of the receipt of any permit application for a proposed major stationary source or major modification, emissions from which may affect a Class I area. Such notification must be made in writing within 30 days of receipt of an application for a permit to construct and at least 60 days prior to public hearing on the application. The notification must include a complete copy of the permit application. The Director shall also notify any affected Federal Land Manager within 30 days of receipt of any advance notification of such permit application.

(2) The permit application will contain an analysis on the impairment of visibility and an assessment of any anticipated adverse impacts on soils and vegetation in the vicinity of the source resulting from construction of the source.

(c) Visibility analysis. Any analysis performed by the Federal Land Manager shall be considered by the Director provided that the analysis is filed with the DEQ within 30 days of receipt of the application by the Federal Land Manager. Where the Director finds that such an analysis does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the Federal Class I area, the Director will, in any notice of public hearing on the permit application, either explain the decision or give notice as to where the explanation can be obtained.

(d) Permit denial. Upon presentation of good and sufficient information by a Federal Land Manager, the Director may deny the issuance of a permit for a source, if the emissions will adversely impact areas categorized as Class I areas even though the emissions would not cause the increment for such Class I areas to be exceeded.

252:100-8-36.1. Public participation

See OAC 252:4 and O.S. §§ 27A-2-5-112 and 27A-2-14-101 to § 2-14-304.

252:100-8-36.2. Source obligation

(a) **Obtaining and complying with preconstruction permits.** Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this Part or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Part who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(b) **Consequences of relaxation of permit requirements.** When a source or modification becomes major solely by virtue of a relaxation in any enforceable permit limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the requirements of OAC 252:100-8, Parts 1, 3, 5, and 7 and 252:100-8-34 through 252:100-8-37 shall apply to that source or modification as though construction had not yet commenced on it.

(c) **Requirements when using projected actual emissions.** The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) when the owner or operator elects to use the method specified in (B)(i) through (iii) of the definition of "projected actual emissions" for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

- (A) A description of the project;
- (B) Identification of the existing emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
- (C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under (B)(iii) of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator shall provide a copy of the information set out in OAC 252:100-8-36.2(c)(1) to the Director. Nothing in OAC 252:100-8-36.2(c)(2) shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in OAC 252:100-8-36.2(c)(1)(B); and calculate and maintain a record of the annual emissions, in TPY on a calendar year basis, for a period of 5 years following resumption of

regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(4) If the unit is an existing EUSGU, the owner or operator shall submit a report to the Director within 60 days after the end of each year during which records must be generated under OAC 252:100-8-36.2(c)(3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an EUSGU, the owner or operator shall submit a report to the Director if the annual emissions, in TPY, from the project identified in OAC 252:100-8-36.2(c)(1), exceed the baseline actual emissions (as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C)) by an amount that is significant for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C). Such report shall be submitted to the Director within 60 days after the end of such year. The report shall contain the following:

- (A) The name, address and telephone number of the major stationary source;
- (B) The annual emissions as calculated pursuant to OAC 252:100-8-36.2(c)(3); and
- (C) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(6) The owner or operator of the source shall make the information required to be documented and maintained pursuant to OAC 252:100-8-36.2(c) available for review upon request for inspection by the Director or the general public.

(7) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 shall apply as if construction has not yet commenced at any time that a project is determined to be a major modification based on any credible evidence, including but not limited to emissions data produced after the project is completed. In any such case, the owner or operator may be subject to enforcement for failure to obtain a PSD permit prior to beginning actual construction.

(8) If an owner or operator materially fails to comply with the provisions of OAC 252:100-8-36.2(c), then the calendar year emissions are presumed to equal the source's potential to emit.

252:100-8-37. Innovative control technology

(a) An applicant for a permit for a proposed major stationary source or major modification may request the Director in writing to approve a system of innovative control technology.

(b) The Director may determine that the innovative control technology is permissible if:

- (1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function.
- (2) The applicant agrees to achieve a level of continuous emissions reductions equivalent to that which would have been required for BACT under OAC 252:100-8-34(b)(1) by a date specified by the Director. Such date shall not be later than 4 years from the time of start-up or 7 years from permit issuance.
- (3) The source or modification would meet the requirements equivalent to those in OAC 252:100-8-34 and 252:100-8-35(a) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Director.
- (4) The source or modification would not, before the date specified, cause or contribute to any violation of the applicable NAAQS, or impact any Class I area or area where an applicable increment is known to be violated.
- (5) All other applicable requirements including those for public participation have been met.
- (6) The provisions of OAC 252:100-8-36 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

(c) The Director shall withdraw approval to employ a system of innovative control technology made under OAC 252:100-8-37, if:

- (1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or,
 - (2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or,
 - (3) The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.
- (d) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with OAC 252:100-8-37(c), the Director may allow the source or modification up to an additional 3 years to meet the requirement for application of BACT through the use of a demonstrated system of control.

252:100-8-38. Actuals PAL

(a) **Incorporation by reference.** With the exception of the definitions in OAC 252:100-8-38(c), 40 CFR 51.166(w), Actuals PALs, is hereby incorporated by reference, as it exists on July 2, 2007, and does not include any subsequent amendments or editions to the referenced material.

(b) **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.

(c) **Terminology related to 40 CFR 51.166(w).** For purposes of interfacing with 40 CFR, the following terms 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 252:100-8-31.
- (5) "Net emissions increase" is synonymous with the definition of "net emissions increase" in OAC 252:100-8-31.
- (6) "Reviewing authority" is synonymous with "Director".
- (7) "State implementation plan" is synonymous with OAC 252:100.
- (8) "Volatile organic compound (VOC)" is synonymous with the definition of "volatile organic compound" or "VOC" in OAC 252:100-1-3.

252:100-8-39. Severability

If any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS

252:100-8-50. Applicability

(a) **General applicability.**

(1) The requirements of this Part shall apply to the construction of any new major stationary source or major modification which would locate in or affect a nonattainment area located in Oklahoma, designated under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification is major for the pollutant for which the area is designated nonattainment.

(2) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of any new major stationary source or major modification.

(3) In addition, the requirements of a PSD review (OAC 252:100-8, Part 7) would be applicable if any regulated NSR pollutant other than the nonattainment pollutant is emitted in significant amounts by that source or modification.

(b) **Major modification.**

(1) **Major modification applicability determination.**

(A) Except as otherwise provided in OAC 252:100-8-50(c), and consistent with the definition of "major modification" contained in OAC 252:100-8-51, a project is a major modification for a regulated

NSR pollutant if it causes two types of emissions increases:

- (i) a significant emissions increase, and
- (ii) a significant net emissions increase.

(B) The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) Calculating significant emissions increase and significant net emissions increase. The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions unit(s) being modified, according to OAC 252:100-8-50(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase" in OAC 252:100-8-50.1 and 252:100-8-51. This is the second step in the process of determining if a proposed modification is a major modification. Both steps occur prior to the beginning of actual construction. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, as applicable, for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.

(4) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.

(5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in OAC 252:100-8-50(b)(3) and (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant.

(c) Plantwide applicability limitation (PAL). Major stationary sources seeking to obtain or maintain a PAL shall comply with requirements under OAC 252:100-8-56.

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) "Reviewing authority" is synonymous with "Director".

(7) "Secondary emissions" is synonymous with the definition of "secondary emissions" in OAC 252:100-8-1.1.

(8) "State implementation plan" is synonymous with OAC 252:100.

(9) "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, except for the definitions found at 40 CFR 51.165(a)(1)(xxxv) "baseline actual emissions"; (ii) "building, structure, facility, or installation"; (xiv) "fixed capital cost"; (xlv) "functionally equivalent component"; (v) "major modification"; (vi) "net emissions increase"; (xliii) "process unit"; (xxxviii) "reviewing authority"; (viii) "secondary emissions"; (xlvi) "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.

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.

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.

(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 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.

252:100-8-53. Exemptions

(a) The requirements in 40 CFR 51.165(a)(4) regarding exemption of fugitive emissions in determining if a source or modification is major are hereby incorporated by reference as they exist on July 2, 2007.

(b) Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if the source or modification was not subject to 40 CFR Part 51, Appendix S (emission offset interpretative ruling) as it existed on January 16, 1979, and the source:

(1) obtained all final federal and state construction permits before August 7, 1980;

(2) commenced construction within 18 months from August 7, 1980, or any earlier time required by the State Implementation Plan; and,

(3) did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

(c) Secondary emissions are excluded in determining the potential to emit. However, upon determination of the Director, if a source is subject to the requirements on the basis of its direct emissions, the applicable requirements must also be met for secondary emissions but the source would be exempt from the conditions of OAC 252:100-8-52(d) and 252:100-8-54(1) through 252:100-8-54(3). Also, the indirect impacts of mobile sources are excluded.

(d) As specified in the applicable definitions, the requirements of Part 7 for PSD and Part 9 for nonattainment areas of this Subchapter are not

applicable to a modification if the existing source was not major on August 7, 1980, unless the proposed addition to the existing minor source is major in its own right.

252:100-8-54. Requirements for sources located in nonattainment areas

In the event a major source or modification would be constructed in an area designated as nonattainment for a pollutant for which the source or modification is major, approval shall be granted only if the following conditions are met:

- (1) The new source must demonstrate that it has applied control technology which the Director, on a case-by-case basis, determines is achievable for a source based on the lowest achievable emission rate (LAER) achieved in practice by such category of source (i.e., lowest achievable emission rate as defined in the Act).
- (2) If the Director determines that imposition of an enforceable numerical emission standard is infeasible due to technological or economic limitations on measurement methodology, a design, equipment, work practice or operational standard, or combination thereof, may be prescribed as the emission limitation rate.
- (3) The owner or operator of the new source must demonstrate that all other major sources owned or operated by such person in Oklahoma are in compliance, or are meeting all steps on a schedule for compliance, with all applicable limitations and standards under Oklahoma and Federal Clean Air Acts.
- (4) The owner or operator of the new source must demonstrate that upon commencing operations:
 - (A) The emissions from the proposed source and all other sources permitted in the area do not exceed the planned growth allowable for the area designated in the State Implementation Plan; or,
 - (B) The total allowable emissions from existing sources in the region and the emissions from the proposed source will be sufficiently less than the total emissions from existing sources allowed under the State Implementation Plan at the date of construction permit application so as to represent further progress toward attainment or maintenance of the ambient air quality standards in the problem area.
- (5) The owner or operator may present with the application an analysis of alternate sites, sizes and production processes for such proposed source.

252:100-8-54.1 Ozone and PM-10 precursors

(a) **Ozone.** The requirements of Part 9 of OAC 252:100-8 applicable to major stationary sources and major modifications of VOCs shall apply to NO_x emissions from major stationary sources and major modifications of NO_x in an ozone transport region (as defined in 42 U.S.C. § 7511c) or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone

transport region where the Administrator has granted a NO_x waiver applying the standards set forth under section 182(f) of the Act and the waiver continues to apply.

(b) **PM-10 precursors.** The requirements of Part 9 of OAC 252:100-8 applicable to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

252:100-8-55. Source obligation

(a) **Construction permits required.** An owner or operator shall obtain a construction permit prior to commencing construction of a new major stationary source or major modification.

(b) **Responsibility to comply and the consequences of relaxation of permit conditions.** The requirements in 40 CFR 51.165(a)(5) regarding the responsibility to comply with applicable local State or Federal law and the consequences of becoming a major source by virtue of a relaxation in any enforcement limitation are hereby incorporated by reference as they exist on July 2, 2007.

(c) **Requirements when using projected actual emissions.**

(1) The specific provisions in 40 CFR 51.165(a)(6)(i) through (v) (as they exist on July 2, 2007) shall apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) when the owner or operator elects to use the methods specified in the definition of "projected actual emissions" at 40 CFR 51.165(a)(1)(xxviii)(B)(1) through (3) for calculating projected actual emissions.

(2) The requirements in 40 CFR 51.165(a)(6)(i) through (v) are hereby incorporated by reference as they exist on July 2, 2007.

(d) **Availability of information.** The requirements in 40 CFR 51.165(a)(7) regarding availability of information required to document the use of projected actual emissions for determining if a project is a major modification are hereby incorporated by reference as they exist on July 2, 2007.

252:100-8-56. Actuals PAL

The requirements in 40 CFR 51.165(f) regarding actuals PAL except for the terminology contained in OAC 252:100-8-50.1(b), are hereby incorporated by reference as they exist on July 2, 2007.

252:100-8-57. Severability

If any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Legal Authority

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.

§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 (\$.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, and technology center school districts 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 and the technology center school districts 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 and the technology center school districts 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.

§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.

August 15, 2001
Air Quality Advisory Council

August 21, 2001
Environmental Quality Board

Effective Date: June 1, 2002

Events and Issues, or copies may be obtained from Myrna Bruce by calling (405) 702-4177.

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, 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; (405) 702-4100.

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 #01-1297; filed 6-29-01]

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

[OAR Docket #01-1298]

INTENDED RULEMAKING ACTION:

Notice of proposed **PERMANENT** and **EMERGENCY** rulemaking

PROPOSED RULES:

- Subchapter 8. Permits for Part 70 Sources
- Part 5. Permits for Part 70 Sources
- 252:100-8-7.1 [AMENDED]
- 252:100-8-7.2 [AMENDED]
- 252:100-8-8 [AMENDED]

SUMMARY:

The Department is considering the following revisions to Subchapter 8 that are necessary for final approval of our Title V program. (1) The Department proposes to add language to paragraph 8-7.1(d)(2) that states that if DEQ fails to act on a permit renewal in a timely manner, EPA may terminate the permit or revoke and reissue the permit. (2) The Department proposes to strike the words "upon the Administrator's request" in subparagraph 8-7.2(a)(3)(B). (3) The Department proposes to strike the words "unless waived by the Administrator" from subparagraph 8-7.2(b)(1)(C). (4) The Department proposes to revise the language in subsection 8-8(a) to clarify that the requirements for EPA and affected states review apply to all part 70 applications and permits. The Department will also move language regarding waiver of compliance by EPA to subsections dealing more specifically with the subject matter that can be waived. (5) The Department proposes to revise the language in subsection 8-8(d) regarding the transmission of part 70 applications to EPA. (6) The Department proposes to revise subsection 8-8(e) regarding

transmission of notice of draft permit to affected states. (7) The Department proposes to clarify the language of subsection 8-8(f) so that it covers all applicable permit actions. (8) The Department proposes to clarify the language of subsection 8-8(h) so that it covers all applicable permit actions. (9) The Department proposes to amend subsections 8-8(i) and (j) regarding the Departmental action on a Part 70 permit after EPA review of and objection to such permit. (10) The Department proposes to strike the words "or determined to be inconsistent with applicable laws" from subparagraph 8-8(k). (11) The Department is considering adding a new subsection 8-8(l) forbidding the issuance of a part 70 permit or renewal until affected states and EPA have had an opportunity to review the permit or renewal. (12) The Department is considering additional minor changes for clarity.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S.Supp. 2000, §§ 2-2-101, 2-2-201; and Oklahoma Clean Air Act §§ 2-5-101 *et seq.*

COMMENT PERIOD:

Written comments will be accepted prior to and at the hearing on August 15, 2001. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by August 8, 2001. Oral comments may be made at the August 15, 2001, hearing and at the Environmental Quality Board hearing on November 13, 2001, in Okmulgee, Oklahoma.

PUBLIC HEARINGS:

Wednesday, August 15, 2001 - 9:00 a.m. hearing, 707 North Greenwood, Room 150, OSU at Tulsa, Tulsa, Oklahoma.

Scheduled before the Environmental Quality Board at 9:30 a.m. on November 13, 2001, Okmulgee, OK, (exact location to be announced).

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 Current Events and Issues, or copies may be obtained from Myrna Bruce by calling (405) 702-4177.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person.

Notices of Rulemaking Intent

CONTACT PERSON:

Please send written comments to Joyce Sheedy, 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; (405) 702-4100.

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 #01-1298; filed 6-29-01]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL CHAPTER 10. REQUIREMENTS FOR REGISTRATION

[OAR Docket #01-1278]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULE:

475:10-1-24 Ephedra/Mahuang exemption
[AMENDED]

SUMMARY:

The proposed amendment to rule 475:10-1-24 will eliminate the contradiction between paragraph "E" and paragraph "2". Paragraph "E" states that it is acceptable to include descriptions of ephedrine alkaloids, however paragraph "2" states a person can not represent in any manner that it contains ephedrine alkaloids. The proposed amendment will make it acceptable to include descriptions of ephedrine alkaloids, so long as the description does not state that the ephedrine alkaloids increase muscle mass.

AUTHORITY:

Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; 63 O.S. § 2-301; 75 O.S. § 302.

COMMENT PERIOD:

Persons may submit written and oral comments to Mark Lane at 4545 N. Lincoln Blvd., Suite 11, Oklahoma City, OK 73105, no later than August 6, 2001.

PUBLIC HEARING:

A public hearing has not been scheduled; however, persons may demand a hearing by contacting Mark Lane at (405) 521-2885 no later than 5:00pm on August 6, 2001.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by this amendment are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed

amendment. Business entities may submit this information in writing to Mark Lane at the above address during the period from July 16, 2001, to August 6, 2001.

COPIES OF PROPOSED RULE:

Copies of the proposed rule may be obtained in person or by mail from the Oklahoma State Bureau of Narcotics office located at 4545 N. Lincoln Blvd., Suite 11, Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

A rule impact statement is available for review.

CONTACT PERSON:

Mark Lane, Assistant General Counsel, (405) 521-2885 or (800) 522-8031.

[OAR Docket #01-1278; filed 6-19-01]

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

~~OCAR Docket #01-1309~~

RULEMAKING ACTION:

Notice of proposed ~~PERMANENT~~ and ~~EMERGENCY~~ rulemaking.

PROPOSED RULES:

~~Subchapter 8. Permits for Part 70 Sources~~
Part 5. Permits for Part 70 Sources
252:100-8-8 [AMENDED]

SUMMARY:

The Department is considering the following revisions to Subchapter 8 that are necessary for final approval of our Title V program. (1) The Department proposes to revise the language in subsection 8-8(a) to clarify that the requirements for EPA and affected states review apply to construction permit issuance and permit modifications for Part 70 sources, and Part 70 permit issuance, permit modifications and permit renewals. The Department will also move language regarding waiver of compliance by EPA to subsections dealing more specifically with the subject matter that can be waived. (2) The Department proposes to revise the language in subsection 8-8(d) regarding the transmission of part 70 applications to EPA. (3) The Department proposes to revise subsection 8-8(e) regarding transmittal of notice of draft permit to affected states. (4) The Department proposes to clarify the language of subsection 8-8(f) so that it covers all applicable permit actions. (5) The Department proposes to clarify the language of subsection 8-8(h) so that it covers all applicable permit actions. (6) The Department proposes to amend subsections 8-8(i) regarding the Departmental action on a Part 70 permit after EPA review of and objection to such permit and replace the term draft permit with the term proposed permit. (7) The Department proposes to change the language in subsection 8-8(j) to indicate that EPA will follow the Federal Part 70 regulations should the Administrator modify, terminate, or revoke a DEQ issued permit. (8) The Department proposes to strike the words "or determined to be inconsistent with applicable laws"

from subparagraph 8-8(k). (9) The Department is considering additional minor changes for clarity.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S.Supp. 2000, §§ 2-2-101, 2-2-201; and Oklahoma Clean Air Act §§ 2-5-101 *et seq.*

COMMENT PERIOD:

A notice for these proposed changes was originally published on July 16, 2001 in which it was noticed that written comments will be accepted prior to and at the Air Quality Council hearing on August 15, 2001 and that oral comments may also be made at that time. Oral comments may also be made at the Environmental Quality Board hearing on August 21, 2001, in Ardmore, Oklahoma.

PUBLIC HEARINGS:

Scheduled before the ~~Environmental Quality Board~~ at 9:30 a.m. on August 21, 2001, at Kruse Auditorium, Noble Foundation, 2510 Sam Noble Pkwy, Ardmore, OK

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 Current Events and Issues, or copies may be obtained from Myrna Bruce by calling (405) 702-4177.

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, 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; (405) 702-4100.

Notices of Rulemaking Intent

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 #01-1309; filed 7-5-01]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 60. MOTOR VEHICLES

[OAR Docket #01-1308]

RULEMAKING ACTION:

Notice of proposed PERMANENT AND EMERGENCY rulemaking.

PROPOSED RULES:

Subchapter 4. Registration Pursuant to the International Registration Plan [AMENDED]

SUMMARY:

The Commission seeks public input prior to implementing rules which will establish an estimated mileage chart for use in registering fleets under the IRP which were not operated in the state during the preceding year, and for which a full statement of proposed method of operation is absent. Additionally, proposed rules to govern the distribution and issuance of temporary 45-day permits by persons under contract with the Commission will be presented.

AUTHORITY:

47 O.S. §§1120, 1124.1; Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., August 20, 2001, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, at the numbers provided below.

PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules. Time, Date and Place of the hearing is as follows:

Wednesday, August 22, 2001, 2:00 p.m. in the First Floor Hearing Room (Room 1-24) of the Oklahoma Tax Commission, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after August 16, 2001 from the same source listed above for obtaining copies of proposed rules.

CONTACT PERSON:

Carolyn H. Swifthurst, Tax Policy Analyst, Phone: 405-521-3133, FAX 405-522-0063, Email: cswifthurst@oktax.state.ok.us

[OAR Docket #01-1308; filed 7-5-01]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 20. NUISANCE AQUATIC SPECIES RULES

[OAR Docket #01-1305]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Noxious Aquatic Plant Rules

800:20-3-1. Purpose [AMENDED]

800:20-3-2. List of restricted noxious aquatic plant species [AMENDED]

SUMMARY:

This rule will establish a list of restricted noxious aquatic plants and a list of plant species classified as "Species to Watch" which will not be prohibited. By law, the ODWC is given the authority (29 §6-601) to designate and declare any aquatic plants as "noxious", if the "may cause injury to the environment of the state". This proposal would reduce the risk and prevent the spread of noxious aquatic plants which are being sold and distributed through the backyard water gardening trade. Some of these plants could have a detrimental impact if accidentally or intentionally released in to Oklahoma's aquatic environment. These rules are currently in effect as an emergency.

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401 and 6-601 and Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission

**REGULAR MEETING/HEARING AGENDA
AIR QUALITY COUNCIL
DEPARTMENT OF ENVIRONMENTAL QUALITY
AUGUST 15, 2001 9:00 A.M.
OSU @ TULSA, North Hall Room 150
- 700 North Greenwood Tulsa, Oklahoma**

- 1. Call to Order – David Branecky, Chair**
- 2. Roll Call – Myrna Bruce**
- 3. Approval of Minutes of the June 20, 2001 Regular Meeting**
- 4. Public Rulemaking Hearings**

A. OAC 252:100-8 PERMITS FOR PART 70 SOURCES [AMENDED]

EPA has recently responded to Oklahoma's July 27, 1998 request for full approval of the Department's Title V permitting program with a list of deficiencies. The Department proposes to revise portions of subchapter 8 addressing the issues EPA deems critical for approval. Timing is imperative. If Oklahoma does not have program approval by December 1, 2001, EPA's Part 71 operating permits regulations automatically go into effect.

1. Presentation – Joyce Sheedy
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

B. OAC 252:100-5-2.2(b) REGISTRATION, EMISSION INVENTORY AND ANNUAL OPERATING FEES [AMENDED]

The Department is proposing increases in the annual operating fees from \$17.12 to \$22.28 per ton of regulated pollutant (for fee calculation) for both minor facilities and part 70 sources found under 252:100-5-2.2(b). In addition a few routine clean-up type revisions are proposed.

1. Presentation – Staff
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

5. Division Director's Report – Eddie Terrill

- 6. New Business – (Any matter not known about, or which could not have been reasonably foreseen prior to the time of posting the Agenda.)**

7. Adjournment Next Regular Meeting October 24, 2001 Lakeview Lodge, Broken Bow

Lunch Break, if necessary

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-8. Permit review by EPA and affected states

(a) **Applicability.** This Section applies ~~only to specific Tier II and III applications for Part 70 construction and/or operating permits and permit actions that have not been waived from compliance with this section by the Administrator to all Subchapter 8 permit actions except administrative permit amendments.~~

(b) **Format.** To the extent practicable, information provided to the EPA by applicants shall be in computer-readable format compatible with EPA's national database management system.

(c) **Recordkeeping.** The DEQ will keep for 5 years records required by this Section and will submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this Chapter.

(d) **Transmission of ~~Part 70 applications~~ information to EPA.** ~~For Part 70 Tier II and III applications subject to this section, the~~ The DEQ shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit, unless waived by the Administrator for a category of sources other than major sources. In the alternative, the DEQ may require an applicant upon filing to also provide a copy of the permit application (including the compliance plan) directly to the Administrator. ~~Upon agreement with the Administrator, the DEQ may submit a permit application summary form and any relevant portion of the permit application and compliance plan, in place thereof.~~

(e) **~~Transmittal~~ Transmission of notice of draft permit to affected states.** ~~See 27A O.S. § 2-5-112(E); 27A O.S. §§ 2-14-101 through 2-14-401; and OAC 252:2-15. The DEQ shall give notice of each draft permit to any affected State on or before the time that this notice is provided to the public under 27A O.S. § 2-14-302, except to the extent that paragraph 8-7.2(b)(1) regarding minor permit modification applications, and 40 CFR § 70.7(e)(3)(iii) regarding group processing of minor permit modifications, requires the timing of the notice to be different.~~

(f) **~~Preparation and submittal~~ Timelines for submission of EPA review copy.**

~~(1) Tier II applications.~~ For Tier II applications, the DEQ shall review public comments, revise the draft permit as appropriate and submit the revision to EPA for review no later than 60 days before the issuance deadline established in OAC 252:2-15-72 or, if none, by this Chapter.

~~(2) Tier III applications.~~ For Tier III applications, the DEQ shall prepare a proposed permit according to 27A O.S. § 2-14-304, and submit it to EPA for review upon the publication of notice of an administrative permit hearing opportunity. The DEQ shall review public comments, revise the draft permit as appropriate and submit the proposed permit to EPA for review no later than 60 days before the issuance deadline established in OAC 252:4-7-31, except as provided in OAC 252:4-7-9 through 4-7-11, which stop the review timeline and provide additional time

for permit review.

(g) ~~Notice of non-acceptance. As part of the DEQ's submittal of a revised draft permit (Tier II) or a proposed permit (Tier III) to the Administrator, the~~ The DEQ shall notify the Administrator and any affected State in writing of any refusal by the DEQ to accept all recommendations for the ~~revised draft permit or proposed permit~~ that the affected State submitted during the review period. The notice will include the DEQ's reasons for not accepting any such recommendation. The DEQ is not required to accept recommendations that are not based on applicable requirements of the Oklahoma Clean Air Act or ~~these rules~~ 40 CFR Part 70.

(h) **EPA review and non-objection.** Upon receipt of notice from the EPA ~~that it will not object to:~~

~~(1) A revised draft permit based on a Tier II application, the DEQ shall issue the permit.~~

~~(2) A proposed permit based on a Tier III application, a proposed permit, the DEQ shall issue the proposed permit as final unless an administrative permit hearing has been timely and properly requested.~~

(i) **EPA review and objection.**

(1) **Timing.** ~~Except as specified in paragraph 5 of this subsection, no~~ No permit for which an application must be transmitted to the Administrator under subsection (a) of this Section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the ~~revised draft permit (Tier II) or proposed permit (Tier III)~~ and all necessary supporting information.

(2) **Form of objection.** An EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections.

(3) **Additional grounds.** Failure of the DEQ to do any of the following also shall constitute grounds for an objection:

(A) Comply with subsections (d) or (e) of this Section;

(B) Submit any information necessary to review adequately the ~~revised draft permit (Tier II) or the proposed permit (Tier III)~~; or

(C) Process the permit application according to the uniform permitting requirements of OAC 252:2-15-252:4-7 Part 1.

(4) **Copy.** The Administrator will provide the permit applicant a copy of the objection.

(5) **DEQ response.** The DEQ shall consult with EPA and the applicant and shall either:

~~(A) Amend permit. Amend amend the permit and submit for approval an amended draft (Tier II) or proposed (Tier III) permit to EPA within 90 days after the date of EPA's objection, or~~

~~(B) Give notice and issue. Determine that one or more revisions sought by EPA are inconsistent with applicable state or federal statutes or regulations, inform EPA accordingly within 90 days following the date of the Administrator's objection, decline to make those particular revisions and:~~

~~(i) issue the amended or revised draft permit (Tier II) as final, or~~

~~(ii) issue the proposed permit (Tier III) as final unless~~

~~an administrative permit hearing has been timely and properly requested.~~

(6) **Failure of DEQ to respond.** If the DEQ fails, within 90 days after the date of the EPA objection, to amend and resubmit the ~~draft permit or amended~~ proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of EPA's Part ~~70-71~~ regulations.

(j) **Public petitions to the Administrator.** If the Administrator does not object in writing under subsection (h) of this ~~section~~ Section, any person that meets the requirements of this subsection may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that the petitioner raised with reasonable specificity during the public comment period provided for in ~~OAC 252:2-15-27A O.S. § 2-14-302.A.2.,~~ unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the DEQ shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the DEQ has issued a permit prior to receipt of an EPA objection under this subsection, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in ~~OAC 252:100-8-7 through 252:100-8-7.5-40~~ 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) except in unusual circumstances. If the DEQ revokes the permit, it may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(k) **Effect on ~~Tier III~~ administrative permit hearing.** When a public petition or an EPA objection is registered on a proposed permit ~~(Tier III)~~ on which an administrative permit hearing has been requested in accordance with the Oklahoma Uniform Environmental Permitting Act, 27A O.S. §§ 2-14-101 through 2-14-401, the DEQ may stay the evidentiary part of the hearing involving cross-examination until EPA objections are resolved ~~or determined to be inconsistent with applicable laws.~~

2

MINUTES
AIR QUALITY COUNCIL
August 15, 2001
Tulsa, Oklahoma

Council Members Present

David Branecky, Chairman
Sharon Myers, Vice-Chair
Gary Kilpatrick
Gary Martin
William B. Breisch
Robert Lynch
Joel Wilson
Rick Treeman

Staff Present

Eddie Terrill
David Dyke
Scott Thomas
Dawson Lasseter
Shawna McWaters-Khalousi
Pam Dizikes
Marilyn Simpson

Staff Present

Jeanette Buttram
Joyce Sheedy
Cheryl Bradley
Pat Sullivan
Myrna Bruce

Council Members Absent

Fred Grosz

Guest Present

**see attached list

Notice of Public Meeting for August 15, 2001 was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting. At least twenty-four hours prior to the meeting, agendas were posted on the entrance doors at of the DEQ Central Office in Oklahoma City and the doorway to North Hall Room 150 and the building entrance at OSU/Tulsa.

Call to Order Chairman Branecky called the meeting to order at 9:00 a.m. and roll call was taken by Ms. Bruce as follows: Roll call: Ms. Myers – here; Mr. Wilson - here; Mr. Kilpatrick - here; Mr. Breisch – here; Mr. Treeman - here; Dr. Lynch – here; and Mr. Branecky – here. Mr. Martin arrived after roll call was taken and Dr. Grosz did not attend.

Approval of Minutes Mr. Branecky entertained a motion to approve the minutes of the June 20, 2001 Public Meeting/Hearings. Ms. Myers pointed out that there were a number of mistakes in the transcript making them unclear as to the meaning. There were also a number of typographical errors. During discussion, it was decided that these Minutes and Transcripts would be presented to the Environmental Quality Board as a Draft version should Council recommend any of the proposals for approval. Motion was made by Ms. Myers to defer approval of the Minutes for correction and possible approval at the October 24, 2001 Air Quality Council meeting. Second was made by Dr. Lynch. Roll call: Ms. Myers - aye; Mr. Wilson - aye; Mr. Kilpatrick - aye; Mr. Breisch - aye; Mr. Treeman - aye; Dr. Lynch - aye; and Mr. Branecky - aye.

Protocol Statement As protocol officer, Mr. Dyke 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 2-2-201; 2-5-101 through 2-5-118. Mr. Dyke entered the agenda and the Oklahoma Register Notice into the record.

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

Dr. Sheedy advised that on July 27, 1998 the Governor of Oklahoma submitted a request to EPA Region VI for full approval of Oklahoma's Title V program. On May 30, 2001, the Air Quality Division received via e-mail a draft letter of comments from Region VI listing deficiencies in that submittal. (Hard copy of those comments was received on June 15, 2001) These comments from EPA were in response to a settlement agreement under which all states that have not received final approval of their Title V program must remedy significant deficiencies to that program by December 1, 2001 or have the program revert to EPA administration. The proposed revisions address the most serious deficiencies noted by EPA so that the state can receive final approval of its program. To meet the December deadline, the proposed changes must be approved as emergency and permanent at the August 21, 2001 Environmental Quality Board meeting.

Dr. Sheedy entered into the record a comment letter from EPA received via facsimile on August 14, 2001 stating that the proposed changes correct the noted deficiencies and should be sufficient for approval.

The Department proposes to revise subsections 8-8(a), 8-8(d), 8-8(e), 8-8(f) and 8-8(h) to address issues of transmission to and review by EPA and affected states. Staff will move language regarding waiver of compliance by EPA to subsections dealing with the specific subject matter to be waived. Staff will amend subsection 8-8(i) regarding departmental action on a Part 70 permit after EPA review of and objection to such permit. Staff will also replace the term "draft permit" with "proposed permit". Staff will replace state rule citations in 8-8(j) with appropriate federal citations and make additional minor changes for clarity. Staff will delete "... or determined to be inconsistent with applicable laws." from subsection 8-8(k) regarding administrative permit hearings.

Following discussion, Mr. Kilpatrick moved to accept the proposed changes and recommend Subchapter 8 to the Environmental Quality Board. Ms. Myers made the second. Roll call: Ms. Myers - aye; Mr. Wilson- aye; Mr. Martin - aye; Mr. Kilpatrick - aye; Mr. Breisch - aye; Mr. Treeman - aye; Dr. Lynch - aye; and Mr. Branecky - aye.

A copy of the hearing transcript is attached and made an official part of these minutes.

PUBLIC HEARING
OAC 252-100-5-2.2(b)
Registration, Emission Inventory and Annual Operating Fees [AMENDED]

Ms. Pat Sullivan advised that proposed rule would allow for an increase in the annual operating fees. She entered into the record a letter of comment from Woodward Iodine Corporation dated August 8, 2001. Ms. Sullivan related that it was staff's recommendation to continue the hearing to the October 24 Council meeting in Broken Bow. Mr. David Dyke provided an updated slide

presentation. Mr. Branecky asked Council to consider passing a Resolution asking that the DEQ pursue through legislation the imposition of an annual fee to be imposed on mobile sources to help support the air quality program in Oklahoma. Ms. Myers made a motion that Council adopt the Resolution and send it the Environmental Quality Board. After additional discussion, Mr. Breisch made the second. Roll call for the Resolution was: Ms. Myers - aye; Mr. Wilson - aye; Mr. Wilson - aye; Mr. Kilpatrick - aye; Mr. Breisch - aye; Mr. Treeman - aye; Dr. Lynch - aye; and Mr. Branecky - aye.

Speaking on behalf of the Environmental Federation of Oklahoma Air Quality Committee, Mr. Howard Ground commented that EFO feels that it is necessary that the state of Oklahoma has an adequate program and adequate staffing. He asked for assurance that the fees collected would be no more than would be required to operate; that the fees be used appropriately as collected from Title V and for non-Title V permits; and that the State meets the needs of industry. Mr. Ground also advised that EFO is supportive of the Resolution previously passed by Council.

Ms. Myers made motion that the hearing be continued to the October 24 meeting and Mr. Wilson made the second. Roll call: Ms. Myers - aye; Mr. Wilson - aye; Mr. Wilson - aye; Mr. Kilpatrick - aye; Mr. Breisch - aye; Mr. Treeman - aye; Dr. Lynch - aye; and Mr. Branecky - aye.

A copy of the hearing transcript is attached and made an official part of these minutes.

Division Director's Report - None

New Business Dr. Richard Dawson and Mr. John Hartman made public their comments regarding the building of power plants in Oklahoma.

Adjournment With no further business, the meeting was adjourned with announcement that the next regularly scheduled meeting would be October 24, 2001 in the Cedar/Cypress Room at the Forest Heritage Center in Broken Bow, Oklahoma.

NOTE: The sign-in sheet is attached as an official part of these Minutes.

David Branecky, Chairman
Air Quality Council

J. Eddie Terrill, Director
Air Quality Division

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STATE OF OKLAHOMA

COPY

TRANSCRIPT OF PROCEEDINGS
AIR QUALITY COUNCIL MEETING
OAC 252:100-8
PERMITS FOR PART 70 SOURCES
HELD ON AUGUST 15, 2001 AT 9:00 A.M.
AT OSU AT TULSA, NORTH HALL ROOM 150
700 NORTH GREENWOOD
TULSA, OKLAHOMA

REPORTED BY: CHRISTY A. MYERS, C.S.R.

COUNCIL MEMBERS

- 1
- 2
- 3 David Branecky, Chairman
- 4 Sharon Myers, Vice-Chair
- 5 Rick Treeman, Member
- 6 Joel Wilson, Member
- 7 Dr. Fred Grosz, Member
- 8 Gary Kilpatrick, Member
- 9 Leo Fallon, Member
- 10 Bill Breisch, Member
- 11 Dr. Bob Lynch, Member
- 12 Gary Martin, Member
- 13 Eddie Terrill, Director
- 14 David Dyke, Protocol Officer
- 15 Myrna Bruce, Secretary
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- 25

1 absent are Dr. Grosz and Mr. Martin.
 2 MR. BRANECKY: The first item on
 3 the agenda is approval of the Minutes --
 4 I'm sorry. One point we would like to make
 5 this morning -- and I'm guilty as anybody -
 6 - if you have a cell phone or a pager,
 7 would you mind putting it on vibrate so we
 8 won't be disturbed during our meeting this
 9 morning.
 10 MS. MYERS: Vibrator off.
 11 MR. BRANECKY: Vibrator off.
 12 Thank you. Now we're ready for approval of
 13 the Minutes from the June 20th meeting. Do
 14 we have any discussion on the Minutes?
 15 MS. MYERS: There was an awful
 16 lot of mistakes in the Minutes. Some of
 17 them are typos, some of them are unclear as
 18 to what was really meant.
 19 MR. BRANECKY: In the transcript?
 20 MS. MYERS: Yes. So I don't know
 21 whether we approve those or whether we turn
 22 them back over to Christy and Myrna to get
 23 them corrected and approved at the next
 24 meeting. Right now I would not vote to
 25 approve them.

PROCEEDINGS

- 1
- 2
- 3 MR. BRANECKY: Let's go ahead and
- 4 get started this morning. Good morning,
- 5 everyone, welcome. We've got two items on
- 6 the agenda today. It shouldn't take too
- 7 terribly long, I hope.
- 8 Before we get to the first thing on
- 9 the agenda, I would like for Myrna to call
- 10 the roll.
- 11 MS. BRUCE: Ms. Myers.
- 12 MS. MYERS: Here.
- 13 MS. BRUCE: Mr. Wilson.
- 14 MR. WILSON: Here.
- 15 MS. BRUCE: Mr. Kilpatrick.
- 16 MR. KILPATRICK: Here.
- 17 MS. BRUCE: Mr. Breisch.
- 18 MR. BREISCH: Here.
- 19 MS. BRUCE: Mr. Treeman.
- 20 MR. TREEMAN: Here.
- 21 MS. BRUCE: Dr. Lynch.
- 22 DR. LYNCH: Here.
- 23 MS. BRUCE: Mr. Branecky.
- 24 MR. BRANECKY: Here.
- 25 MS. BRUCE: For the record,

1 COURT REPORTER: I can send them
 2 back to her. I could not make corrections
 3 on that disk, because it was an ascii. I
 4 will send them to her. I have made a lot
 5 of corrections you haven't seen, and we'll
 6 just have her do them.
 7 MR. DYKE: We realize there were
 8 a lot of mistakes in this. We had a
 9 temporary court reporter.
 10 MR. BRANECKY: So can we defer
 11 approval until the next meeting?
 12 MS. DIZIKES: Can we bring 31 to
 13 the Board without approved minutes?
 14 COURT REPORTER: Pam, I'm sorry,
 15 what did you say?
 16 MS. DIZIKES: I'm asking if we
 17 can bring Subchapter 31 to the Board
 18 without approved minutes.
 19 MR. BRANECKY: I don't think
 20 we've ever done that before.
 21 MR. TERRILL: That's a good
 22 point.
 23 MR. BRANECKY: And what if you
 24 can't?
 25 MS. DIZIKES: If we can't, then

1 we'll have to defer it for another meeting
 2 until they are approved.
 3 MR. BRANECKY: For 31? We'll
 4 have to defer 31 to next year.
 5 MS. DIZIKES: That's the only
 6 one.
 7 MR. BRANECKY: No, there is --
 8 can we approve the submitted corrected
 9 transcript?
 10 MS. MYERS: Conditionally, yes,
 11 if it's required to get those rules to the
 12 Board, and then maybe reopen it for
 13 discussion for the correction or accept
 14 amended minutes at the next meeting.
 15 MR. TERRILL: We should have
 16 anticipated this. We knew there were
 17 problems with that, but we didn't.
 18 MR. DYKE: Scott.
 19 MR. THOMAS: In the past when
 20 we've been on a tight schedule, we have
 21 presented draft minutes to the Board and
 22 they got through the system. I don't know
 23 the exact rules and regulations. But in
 24 the past, draft minutes that haven't been
 25 approved, have gone to the Board.

1 MR. WILSON: Yes.
 2 MS. BRUCE: Mr. Kilpatrick.
 3 MR. KILPATRICK: Aye.
 4 MS. BRUCE: Mr. Breisch.
 5 MR. BREISCH: Yes.
 6 MS. BRUCE: Mr. Treeman.
 7 MR. TREEMAN: Yes.
 8 MS. BRUCE: Dr. Lynch
 9 DR. LYNCH: Yes.
 10 MS. BRUCE: Mr. Branecky.
 11 MR. BRANECKY: Yes.
 12 All right, before we go into the
 13 public rulemaking portion of the meeting, I
 14 have two gentlemen here that would like to
 15 comment on Air Quality Standards. Since
 16 that is not, specifically, having to deal
 17 with Subchapter 8 or Subchapter 5, I would
 18 ask that you defer your comments and we'll
 19 cover those under new business, which will
 20 be Item 6 on our agenda.
 21 MR. DYKE: Good morning. I'm
 22 David Dyke, I'm Assistant Director of the
 23 Air Quality Division. As such, I'll be the
 24 Protocol Officer this morning for the
 25 hearings.

1 MS. DIZIKES: The point is being
 2 made that on Subchapter 8, we would be
 3 going without minute approval.
 4 MR. TERRILL: That's true, that's
 5 right. So we can defer these minutes until
 6 the next meeting
 7 MR. DYKE: We'll get that
 8 corrected and then present it again for
 9 approval.
 10 MR. BRANECKY: Okay. We need a
 11 vote, I guess, to defer approval of the
 12 Minutes until the October meeting.
 13 MS. MYERS: I make a motion that
 14 we defer the Minutes until the October
 15 meeting based on corrections that need to
 16 be made.
 17 MR. BRANECKY: I've got a motion.
 18 Second?
 19 DR. LYNCH: Yes.
 20 MR. BRANECKY: I have a motion
 21 and second.
 22 Myrna, call roll, please.
 23 MS. BRUCE: Ms. Myers.
 24 MS. MYERS: Yes.
 25 MS. BRUCE: Mr. Wilson.

1 These hearings will be convened by
 2 the Air Quality Council in compliance with
 3 the Oklahoma Administrative Procedures Act,
 4 Title 40 of the Code of Federal
 5 Regulations, Part 51, as well as the
 6 Authority of Title 27A of the Oklahoma
 7 Statutes, Section 2-2-201, Sections 2-5-101
 8 through 2-5-118.
 9 These hearings were advertized in
 10 the Oklahoma Register for the purpose of
 11 receiving comments pertaining to the
 12 proposed OAC Title 252 Chapter 100 Rules,
 13 as listed on the agenda, which will be
 14 entered into the record, along with the
 15 register filing. If you wish to make a
 16 statement, complete a form and I'll call on
 17 you at the appropriate time.
 18 We'll proceed this morning with what
 19 is marked as Agenda Item 4A of the amended
 20 agenda, OAC 252:100-8, Permits for Part 70
 21 Sources.
 22 I'll call on Dr. Joyce Sheedy.
 23 Joyce, you'll need to speak up, because
 24 there is not a microphone over there.
 25 DR. SHEEDY: Okay, I will try to

1 make sure you can hear me.
2 MR. BRANECKY: Can everybody in
3 the back hear? Okay.

4 DR. SHEEDY: Mr. Chairman,
5 Members of the Council, ladies and
6 gentlemen, the proposed revisions to
7 Section 8 of Subchapter 8 are necessary in
8 order for the State to receive final
9 approval of its Title V operating permit
10 program.

11 On July 27, 1998, the Governor of
12 Oklahoma submitted a request to EPA, Region
13 6, for full approval of Oklahoma's Title V
14 program. Since that time, EPA has entered
15 a settlement agreement in a lawsuit brought
16 by the Sierra Club, under which all states
17 that have not received final approval of
18 their Title V program must remedy
19 significant deficiencies to that program by
20 December 1, 2001. Interim approvals will
21 expire on that date, leaving EPA to run the
22 programs in those states.

23 On May 30, 2001, the Air Quality
24 Division received, via e-mail, a draft
25 letter of comments from Region 6, listing

1 proposed changes for Subchapter 8 and
2 believes that these changes will correct
3 the EPA objection to the deficiency.

4 At this time, staff proposes the
5 following revisions to Section 8 of
6 Subchapter 8.

7 On page 1, staff proposes to amend
8 Subsection 8(a), title "Applicability", to
9 clarify that Section 8 applies to all
10 Subchapter 8 permit actions except
11 administrative permit amendments. This
12 includes construction permits as well as
13 Part 70 operating permits. One result of
14 this amendment is to ensure that the
15 process of issuing construction and
16 operation permits will not require
17 redundant review by EPA and affected
18 states. In addition, language regarding
19 waiver of compliance by EPA has been
20 deleted from Subsection 8(a), and moved to
21 Subsection 8(d), which deals more
22 specifically with the requirements that can
23 be waived. Both of these changes are
24 consistent with the way the Division
25 administers the program.

1 deficiencies in the Oklahoma program as
2 submitted in 1998. This was followed by a
3 hard copy on June the 12th -- dated June
4 12th, 2001, that was received on June the
5 15th. A copy of this letter is included in
6 the Council packet and will be made part of
7 the hearing record.

8 Discussions between the Department
9 staff and EPA resulted in identification of
10 the deficiencies listed in the letter that
11 EPA considers significant and which,
12 therefore, must be corrected prior to
13 December 1, 2001, in order for the
14 Department to retain the Title V program.
15 Other nonsignificant deficiencies will be
16 identified in a Notice of Deficiency and
17 the necessary rule changes will be made at
18 a later date. In order for the -- to meet
19 the December 1 deadline, the rule changes
20 presented today must be approved as
21 emergency and permanent at the August 21st,
22 2001, Environmental Quality Board Meeting.

23 EPA faxed a letter to the Division
24 on 8/14/01, yesterday, which basically
25 states that the EPA has reviewed the

1 Also on page 1, staff proposes to
2 revise Subsection 8(d), now titled
3 "Transmission of information to EPA", to
4 clarify that EPA will be provided with a
5 copy of each permit application, each
6 proposed permit, and each final permit,
7 unless waived by the Administrator, and
8 that upon agreement with the Administrator,
9 a permit application summary form and
10 relevant portions of the permit application
11 and compliance plan may be submitted in
12 place of the complete permit application.
13 For any of you who may have reviewed the
14 proposed changes to Subchapter 8 that were
15 on the DEQ web page, there has been a
16 change in this subsection since it first
17 appeared. In the first sentence of
18 Subsection 8(d), five lines down counting
19 the tag line, the phrase "each final
20 permit" was originally "each final part 70
21 permit" on the web page. The words "part
22 70" were deleted for consistency with
23 changes in Subsection 8(a), which makes the
24 requirements applicable to all Subchapter 8
25 permit actions, including both construction

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1 and operating permits, as stated before,
 2 only administrative permit amendments are
 3 excepted.
 4 On page 1, Subsection 8(e), now
 5 titled "Transmission of notice of draft
 6 permit to affected states" has been
 7 rewritten. This subsection currently
 8 consists solely of incorporations by
 9 reference. These incorporations are not
 10 relevant to 40 CFR Section 70.8(b), that
 11 requires DEQ to provide notice of each
 12 draft permit to any affected state on or
 13 before the time notice is provided to the
 14 public. Staff proposes to replace these
 15 incorporations by language that clarifies
 16 that the Department shall give notice of
 17 each draft permit to any affected states on
 18 or before notice is given to the public.
 19 Beginning on page 1 and continuing
 20 to page 2, staff proposes to revise
 21 Subsection 8(f), now titled "Timelines for
 22 submission of EPA review copy". We
 23 proposed to clarify that the subsection
 24 applies to all Subchapter 8 permit actions
 25 except administrative permit amendments.

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1 term "revised draft permit" has been
 2 deleted from this subsection.
 3 Several changes are proposed to
 4 Subsection 8(i), titled "EPA review and
 5 objection", which begins on page 2 and
 6 continues to page 3.
 7 In paragraph 8(i) titled "Timing",
 8 the term "revised draft permit" has been
 9 replaced by "proposed permit" as requested
 10 by EPA, and references to Tier II and Tier
 11 III have been deleted to clarify that the
 12 requirements of the paragraph apply to all
 13 Subchapter 8 permit actions except
 14 administrative permit amendments.
 15 Beginning at the bottom of page 1
 16 and continuing on to page 2, staff proposes
 17 to revise Subparagraph 8(i)(3)(B) to remove
 18 references to Tier II and Tier III.
 19 On page 3, staff has updated the
 20 citation in subparagraph 8(i)(3)(C) to
 21 reflect the replacement of Chapter 2 by
 22 Chapter 4.
 23 Also, on page 3, staff proposes to
 24 amend Subparagraph 8(i)(5)(A) by removal of
 25 references to Tier II and Tier III and to

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1 This is done by removing the references to
 2 Tier II and Tier III permit actions.
 3 On page 2, staff proposes to amend
 4 Subsection 8(g), titled "Notice of non-
 5 acceptance", to clarify that the notice
 6 requirement applies to all Subchapter 8
 7 permit actions except administrative permit
 8 amendment. Again, this is done by removing
 9 references to Tier II and Tier III. Staff
 10 also proposes to delete the term "revised
 11 draft permit" as requested by EPA, and to
 12 clarify that the DEQ is not required to
 13 accept recommendations from affected states
 14 that are not based on applicable
 15 requirements of 40 CFR Part 70, as well as
 16 the Oklahoma Clean Air Act.
 17 On page 2, staff proposes to revise
 18 subsection 8(h), titled "EPA review and
 19 non-objection", to clarify that the
 20 requirement that DEQ issue permits for
 21 which EPA has no objection applies to all
 22 Subchapter 8 permit actions except
 23 administrative permit amendments. Again,
 24 this is done by deleting reference to Tier
 25 II and Tier III. As requested by EPA, the

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1 delete Subparagraph 8(i)(5)(B) to remove
 2 the provision for DEQ to disregard EPA's
 3 objections and issue a permit.
 4 On page 3, staff proposes to amend
 5 paragraph 8(i)(6) by deleting the term
 6 "draft permit", inserting "amended" prior
 7 to "proposed permit", and replacing "Part
 8 70 regulations" with "Part 71 regulations".
 9 Part 71 contains the federal regulations
 10 that EPA would use in issuing a permit.
 11 Beginning on page 3 and continuing
 12 on to page 4, staff proposes to make
 13 amendments to Subsection 8(j), titled
 14 "Public petitions to the Administrator".
 15 We propose to replace the reference to OAC
 16 2-15 with reference to OAC -- I'm sorry,
 17 with reference to the statute 27A O.S.
 18 Section 2-14-302 (A)(2). This has been
 19 necessitated by the recent replacement of
 20 Chapter 2 by Chapter 4. Staff also
 21 proposes to capitalize the term "Section"
 22 in the first sentence for consistency with
 23 the overall rules. And the statement that
 24 EPA will follow Oklahoma rules in
 25 modifying, terminating, or revoking a

1 permit has been changed to indicate that
 2 EPA will follow the Federal Part 70
 3 regulations.
 4 On page 4, staff proposes to amend
 5 Subsection 8(k), now titled "Effect on
 6 administrative permit hearing", to update
 7 the citation by deleting the reference to
 8 Tier III and substituting "the Oklahoma
 9 Uniform Environmental Permitting Act".
 10 Also, in Subsection 8(k), staff proposes to
 11 delete the provision that DEQ may determine
 12 EPA's objections to be inconsistent with
 13 applicable laws. In their comment letter,
 14 EPA made clear that it is not DEQ's
 15 prerogative to determine that EPA's
 16 objections are consistent with applicable
 17 laws.

18 Although this is the first time
 19 these proposed revisions have appeared
 20 before the Council, staff urges that you
 21 take action on this item today, on both
 22 permanent and emergency basis since prompt
 23 adoption of the rules by the Environmental
 24 Quality Board is required for the state to
 25 meet the December 1 deadline for full Title

1 DR. SHEEDY: To what we have --
 2 MR. BRANECKY: -- because EPA has
 3 already agreed to these changes; is that
 4 right?

5 DR. SHEEDY: They have said in
 6 the letter that they faxed us yesterday
 7 that they did -- that these should take
 8 care of the problem in so far as getting
 9 full approval.

10 MR. BRANECKY: So if we make any
 11 changes today, then we run the risk of EPA
 12 not approving it and thus our Title V
 13 program reverting back to EPA December 1st?

14 MR. TERRILL: We made a
 15 calculated gamble here relative to EPA
 16 being here today. They are out of travel
 17 money, and it's not an unusual situation
 18 for them to be out of travel money at this
 19 time of year. So we had a choice of them -
 20 - of us paying their way here, but we
 21 couldn't pay enough of it for them to come,
 22 anyway, or they could drive to Ardmore for
 23 the Board meeting. And we felt like it was
 24 more critical for them to be there for the
 25 Board meeting than it was to be here for

1 V program approval.
 2 MR. DYKE: Questions of Dr.
 3 Sheedy from Council?
 4 MR. BRANECKY: Joyce, to be
 5 clear, and I think everybody basically
 6 understands this, our options are we pass
 7 this without any substantive changes or if
 8 we don't pass it or if we make substantive
 9 changes, then it may not be -- EPA will
 10 take away the Title V program come December
 11 1st; is that right?

12 DR. SHEEDY: This is what we've
 13 been --

14 MR. BRANECKY: We're held
 15 hostage?

16 MR. TERRILL: Actually, they
 17 won't take it away, it will revert back.

18 DR. SHEEDY: Exactly, because our
 19 interim approval will expire on December
 20 1st, 2001.

21 MS. MYERS: These changes are not
 22 considered substantial changes?

23 MR. BRANECKY: If we make any
 24 more changes today -- we can't make any
 25 substantial changes today.

1 this meeting, because the changes that we
 2 are proposing today, we don't consider to
 3 be a substantial change from the way we're
 4 operating the program anyway.

5 The real interesting dialogue will
 6 occur when we have to make the other
 7 changes that they are going to recommend in
 8 their Notice of Deficiency. And I wouldn't
 9 care to comment as to how that's going to
 10 go. We'll just have to see because we have
 11 some disagreements with some of their
 12 opinions and some of their statements,
 13 simply because some of the changes that
 14 they've objected to are changes they've had
 15 representatives at Council meetings when
 16 we've made the changes, and they approved
 17 them then, but now there is a problem. So
 18 we'll have eighteen to twenty-four months -
 19 - I don't know exactly the time frame -- to
 20 work through those. But the changes we're
 21 asking for today are relatively minor in
 22 the overall scheme of how we are running
 23 our Title V program.

24 DR. SHEEDY: I don't think
 25 they'll result in any change to the way we

1 are currently running our Title V program
2 as concerns permit review by EPA and
3 effected states. I believe this is the way
4 we have been doing it.

5 MS. MYERS: I guess there is a
6 certain amount of frustration knowing that
7 these rules have been going back and forth
8 to the EPA and we're getting these edicts
9 at the last minute. It does frustrated a
10 lot of people.

11 DR. SHEEDY: Yes.

12 MR. BRANECKY: I would like to go
13 on the record, at least, on my behalf as
14 saying that I don't appreciate the way EPA
15 has handled this, that we are basically
16 being forced to accept rules that they've
17 approved, yet we really don't have a chance
18 to give full attention to. Basically we
19 have to pass the. I guess I just don't
20 appreciate that. I think we should have
21 been given some more time. EPA should have
22 responded sooner than they did.

23 DR. SHEEDY: Yes.

24 MR. BREISCH: It stretches the
25 imagination to think of them taking over a

1 lapses in December. Knowing EPA, I think
2 we're looking at somewhere around a year,
3 possibly longer. That's the downside.

4 MS. MYERS: We don't want to give
5 it back to them. I do have one question
6 for you, Joyce. On page 2, that top
7 paragraph that's mostly scratched out under
8 Section (f), under "Timelines", there is a
9 statement in there that says "permit to EPA
10 for review no later than 60 days". Is that
11 not less than 60 days prior to issuance
12 deadline? That reads funny to me.

13 DR. SHEEDY: I think we just
14 basically copied the old language. What it
15 means, I believe, is that we've got
16 issuance deadlines set in Chapter 4 and
17 this is stating that before 60 days before
18 the issuance deadline we must have sent
19 this -- that we will review public comments
20 and revise the draft permit and submit it
21 to EPA.

22 MS. MYERS: It would be not less
23 than 60 days before?

24 DR. SHEEDY: It has to be before
25 60 days. So it could be 61 days, but it

1 Title V program. It boggles your mind.
2 They can't do it, they don't have the money
3 to travel down here, let alone to have the
4 staff to do that.

5 MR. BRANECKY: So do we want to
6 call their bluff?

7 MR. BREISCH: That's on the
8 record, too.

9 MR. WILSON: Well, that would
10 take care of our fee issue.

11 MR. TERRILL: Well, no, actually
12 the fee issue -- yeah, it would. It would
13 revert to the federal fee, you're right.

14 But the real problem here is they don't
15 have the capabilities of taking over the
16 program. But what it would do, it would
17 bring to a halt any modifications to Title
18 V permits that need to be made until such
19 time as we get the program back. And for
20 any of you out there that think you might
21 want to do something at your facility that
22 might need a modification with a Title V
23 permit, that's a bad thing. And they have
24 no -- EPA has no idea how long it would
25 take us to get that approval back if it

1 couldn't be 59 days.

2 MR. BRANECKY: It should be less
3 than.

4 DR. SHEEDY: I think you could
5 read it both ways, less than or later than.
6 I think it should mean the same thing
7 either way. Pam, do you agree?

8 MS. DIZIKES: It seems very clear
9 to me.

10 MR. WILSON: That may be some
11 indication we need to change it.

12 MR. TERRILL: Let me suggest
13 this. It is unclear to me, too. I don't
14 know -- Pam explained it to me once and I
15 kind of understood it then, but then I've
16 slept.

17 MR. BRANECKY: What does the
18 public -- can you understand what that
19 means, the guys that are going to be using
20 this or reading this? Would less than 60
21 days make that more clear?

22 MS. HARRY: We're talking about
23 the permit issuance deadline.

24 MR. DYKE: Identify yourself,
25 please.

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1 MS. HARRY: I'm sorry. Deborah
2 Harry. Are we talking about the deadline
3 for permit issuance, like a 180 day
4 deadline?
5 DR. SHEEDY: Yes. I believe
6 that's what we're talking about.
7 MS. HARRY: So if the agency
8 processes it faster, and said no less than
9 60 days, you have to wait it out if you got
10 close -- we don't allow the agency to
11 process quicker than the permit time lines.
12 MS. MYERS: When is it you want
13 it? Do you want it 60 days before the
14 deadline?
15 DR. SHEEDY: No, I think what
16 we're trying to say here is that you have
17 to have it done by 60 days before the
18 deadline. But by saying no later than,
19 that means that if you've got it done
20 earlier, you can go ahead and send it in,
21 but you have to have it done before 60 days
22 in advance of that deadline. So I think
23 that they may mean the same thing before,
24 or at least may mean the same thing, but we
25 want it to stay where you can send it in

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1 earlier than -- you know, like you can send
2 it in 90 days before the deadline if you
3 were through.
4 MR. BRANECKY: But no less than
5 60 days.
6 DR. SHEEDY: But no less than.
7 MR. BRANECKY: Not 30, it's got
8 to be at least 60?
9 DR. SHEEDY: I think that's what
10 it means.
11 MS. MYERS: Are you open for
12 suggestions?
13 MR. KILPATRICK: I don't see how
14 you can misread it. No later than what?
15 No later than 60 days before. It's a
16 trigger clause. You've got to do it no
17 later than -- then you say, than what?
18 Than 60 days before. So it can be 61, 62,
19 it can be anything greater than 60, but no
20 later than that.
21 MR. TERRILL: And the reality of
22 it is, we're going to have to open this
23 rule back up anyway when we make our
24 changes. So if we can figure out a better
25 way to say that, we'll do a re-write/de

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1 wrong on this. It's noted and we caught it
2 ourselves, actually, in our discussions.
3 We had some discussions about whether or
4 not it's clear. So we can come back to it.
5 Trust me, we're going to be looking at this
6 rule a lot in the next eighteen months.
7 MS. MYERS: I feel better now
8 that I'm not the only one that's confused.
9 MR. TERRILL: I don't use it
10 enough, that's part of the reason I was
11 confused about it.
12 MS. MYERS: I'm okay with it.
13 MR. DYKE: Any other questions or
14 comments from the Council? Any questions
15 or comments from the public on this rule?
16 Anything further on this rule from the
17 Council?
18 MR. BRANECKY: I guess at this
19 point, I'm open for a motion. I don't know
20 if we can pass this under protest? If you
21 guys want to approve it, I'm open for a
22 motion for approval.
23 MR. KILPATRICK: I will move that
24 we accept the proposed changes to
25 Subchapter 8, Section 8, and recommend it

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1 as a permanent and emergency rule.
2 MS. MYERS: I'll second it.
3 MR. BRANECKY: I've got a motion
4 and a second. Myrna.
5 MS. BRUCE: Ms. Myers.
6 MS. MYERS: Yes.
7 MS. BRUCE: Mr. Wilson.
8 MR. WILSON: No.
9 MS. BRUCE: Mr. Martin.
10 MR. MARTIN: Yes.
11 MS. BRUCE: Mr. Kilpatrick.
12 MR. KILPATRICK: Yes.
13 MS. BRUCE: Mr. Breisch.
14 MR. BREISCH: Yes.
15 MS. BRUCE: Mr. Treeman.
16 MR. TREEMAN: Yes.
17 MS. BRUCE: Dr. Lynch.
18 DR. LYNCH: Yes.
19 MS. BRUCE: Mr. Branecky.
20 MR. BRANECKY: Yes.
21 (PROCEEDINGS CONCLUDED)
22
23
24
25

C E R T I F I C A T E

1
2 STATE OF OKLAHOMA)
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 taken by me in
10 shorthand and thereafter transcribed under
11 my direction; that said proceedings were
12 taken on the 15th day of August, 2001, at
13 Tulsa, 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 17th day of August, 2001.

20 
21 CHRISTY A. MYERS, C.S.R.
22 Certificate No. 00310
23
24
25



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

AIR QUALITY COUNCIL
Public Hearing and Meeting

Attendance Record

AUGUST 15, 2001

Page One

NAME/AFFILIATION	ADDRESS	TELEPHONE
1. Eddie Terrill	707 N. Robinson - DE 6	(405) 702-4100
2. Shauna McWaters-Khalousi	" (DEQ-ADD)	702-4128
3. Julia Stevens / OGE	321 N Harvey OKC	405 553 3429
4. Melody Marks OGE	381 N Harvey OKC	405 553 3297
5. MIKE HAMPTON KOCH	2001 Hwy 81, MEDFORD	(580) 395-9283
6. Perry Friedrich GRDA	PO Box 10 Chauveau	(918) 824-1045
7. Richard Dawson MD	4805 South Lincoln Ave OKC	405-656-1526
8. MARK GIPSON	AEP - PSON	405-811-1333
9. Howard Ground	AEP - PSO	214-777-1711
10. CLYDE JONES	PO Box 579 Bartlesville, OK	918-336-7100
11. Melinda Hosh	SAC & Fox Nation, 219 S 8TH AV STROUD	74079 918-968-2583
12. Anne Wernison/Williams/Williams Center	TULSA 74119	918-573-3886
13. DON WHITNEY	TRINITY CONSULTANTS OKC	405 228-3292
14. Merle Fritz	Simclair Oil Tulsa	918-584-5025
15. Lee Moody	TRINITY CONSULTANTS DALLAS	972 661 8100
16. Deborah Perry	Atkins Benham Tulsa	918 496 0059
17. Donnie M. Gilbre	Covanta 2122 S. Yukon TULSA	918-583 3925
18. Dave Bradshaw	Boeing	918-832-2073
19. Wernon Moken	SES Tulsa OK Tulsa	918-254-5263
20. Marshall Bullard	P.O. Box 555 Tulsa, OK	918-254-5370
21. GERALD BUTCHER	POB 429, Anadarko, OK	405-247-4341
22. Henry McLaurine	Calpine Corp.	713-830-8881
23. Mike Wood	Hot Springs, AR	501-624-8569
24. Tim Haught	ONEOK, Inc. Tulsa	918-588-7640
25. Don Anderson - Western Gas Resources	12200 N Meadows, Denver, CO 80234	303-450-8411

REGULAR MEETING AGENDA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OKLAHOMA ENVIRONMENTAL QUALITY BOARD

A Public Meeting: 9:30 a.m., Tuesday, August 21, 2001
The Noble Foundation
Kruse Auditorium
2510 Sam Noble Parkway
Ardmore, Oklahoma

1. Call to Order – Jerry Johnston, Chair
2. Roll Call - Lynda Finch
3. Approval of Minutes of the June 26, 2001 Regular Meeting

4. **Rulemaking – OAC 252:100 Air Pollution Control**

Three sets of changes are proposed:

- The proposed revision to Subchapter 7 authorizes coverage under a general permit to be effective when the Air Quality Division receives the notice of intent (NOI), if allowed by the specific general permit.
- The proposed Subchapter 8 revisions deal with permit review by EPA and other states on Oklahoma Title V permits. The changes are necessary for final approval of the State's Title V program. The revisions clarify that all permit actions except administrative permit amendments are subject to review by EPA and affected states, and delete language that allows the DEQ to issue a Part 70 permit despite EPA's objection. They also establish or clarify that: DEQ will provide EPA with copies of specified permit documents; DEQ may, upon agreement with EPA, submit a permit application summary form in lieu of the complete permit application; DEQ will give notice of each draft permit to affected states on or before notice is provided to the public; DEQ is not required to accept recommendations from affected states that are not based on applicable Part 70 requirements; DEQ's obligation to issue permits for which EPA has no objection covers all permit actions except administrative permit amendments; DEQ cannot unilaterally determine that EPA's objections are inconsistent with the law; and EPA will follow the federal part 70 regulations, not State rules, for actions it takes on DEQ-issued permits. Other minor changes are made for clarity and to update citations.
- Proposed Subchapter 31 revisions are intended to clarify existing rules by placing like subject matter together, deleting obsolete and redundant language, and redrafting awkward language. Additionally, some substantive changes are made. The revisions clarify definitions relating to new and existing sources and add definitions of "pulp mill," "sulfur recovery plant," "sweetening plant," and "three-hour average"; revoke duplicative performance testing requirements; increase the hydrogen sulfide ambient air concentration limit, and increase the averaging time to 24 hours, in reliance on a health-based standard; delete the annual sulfur dioxide ambient air concentration limit, in reliance on the federal NAAQS; delete the subsection regarding new sulfuric acid plants, in reliance on the federal NSPS; delete the requirements for nonferrous smelters, since there currently are no such facilities in the state, and in reliance on the federal NSPS for any future facilities; clarify the emission limits for non-condensable gases from kraft pulp mills; include gas fuel in the formula for determining allowable sulfur dioxide emissions from new fuel-burning equipment when a combination of fuels is burned; delete the stack height requirement for exhaust gas from the combustion of hydrogen sulfide to sulfur dioxide, in reliance on the ambient air concentration limit; delete the

exemption from the hydrogen sulfide reduction or emission limit for sources that process pipeline-quality sweetened natural gas; relocate the provisions regarding paper pulp mills and amend the title to clarify which mills are subject; and replace the term "Maximum average period" with a time-based average.

- A. Presentation– David Branecky, Air Quality Advisory Council Chair
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion by the Board
- E. Roll call vote(s) on permanent adoption of amendments to Subchapters 7 and 31, and emergency* and permanent adoption of amendments to Subchapter 8

5. **Rulemaking-- OAC 252:20 Emergency Planning and Community Right-to-Know**

The DEQ proposes to revoke two subsections of a fee rule. The two subsections deal with radiation management, not Emergency Planning and Community Right-To-Know. The subsection apportioning the annual fees due the Central Interstate Low-Level Radioactive Waste Compact Commission duplicates statute. The subsection concerning fees for services, travel and lodging of the Radiation Management Section is unnecessary.

- A. Presentation– Dr. David Gooden, Radiation Management Advisory Council Chair
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion by the Board
- E. 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 budget request must be submitted to OSF by October 1st of this year. Recent legislation requires that all state agencies submit a 5-year budget. The request for the coming fiscal year, in this case SFY 2003 (beginning July 1, 2002), is the most critical. DEQ's request for SFY 2003-2007 appropriated funds includes allocations to assist with the Total Maximum Daily Load (TMDL) program, storm water program, enhanced water quality monitoring activities, shipping costs for transportation of time-sensitive public water supply samples, public water supply assistance, air quality modeling and staffing needs, assistance to local communities with special solid waste programs and land restoration activities, state Superfund matches, laboratory equipment, and file digitization.

- A. Presentation– Steve Thompson, Deputy Executive Director
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion by the Board
- E. Roll call vote on approval of budget request

7. **Annual Performance Review of Executive Director and Department**

Among the statutory duties of the Board are responsibilities to appoint and set the compensation of the Executive Director and to assist the Department in conducting periodic reviews and planning activities related to the goals, objectives, priorities and policies of the Department. In connection with these responsibilities, the Board has determined that it should perform an annual performance review of the Executive Director and the Department.

- A. Discussion by the Board in open session
 - B. Possible executive session pursuant to Title 75 Oklahoma Statutes § 307(A) (discussion of employment actions related to any individual salaried public officer or employee), if authorized by recorded majority vote of the Board members present
 - (1) Vote in open session on whether to enter executive session
 - (2) If executive session approved, designation in open session of person to keep minutes in executive session
 - (3) Discussion of Executive Director's performance in executive session
 - C. Further discussion by the Board in open session
 - D. Possible roll call vote on specific actions or recommendation as a result of performance review
8. **2002 Board meeting dates and locations:** Discussion and vote by the Board
 9. New Business (any matter not known about, or which could not have been reasonably foreseen prior to the time of posting of agenda)
 10. Executive Director's Report (including delivery of copies of recent ruling on declaratory judgment petitions)
 11. 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. The forum will include a brief presentation on environmental issues associated with power plants in Oklahoma.

Should you have a disability and need an accommodation, please notify the DEQ three days in advance at 702-7100.

* Specification of proposed adoption by emergency rulemaking, by permanent rulemaking, or by both, is based on the recommendations of the respective advisory councils. Adoption or amendment of rules as emergency rulemaking requires a finding by the Board that a compelling extraordinary circumstance warrants the seeking of emergency certification, so that the rules will take effect immediately upon the Governor's signature. Absent a finding and certification of emergency, rules adopted today will not become effective until May or June of 2002.

CHAPTER 100. AIR POLLUTION CONTROL
SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

EXECUTIVE SUMMARY:

The following proposed revisions to Section 8 of Subchapter 8 are necessary for final approval of the State's Title V program. (1) Revise subsection 8-8(a) to clarify the requirements for EPA and affected states to review permit actions applies to all Subchapter 8 permit actions except administrative permit amendments. The Department will also move language regarding waiver of compliance by EPA to subsections of Subchapter 8 dealing more specifically with the subject matter that can be waived. (2) Revise subsection 8-8(d) to make clear that the EPA Administrator will be provided with a copy of each permit application (including applications for permit modification), each proposed permit, and each final permit unless waived by the Administrator. Added language also makes clear that upon agreement with the Administrator, the DEQ may submit a permit application summary form and attachments in place of the complete permit application. (3) Revise subsection 8-8(e) to make clear that the Department shall give notice of each draft permit to any affected State on or before notice is provided to the public. (4) Expand the subsection 8-8(f) requirement to send a copy of the proposed permit to EPA so that it covers all permit actions except administrative permit amendments. (5) Revise subsection 8-8(g) to make clear that DEQ must accept the recommendations of affected states so long as those recommendations are based on Part 70 requirements. (6) Revise subsection 8-8(h) to clarify that DEQ's obligation to issue permits for which EPA has no objection covers all permit actions except administrative permit amendments. (7) Amend subsection 8-8(i) regarding Departmental action on a part 70 permit after EPA review of and objection to such permit by deleting subparagraph 8-8(i)(5)(B), which allows the DEQ to issue the permit despite EPA objection. (8) Change subsection 8-8(j) to indicate that EPA will follow the Federal part 70 regulations, and not the State rules, should the Administrator modify, terminate, or revoke a DEQ issued permit. (9) Strike the words "or determined to be inconsistent with applicable laws" from subparagraph 8-8(k) to make clear that DEQ cannot determine that EPA's objections are inconsistent with the law. (10) At subsections 8-8(g), (h), and (i) the term "proposed permit" is substituted for the term "revised draft permit" for clarity. Additional minor changes are made for clarity and to update citations throughout Section 8.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

The proposed revisions are to insure that Section 8 of Subchapter 8 is consistent with the analogous federal rule.

ENVIRONMENTAL BENEFIT STATEMENT:

Not required because the proposed revisions are not more stringent than the analogous federal rule.

SUMMARY OF COMMENTS AND RESPONSES:

Attached.

WRITTEN COMMENTS WITH STAFF RESPONSES

United States Environmental Protection Agency, Region 6 - letter dated June 12, 2001, signed by Jolé C. Luehrs, Chief of the Air Permits Section with EPA, Region 6 received on June 15, 2001.

On July 27, 1998, the Governor of Oklahoma submitted a request to EPA Region 6 for full approval of Oklahoma's Title V operating permit program. On June 15, 2001, the Department received a letter dated June 12, 2001, from the Region, noting deficiencies in the program that must be corrected before full approval is granted. The comments in this letter preceded the proposed revisions, but since the comments were instrumental in initiating the revisions, they are being included in the record of comments. Following is a summary of portions of the comment letter that pertain to the proposed revisions to Subchapter 8, Section 8-8, together with the Department's responses.

1. **COMMENT:** 40 CFR § 70.8(a) on the applicability of permit review by EPA and affected states is not broad enough, in that it does not include all Part 70 permitting actions.

RESPONSE: Subsection 8-8(a) has been revised to make clear that all Subchapter 8 permit actions, except administrative permit amendments, are subject to permit review by EPA and affected states.

2. **COMMENT:** Requirements of subsection 8-8(d) are not broad enough. 40 CFR § 70.8(a)(1) requires that DEQ provide EPA with a copy of each Part 70 application (including any application for permit modification), each proposed permit, and each final Part 70 permit. This requirement may be waived by EPA, but only for a category of permits other than major sources.

RESPONSE: Subsection 8-8(d) has been revised to make clear that all permit applications are submitted to EPA.

3. **COMMENT:** Subsection 8-8(e) consists solely of incorporations by reference, which references are not relevant to the requirements of 40 CFR § 70.8(b) that DEQ provide to any affected State on or before the time that DEQ provides notice to the public, a copy of each draft permit.

RESPONSE: Subsection 8-8(e) has been revised to make clear that the Department shall give notice of each draft permit to any affected states on or before notice is provided to the public.

4. **COMMENT:** The regulation uses the term "revised draft" for certain references to Tier II permits. Since the definition of "proposed permit" in OAC 252:100-8-2 means the version that DEQ submits to EPA, EPA proposed substituting the term "proposed permit" for "revised draft permit" when referring to any permits submitted to EPA for review under Section 8.

RESPONSE: Staff has deleted the term "revised draft permit"

in subsections (g), (h), and (i) of Section 8 and when necessary replaced it with the term "proposed permit."

5. **COMMENT:** Subsection 8-8(f) regarding the preparation and submission to EPA for review of the proposed permit, does not cover all Part 70 permit actions.

RESPONSE: The subsection has been revised to apply to all permit actions except administrative permit amendments.

6. **COMMENT:** Subsection 8-8(g) must be amended to require that DEQ accept recommendations from affected states if the recommendations are based on Part 70 requirements.

RESPONSE: The subsection has been revised to require that DEQ accept recommendations from affected states provided the recommendations are based on Part 70 requirements.

7. **COMMENT:** DEQ must issue permits for which EPA has no objections. This must apply to all Part 70 permit actions.

RESPONSE: Subsection 8-8(h) has been revised to require that DEQ issue permits for which EPA has no objections. Clarification is made that the requirement of this subsection is applicable to all permit actions except administrative permit amendments.

8. **COMMENT:** DEQ cannot disregard EPA's objection and go ahead and issue the permit.

RESPONSE: Paragraph (5) of subsection (i) has been revised to remove the provision for DEQ to disregard EPA's objections and issue a permit.

9. **COMMENT:** There is a minor error in DEQ's rule, which indicates that EPA would follow Oklahoma rules in modifying, terminating, or revoking a permit. The EPA will follow the Federal Part 70 regulations.

RESPONSE: This change has been made in subsection 8-8(j).

10. **COMMENT:** It is not for DEQ to determine that EPA's objections are inconsistent with applicable laws. Part 70 requires that no permit may issue if EPA objects in writing within 45 days of receipt of the proposed permit.

RESPONSE: This change has been made in subsection 8-8(k)

11. **COMMENT:** There is no provision in Oklahoma's regulation prohibiting default issuance of permits that EPA or affected States have not reviewed.

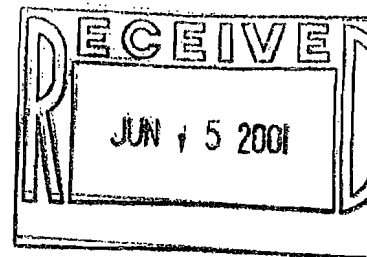
RESPONSE: Oklahoma Statutes, at 27A O.S. § 2-5-112(D), prohibits the issuance of permits by default. The statutory prohibition is referenced in the Oklahoma rules at OAC 252:100-8-7(g).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 12 2001



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

Re: Correction of Title V Operating Permit
Program Deficiencies

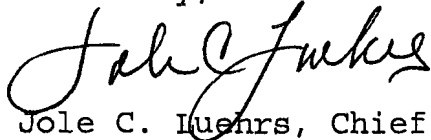
Dear Mr. Terrill:

On July 27, 1998, the Governor of Oklahoma submitted a request to receive full approval for Oklahoma's Title V operating permit program. This submittal was intended to correct the deficiencies previously specified in EPA's notice of interim approval. We have reviewed Oklahoma's submittal and have determined that Oklahoma has adequately corrected all of the interim approval deficiencies, except one. This deficiency concerns the use of the administrative amendment procedures to incorporate requirements from preconstruction permits issued under Subchapter 8. This deficiency and proposed solutions are set forth in the Enclosure. This deficiency must be addressed before Oklahoma can be granted full approval.

In addition, a review of the submittal revealed that Oklahoma made other changes to the regulations that EPA previously approved. Our review of these regulations also revealed additional deficiencies. These deficiencies and proposed solutions are also set forth in the Enclosure. One deficiency - Permit Review by EPA and Affected States (Item I) must also be corrected before Oklahoma can receive full approval. The remaining deficiencies do not have to be corrected prior to full approval. However, if these deficiencies are not corrected prior to full approval, EPA will send a Notice of Deficiency (NOD) to Oklahoma, requiring Oklahoma to correct these deficiencies within a certain time. A draft copy of this letter and the enclosure was sent to your staff on May 30, 2001. We all discussed these deficiencies with your staff on June 6, 2001, and are willing to have further discussions with you or your staff at your convenience.

If you have any questions, please feel free to call me at (214) 665-8117, or have your staff call Mary Stanton at (214) 665-8377 or Evan Pearson, Senior Attorney, at (214) 665-8074.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jole C. Luhrs".

Jole C. Luhrs, Chief
Air Permits Section (6PD-R)

Enclosure

cc: Joyce Sheedy
Pam Dizikes

Page 3 of the June 12, 2001, letter from EPA to ODEQ was not in the June 24, 2010, submittal to EPA.

2. OAC 252:100-15-40(c)(3) and (5) provide that plant-wide emission plan approval and alternative emissions reduction authorizations can be processed as Tier I applications. However, both of these items would not meet the minor permit modification criteria. The plant-wide emission plan approval would require a case-by-case determination of an emission limitation. 40 C.F.R. § 70.7(e)(2)(i)(A)(3) prohibits the use of the minor permit modification procedures for such case-by case determinations. Likewise, since an alternative emissions reduction authorization would be a Title I modification (requires SIP revision), 40 C.F.R. § 70.7(e)(2)(i)(A)(5) would likewise prohibit such an authorization from being approved under the minor permit modification procedures. Since these items would be required to be processed as significant permit modifications, they would need to meet the public participation requirements of 40 C.F.R. § 70.7(h). Therefore, these authorizations must be moved to either the Tier II or Tier III regulations.

D. OAC 252:100-8-2. Definitions

1. **Insignificant Activities** - It is our understanding that Oklahoma does not want EPA to approve Appendix I as part of its Title V approval. Thus, EPA will state in its *Federal Register* notice that it is not approving Appendix I. If this is not the case, Oklahoma will have to provide a justification showing why the items in Appendix I meet the insignificant activities definition.

2. **Regulated air pollutant** - The definition of regulated air pollutant includes:

(A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in 252:100-1-3, 252:100-37-2, 252:100-39-2, or any Volatile Organic Solvent (VOS), as that term is defined in 252:100-37-2 and 252:100-39-2, or any organic material defined in 252:100-37-2 except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);

Volatile organic Solvent (VOS) and organic material are not defined in the respective regulations cited above. Therefore, this definition should be amended to reflect that these two items are not defined.

3. **Trivial activities** - It is our understanding that Oklahoma does not want EPA to approve Appendix J as part of its Title V approval. Thus, EPA will state in its *Federal Register* notice that it is not approving Appendix J. If this is not the case, Oklahoma will have to provide a justification showing why the items in Appendix J meet the trivial activities definition.

E. OAC 252:100-8-6. Permit Content

40 C.F.R. § 70.3(d) provides that "fugitive emissions from a part 70 source shall be included in the . . . part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source." A review of OAC 252:100-8-6 and other provisions of OAC 252:100-8 did not reveal a regulation addressing this requirement. Therefore, Oklahoma will have to revise this section to add this requirement.

F. 252:100-8-7.2(a)(1)(E). Administrative permit amendments

We still have some issues with the deficiency dealing with the use of the administrative permit amendment procedures to incorporate preconstruction permit requirements into a Part 70 permit. 40 C.F.R. § 70.7(d)(1)(v) allows the use of the administrative permit amendment procedures to incorporate into the Part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that program meets procedural requirements substantially equivalent to the requirements of 40 C.F.R. §§ 70.7 and 70.8. Oklahoma's revised regulation allows the use of administrative permit amendment procedures to incorporate requirements from preconstruction permits issued under Subchapter 8. The problem is that Subchapter 8 is not an EPA-approved new source review (NSR) permit program; therefore this deficiency is not adequately addressed. In addition, it appears the Oklahoma's NSR regulations do not contain the necessary procedural requirements of 40 C.F.R. §§ 70.7 and 70.8. There are several options available to correct this deficiency:

1. EPA can approve the regulation without any additional changes provided Oklahoma includes additional provisions (e.g., affected state review, EPA review, and Petitions to EPA) in all its permits that meet the requirements of 40 C.F.R. § 70.7 and 70.8. We are willing to work with you to draft the necessary language to accomplish this.
2. EPA can postpone full approval of Oklahoma's part 70 program until the state submits and EPA approves Subchapter 8 as a revision to its State Implementation Plan. This is provided that the Subchapter 8 NSR provisions address major sources and minor modifications to major sources, and that the Subchapter 8 NSR provisions meet procedural requirements substantially equivalent to 40 C.F.R. §§ 70.7 and 70.8 (e.g., affected state review, EPA review, EPA petition);
3. Oklahoma can amend the regulation so that the language tracks the language in 40 C.F.R. § 70.7(d)(1)(v). However, Oklahoma could not use this provision to incorporate

requirements from NSR permits until the requirements in item 2 above are met; or

4. Oklahoma can delete this provision.

G. OAC 252:100-8-7.2(a)(3)(B). Administrative permit amendments

40 C.F.R. § 70.7(d)(3)(ii) provides that all administrative amendments shall be provided to EPA. EPA does not have to request them. Therefore, OAC 252:100-8-7.2(a)(3)(B) should be amended as follows:

(B) The DEQ shall submit a copy of the revised permit to the Administrator ~~upon the Administrator's request.~~

H. OAC 252:100-8-7.2(b)(1)(C). Minor permit modification procedures

40 C.F.R. § 70.8(a)(2) only allows the Administrator to waive the requirements of 40 C.F.R. § 70.8(a)(1) - Transmission of information to the Administrator and § 70.8(b)(1) - Review by affected States only for certain categories of sources. It does not allow for waiver of EPA's objection or petition rights. Thus, this subsection is too broad. Therefore, it should be rewritten as follows:

(C) **EPA and affected state notification.** If the proposed minor modification is of a permit that underwent EPA review in accordance with 252:100-8-8, the provisions of that section shall apply to the minor modification application ~~unless waived by the Administrator.~~

I. OAC 252:100-8-8. Permit review by EPA and affected states

EPA has numerous comments on this regulation. First, 40 C.F.R. § 70.8(a)(1) provides that all permit applications, including modifications, all proposed permits and all final permits must be submitted to EPA. Second, as to notification of affected states, 27A Okla.St. Ann. § 2-5-112(e) does not address the timing for submitting the proposed permits to affected states, as required by 40 C.F.R. § 70.8(b). Third, all Part 70 permits, including certain Tier I permits are subject to 40 C.F.R. § 70.8. There are numerous ways to accomplish this. We will be happy to discuss options with you. Fourth, the regulation uses the term "revised draft" for certain references to Tier II permits. Since the definition of "proposed permit" in OAC 252:100-8-2 means the version that DEQ submits to EPA, we propose substituting the term "proposed permit" for "revised draft permit" when referring to any permits submitted to EPA for review under this section. Fifth, DEQ cannot disregard EPA's

objection and go ahead and issue the permit. Sixth, there is no provisions in Oklahoma's regulation prohibiting default issuance of permits that EPA or affected States have not reviewed. Finally, there are a few other minor changes which should be self-explanatory.

(a) **Applicability.** This section applies to all Part 70 permitting actions. However, the requirement to submit certain information to the Administrator or the review of certain permitting actions by affected States may be waived by the Administrator for sources other than major sources only to specific Tier II and III applications for Part 70 construction and/or operating permits and permit actions that have not been waived from compliance with this section by the Administrator.

* * * *

(d) **Transmission of Part 70 applications to EPA.**

The DEQ shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 70 permit, or DEQ shall require an applicant upon filing to also provide a copy of the permit application (including the compliance plan) to the Administrator. Upon agreement with the Administrator, DEQ may submit a permit application summary form and any relevant portion of the permit application and compliance plan in place thereof. For Part 70 Tier II and III applications subject to this section, the DEQ shall require an applicant upon filing to also provide a copy to the Administrator or the DEQ may submit a permit application summary form and any relevant portion of the permit application and compliance plan, in place thereof.

(e) **Transmittal of notice of draft permit to affected states.**

The DEQ shall give notice of each draft permit to any affected State on or before the time that DEQ provides this notice to the public under [252:002-15??], except to the extent that [252:002-15??] requires the timing of the notice to be different.

~~See 27A O.S.Supp. 1995, § 2-5-112(B), 27A O.S.Supp. 1995, § 2-14-101 et seq., and 252:2-15.~~

(f) Preparation and submittal of EPA review copy.

Need to add Tier I applications subsection or revise 252:100-8-8(f) to cover all Part 70 permitting actions.

(1) **Tier II applications.** For Tier II applications, the DEQ shall review public comments, revise the draft permit as appropriate and submit the ~~proposed permit revision~~ to EPA for review no later than 60 days before the issuance deadline established in 252:2-15-72 or, if none, by this Chapter.

(2) **Tier III applications.** For Tier III applications, the DEQ shall prepare a proposed permit according to 27A O.S.Supp. 1995, § 2-14-304, and submit it to EPA for review upon the publication of notice of an administrative permit hearing opportunity.

(g) **Notice of non-acceptance.** As part of the DEQ's submittal of a ~~proposed permit revised draft permit (Tier II) or a proposed permit (Tier III)~~ to the Administrator, the DEQ shall notify the Administrator and any affected State in writing of any refusal by the DEQ to accept all recommendations for the revised draft permit or proposed permit that the affected State submitted during the review period. The notice will include the DEQ's reasons for not accepting any such recommendation. The DEQ is not required to accept recommendations that are not based on applicable requirements of the Oklahoma Clean Air Act or these rules ~~or 40 C.F.R. Part 70.~~

(h) **EPA review and non-objection.** Upon receipt of notice from the EPA that it will not object to:

~~(1) A proposed permit based on a Tier I application, the DEQ shall issue the permit.~~

~~(2) (1) A ~~proposed revised draft permit~~ based on a Tier II application, the DEQ shall issue the permit.~~

~~(3) (2) A proposed permit based on a Tier III application, the DEQ shall issue the proposed permit as final unless an administrative permit hearing has been timely and properly requested.~~

(i) **EPA review and objection.**

~~(1) **Timing.** Except as specified in paragraph 5 of this subsection, The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with the~~

applicable requirements or these rules or 40 C.F.R. Part 70. No permit for which an application must be transmitted to the Administrator under subsection (a) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit revised draft permit ~~(Tier II) or proposed permit (Tier III)~~ and all necessary supporting information.

* * * *

(3) **Additional grounds.** Failure of the DEQ to do any of the following also shall constitute grounds for an objection:

(A) Comply with subsections (d) or (e) of this section;

(B) Submit any information necessary to review adequately the proposed permit revised draft permit ~~(Tier II) or the proposed permit (Tier III)~~; or

(C) Process the permit application according to the uniform permitting requirements of 252:2-15.

* * * *

(5) **DEQ response.** The DEQ shall consult with EPA and the applicant and shall either:

~~(A) Amend permit.~~ amend the permit and submit for approval an amended proposed draft ~~(Tier II) or proposed (Tier III) permit~~ to EPA within 90 days after the date of EPA's objection, or

~~(B) Give notice and issue.~~ Determine that one or more revisions sought by EPA are inconsistent with applicable state or federal statutes or regulations, inform EPA accordingly within 90 days following the date of the Administrator's objection, decline to make those particular revisions and:

~~(i) issue the amended or revised draft permit (Tier II) as final, or~~

~~(ii) issue the proposed permit (Tier III) as final unless an administrative permit hearing has been timely and properly requested.~~

~~(6) Failure of DEQ to respond.~~ If the DEQ fails, within 90 days after the date of the EPA objection, to amend and resubmit the draft permit or amended proposed permit in response to the objection, the Administrator

will issue or deny the permit in accordance with the requirements of EPA's Part ~~71~~ 70-regulations.

(j) **Public petitions to the Administrator.** If the Administrator does not object in writing under subsection (h) of this section, any person that meets the requirements of this subsection may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that the petitioner raised with reasonable specificity during the public comment period provided for in 252:002-15, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the DEQ shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the DEQ has issued a permit prior to receipt of an EPA objection under this subsection, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in ~~40 C.F.R. §§ 70.7(g)(4) or (5)(1) and (11)~~ 252:100-8-7 through 252:100-8-7.5 except in unusual circumstances. If the DEQ revokes the permit, it may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(k) **Effect on Tier III administrative permit hearing.**

When a public petition or an EPA objection is registered on a proposed permit (Tier III) on which an administrative permit hearing has been requested in accordance with 27A O.S.Supp. 1995, Section 2-14-101 et seq., the DEQ may stay the evidentiary part of the hearing involving cross-examination until EPA objections are resolved or determined to be inconsistent with applicable laws.

~~(1) DEQ shall not issue a Part 70 permit (including a permit renewal or modification) until affected States and EPA have had an opportunity to review the proposed permit as required under this section.~~

SC8
Michelle



MARK COLEMAN
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

FRANK KEATING
Governor

October 19, 2001

Mr. Carl Edlund, Acting Division Director
Multimedia Planning and Permitting Section (6PD)
United States Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: Approval of the Oklahoma Operating Permits Program

Dear Mr. Edlund:

As evidence that the Department of Environmental Quality has met all requisites for final Title V operating program approval, we are submitting documentation that OAC 252:100-8, Section 8 has been modified to correct the significant deficiencies contained in the June 12, 2001 letter. As required by 40 CFR 70.4(b)(2), I am enclosing copies of the modifications to Section 8 of Subchapter 8, the public notice published July 16, 2001, the public notice published August 1, 2001, the Air Quality Council rulemaking recommendation dated August 15, 2001, a transcript of the public hearing held on August 15, 2001, the Administrative Agency Rule Report for the August 21, 2001, Environmental Quality meeting, the minutes of the Environmental Quality board meeting held on August 21, 2001, and the Governor's approval of the modifications as both emergency and permanent. No written comments were received from the public.

If you have any questions regarding this submittal, please contact Pam Dizikes at (405) 702-7175.

Sincerely,

Eddie Terrill, Director
Air Quality Division

ET:js

Enclosures 9

CC: Evan Pearson (6RC)
Mary Stanton 96PD-R)
Pam Dizikes, AQD



Permanent Final Adoptions

Cancellation of authority to construct or modify. A permit issued to construct or modify will terminate and become null and void (unless extended as provided below) if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.

(g) **Extension of authorization to construct or modify.**

(1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:

- (A) one extension of 18 months or less or
- (B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

[OAR Docket #02-592; filed 4-1-02]

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

[OAR Docket #02-593]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 8. Permits for Part 70 Sources
Part 5. Permits for Part 70 Sources
252:100-8-8 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S.Supp. 2000, §§ 2-2-101, 2-2-201 and 2-5-101 *et seq.*

DATES:

Comment period:

July 15, 2001 through August 15, 2001 and August 21, 2001

Public hearings:

August 15, 2001 and August 21, 2001

Adoption:

August 21, 2001

Submitted to Governor:

August 29, 2001

Submitted to House:

August 29, 2001

Submitted to Senate:

August 29, 2001

Gubernatorial approval:

October 13, 2001

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 28, 2002

Final adoption:

March 28, 2002

Effective:

June 1, 2002

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 8. Permits for Part 70 Sources

Part 5. Permits for Part 70 Sources

252:100-8-8 [AMENDED]

Gubernatorial approval:

October 11, 2001

Register publication:

19 Ok Reg 134

Docket number:

01-1568

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The following proposed revisions to Section 8 of Subchapter 8 are necessary for final approval of the State's Title V program. (1) Revise subsection 8-8(a) to clarify the requirements for EPA and affected states to review permit actions apply to all Subchapter 8 permit actions except administrative permit amendments. The Department will also move language regarding waiver of compliance by EPA to subsections of Subchapter 8 dealing more specifically with the subject matter that can be waived. (2) Revise subsection 8-8(d) to make clear that the EPA Administrator will be provided with a copy of each permit application (including applications for permit modification), each proposed permit, and each final permit unless waived by the Administrator. Added language also makes clear that upon agreement with the Administrator, the DEQ may submit a permit application summary form and attachments in place of the complete permit application. (3) Revise subsection 8-8(e) to make clear that the Department shall give notice of each draft permit to any affected State on or before notice is provided to the public. (4) Expand the subsection 8-8(f) requirement to send a copy of the proposed permit to EPA so that it covers all permit actions except administrative permit amendments. (5) Revise subsection 8-8(g) to clarify that DEQ is not required to accept recommendations that are not based on applicable Part 70 requirements. (6) Revise subsection 8-8(h) to clarify that DEQ's obligation to issue permits for which EPA has no objection covers all permit actions except administrative permit amendments. (7) Amend subsection 8-8(i) regarding Departmental action on a part 70 permit after EPA review of and objection to such permit by deleting subparagraph 8-8(i)(5)(B), which allows the DEQ to issue the permit despite EPA objection. (8) Change subsection 8-8(j) to indicate that EPA will follow the Federal part 70 regulations, and not the State rules, should the Administrator modify, terminate, or revoke a DEQ issued permit. (9) Strike the words "or determined to be inconsistent with applicable laws" from subparagraph 8-8(k) to make clear that DEQ cannot determine that EPA's objections are inconsistent with the law. (10) At subsections 8-8(g), (h), and (i) the term "proposed permit" is substituted for the term "revised draft permit" for clarity. Additional minor changes are made for clarity and to update citations throughout Section 8. 8 is consistent with the analogous federal rule.

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 1, 2002.**

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-8. ~~Permit review by EPA and affected states~~

(a) ~~Applicability.~~ This Section applies ~~only to specific Tier II and III applications for Part 70 construction and/or operating permits and permit actions that have not been waived from compliance with this section by the Administrator to all Subchapter 8 permit actions except administrative permit amendments.~~

(b) ~~Format.~~ To the extent practicable, information provided to the EPA by applicants shall be in computer-readable format compatible with EPA's national database management system.

(c) ~~Recordkeeping.~~ The DEQ will keep for 5 years records required by this Section and will submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this Chapter.

(d) ~~Transmission of Part 70 applications information to EPA.~~ For Part 70 Tier II and III applications subject to this section, ~~the~~ The DEQ shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit, unless waived by the Administrator for a category of sources other than major sources. In the alternative, the DEQ may require an applicant upon filing to also provide a copy of the permit application (including the compliance plan) directly to the Administrator or, upon agreement with the Administrator, the DEQ may submit a permit application summary form and any relevant portion of the permit application and compliance plan, in place thereof.

(e) ~~Transmittal—Transmission~~ of notice of draft permit to affected states. See 27A O.S. § 2-5-112(E); 27A O.S. §§ 2-14-101 through 2-14-401; and OAC 252:2-15. The DEQ shall give notice of each draft permit to any affected State on or before the time that this notice is provided to the public under 27A O.S. § 2-14-302, except to the extent that paragraph 8-7.2(b)(1) regarding minor permit modification applications, and 40 CFR § 70.7(e)(3)(iii) regarding group processing of minor permit modifications, requires the timing of the notice to be different.

(f) ~~Preparation and submittal—Timelines for submission~~ of EPA review copy.

(1) ~~Tier II applications.~~ For Tier II applications, the DEQ shall review public comments, revise the draft permit as appropriate and submit the revision to EPA for review no later than 60 days before the issuance deadline established in OAC 252:2-15-72 or, if none, by this Chapter.

(2) ~~Tier III applications.~~ For Tier III applications, the DEQ shall prepare a proposed permit according to 27A O.S. § 2-14-304, and submit it to EPA for review upon the publication of notice of an administrative permit hearing opportunity. The DEQ shall review public comments, revise the draft permit as appropriate and submit the proposed permit to EPA for review no later than 60 days before the issuance deadline established in OAC 252:4-7-31, except as provided in OAC 252:4-7-9 through 4-7-11, which stop the review timeline and provide additional time for permit review.

(g) ~~Notice of non-acceptance.~~ As part of the DEQ's submittal of a revised draft permit (Tier II) or a proposed permit

(Tier III) to the Administrator, the The DEQ shall notify the Administrator and any affected State in writing of any refusal by the DEQ to accept all recommendations for the revised draft permit or proposed permit that the affected State submitted during the review period. The notice will include the DEQ's reasons for not accepting any such recommendation. The DEQ is not required to accept recommendations that are not based on applicable requirements of the Oklahoma Clean Air Act or these rules 40 CFR Part 70.

(h) ~~EPA review and non-objection.~~ Upon receipt of notice from the EPA that it will not object to:

(1) ~~A revised draft permit based on a Tier II application,~~ the DEQ shall issue the permit.

(2) ~~A proposed permit based on a Tier III application, a proposed permit,~~ the DEQ shall issue the proposed permit as final unless an administrative permit hearing has been timely and properly requested.

(i) ~~EPA review and objection.~~

(1) ~~Timing.~~ Except as specified in paragraph 5 of this subsection, ~~no~~ No permit for which an application must be transmitted to the Administrator under subsection (a) of this Section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the revised draft permit (Tier II) or proposed permit (Tier III) and all necessary supporting information.

(2) ~~Form of objection.~~ An EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections.

(3) ~~Additional grounds.~~ Failure of the DEQ to do any of the following also shall constitute grounds for an objection:

(A) Comply with subsections (d) or (e) of this Section;

(B) Submit any information necessary to review adequately the revised draft permit (Tier II) or the proposed permit (Tier III); or

(C) Process the permit application according to the uniform permitting requirements of OAC 252:2-15-252:4-7 Part 1.

(4) ~~Copy.~~ The Administrator will provide the permit applicant a copy of the objection.

(5) ~~DEQ response.~~ The DEQ shall consult with EPA and the applicant and shall either:

(A) ~~Amend permit.~~ Amend amend the permit and submit for approval an amended draft (Tier II) or proposed (Tier III) permit to EPA within 90 days after the date of EPA's objection, or

(B) ~~Give notice and issue.~~ Determine that one or more revisions sought by EPA are inconsistent with applicable state or federal statutes or regulations, inform EPA accordingly within 90 days following the date of the Administrator's objection, decline to make those particular revisions and:

(i) issue the amended or revised draft permit (Tier II) as final, or

Permanent Final Adoptions

(ii) ~~issue the proposed permit (Tier III) as final unless an administrative permit hearing has been timely and properly requested.~~

(6) ~~Failure of DEQ to respond.~~ If the DEQ fails, within 90 days after the date of the EPA objection, to amend and resubmit the ~~draft permit or amended~~ proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of EPA's Part ~~70-71~~ regulations.

(j) **Public petitions to the Administrator.** If the Administrator does not object in writing under subsection (h) of this ~~section~~ Section, any person that meets the requirements of this subsection may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that the petitioner raised with reasonable specificity during the public comment period provided for in ~~OAC 252:2-15-27A~~ O.S. § 2-14-302.A.2., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the DEQ shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the DEQ has issued a permit prior to receipt of an EPA objection under this subsection, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in ~~OAC 252:100-8-7 through 252:100-8-7.5-40~~ CFR §§ 70.7(g)(4) or (5)(i) and (ii) except in unusual circumstances. If the DEQ revokes the permit, it may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(k) ~~Effect on Tier III administrative permit hearing.~~ When a public petition or an EPA objection is registered on a proposed permit (~~Tier III~~) on which an administrative permit hearing has been requested in accordance with the Oklahoma Uniform Environmental Permitting Act, 27A O.S. §§ 2-14-101 through 2-14-401, the DEQ may stay the evidentiary part of the hearing involving cross-examination until EPA objections are resolved or determined to be inconsistent with applicable laws.

[OAR Docket #02-593; filed 4-1-02]

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

[OAR Docket #02-594]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 31. Control of Emission of Sulfur Compounds

Part 1. General Provisions [AMENDED]

252:100-31-2 [AMENDED]

252:100-31-3 [REVOKED]

Part 2. Ambient Air Concentration Limits for New and Existing Equipment [NEW]

252:100-31-7 [NEW]

Part 3. Existing Equipment Standards

252:100-31-12 [REVOKED]

252:100-31-13 [AMENDED]

252:100-31-14 [REVOKED]

252:100-31-15 [AMENDED]

252:100-31-16 [NEW]

Part 5. New Equipment Standards

252:100-31-25 [AMENDED]

252:100-31-26 [AMENDED]

252:100-31-27 [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. Supp. 2000, §§ 2-2-101, 2-2-201 and 2-5-101, *et seq.*

DATES:

Comment period:

July 17, 2000 through August 16, 2000

September 15, 2000 through October 18, 2000

November 15, 2000 through December 13, 2000

January 16, 2001 through February 21, 2001

March 15, 2001 through April 18, 2001

May 15, 2001 through June 20, 2001

August 21, 2001

Public hearing:

August 16, 2000

October 18, 2000

February 21, 2001

April 19, 2001

June 20, 2001

August 21, 2001

Adoption:

August 21, 2001

Submitted to Governor:

August 29, 2001

Submitted to House:

August 29, 2001

Submitted to Senate:

August 29, 2001

Gubernatorial approval:

October 13, 2001

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 28, 2002

Final adoption:

March 28, 2002

Effective:

June 1, 2002

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

Incorporated standards:

40 CFR 60 Appendix P

Incorporating rules:

252:100-31-13(c)

Availability:

The standards are available to the public for examination at the Department of Environmental Quality office at 707 North Robinson, 4th Floor, Oklahoma City, Oklahoma

ANALYSIS:

The proposed revisions are intended to clarify the existing rule. Sections have been reorganized to place like subject matter with like subject matter. Obsolete and redundant language is deleted, and awkward language is redrafted. Several standards are deleted, where analogous Federal standards exist; and several standards are relaxed, where a workgroup indicated compliance problems have existed, and the relaxation should not yield a decrease in air quality. We propose to:

1. revise Section 2 by clarifying the definitions of "existing source" and "new installation, (source or equipment)" by specifying the effective date for new sources, and adding definitions of "pulp mill," "sulfur recovery plant,"

July 17, 2002
Air Quality Advisory Council

September 10, 2002
Environmental Quality Board

Effective Date: June 1, 2003

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

~~[OAC Docket #02-1083]~~

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Registration, Emissions Inventory and Annual Operating Fees

252:100-5-2.1 [AMENDED]

~~Subchapter 8. Permits for Part 70 Sources~~

~~252:100-8-2 [AMENDED]~~

Subchapter 11. Alternative Emissions Reduction Plans and Authorizations

252:100-11-2 through 11-6 [AMENDED]

252:100-11-7 [NEW]

Subchapter 17. Incinerators

Part 1. General Provisions

252:100-17-1 [AMENDED]

Part 3. Incinerators

252:100-17-2 [AMENDED]

Part 5. Municipal Waste Combustors

252:100-17-14.1 [AMENDED]

252:100-17-14.2 [NEW]

252:100-17-20 through 22 [AMENDED]

252:100-17-25 through 26 [AMENDED]

Part 7. Hospital, Medical and Infectious Waste Incinerators

252:100-17-41 [AMENDED]

252:100-17-45 through 47 [AMENDED]

252:100-17-49 [AMENDED]

Part 9. Commercial and Industrial Solid Waste Incinerator Units

252:100-17-60 through 17-75 [NEW]

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

Part 1. General Provisions

252:100-41-1 [AMENDED]

252:100-41-2 [AMENDED]

Part 5. Toxic Air Contaminants

252:100-41-35 through 41-38 [AMENDED]

252:100-41-39 [AMENDED AND RENUMBERED]

252:100-41-40 [AMENDED]

252:100-41-40.1 [NEW]

252:100-41-41 [REVOKED]

252:100-41-42 through 41-44 [AMENDED]

Appendix O. Toxic Air Contaminants [NEW]

SUMMARY:

The proposed changes to Section 252:100-5-2.1 add language that will require stack testing to verify the reported emissions for certain categories of fuel-burning equipment. Testing will be required after every 43,000 hours of operation, provided there is no other method acceptable to the Division Director available to verify the reported emissions. Sources subject to this requirement that were in existence before January 1, 1999, and which have accumulated at least 43,000 hours of operation since their last acceptable stack test, must conduct the required stack test or verify the reported emissions by other acceptable means before March 1, 2007. Beginning January 1, 2004, stack testing or other acceptable verification is required for every applicable source after every 43,000 hours of operation. The new requirement supplements existing requirements for verification of incomplete or incorrect facility emission inventories contained in OAC 252:100-5-2.1(e).

The DEQ is proposing an amendment to OAC 252:100-8-2 to revise the definition of "major source" for Part 70 sources in response to the revision made in the federal rule effective November 27, 2001. The proposed revision consists of deleting the phrase "but only with respect to those air pollutants that have been regulated for that category" from (B)(xxvii) of the definition.

The DEQ is proposing changes to Subchapter 11 to enhance an applicant's case for receiving EPA's approval of an alternative emissions reduction plan as a source-specific SIP revision. The changes include a requirement that the plan provide for an actual reduction in emissions, and that the applicant submit sufficient information to demonstrate this reduction and to demonstrate that the plan will not adversely affect the applicant's ability to meet ambient air quality standards. Multiple facilities may utilize an alternative emissions reduction plan only if they are under common ownership or control, are located on contiguous or adjacent property, and affect the same airshed. A new Section 7 has been added to facilitate enforcement of the rule.

The Department proposes the addition of OAC 22:100-17, Part 9, Commercial and Industrial Solid Waste Incinerator Units (CISWI), to establish state emission standards and other enforceable requirements for existing CISWI. A CISWI is considered an existing CISWI if construction commenced on or before November 30, 1999. These proposed rules would provide the means for implementing and enforcing the federal emission guidelines (40 CFR 60, Subpart DDDD). The new Part 9 incorporates by reference sections of the

Notices of Rulemaking Intent

New Source Performance Standards for CISWI (40 CFR 60, Subpart CCCC). In addition to establishing emission standards for certain regulated pollutants, the new rule will establish requirements for CISWI operator training and qualifications, waste management plans, testing and monitoring of pollutants, and operating parameters. Also, Parts 1 and 5 of Subchapter 17 would be amended to make them consistent with the proposed new Part 9. Sections in Parts 5 and 7 of Subchapter 17 would be amended to update the incorporations by reference of federal New Source Performance Standards to the standards that exist on July 1, 2002.

The proposed changes to Parts 1 and 5 of Subchapter 41, Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants, would simplify language, clarify requirements, and remove redundant language or requirements. Substantive changes would also be proposed including the addition of a new Appendix O, Toxic Air Contaminants.

AUTHORITY:

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

COMMENT PERIOD:

Written comments will be accepted prior to and at the hearing on July 17, 2002. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by July 10, 2002. Oral comments may be made at the July 17, 2002 hearing and the September 10, 2002 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, July 17, 2002, 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 September 10, 2002, Cushing, OK (exact location to be determined).

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 Cheryl Bradley by calling (405) 702-4171.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Max Price (Subchapter 5), Cheryl Bradley (Subchapters 17 and 41 and Appendix O) and Joyce Sheedy (Subchapters 8 and 11), 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 #02-1083, filed 5-23-02]~~

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

[OAR Docket #02-1084]

RULEMAKING ACTION:

Notice of proposed EMERGENCY and PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 8. Permits for Part 70 Sources
- Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
252:100-8-34 [AMENDED]
- Appendix E. Primary Ambient Air Quality Standards [REVOKED]
- Appendix E. Primary Ambient Air Quality Standards [NEW]

SUMMARY:

A public petition for rulemaking has been filed with the Department of Environmental Quality. The petitioner was referred to the Air Quality Council. The petitioner seeks to amend permitting requirements for the construction of new electric power plants. The proposed changes at OAC 252:100-8-34, Best Available Control Technology (BACT), would establish BACT standards for nitrogen oxides (NOx) and carbon monoxide (CO) for gas-fired turbine electric generating units that would result in emissions of 2.0 ppm or less of each pollutant.

The same petitioner filed a second public petition for rulemaking, that was referred to the Air Quality Council. The petitioner seeks to change the Oklahoma NO₂ primary ambient standard and the CO primary ambient standard contained in Appendix E, Primary Ambient Air Quality Standards. The petitioner proposes to change the current annual standard for NO₂ from 100 ug/m³ (0.053 ppm) to a one-hour standard of 470 ug/m³ (0.25 ppm). The petitioner also proposes to change the current one-hour CO standard of 40 ug/m³ (935 ppm) to 23 ug/m³ (20 ppm). To make these changes, Appendix E would

**REGULAR MEETING/ HEARING AGENDA
AIR QUALITY COUNCIL
July 17, 2002, 9:00 a.m.
Multi-purpose Room
707 North Robinson
Oklahoma City, Oklahoma**

Please turn off your cell phones.

1. Call to Order – David Branecky
2. Roll Call – Myrna Bruce
3. Approval of Minutes – April 17, 2002 Regular Meeting
4. Public Rulemaking Hearings
 - A. OAC 252:100-8-2. Permits for Part 70 Sources [AMENDED]

The Department proposes changes to Subchapter 8 to revise the definition of “major source” for Part 70 sources in response to the revision made in the federal rule effective November 27, 2001. The proposed revision consists of deleting the phrase “but only with respect to those air pollutants that have been regulated for that category” from (B) (xxvii) of the definition.

1. Presentation – Joyce Sheedy
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

- B. OAC 252:100-11. Alternative Emissions Reduction Plans and Authorizations [AMENDED]

The Department proposes changes to Subchapter 11 that will enhance an applicant's chance of receiving EPA approval of an alternative emissions reduction plan as a source-specific SIP revision. The changes require that the plan provide for a reduction in actual emissions and, that the applicant provide sufficient information to demonstrate this reduction and to demonstrate that the plan will not adversely affect the ability to meet ambient air standards. The proposed changes reduce the confusion regarding facility vs. source, revise public notice requirements in Section 6, and add a new Section 7 on compliance.

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 252:100-39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas. Part 7 [AMENDED]
- OAC 252:100-43. Sampling and Testing Methods [AMENDED]
- OAC 252:100-45. Monitoring of Emissions [REVOKED]

The Department proposes these amendments to the Council as a single action. The changes move requirements from Subchapter 45 into Subchapter 43 and revoke Subchapter 45. In addition, two new sections unrelated to Subchapter 45 are proposed for Subchapter 43. Section 252:100-43-1.1 Definitions, will define the terms: method, monitoring and test. Section 252:100-43-1.2 Applicability, now clarifies that Subchapter 43 may not be used to avoid compliance with applicable, but more stringent, federal or state rules. The proposed changes also amend and move section 252:100-43-15 to a new section in Subchapter 39, 252:100-39-41.1 and amend section 252:100-39-41 to reflect this change.

- 1. Presentation – Max Price
- 2. Questions and discussion by Council/Public
- 3. Possible action by Council
- 4. Roll call vote for permanent adoption

- D. OAC 252:100-5-2.1 Registration, Emissions Inventory and Annual Operating Fees [AMENDED]

The Department proposes to amend 252:100-5-2.1 by requiring stack testing to verify reported emissions for certain categories of fuel-burning equipment. Testing will be required after every 43,000 hours of operation, provided there is no other credible method available to verify the reported emissions. The new requirement supplements existing requirements for verification of incomplete or incorrect facility emission inventories contained in 252:100-5-2.1(e).

- 1. Presentation – Max Price
- 2. Questions and discussion by Council/Public
- 3. Possible action by Council
- 4. Roll call vote for permanent adoption

- E. OAC 252:100-41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants & Appendix O. Toxic Air Contaminants [AMENDED]

The Department proposes changes to Parts 1 and 5 of Subchapter 41, Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants, to simplify language, clarify requirements, and remove redundant language or requirements. Substantive changes are also proposed including the addition of a new Appendix O. Toxic Air Contaminants.

- 1. Presentation – Cheryl Bradley
- 2. Questions and discussion by Council/Public
- 3. Possible action by Council
- 4. Roll call vote for permanent adoption

F. OAC 252:100-17. Incinerators [AMENDED]

The Department proposes to add OAC 242:100-17, Part 9, Commercial and Industrial Solid Waste Incinerator Units (CISWI), to provide the means for implementing and enforcing the federal emission guidelines at 40 CFR 60, Subpart DDDD and incorporates by reference sections of 40 CFR 60, Subpart CCCC. In addition to establishing emission standards for certain regulated pollutants, the new rule will establish requirements for operator qualifications and training, waste management plans, testing and monitoring of pollutants, and operating parameters.

1. Presentation – Cheryl Bradley
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

G. OAC 252:100-8. Permits for Part 70. Part 7 [AMENDED]

Appendix E. Primary Ambient Air Quality Standards [REVOKED]

Appendix E. Primary Ambient Air Quality Standards [NEW]

The Department has been petitioned by Dr. Richard Dawson to amend permitting requirements for the construction of new electric power plants. The proposed changes establish new BACT standards for nitrogen oxides and carbon monoxide for gas-fired turbine electric generating units. The same petitioner seeks to change Oklahoma's primary ambient air standards for both NO₂ and CO contained in Appendix E.

1. Presentation – Dr. Richard Dawson
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for emergency and permanent adoption.

5. Division Director's Report – Eddie Terrill
6. New Business – (Any matter not known about, or which could not have been reasonably foreseen prior to the time of posting the Agenda.)
7. Adjournment -- Next Regular Meeting will be at 9 a.m. October 16, 2002, DEQ Building, 707 North Robinson, Multi-purpose Room, Oklahoma City.
8. 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 405-702-4177.

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);
- (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.

"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 252:100-2-15 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) through (C) 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 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 HAP's, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

~~(C) 0.6 tons per year for any one category A substance, 1.2 tons per year for any one category B substance or 6 tons per year for any one category C substance as defined in OAC 252:100-41-40.~~

"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 tons per year ("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 that fraction of particulate matter that exhibits an average aerodynamic particle diameter of more than 10 micrometers) (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;
- (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, ~~but only with respect to those air pollutants that have been regulated for that category.~~

(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) non-attainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

"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.

"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 operation of one or more manufacturing, 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 Subchapter, 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 in so far 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 Subchapter.

"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.

"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.

8

**DRAFT MINUTES
AIR QUALITY COUNCIL
July 17, 2002
Department of Environmental Quality
Multipurpose Room 707 N. Robinson
Oklahoma City Oklahoma**

Draft for EQBoard September 10
For AQC approval October 17

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m., July 17, 2002 in the Multipurpose Room of the Department of Environmental Quality, 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. At least twenty-four hours prior to the meeting, agendas were posted on the entrance doors at the DEQ Central Office in Oklahoma City.

As protocol officer, Mr. Dyke 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. Mr. Dyke entered the agenda and the Oklahoma Register Notice into the record. He added that forms were at the sign-in table for anyone wishing to comment on any of today's rules.

Chairman David Branecky called the meeting to order and requested roll call. A quorum was confirmed.

MEMBERS PRESENT

David Branecky
Bill Breisch
Bob Lynch
Sharon Myers
Joel Wilson

DEQ STAFF PRESENT

Eddie Terrill
David Dyke
Scott Thomas
Pam Dizikes
Joyce Sheedy
Max Price
Cheryl Bradley
Shawna McWaters-Khalousi
Dawson Lasseter
Garry Keele
Kendall Cody
Pat Sullivan
Myrna Bruce

MEMBERS ABSENT

Fred Grosz
Gary Kilpatrick
Gary Martin
Rick Treeman

OTHERS PRESENT

Sign-in sheet is attached as an official part of these Minutes.

Approval of Minutes Chairman Branecky called agenda item number 3, Approval of Minutes of the April 17 Regular Meeting. Hearing no discussion, Chairman Branecky called for a motion to approve the Minutes as presented. Dr. Lynch made the motion and second was made by Ms. Myers.

Roll call.	Motion carried.	Sharon Myers	Yes
Bill Breisch	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes

Rulemaking – OAC252:100-8-2 Permits for Part 70 Sources [AMENDED]

Dr. Joyce Sheedy advised that staff proposed to revise the definition of major source for Part 70 operating permit program, Section 2 of Subchapter (SC) 8 in response to the change in the federal definition of major source at 40 CFR 70.2 that became effective November 27, 2001. She stated that the definition of major source is a key component in determining the applicability of the Part 70 operating permit program to sources in the state. She added that proposed revision consists of deleting the phrase “but only with respect to those pollutants that have been regulated for that category” from (B)(xxxii) of the definition.

Dr. Sheedy pointed out the revisions that would need to be made and stated that because this is a requirement of continuing the Title V delegation, it was staff’s recommendation to ask the Board for adoption as a permanent rule. After a brief discussion and questions answered, Mr. Branecky entertained a motion to recommend the rule to the Environmental Quality Board for approval as permanent rule. Motion was made by Ms. Myers and second by Mr. Breisch.

Roll call.	Motion carried.		
Bill Breisch	Yes	Sharon Myers	Yes
Bob Lynch	Yes	Joel Wilson	Yes
		David Branecky	Yes

Rulemaking – OAC252:100-11 Alternative Emissions Reduction Plans and Authorizations [AMENDED]

Dr. Joyce Sheedy advised the Council that the proposed revision to Subchapter 11 had been presented at the January 16 meeting, continued to April 17, and to July 17 to allow changes to be made to additional sections of the rule and to respond to comments. She advised that the revision of Subchapter 11 was originally to add the requirement that an alternative emission reduction plan must provide more reduction than actual emissions. She added that since SC 11 is not part of the Oklahoma SIP, alternative emission reduction plans require a source specific SIP revision.

Dr. Sheedy pointed out changes that had been included that would enhance the applicant’s chance of receiving EPA’s approval of the resulting SIP revision; and that these additional changes would clarify the information that is necessary in the plan application and further define the requirements and limitations for such plans.

Dr. Sheedy added that EPA was supportive of these changes and they thought it would help in their process of proving SIP revisions for these individual plans. She advised that staff proposed that the Council forward the rulemaking to the Environmental Quality Board as a permanent rule.

After discussion and questions from Council and the public, Mr. Branecky called for a motion. Mr. Wilson made a motion that included the changes discussed. Mr. Breisch made the second.

Roll call.	Motion carried.		
Bill Breisch	Yes	Sharon Myers	Yes
Bob Lynch	Yes	Joel Wilson	Yes
		David Branecky	Yes

**Rulemaking – OAC252:100-39 Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas. Part 7 [AMENDED]
OAC 252:100-43 Sampling and Testing Methods [AMENDED]
OAC 252:100-45 Monitoring of Emissions [AMENDED]**

Mr. Max Price stated that the Department proposed changes that would move requirements from SC 45 into SC 43 and would revoke SC 45. He added that two new sections unrelated to SC 45 are proposed for SC 43: Section 252:100-43-1.1 Definitions, will define the terms method, monitoring and test. Mr. Price added that Section 252:100-43-1.2 Applicability, would clarify that SC 43 may not be used to avoid compliance with applicable, but more stringent, federal or state rules. He added that the proposed changes also amend and move section 252:100-43-15 to a new section in SC 39, 252:100-39-41.1 and amend section 252:100-39-41 to reflect this change.

Mr. Price responded to comments that had been received and fielded questions from Council and audience. Mr. Myers made motion to continue the hearing to the next Council meeting to allow more time to study the proposed revisions and see what the impact would be. Mr. Wilson seconded.

Roll call.	Motion carried.	Sharon Myers	Yes
Bill Breisch	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes

Rulemaking – OAC252:100-5-2-1 Registration, Emissions Inventory and Annual Operating Fees [AMENDED]

Mr. Max Price advised that the Department proposed to amend 5-2-1 by requiring stack testing to verify reported emissions for certain categories of fuel-burning equipment. He pointed out that testing would be required after every 43,000 hours of operation, provided there is no other credible method available to verify the reported emissions. He stated that this new requirement supplements existing requirements for verification of incomplete or incorrect facility emission inventories contained in 5-2-.1(e).

Mr. Price pointed out comments that had been received and responded to those comments. Mr. Price then answered questions and took comments from the Council and audience. It was recommended that the hearing be continued to allow time to receive additional written comments.

Mr. Branecky called for a motion to continue the hearing to the October meeting. Mr. Wilson made motion and second was made by Ms. Myers.

Roll call.	Motion carried.	Sharon Myers	Yes
Bill Breisch	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes

Rulemaking – OAC252:100-41 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants and Appendix O. Toxic Air Contaminants [AMENDED]

Ms. Cheryl Bradley stated that the Department proposed changes to Parts 1 and 5 of SC 41 to simplify language, clarify requirements, and remove redundant language or requirements. She advised that substantive changes were also proposed which included the addition of a new Appendix O. Toxic Air contaminants. She pointed out the proposed changes would simplify language, clarify requirements, and remove redundant language or requirements. She added detail of substantive changes that were also being proposed. She entered into the record a letter of comment received from Mid-Continent Oil and Gas Association. She stated that there were still unresolved issues and suggested that the Council continue the hearing to the next regularly scheduled meeting. Ms. Bradley then responded to questions from the Council and the audience.

Mr. Branecky entertained motion to continue the rulemaking to the October meeting. Motion was made by Mr. Breisch and second by Ms. Myers.

Roll call.	Motion carried.		
Bill Breisch	Yes	Sharon Myers	Yes
Bob Lynch	Yes	Joel Wilson	Yes
		David Branecky	Yes

Rulemaking – OAC252:100-17 Incinerators [AMENDED]

Ms. Cheryl Bradley stated that the Department proposed to add OAC 252:100-17, Part 9, Commercial and Industrial Solid Waste Incinerator Units (CISWI) to provide the means for implementing and enforcing the federal emission guidelines at 40CFR 60, Subpart DDDD and incorporates by reference sections of 40 CFR 60, Subpart CCCC. She advised that in addition to establishing emissions standards for certain regulated pollutants, the new rule would establish requirements for operator qualifications and training, waste management plans, testing and monitoring of pollutants, and operating parameters. The proposed rules will be an essential part of Oklahoma's plan to control emissions from existing commercial and industrial incinerators.

Ms. Bradley advised that it was staff's recommendation that Council continue the rulemaking to the October meeting and fielded questions from the Council and the audience. Mr. Branecky entertained motion. Ms. Myers made motion to continue to October meeting and Dr. Lynch made the second.

Roll call.	Motion carried.		
Bill Breisch	Yes	Sharon Myers	Yes
Bob Lynch	Yes	Joel Wilson	Yes
		David Branecky	Yes

**Rulemaking – OAC252:100-8 Permits for Part 70. Part 7 [AMENDED]
Appendix E. Primary Ambient Air Quality Standards [REVOKED]
Appendix E. Primary Ambient Air Quality Standards [NEW]**

Dr. Richard Dawson petitioned the Department to amend permitting requirements for the construction of new electric power plants. He proposed changes that would establish new BACT standards for nitrogen oxides and carbon monoxide for gas-fired turbine electric generating units. The petition would also change Oklahoma's primary ambient air standards for both NO₂ and CO contained in Appendix E.

Following Dr. Dawson's presentation and discussion with Council and audience, Mr. Branecky went on the record to say that he supports clean air in Oklahoma, but he felt that Dr. Dawson failed to prove the need for the additional requirements requested. Mr. Branecky also stated that DEQ does an adequate job of protecting the health of the citizens of Oklahoma using the rule that is currently in place. Mr. Branecky then called for a motion.

Ms. Myers made a motion that Council not accept the rule revisions to SC 8 and Appendix E as proposed. Mr. Breisch seconded that motion. Mr. Branecky pointed out to the Council that a 'yes' vote would be denying the proposals.

Roll call.	Motion carried.		
Bill Breisch	Yes	Sharon Myers	Yes
Bob Lynch	Yes	Joel Wilson	Yes
		David Branecky	Yes

Mr. Wilson voiced for the record his appreciation to Dr. Dawson for getting involved in the rulemaking process as a private citizen, and his admiration for Dr. Dawson's passion about the health of the people. Mr. Wilson added that it was a good effort, but the proposal contained technical problems; therefore, he too must vote to deny the proposals.

Division Director's Report Mr. Terrill stated that the Air Quality Division has received another rulemaking petition filed with the DEQ. He advised that staff is in the process of setting this petition on the agenda of the October Air Quality Council meeting for a decision whether to proceed with rulemaking on the petition.

New Business None

Adjournment Meeting adjourned at 12:45 p.m.

Next Meeting October 16, 2002, Department of Environmental Quality, Multipurpose Room, 707 North Robinson, Oklahoma City, Oklahoma.

A copy of the hearing transcripts are attached and made an official part of these Minutes.

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STATE OF OKLAHOMA

TRANSCRIPT OF PROCEEDINGS
AIR QUALITY COUNCIL MEETING

OAC 252:100-8-2

PERMITS FOR PART 70 SOURCES

HELD ON JULY 17, 2002 AT 9:00 A.M.

707 NORTH ROBINSON

OKLAHOMA CITY, OKLAHOMA

REPORTED BY: CHRISTY A. MYERS, C.S.R.

MYERS REPORTING SERVICE
(405) 721-2882

ORIGINAL

COUNCIL MEMBERS

avid Branecky, Chairman

haron Myers, Vice-Chair

ick Treeman, Member

oel Wilson, Member

r. Fred Grosz, Member

ary Kilpatrick, Member

ill Breisch, Member

r. Bob Lynch, Member

STAFF MEMBERS

ddie Terrill, Director

avid Dyke, Protocol Officer

yrna Bruce, Secretary

1 MS. BRUCE: Mr. Wilson.
 2 MR. WILSON: Here.
 3 MS. BRUCE: Mr. Branecky.
 4 MR. BRANECKY: Here.
 5 MS. BRUCE: For the record,
 6 absent are Mr. Kilpatrick, Mr. Treeman, Dr.
 7 Grosz and Mr. Martin.
 8 MR. BRANECKY: The next item on
 9 the agenda is approval of the Minutes from
 10 the April 17th meeting. Do we have any
 11 discussion on the Minutes? I'll entertain
 12 a motion for approval.
 13 DR. LYNCH: I move to approve
 14 them.
 15 MS. MYERS: Second.
 16 MR. BRANECKY: I have a motion
 17 and second. Myrna, call the roll, please.
 18 MS. BRUCE: Dr. Lynch.
 19 DR. LYNCH: Yes.
 20 MS. BRUCE: Mr. Breisch.
 21 MR. BREISCH: Yes.
 22 MS. BRUCE: Ms. Myers.
 23 MS. MYERS: Yes.
 24 MS. BRUCE: Mr. Wilson.
 25 MR. WILSON: Yes.

PROCEEDINGS

1
 2
 3 MR. BRANECKY: Good morning,
 4 everyone. We need to go ahead and get
 5 started, we've got a full agenda today.
 6 Hopefully -- well, I don't know if we'll
 7 get through by lunch, but we certainly will
 8 take a break for our court reporter. Our
 9 court reporter, it is very difficult for
 10 her to continue for any length of time.
 11 So, I would plan on probably taking a break
 12 around 10:30, if that's okay?

13 THE REPORTER: Perfect.
 14 MR. BRANECKY: And then if we
 15 need to, we'll break for lunch and come
 16 back after lunch. We'll go ahead and get
 17 started.

18 The first order on the agenda is for
 19 Myrna to call the roll, please.

20 MS. BRUCE: Dr. Lynch.
 21 DR. LYNCH: Here.
 22 MS. BRUCE: Mr. Breisch.
 23 MR. BREISCH: Here.
 24 MS. BRUCE: Ms. Myers.
 25 MS. MYERS: Here.

1 MS. BRUCE: Mr. Branecky.
 2 MR. BRANECKY: Yes.
 3 The next portion of the meeting,
 4 we'll go into the public hearing section.
 5 And Mr. Dyke, will you take it from there?
 6 MR. DYKE: Good morning,
 7 everyone. I'm David Dyke, I'm the
 8 Assistant Director of the Air Quality and
 9 I'll be the Protocol Officer today.
 10 These hearings will be convened by
 11 the Council in compliance with the Oklahoma
 12 Administrative Procedures Act.
 13 MR. BRANECKY: Excuse me, Mr.
 14 Dyke. That reminded me, for those of you
 15 that have mobile phones, please put them on
 16 vibrate or mute, or pagers, whatever you
 17 have to do. Thank you. Sorry.
 18 MR. DYKE: Okay.
 19 MR. BRANECKY: Start over.
 20 MR. DYKE: This meeting is
 21 convened by the Council in compliance with
 22 the Oklahoma Administrative Procedures Act,
 23 Title 40 of the Code of Federal
 24 Regulations, Part 5.1, as well as the
 25 Authority of Title 27A of the Oklahoma

1 Statutes, Section 2-2-201, Sections 2-5-101
2 through 2-5-118.

3 These hearings were advertised in
4 the Oklahoma Register for the purpose of
5 receiving comments pertaining to the
6 proposed OAC 252 Chapter 100 rules, as
7 listed on the agenda, which will be entered
8 into the record along with the filing.

9 If you wish to make a statement,
10 fill out a form at the back table and we'll
11 call on you at the appropriate time.

12 We'll begin with what's marked as
13 Agenda Item 4A, OAC 252:100-8-2, Permits
14 for Part 70 Sources. And we'll call on
15 staff member, Joyce Sheedy.

16 DR. SHEEDY: Mr. Chairman,
17 Members of the Council, ladies and
18 gentlemen, staff proposes to revise the
19 definition of "major source" for the Part
20 70 operating permit program in Section 2 of
21 Subchapter 8.

22 This revision is in response to the
23 change in the federal definition of "major
24 source" at 40 CFR 70.2 that became
25 effective on November 27, 2001.

1 The effect of the proposed amendment
2 is to expand the last category. By
3 removing the phrase "but only with respect
4 to those air pollutants that have been
5 regulated for this category", all fugitive
6 emissions of all regulated pollutants from
7 a stationary source that is subject to NSPS
8 or NESHAP on and after August 7th, 1980,
9 must be considered in determining Title V
10 applicability whether or not pollutants are
11 regulated under the NSPS or NESHAP in
12 question. This could impact some sources
13 in the State.

14 Because this is a requirement of our
15 continued Title V delegation, staff asks
16 that the proposed rule, as amended, be
17 recommended for adoption by the Board as a
18 permanent rule. Thank you.

19 MR. TERRILL: Questions of Dr.
20 Sheedy by the Council.

21 MR. BREISCH: Joyce, just
22 briefly, what sources might come under,
23 that haven't so far?

24 DR. SHEEDY: Well, I've been
25 trying to think what sources might come

1 The definition of major source is a
2 key component in determining the
3 applicability of the Part 70 operating
4 permit program to sources in the state.

5 The proposed revision consists of
6 deleting the phrase "but only with respect
7 to those pollutants" -- I'm sorry, "to
8 those air pollutants that have been
9 regulated for that category" from
10 (B)(xxvii) of the definition of major
11 source on page 5 of the rule in the Council
12 packet.

13 Currently, the fugitive emissions of
14 a stationary source are not considered in
15 determining whether the source is a major
16 source (and therefore subject to Part 70)
17 unless the source is included in a list of
18 categories of stationary sources that is
19 included in the definition.

20 The last category in the list is:
21 All other stationary source categories
22 which, as of August 7, 1980, are regulated
23 by a NSPS or NESHAP, but only for those air
24 pollutants that are regulated by the NSPS
25 or NESHAP.

1 under and it's -- I really don't know. We
2 haven't done a study. It could affect some
3 sources that -- I don't know, maybe some of
4 the toxic HAP sources might.

5 MR. BREISCH: But you haven't
6 been contacted by any industry --

7 DR. SHEEDY: No.

8 MR. BREISCH: -- or anybody that
9 could be affected?

10 DR. SHEEDY: No. No one has
11 contacted us. We've received no comment at
12 all about this rule and if we didn't --
13 it's a federal rule already, so -- because
14 they've already changed their definitions
15 and it's effective already. And this just
16 keeps our program in line with the federal
17 rule.

18 MR. TERRILL: Any further
19 questions from the Council? Any questions
20 from the public for Dr. Sheedy? Okay.

21 MR. BRANECKY: With that, at this
22 point in time, we'll entertain a motion for
23 approval as permanent and emergency?

24 DR. SHEEDY: No, just permanent.

25 MR. BRANECKY: Just permanent.

1 MR.: I'll so move.
 2 MS. MYERS: Second.
 3 MR. BRANECKY: Myrna, would you
 4 call the roll, please.
 5 MS. BRUCE: Dr. Lynch.
 6 DR. LYNCH: Yes.
 7 MS. BRUCE: Mr. Breisch.
 8 MR. BREISCH: Yes.
 9 MS. BRUCE: Ms. Myers.
 10 MS. MYERS: Yes.
 11 MS. BRUCE: Mr. Wilson.
 12 MR. WILSON: Yes.
 13 MS. BRUCE: Mr. Branecky.
 14 MR. BRANECKY: Yes.

15 (End of Proceedings)

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C E R T I F I C A T E

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 2
 3 STATE OF OKLAHOMA)
 4 COUNTY OF OKLAHOMA) ss:
 5 I, CHRISTY A. MYERS, certified
 6 Shorthand Reporter in and for the State of
 7 Oklahoma, do hereby certify that the above
 8 proceeding is the truth, the whole truth,
 9 and nothing but the truth, in the case
 10 aforesaid; that the foregoing proceedings
 11 were taken by me in shorthand and
 12 thereafter transcribed under my direction;
 13 that said proceedings were taken on the
 14 17th day of July, 2002, at Oklahoma City,
 15 Oklahoma; and that I am neither attorney
 16 for nor relative of any of said parties,
 17 nor otherwise interested in said action.
 18 IN WITNESS WHEREOF, I have hereunto
 19 set my hand and official seal on this, the
 20 18th day of August, 2002.

CHRISTY A. MYERS, C.S.R.

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<p align="center">-1-</p> <p>100 [1] 6:6 10:30 [1] 3:12 17 [1] 1:9 17th [2] 4:10 11:14 18th [1] 11:20 1980 [2] 7:22 8:8</p>	<p>affected [1] 9:9 aforesaid [1] 11:10 agenda [5] 3:5,18 4:9 6:7 6:13 ahead [2] 3:4,16 air [6] 1:2,6 5:8 7:8,23 8:4 along [1] 6:8 amended [1] 8:16 amendment [1] 8:1 applicability [2] 7:3 8:10 appropriate [1] 6:11 approval [3] 4:9,12 9:23 approve [1] 4:13 April [1] 4:10 asks [1] 8:15 Assistant [1] 5:8 attorney [1] 11:15 August [3] 7:22 8:8 11:20 Authority [1] 5:25</p>	<p>comments [1] 6:5 compliance [2] 5:11,21 component [1] 7:2 considered [2] 7:14 8:9 consists [1] 7:5 contacted [2] 9:6,11 continue [1] 3:10 continued [1] 8:15 convened [2] 5:10,21 Council [8] 1:6 2:1 5:11 5:21 6:17 7:11 8:20 9:19 COUNTY [1] 11:4 court [2] 3:8,9</p>	<p>first [1] 3:18 foregoing [1] 11:10 form [1] 6:10 Fred [1] 2:6 fugitive [2] 7:13 8:5 full [1] 3:5</p>	<p>meeting [4] 1:6 4:10 5:3 5:20 member [7] 2:4,5,6,7,8,9 6:15 Members [3] 2:1,10 6:17 might [3] 8:22,25 9:4 Minutes [2] 4:9,11 mobile [1] 5:15 morning [2] 3:3 5:6 motion [3] 4:12,16 9:22 move [2] 4:13 10:1 Ms [24] 3:20,22,24,24,25 4:1,3,5,15,18,20,22,22,23 4:24 5:1 10:2,5,7,9,9,10 10:11,13 must [1] 8:9 mute [1] 5:16 Myers [13] 1:13,14 2:3 3:24,25 4:15,22,23 10:2,9 10:10 11:5,22 Myrna [4] 2:13 3:19 4:17 10:3</p>
<p align="center">-2-</p> <p>2 [1] 6:20 2-2-201 [1] 6:1 2-5-101 [1] 6:1 2-5-118 [1] 6:2 2001 [1] 6:25 2002 [3] 1:9 11:14,20 252 [1] 6:6 252:100-8-2 [2] 1:7 6:13 27 [1] 6:25 27A [1] 5:25</p>	<p align="center">-B-</p> <p>B [1] 7:10 became [1] 6:24 begin [1] 6:12 Bill [1] 2:8 Board [1] 8:17 Bob [1] 2:9 Branecky [16] 2:2 3:3 3:14 4:3,4,8,16 5:1,2,13 5:19 9:21,25 10:3,13,14 break [3] 3:8,11,15 Breisch [10] 2:8 3:22,23 4:20,21 8:21 9:5,8 10:7,8 briefly [1] 8:22 Bruce [17] 2:13 3:20,22 3:24 4:1,3,5,18,20,22,24 5:1 10:5,7,9,11,13</p>	<p align="center">-D-</p> <p>David [3] 2:2,12 5:7 definition [5] 6:19,23 7:1,10,19 definitions [1] 9:14 delegation [1] 8:15 deleting [1] 7:6 DEPARTMENT [1] 1:1 determining [3] 7:2,15 8:9 difficult [1] 3:9 direction [1] 11:12 Director [2] 2:11 5:8 discussion [1] 4:11 DIVISION [1] 1:2 done [1] 9:2 Dr [17] 2:6,9 3:20,21 4:6 4:13,18,19 6:16 8:19,24 9:7,10,20,24 10:5,6 Dyke [7] 2:12 5:5,6,7,14 5:18,20</p>	<p align="center">-G-</p> <p>Gary [1] 2:7 gentlemen [1] 6:18 Good [2] 3:3 5:6 Grosz [2] 2:6 4:7</p> <p align="center">-H-</p> <p>hand [1] 11:19 HAP [1] 9:4 hearing [1] 5:4 hearings [2] 5:10 6:3 HELD [1] 1:9 hereby [1] 11:7 hereunto [1] 11:18 Hopefully [1] 3:6</p>	<p align="center">-N-</p> <p>need [2] 3:4,15 neither [1] 11:15 NESHAP [4] 7:23,25 8:8 8:11 next [2] 4:8 5:3 nor [2] 11:16,17 NORTH [1] 1:10 nothing [1] 11:9 November [1] 6:25 NSPS [4] 7:23,24 8:7,11</p>
<p align="center">-4-</p> <p>40 [2] 5:23 6:24 405 [1] 1:15 4A [1] 6:13</p>	<p align="center">-C-</p> <p>C [2] 11:2,2 C.S.R [2] 1:13 11:22 case [1] 11:9 categories [2] 7:18,21 category [4] 7:9,20 8:2,5 certainly [1] 3:7 Certified [1] 11:5 certify [1] 11:7 CFR [1] 6:24 Chairman [2] 2:2 6:16 change [1] 6:23 changed [1] 9:14 Chapter [1] 6:6 CHRISTY [3] 1:13 11:5 11:22 City [2] 1:11 11:14 Code [1] 5:23 comment [1] 9:11</p>	<p align="center">-E-</p> <p>E [2] 11:2,2 Eddie [1] 2:11 effect [1] 8:1 effective [2] 6:25 9:15 emergency [1] 9:23 emissions [2] 7:13 8:6 End [1] 10:15 entered [1] 6:7 entertain [2] 4:11 9:22 ENVIRONMENTAL [1] 1:1 Excuse [1] 5:13 expand [1] 8:2</p>	<p align="center">-I-</p> <p>impact [1] 8:12 included [2] 7:17,19 industry [1] 9:6 interested [1] 11:17 item [2] 4:8 6:13</p>	<p align="center">-O-</p> <p>OAC [3] 1:7 6:6,13 Officer [2] 2:12 5:9 official [1] 11:19 Oklahoma [12] 1:3,11 1:11 5:11,22,25 6:4 11:3 11:4,7,14,15 one [1] 9:10 operating [2] 6:20 7:3 order [1] 3:18 otherwise [1] 11:17</p>
<p align="center">-5-</p> <p>5 [1] 7:11 51 [1] 5:24</p>	<p align="center">-F-</p> <p>F [1] 11:2 far [1] 8:23 federal [4] 5:23 6:23 9:13 9:16 filing [1] 6:8 fill [1] 6:10</p>	<p align="center">-J-</p> <p>Joel [1] 2:5 Joyce [2] 6:15 8:21 July [2] 1:9 11:14</p>	<p align="center">-K-</p> <p>keeps [1] 9:16 key [1] 7:2 Kilpatrick [2] 2:7 4:6</p>	<p align="center">-P-</p> <p>packet [1] 7:12 page [1] 7:11 pagers [1] 5:16 Part [6] 1:8 5:24 6:14,19 7:3,16 parties [1] 11:16 Perfect [1] 3:13 permanent [4] 8:18 9:23 9:24,25 permit [2] 6:20 7:4 Permits [2] 1:8 6:13</p>
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<p align="center">-A-</p>	<p align="center">-A-</p>	<p align="center">-F-</p>	<p align="center">-L-</p>	<p align="center">-P-</p>

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

AIR QUALITY COUNCIL
Public Hearing and Meeting

Attendance Record

July 17, 2002

Page One

NAME/AFFILIATION	ADDRESS	TELEPHONE
1. Bill Hale	1617 S Main, Muskogee, OK	918-429-0113
2. Jim Vannoy / Xerox	PO Box 26588 OKC OK 73126	405 324 3809
3. TERESA WHEELER / TINKER		405-734-7071
4. DAVE CANNING / CH2M - TINKER		405-734-4567
5. Julia Beverly / OGE	PO Box 321 OKC	405 553 3439
6. Richard Dawson	4805 S. WITTEN AVE OKC	405-636-1506
7. Howard Groundel AEP	Dallas	214-777-1711
8. MARL GIPSON	ARP OKC	405.841.1333
9. Renee Parsons - SPECTRUM FIELD SERVICES		214-987-6128
10. Ann Shaw - SPECTRUM		580-444-3114
11. DON WHITNEY	TRINITY CONSULTANTS	405 228-3292
12. Tom TARR / Cooper Cameron		(405) 671 1321
13. DENNIS G. DOUGHTY	M&S	272-3110
14. Gilman TRAVIS / Sunoco	Tulsa, OK	594-6572
15. Daniel Wade / Dolese Bros. Co.		235-2311
16. Becko Ziebro	Trinity Consultants	228-3292
17. Kelly Folsom - Weyerhaeuser		520-933-1926
18. Steve Moyer	Sinclair Oil Corp Tulsa OK	918 588 1197
19. Al Learned	Marathon Oil Co	405 720 5690
20. Larry Wildz	Spectrum Field Services	918 492 4906
21. Debbie McKay	1212 R. S Kerr	405 270 9123
22. Mike Wood	Weyerhaeuser	501 624 8569
23. m. Whittenburg	ONEOK	918-588-7538
24. D. Wallis	"	918-732-1329
25. Kirk Rutter	Boeing - Tulsa	918-832-3178



NAME/AFFILIATION	ADDRESS	TELEPHONE
26. Garry Keel, DEQ	Tulsa R/AT	918-293-1625
27. Laura Herron, DEQ		405-702-4100
28. Henry McLaurine	Houston	713-836-8881
29. ANGIE BURKHALTER	OIPA	405-942-2334 x221 (405) 748-4674
30. Karen Stas	American Lung Assoc of Oklahoma	
31. Bonnie M. Selbo	2122 S. Yukon Tulsa	
32. Steve Landers	4901 Chandler, Muskogee	918-683-7671
33. Susan Krug	AH Gen:	521-4274
34. Deborah Perry	AHAW's Behnam, Inc	918 496 0059
35. Doug Rex	21 E. Main St	405-234-2264
36. Gerald Butcher	WFEC, POB 429, Anadarko	405-247-4341
37. GARY COLLINS	TERRA 6606 E 540 Rd Claremore	918 266 1511
38. Jack Money	OPUBCO	475-3105
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REGULAR MEETING AGENDA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OKLAHOMA ENVIRONMENTAL QUALITY BOARD

A Public Meeting: 9:30 a.m., Tuesday, September 10, 2002
Cushing City Hall
100 Judy Adams Boulevard
Cushing, Oklahoma

1. Call to Order – Jerry Johnston, Chair

2. Roll Call – Myrna Bruce

3. Approval of Minutes of the June 25, 2002 Regular Meeting

4. **Rulemaking -- OAC 252:100 Air Pollution Control**

Two sets of changes are proposed:

- In Subchapter 8, the definition of “major source” for Part 70 sources is amended in response to a revision in the federal rule last year. The amendment deletes the phrase “but only with respect to those air pollutants that have been regulated for that category” from the definition.
- The Subchapter 11 changes are designed to enhance an applicant's chance of receiving EPA approval of an alternative emissions reduction plan as a source-specific State Implementation Plan (SIP) revision. The changes require that the plan provide for a reduction in actual emissions, and that the applicant provide sufficient information to demonstrate this reduction and to demonstrate that the plan will not adversely affect the ability to meet ambient air standards. The revisions also reduce the confusion regarding “facility” versus “source”, specify conditions for a plan involving multiple facilities under common control, and add a new section on compliance.
 - A. Presentation – David Branecky, Chair, Air Quality Advisory Council
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion by the Board
 - E. Roll call vote(s) on permanent adoption

5. **Rulemaking – OAC 252:205 Hazardous Waste Management**

Two sets of changes are proposed:

- The amendment to Section 205-3-3 incorporates by reference new or superseding federal hazardous waste amendments: (1) new listing of three hazardous wastes generated from inorganic chemical manufacturing processes; (2) revisions to the Corrective Action Management Unit (CAMU) Rule; (3) classification of mineral processing characteristic sludges and by-products being reclaimed as solid wastes; (4) prohibition on using Toxicity Characteristic Leaching Procedure to determine whether manufactured gas plant waste is hazardous waste; and (5) technical corrections related to the new inorganic chemical manufacturing listings. The language currently found in Section 205-3-3 is revoked, as changes to Section 205-3-2 have made it superfluous.
- It is necessary to revoke the rules in Subchapter 17, Part 3, “Waste Reduction Incentives”, because the State statutes that provided the authority for these rules have been revoked.
 - A. Presentation – Jody Reinhart, Chair, Hazardous Waste Management Advisory Council
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion by the Board
 - E. Roll call vote(s) on emergency adoption of the amendments to Section 205-3-3 and of permanent adoption of the Subchapter 17, Part 3 changes

6. **Rulemaking – OAC 252:631 Public Water Supply Operation**

This action updates state rules as directed by EPA to ensure that DEQ retains primacy in administering the public water supply system program under the Safe Drinking Water Act. This is accomplished by incorporating the most recent version of 40 CFR Parts 141 and 143 by reference and by revoking the inconsistent provisions of the current rules. Additionally, changes are proposed to the fee section of the rule to reflect requirements in state statute and to eliminate fee language that conflicts with provisions in OAC 252:305, "Laboratory Services". The regulations for minor water systems were grouped together in a new subchapter to ease compliance for minor systems.

- A. Presentation – Robert Johnston, Chair, Water Quality Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion by the Board
- E. Roll call vote(s) on emergency and permanent adoption

7. **DEQ Operational Budget Request**

DEQ budget requests to the Governor through the Office of State Finance require approval of the Board. The operational budget request for State Fiscal Year 2004 (beginning July 1, 2003) must be submitted to the OSF by October 1st of this year. The law now requires that all state agencies submit a 5-year budget plan. The request for the coming year, in this case SFY 2004, is the most critical. Included in the request for SFY 2004 are funds for various projects and programs related to water quality, public water supplies, air quality, and Superfund projects.

- A. Presentation – Larry Gales, Primary Division Director
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion by the Board
- E. Roll call vote on approval of budget request

8. **2003 Board meeting dates and locations:** Discussion and vote by the Board

9. **New Business** (any matter not known about, or which could not have been reasonably foreseen prior to the time of posting of agenda)

10. **Executive Director's Report**, including brief status reports on rulemaking petitions and on follow-up to questions raised in March Board meeting about Chapter 616 (Industrial Wastewater Systems) rules

11. **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 have a disability and need an accommodation, please notify the DEQ three days in advance at 702-7100.

* Specification of proposed adoption by emergency rulemaking, by permanent rulemaking, or by both, is based on the recommendations of the respective advisory councils. Adoption or amendment of rules as emergency rulemaking requires a finding by the Board that a compelling extraordinary circumstance warrants the seeking of emergency certification, so that the rules will take effect immediately upon the Governor's signature. Absent a finding and certification of emergency, rules adopted today will not become effective until June of 2003.

Sept 10, 2002

CHAPTER 100. AIR POLLUTION CONTROL

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

EXECUTIVE SUMMARY:

The DEQ is proposing to revise the definition of "major source" for Part 70 sources in Section 2 of Subchapter 8. A federal rule incorporating this change was published and made final on November 27, 2001. Permitting authorities, including the Oklahoma DEQ, are required to revise their programs to incorporate this change. The proposed revision consists of deleting from subdivision (xxvii) of subparagraph (B) the words: "but only with respect to those air pollutants that have been regulated for that category."

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

The proposed revision is to insure the definition of "major source" in Section 2 of Subchapter 8 is consistent with the analogous federal rule.

ENVIRONMENTAL BENEFIT STATEMENT:

The proposed changes are not expected to have a significant effect on the environment. Expanding the reach of the Title V permitting program to cover some additional facilities offers further protection for the quality of air within the state.

SUMMARY OF COMMENTS AND RESPONSES:

No written comments have been received and there were no comments from the public at the July 17, 2002, Air Quality Council meeting.

(10) Appendix G. Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service.

[OAR Docket #03-701; filed 4-21-03]

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

[OAR Docket #03-703]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 8. Permits for Part 70 Sources
Part 5. Permits for Part 70 Sources
252:100-8-2 [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 17, 2002 through July 17, 2002
September 10, 2002

Public hearing:

July 17, 2002 and September 10, 2002

Adoption:

September 10, 2002

Submitted to Governor:

September 19, 2002

Submitted to House:

September 19, 2002

Submitted to Senate:

September 19, 2002

Gubernatorial approval:

October 29, 2002

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

Final adoption:

March 25, 2003

Effective:

June 1, 2003

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The DEQ is proposing to revise the definition of "major source" for Part 70 sources in Section 2 of Subchapter 8. A federal rule incorporating this change was published and made final on November 27, 2001. Permitting authorities, including the Oklahoma DEQ, are required to revise their programs to incorporate this change. The proposed revision consists of deleting from subdivision (xxvii) of subparagraph (B) the words: "but only with respect to those air pollutants that have been regulated for that category."

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 1, 2003:

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);
- (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);

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(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.

"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 252:100-2-15 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) through (C) 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 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 HAP's, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

(C) 0.6 tons per year for any one category A substance, 1.2 tons per year for any one category B substance or 6 tons per year for any one category C substance as defined in OAC 252:100-41-40.

"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 tons per year ("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 that fraction of particulate matter that exhibits an average aerodynamic particle diameter of more than 10 micrometers) (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;
- (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, ~~but only with respect to those air pollutants that have been regulated for that category.~~

(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) non-attainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

"**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.

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"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.

"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 operation of one or more manufacturing, 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 Subchapter, 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 in so far 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 Subchapter.

"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.

"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.

[OAR Docket #03-703; filed 4-21-03]

October 16, 2002
Air Quality Advisory Council

November 14, 2002
Environmental Quality Board

Effective Date: June 1, 2003

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 4. RULES OF PRACTICE AND PROCEDURE

[OAR Docket #02-1310]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Environmental Permit Process [AMENDED]
SUMMARY:

The proposed amendments would cure Title V program deficiencies identified by the U.S. Environmental Protection Agency. Four changes, affecting only Air Quality Division actions, are being made. These are: (1) An additional notice provision will require that Air Quality Division permit actions subject to the Chapter 4 notice requirements be made by publication in a newspaper of general circulation in the area where the source is located, and also to persons on a mailing list developed by the DEQ, and by other means as needed to assure adequate notice to the affected public. (2) The notice will identify the emissions change involved in any permit modification. (3) Public review is provided before the issuance of construction permits to new sources. In order for operating permits to be issued to new sources without redundant public review, the notice preceding public review on the construction permit will stipulate the conditions under which additional public review will not be required. (4) Approval of alternative emissions reduction authorizations under Subchapter 11, and approval of plant-wide emission plans under Subchapters 37 or 39, which are now Tier I actions, will become Tier II actions.

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 will be accepted prior to and at the hearing on October 16, 2002. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by October 9, 2002. Oral comments may be made at the October 16, 2002 hearing and the November 14, 2002 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, October 16, 2002, 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 November 14, 2002, at the Great Plains Technology Center, Seminar Center, 2001 E. Gladstone, Frederick, OK.

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:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Joyce Sheedy, 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 #02-1310; filed 8-22-02]

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

[OAR Docket #02-1311]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:100-1-1 [AMENDED]

252:100-1-2 [AMENDED]

Notices of Rulemaking Intent

252:100-1-3 [AMENDED]
252:100-1-4 [NEW]
Subchapter 4. New Source Performance Standards
252:100-4-5 [AMENDED]
Subchapter 5. Registration, Emissions Inventory and Annual Operating Fees
252:100-5-2.3 [NEW]
Subchapter 7. Permits for Minor Facilities
252:100-7-1.1 [AMENDED]
252:100-7-60.3 [NEW]
252:100-7-60.4 [NEW]
Subchapter 8. Permits for Part 70 Sources
252:100-8-1.1 [AMENDED]
252:100-8-5 [AMENDED]
252:100-8-7.2 [AMENDED]
Subchapter 17. Incinerators
Part 1. General Provisions
252:100-17-1 [AMENDED]
252:100-17-2 [AMENDED]
252:100-17-2.2 [AMENDED]
Part 5. Municipal Waste Combustors
252:100-17-14.1 [AMENDED]
252:100-17-14.2 [NEW]
252:100-17-20 through 22 [AMENDED]
252:100-17-25 through 26 [AMENDED]
Part 7. Hospital, Medical and Infectious Waste Incinerators
252:100-17-41 [AMENDED]
252:100-17-45 through 47 [AMENDED]
252:100-17-49 [AMENDED]
Part 9. Commercial and Industrial Solid Waste Incinerator Units
252:100-17-60 through 17-75 [NEW]
Subchapter 31. Control of Emissions of Sulfur Compounds
252:100-31-7 [AMENDED]
252:100-31-2 [AMENDED]
Subchapter 35. Control of Emission of Carbon Monoxide
252:100-35-1.1 [AMENDED]
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)
252:100-37-2 [AMENDED]
252:100-37-25 [AMENDED]
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
252:100-39-30 [AMENDED]
252:100-39-41 [AMENDED]
252:100-39-41.1 [NEW]
252:100-39-46 [AMENDED]
Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants
Part 1. General Provisions
252:100-41-1 [AMENDED]
252:100-41-2 [AMENDED]
252:100-41-15 [AMENDED]
Part 5. Toxic Air Contaminants
252:100-41-35 through 41-38 [AMENDED]

252:100-41-39 [AMENDED AND RENUMBERED]
252:100-41-40 [AMENDED]
252:100-41-40.1 [NEW]
252:100-41-41 [REVOKED]
252:100-41-42 through 41-44 [AMENDED]
Subchapter 43. Sampling and Testing Methods
252:100-43-1 [AMENDED]
252:100-43-1.1 [NEW]
252:100-43-1.2 [NEW]
252:100-43-2 [AMENDED]
252:100-43-3 [AMENDED]
252:100-43-4 through 7 [NEW]
242:100-43-15 [AMENDED AND RENUMBERED]
Subchapter 45. Monitoring of Emissions
252:100-45-1 [REVOKED]
252:100-45-2 [REVOKED]
252:100-45-3 [REVOKED]
252:100-45-4 [REVOKED]
252:100-45-5 [REVOKED]
Subchapter 47. Control of Emissions from Existing Municipal Solid Waste Landfills
252:100-47-3 [AMENDED]
252:100-47-7 through 14 [AMENDED]
Appendix O. Toxic Air Contaminants [NEW]

SUMMARY:

The Department is proposing changes to Subchapters 1, 7, 8, 17, 31, 35, 37, and 39 as a single action. The intent of these changes is to simplify and clarify language and remove redundant definitions from Chapter 100. The proposed changes to Subchapter 1, General Provisions, include substantive changes to the following definitions: "Ambient air standards", "Best available control technology", "Chimney", "Commence", "Construction", "Excess emissions", "Existing source", "Fugitive emissions", "Malfunction", "New Installation (source or equipment)", "Opacity", "PM-10 emissions", "PM-10 (Particulate matter-10 micrometers)", "Particulate matter emissions", "Refuse", "Shutdown", "Stack", "Startup", "Stationary source", "TSP (total suspended particulates)", and "Volatile organic compound". Also, the definitions of "Facility" and "Responsible official" are being added to Subchapter 1. Definitions that are utilized in only one or two Subchapters are being moved from Subchapter 1 to the appropriate Subchapter(s). The definitions for "New portable source" and "Portable source" will be moved to OAC 252:100-7-1.1. The definition of "Best available control technology" will be deleted from OAC 252:100-8-1.1. The definition for "Excess air", "Fly ash" and "Resource recovery facility" will be moved to OAC 252:100-17-2.2. The definition for "Petroleum and natural gas processes" will be moved to OAC 252:100-31-2. The definitions for "Blast furnace" and "Basic oxygen furnace" will be moved to OAC 252:100-35-1.1 and a definition of "Gray iron cupola" will be added to this section. The definitions for "Condensate" and "External floating roof" will be moved to OAC 252:100-37-2 and the term "Custom product finish" will replace "Custom product finishes" in OAC 252:100-37-25. The definition of

"Architectural coating" will be moved to OAC 252:100-39-46 and the definition "Crude oil" will be deleted from Subchapter 39. A number of other defined terms are being deleted from Subchapter 1, as these terms are already defined in the appropriate Subchapters. Definitions to be deleted from Subchapter 1, because they are no longer used in Chapter 100, are "Foundry Cupola", "Hazardous Air Contaminant", "Major source (major emitting facility)", "Mechanical fuel-burning equipment", "Multiple chamber incinerator", "Odorant (odor)", "Organic materials", "Organic solvents", "Paper mill", "Particle board", "Photochemically reactive solvent", "Plywood", "Ringelmann chart", "Soiling index", "Source gas volume", "Stationary engine", "Undertaking cementing", and "Veneer". Also, a new section OAC 252:100-1-4, Units, Abbreviations, and Acronyms, is being added to Subchapter 1. Finally, new Sections 60.3 and 60.4 will be added to Subchapter 7 to reference Permits by Rule for particulate matter facilities and VOC storage and loading facilities in sections OAC 252:100-19-13 and 252:100-37-41 and 42, respectively.

The Department is proposing to amend Subchapter 4 to incorporate by reference all federal New Source Performance Standards (NSPS) amended from July 1, 2001, to July 1, 2002. The U.S. Environmental Protection Agency (EPA) has amended several previously incorporated NSPS Subparts since July 1, 2001. These are Subpart Eb, Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or Which Modification or Construction is Commenced After June 19, 1996, Subpart Da, Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, Subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units and Subpart A, General Provisions.

The proposed new section for Subchapter 5, Registration, Emission Inventory and Annual Operating Fees, would require the owners or operators of specific types of fuel-burning equipment to verify their reported emissions of oxides of nitrogen, carbon monoxide, volatile organic compounds and particulate matter. A stack test would be required on or before March 1, 2007 for any applicable fuel-burning equipment that was in existence on or before January 1, 1999, and which had accumulated at least 44,000 hours of operation since its last recorded stack test, or if no stack test was recorded, its original start-up date. It would then have to be stack tested before the end of each successive period of 44,000 hours of operation. A stack test would also be required for any applicable fuel-burning equipment which came into existence after January 1, 1999, before the end of its first 45,000 hours of operation and before the end of each successive period of 44,000 hours of operation. The stack testing requirements for each listed pollutant could be waived by the Director if: (1) a current operating permit limits the emissions of the pollutant, or (2) the fuel-burning equipment is equipped with an operational emission monitoring system,

or (3) a federal regulation requires the equipment to be tested periodically, or (4) the owner or operator can provide other data that demonstrates that the emissions are true and accurate as reported.

The Department is considering the revisions to Subchapter 8 listed in items (1) through (3) that are a condition of the final approval of Oklahoma's Title V program and items (4) and (5) that are "housekeeping" in nature and not substantive. (1) The Department proposes to revise the language in OAC 252:100-8-5(e)(3) to make clear that the fugitive emissions from sources subject to the Part 70 operating permit program must be included in the permit application and the permit in the same manner as stack emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source. (2) The Department proposes to delete "upon the Administrator's request" from OAC 252:100-8-7.2(a)(3)(B). (3) The Department proposes to delete "unless waived by the Administrator" from OAC 22:100-8-7.2(b)(1)(C). (4) The Department proposes to change references to OAC 252, Chapter 2 to the appropriate sections of Chapter 4 in OAC 252:100-8-5(c) and 252:100-8-7.2(b)(1)(B) and (D). Chapter 4 has replaced Chapter 2. (5) The Department proposes to change the format of the citations in OAC 252:100-8-5 and 252:100-8-7.2 for clarity and uniformity.

The Department proposes the addition of OAC 252:100-17, Part 9, Commercial and Industrial Solid Waste Incinerator Units (CISWI), to establish state emission standards and other enforceable requirements for existing CISWI. A CISWI is considered an existing CISWI if its construction commenced on or before November 30, 1999, and it was not modified or reconstructed on or after June 1, 2001. These proposed rules would provide the means for implementing and enforcing the federal emission guidelines (40 CFR 60, Subpart DDDD). The new Part 9 incorporates by reference sections of the New Source Performance Standards for CISWI (40 CFR 60, Subpart CCCC). In addition to establishing emission standards for certain regulated pollutants, the new rule will establish permitting, CISWI operator training and qualifications, waste management plans, testing and monitoring of pollutants, and operating parameter requirements. The new Part 9, an inventory of existing CISWI in Oklahoma and their emissions, and other essential elements required by 40 CFR 60 Subparts B and DDDD will comprise Oklahoma's draft State 111(d)/129 Plan. The draft State Plan is available for inspection and comment. The public hearing on the proposed plan will be held concurrently with the hearing on the proposed rules. Also, Parts 1 and 5 of Subchapter 17 would be amended to make them consistent with the proposed new Part 9. Sections in Parts 5 and 7 of Subchapter 17 would be amended to update the incorporations by reference of federal New Source Performance Standards 40 CFR 60 Subparts Eb and Ec to the versions of these standards that exist on July 1, 2002. The proposed changes to Parts 5 and 7 will be submitted to the U.S. Environmental Protection Agency as amendments to Oklahoma's federally-approved State 111(d) Plans for

large municipal waste combustors and hospital, medical and infectious waste incinerators. The hearing on the proposed amended plans will be held concurrently with the hearing on the proposed rule changes.

The Department is proposing the following revisions to Subchapter 31 to further clarify that compliance with the ambient air concentration limits in OAC 252:100-31-7(a) and (b) for sulfur oxides and hydrogen sulfide, respectively, includes the entire facility and not just a single emission point or process. The Department also proposes to reinstate the annual ambient air concentration limit for sulfur oxides. This limit was revoked when staff erroneously thought it to have the same effect as the annual SO₂ standard in Appendix E of Chapter 100.

The Department is proposing amendments to OAC 252:100-41-15 to update references to the federal National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department agreed to periodically update these references as a condition of its agreement with the EPA delegating to the Department authority to implement and enforce these standards. Subsection 15(a) would be amended to incorporate the NESHAP, specified in 40 CFR 61, as they exist on July 31, 2002. Subsection 15(b) would be amended to incorporate by reference new and amended Maximum Achievable Control Technology (MACT) standards for hazardous air pollutants in 40 CFR Part 63. The new MACT standards to be added are 40 CFR 63 Subparts J (polyvinyl chloride and copolymers production), AA (phosphoric acid manufacturing), BB (phosphate fertilizer production), XX (ethylene manufacturing process units: heat exchange systems and waste operations), QQQ (primary copper smelters), UUU (petroleum refinery catalytic cracking, catalytic reforming and sulfur plant units), HHHH (wet formed fiberglass mat production), NNNN (surface coating of large appliances), SSSS (metal coil surface coating), TTTT (leather finishing operations), UUUU (cellulose products manufacturing), VVVV (boat manufacturing) and XXXX (rubber tire manufacturing). The EPA published between July 1, 2001 and July 31, 2002, amendments and corrections to standards that have been previously incorporated by reference into subsection 15(b). The following amended MACT standards, as they exist on July 31, 2002, will be adopted by reference: 40 CFR 63 Subparts A (general provisions), O (ethylene oxide emissions from sterilization facilities), S (pulp and paper), U (polymer and resins group I), MM (chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills), SS (closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process), TT (equipment leaks - control level 1), UU (equipment leaks - control level 2), WW (storage vessels (tanks) - control level 2), YY (generic MACT), EEE (hazardous waste combustors), GGG (pharmaceuticals production), HHH (natural gas transmission and storage facilities), JJJ (polymers and resins group IV), LLL (portland cement manufacturing), MMM (pesticide active ingredient manufacturing) and GGGG (solvent extraction for vegetable oil production).

The Department proposes changes to OAC 252:100-41, Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants, Parts 1 and 5, which set forth the provisions of the Department's program to control the routine emissions of toxic air contaminants from stationary sources. These rules originally became effective on March 8, 1987 and have remained substantially unchanged since that date. The EPA promulgated many MACT and other regulations to control hazardous air pollutants after the Clean Air Act Amendments of 1990 were enacted by Congress. The proposed amendments to Subchapter 41 continue the Department's efforts to refine its regulatory continuum by focusing the agency's resources on the control of pollution sources that are most likely to adversely affect public health or the environment and to integrate its programs more effectively with federally enacted control strategies. The proposed changes will simplify language, clarify requirements, remove redundant language or requirements, and update references to occupational exposure limits. A new Appendix O, Toxic Air Contaminants, which is a list of toxic air contaminants and their associated maximum acceptable ambient concentration (MAAC) standards, will be added to Chapter 100. The proposed changes remove from OAC 252:100-41-2 and 40 the definition and requirements associated with "substances of low toxicity" (Category C) and add to Section 2 the definition and provisions for controlling emissions of "substances of concern" as toxic air contaminants. The definition of "toxic air contaminant" in Section 2 will be amended to "any substance or group of substances that is included in Appendix O of this chapter or which meets the criteria for a substance of high toxicity (Category A) or substance of moderate toxicity (Category B) set forth in OAC 252:100-41-40." The definitions of "affected area", "area source", and "substances of low toxicity" will be deleted from Section 2 because they will no longer be used in Subchapter 41, and "best available control technology" and "stationary source" will be deleted from Section 2 because these terms are already defined in Subchapter 1. The references to American Conference of Governmental Industrial Hygienists, National Institute of Occupational Safety and Health, and American Industrial Hygiene Association workplace exposure standards in the definition of "occupational exposure limit" will be updated to their 2002 versions. Section 39 would be amended to add a provision that provides for the use of modeling data, with or without monitoring data, as evidence of a MAAC violation resulting from the combined emissions of two or more sources and renumbered to 252:100-41-38(c). A new section 40.1, Toxic air contaminant list, that references Appendix O and states that substances can only be added or removed from Appendix O through rulemaking, will be added to Chapter 100. The Department is considering amendments to OAC 252:100-41-43, Exemptions, that would replace de minimis exemption levels for Category A, B and C toxic air contaminants with more stringent levels. Also, exemptions would be added to Section 43 for specific sources subject to other state or federal air toxics control requirements such as those imposed in New Source Performance Standards, State

111(d) Plans or Maximum Achievable Control Technology standards. OAC 252:100-41-44(c) will be added to establish that an affected source will have one year from the date a substance is added to Appendix O to comply with the new standard.

The Department proposes changes to Subchapters 43 and 45. These changes will merge the requirements of 252:100-45, Monitoring of Emissions, into Subchapter 43, and then revoke Subchapter 45. In addition, two new sections unrelated to Subchapter 45 are proposed for Subchapter 43. Section 252:100-43-1.1, Definitions, will define the terms: "method", "monitoring", and "test". Section 252:100-43-1.2, Applicability, will clarify that the requirements of Subchapter 43 may not be used to avoid compliance with applicable, but more stringent, Federal or State rules. Section 252:100-43-6, Credible evidence, will add language for credible evidence and compliance certifications similar to that found in the Code of Federal Regulations. Section 252:100-43-7, Records and Reports Required, will add a requirement for a minimum two-year retention time for all required records. This new section also requires records to be kept on site or at a pre-approved location, and maintained in a readily viewable format. In addition, it will set certain requirements for units of measure and procedures for reports. Finally, the proposed changes will amend and move section 252:100-43-15 to a new section in Subchapter 39, 252:100-39-41.1, and amend 252:100-39-41 to reflect this change.

The Department is proposing to amend Subchapter 47, Control of Emissions from Existing Municipal Solid Waste Landfills to update the incorporations by reference of 40 CFR 60.751 through 60.759 to July 1, 2002. The proposed changes will be submitted to the EPA as amendments to Oklahoma's federally-approved State 111(d) Plans for existing municipal solid waste landfills. The hearing on the proposed amended plan will be held concurrently with the hearing on the proposed rule changes.

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 will be accepted prior to and at the hearing on October 16, 2002. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by October 9, 2002. Oral comments may be made at the October 16, 2002 hearing and the November 14, 2002 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, October 16, 2002, 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 November 14, 2002, at the Great Plains Technology Center, Seminar Center, 2001 E. Gladstone, Frederick, OK.

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:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Max Price (Subchapters 5, 39, 43, and 45), Cheryl Bradley (Subchapters 17 and 41 and Appendix O), Joyce Sheedy (Subchapters 8 and 31), Michelle Martinez (Subchapters 1, 4, 7, 17-2.2, 35-1.1, 37, 39-30 and 39-46), and Lisa Donovan (Subchapter 47). 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 #02-1311; filed 8-22-02]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 510. MUNICIPAL SOLID WASTE LANDFILLS**

[OAR Docket #02-1304]

RULEMAKING ACTION:

Notice of proposed PERMANENT Rulemaking
PROPOSED RULES:

Chapter 510. Municipal Solid Waste Landfills
[REVOKED]

SUMMARY:

Chapter 510 of the Oklahoma Administrative Code is proposed to be revoked concurrently with the adoption of Chapter 515, Regulations for the Management of Solid Waste. Chapter 515 is the result of a comprehensive review and rewrite of existing rules, and resulted in merging Chapters 510 (Municipal Solid Waste Landfills) and 520 (Solid Waste Management) into Chapter 515.

REGULAR MEETING/ HEARING AGENDA
AIR QUALITY COUNCIL
October 16, 2002, 9:00 a.m.
Multi-purpose Room
707 North Robinson
Oklahoma City, Oklahoma

Please turn off your cell phones.

1. Call to Order – David Branecky
2. Roll Call – Myrna Bruce
3. Approval of Minutes – July 17, 2002 Regular Meeting
4. Meeting Schedule for Calendar Year 2003
5. Public Rulemaking Hearings

A. OAC 252:4. Subchapter 7. Environmental Permit Process. [AMENDED]

The Department proposes changes to cure Title V program deficiencies identified by the U.S. Environmental Protection Agency. Six changes, affecting only the Air Quality Division actions, are being made. Three changes deal with public notice, a fourth with public review in regard to construction permits for new sources, a fifth moves two specific Tier I activities to the Tier II level and the sixth deletes minor source operating permit renewals from Tier II since minor source operating permits do not require renewals.

1. Presentation – Joyce Sheedy
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

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

The Department proposes revisions that are a condition of the final approval of Oklahoma's Title V program. Other changes are "housekeeping" in nature.

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

The Department proposes changes to Subchapters 1, 7, 17, 31, 35, 37 and 39 as a single action. The intent of these changes is to simplify and clarify language and remove redundant definitions from Chapter 100.

1. Presentation – Michelle Martinez
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

D. OAC 252:100-4. New Source Performance Standards. [AMENDED]

The department proposes to amend Subchapter 4 to incorporate by reference all federal New Source Performance Standards (NSPS) amended from July 1, 2001, to July 1, 2002.

1. Presentation Michelle Martinez
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

E. OAC 252:100-47. Control of Emissions from Existing Municipal Solid Waste Landfills. [AMENDED]

The Department proposes to update the incorporations by reference of 40 CFR 60.751 through 60.759 to July 1, 2002. The proposed changes will be submitted to the EPA as amendments to Oklahoma's federally approved State 111(d) Plans.

1. Presentation – Lisa Donovan
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

F. OAC 252:100-41-15. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants. [AMENDED]

The Department proposes to update the incorporations by reference of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR Parts 61 and 63 to the versions that existed on July 31, 2002.

1. Presentation – Cheryl Bradley
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

G. OAC 252:100-5-2.3. Registration, Emission Inventory and Annual Operating Fees. [NEW]

The Department proposes to add 252:100-5-2.3 to require stack testing to verify reported emissions for certain categories of fuel-burning equipment. Testing will be required every 44,000 hours of operation, provided there is no other acceptable method to verify the reported emissions. The new requirement supplements existing requirements for verification of incomplete or incorrect facility emission inventories contained in 252:100-5-2.1(e).

1. Presentation – Max Price
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

H. OAC 252:100-17. Incinerators. [AMENDED]

The Department proposes to add OAC 242:100-17, Part 9, Commercial and Industrial Solid Waste Incinerator Units (CISWI), to provide the means for implementing and enforcing the federal emission guidelines at 40 CFR 60, Subpart DDDD and incorporates by reference sections of 40 CFR 60, Subpart CCCC. In addition to establishing emission standards for certain regulated

pollutants, the new rule will establish permitting, operator qualifications and training, waste management plans, testing and monitoring of pollutants, and operating parameter requirements.

1. Presentation --Cheryl Bradley
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

I. OAC 252:100-31. Control of Emission of Sulfur Compounds. [AMENDED]

The Department proposes revisions to clarify that the ambient air concentration standard in OAC 252:100-31-7(a) for sulfur oxides is measured in terms of facility-wide impact on the ambient air concentration. The Department also proposes to reinstate the annual ambient air concentration limit for sulfur oxides, which was erroneously revoked.

1. Presentation -- Joyce Sheedy
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

J. OAC 252:100-39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas. Part 7. [AMENDED]

OAC 252:100-43. Sampling and Testing Methods. [AMENDED]

OAC 252:100-45. Monitoring of Emissions. [REVOKED]

The Department proposes these amendments to the Council as a single action. The changes move requirements from Subchapter 45 into Subchapter 43 and revoke Subchapter 45. In addition, two new sections unrelated to Subchapter 45 are proposed for Subchapter 43. Section 252:100-43-1.1 Definitions, will define the terms: method, monitoring and test. Section 252:100-43-1.2 Applicability, now clarifies that Subchapter 43 may not be used to avoid compliance with applicable, but more stringent, federal or state rules. The proposed changes also amend and move section 252:100-43-15 to a new section in Subchapter 39, 252:100-39-41.1, and amend section 252:100-39-41 to reflect this change.

1. Presentation -- Max Price
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

K. OAC 252:100-41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants. & Appendix O. Toxic Air Contaminants. [AMENDED]

The Department proposes changes to Parts 1 and 5 of Subchapter 41, Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants, to simplify language, clarify requirements, and remove redundant language or requirements. Substantive changes are also proposed including the addition of a new Appendix O. Toxic Air Contaminants.

1. Presentation -- Cheryl Bradley
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

6. Petition for rulemaking – Decision whether to refer petition to staff to initiate rulemaking.
7. Division Director's Report – Eddie Terrill
8. New Business – (Any matter not known about, or which could not have been reasonably foreseen prior to the time of posting the Agenda.)
9. Adjournment -- Next Regular Meeting is proposed for 9 a.m. January 15, 2003, DEQ Building, 707 North Robinson, Multi-purpose Room, Oklahoma City.

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.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-5. Permit applications

(a) **Confidential information.** If a source submits information to the DEQ under a claim of confidentiality, the source shall also submit a copy of such information directly to the Administrator, if the DEQ requests that the source do so.

(b) **Duty to supplement or correct application.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) **Standard application form and required information.** Sources that are subject to the Part 70 permit program established by this Chapter shall file applications on the standard application form that the DEQ makes available for that purpose ~~in accordance with OAC 252:2-15~~. The application must include information needed to determine the applicability of any applicable requirement, or state-only requirement, or to evaluate the fee amount required under the schedule approved pursuant to OAC 252:100-5-2.2(b)(2). The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted. The source must provide a list of any insignificant activities that are exempted because of size or production rate. Trivial activities need not be listed. The standard application form and any attachments shall require that the information required by OAC 252:100-8-5(d) and/or (e) be provided.

(d) **Construction permit applications.**

(1) An application for a construction permit shall provide data and information required by this Chapter and/or requested on the application form available from the DEQ pursuant to the requirements of this Chapter. Such data and information shall include but not be limited to site information, process description, emission data and when required, BACT, modeling and sampling point data as follows:

(A) **BACT determination.** To be approved for a construction permit, a major source must demonstrate that the control technology to be applied is the best that is available for each pollutant that would cause the source to be defined as a major source. This determination will be made on a ~~case-by-case~~ case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternative control systems. Unless required under Part 7 of this Subchapter, a BACT determination is not required for a modification that will result in an increase of emissions of less than 100 tons per year of any regulated air pollutant.

(B) **Modeling.** Any air quality modeling or ambient impact evaluation that is required shall be prepared in accordance with procedures acceptable to the DEQ and accomplished by the applicant.

(C) **Sampling points.** If required by the DEQ an application shall show how the new source will be equipped with sampling ports, instrumentation to monitor and record emission data and other sampling and/or testing equipment.

(2) Construction permit applications for new sources must also include the requirements for operating permits contained in OAC 252:100-8-5(e) to the extent they are applicable.

(e) **Operating permit applications.**

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(A) All emissions of pollutants for which the source is major, and all emissions (including fugitive emissions) of regulated air pollutants. Fugitive emissions shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The permit application

shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under ~~subsection (e) of this Section~~ OAC 252:100-8-5(c) or OAC 252:100-8-3(b).

(B) Identification and description of all points of emissions described in ~~subparagraph (e)(3)(A) of this Section~~ OAC 252:100-8-5(e)(3)(A) in sufficient detail to establish the basis for fees and applicability of the Act's requirements.

(C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard.

(D) The following information to the extent it is needed to determine or regulate emissions:

- (i) fuels,
- (ii) fuel use,
- (iii) raw materials,
- (iv) production rates, and
- (v) operating schedules.

(E) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(F) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source.

(G) Other information required by any applicable requirement, or state-only requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(H) Calculations on which the information in items (A) through (G) of this paragraph is based.

(4) The following air pollution control requirements:

(A) Citation and description of all applicable requirements and all state-only requirements.

(B) Description of or reference to any applicable test method for determining compliance with each applicable requirement and state-only requirement.

(5) Other specific information required under the DEQ's rules and statutes to implement and enforce other applicable requirements of the Act or of this Chapter or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from

otherwise applicable requirements and state-only requirements.

(7) Additional information as determined to be necessary by the DEQ to define alternative operating scenarios identified by the source pursuant to OAC 252:100-8-6(a)(9) or to define permit terms and conditions implementing OAC 252:100-8-6(f) or 252:100-8-6(a)(10).

(8) A compliance plan for all covered sources that contains all the following:

(A) A description of the compliance status of the source with respect to all applicable requirements and state-only requirements as follows:

(i) For applicable requirements and state-only requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements and state-only requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(B) For sources not in complete compliance, a compliance schedule as follows:

(i) A schedule of compliance for sources that are not in compliance with all applicable requirements and state-only requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements and state-only requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject. Any such

schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.

(ii) A schedule for submission of certified progress reports no less frequently than every 6 months.

(C) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(A) A certification of compliance with all applicable requirements and state-only requirements by a responsible official consistent with ~~subsection (f) of this section~~ OAC 252:100-8-5(f) and section 114(a)(3) of the Act;

(B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(C) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement state-only requirements or by the permitting authority; and

(D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.

(f) **Certification.** Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Chapter shall be signed by a responsible official and shall contain the following language: "I certify,

based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

252:100-8-7.2. Administrative permit amendments and permit modifications

(a) Administrative permit amendments.

(1) An administrative permit amendment:

(A) Corrects typographical errors;

(B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(C) Requires more frequent monitoring or reporting by the permittee;

(D) Allows for a change in ownership or operational control of a source where no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the DEQ;

(E) Incorporates into the permit the requirements from preconstruction review permits issued by the DEQ under this Part.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

(3) An administrative permit amendment shall be made by the DEQ in accordance with the following:

(A) The DEQ shall take final action on a request for an administrative permit amendment within 60 days from the date of receipt of such a request, and may incorporate the proposed changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(B) The DEQ shall submit a copy of the revised permit to the Administrator ~~upon the Administrator's request.~~

(C) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The DEQ shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAC 252:100-8-6(d) for administrative permit amendments made pursuant to ~~subparagraph 7.2(a)(1)(E) of this Section~~ OAC 252:100-8-7.2(a)(1)(E).

(b) **Permit modification.** A permit modification is any revision to a permit that cannot be accomplished under ~~subsection (a) of this Section~~ OAC 252:100-8-7.2(a). A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

(1) **Minor permit modification procedures.**

(A) **Criteria.**

(i) Minor permit modification procedures may be used only for those permit modifications that:

(I) Do not violate any applicable requirement, or state-only requirements;

(II) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;

(III) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(IV) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include federally-enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I and alternative emissions limits approved pursuant to regulations promulgated under § 112(i)(5) of

the Act; and

(V) Are not modifications under any provision of Title I of the Act.

(ii) Notwithstanding OAC 252:100-8-7.2(b)(1)(A)(i) and 252:100-8-7.2(b)(2)(A), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State's implementation plan or in applicable requirements promulgated by EPA.

(B) **Application.** To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the permit application requirements of Tier I under OAC ~~252:2-15-252:4-7~~ and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs;

(ii) The source's suggested modification language;

(iii) Certification by a responsible official, that the application and the proposed modification meet the criteria for use of minor permit modification procedures; and

(iv) Completed forms for any notices required by OAC ~~252:2-15-252:4-7~~ and ~~subparagraph (C) of this paragraph~~ OAC 252:100-8-7.2(b)(1)(C).

(C) **EPA and affected state notification.** If the proposed minor modification is of a permit that underwent EPA review in accordance with OAC 252:100-8-8, the provisions of that section shall apply to the minor modification application ~~unless waived by the Administrator.~~

(D) **Timetable for issuance.** Within 90 days of the DEQ's receipt of a complete application under OAC ~~252:2-15-252:4-7~~ the DEQ shall:

(i) Issue the minor permit modification as approved;

(ii) Deny the minor permit

modification application; or

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures or administrative amendment procedures.

(E) Source's ability to make change.

Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change and until the DEQ takes any of the actions specified in ~~(1)(D)(i) through (iii) of this subsection~~ OAC 252:100-8-7.2(b)(1)(D)(i) through (iii), the source must comply with the applicable requirements and state-only requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(F) Permit shield. The permit shield under OAC 252:100-8-6(d) will not extend to minor permit modifications.

(G) Permittee's risk in commencing construction.

The permittee assumes the risk of losing any investment it makes toward implementing a modification prior to receiving a permit amendment authorizing the modification. The DEQ will not consider the possibility of the permittee suffering financial loss due to such investment when deciding whether to approve, deny, or approve in modified form a minor permit amendment.

(2) Significant modification procedures.

(A) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that:

(i) Involve any significant changes in existing monitoring requirements in the permit;.

(ii) Relax any reporting or recordkeeping requirements.

(iii) Change any permit condition that is required to be based on a case-by-case determination of an emission limitation or other standard, on a source-specific determination of ambient impacts, or on a visibility or increment analysis;

(iv) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include:

(I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;

(II) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act; and

(v) Are modifications under any provision of Title I of the Act; and,

(vi) Do not qualify as minor permit modifications or administrative amendments.

(B) Procedures for processing. Significant permit modifications shall meet all requirements of these rules that are applicable to Tier II applications. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs.

(C) Issuance. The DEQ shall complete review of significant permit modifications within nine months after receipt of a complete application, but shall be authorized to extend that date by up to three months for cause.

**DRAFT MINUTES
AIR QUALITY COUNCIL**

October 16, 2002

**Department of Environmental Quality
Multipurpose Room 707 N. Robinson
Oklahoma City Oklahoma**

Draft for EQBoard Nov. 14, 2002
For AQC approval Jan. 15, 2003

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. October 16, 2002, in the Multipurpose Room of the Department of Environmental Quality, 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. At least twenty-four hours prior to the meeting, agendas were posted on the entrance doors at the DEQ Central Office in Oklahoma City.

As protocol officer, Mr. Dyke 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. Mr. Dyke entered the Agenda and the Oklahoma Register Notice into the record. He added that forms were at the sign-in table for anyone wishing to comment on any of today's rules.

Chairman David Branecky called the meeting to order and requested roll call. A quorum was confirmed.

MEMBERS PRESENT

David Branecky

Bob Lynch

Gary Martin

Sharon Myers

Rick Treeman

Joel Wilson

MEMBERS ABSENT

Bill Breisch

Fred Grosz

Gary Kilpatrick

OTHERS PRESENT

Sign-in sheet is attached as an official part of these Minutes

DEQ STAFF PRESENT

Eddie Terrill

David Dyke

Scott Thomas

Kendall Cody

Joyce Sheedy

Max Price

Cheryl Bradley

Michelle Martinez

Lisa Donovan

Shawna McWaters-Khalousi

Dawson Lasseter

Gary Kurtz

Pat Sullivan

Rhonda Jeffries

Myrna Bruce

Approval of Minutes Chairman Branecky called agenda item number 3, Approval of Minutes of the July 17, 2002, Regular Meeting. Hearing no discussion, Chairman Branecky called for a motion to approve the Minutes as presented. Mr. Martin made the motion and Mr. Wilson made the second.

Roll call.

Rick Treeman

Yes

Gary Martin

Yes

Bob Lynch

Yes

Joel Wilson

Yes

Sharon Myers

Yes

David Branecky

Yes

Motion carried.

Meeting Schedule for Calendar Year 2003 Discussion regarding the 2003 calendar led to motion by Ms. Myers to approve dates and locations for January 15 in Oklahoma City; April

16 in Tulsa; July 16 in Oklahoma City and October 15 in Oklahoma City. Mr. Martin made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

Rulemaking – OAC 252:4 Subchapter 7 Environmental Permit Process [AMENDED]

Dr. Joyce Sheedy advised that proposed changes to Section 7, Environmental Permit Process of Chapter 4 which contains the Rules of Practice and Procedures for DEQ are a condition of EPA's full approval of our Title V operating permits program. She stated that the State of Oklahoma received final interim approval of its Title V Operating Program effective March 6, 1996, with full approval conditional on correction of identified deficiencies. In summary, four changes were proposed which affect only Air Quality Division actions. These deal with public notice, public review in regard to construction permits for new sources, and changing two specific Tier I activities to the Tier II level. Dr. Sheedy explained these proposed changes in detail, advised that there had been no comments received on these issues, and asked that the rule be forwarded to the Environmental Quality Board for adoption as a permanent rule. Dr. Sheedy introduced Dawson Lasseter, DEQ Permits Manager, who fielded questions from the Council and from the audience. Chairman Branecky called for a motion. Mr. Martin made a motion to approve the amendments as presented and Dr. Lynch made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

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

Dr. Joyce Sheedy advised that proposed changes to Sections 5 and 7.2 of 252:100-8, Permits for Part 70 Sources are a condition of EPA's full approval of our Title V operating permits program. Also proposed were some changes to these sections that are "housekeeping" in nature and not substantive. She stated that the State of Oklahoma received final interim approval of its Title V Operating Permit Program effective March 6, 1996, and that full approval was conditional on correction of identified deficiencies. Dr. Sheedy pointed out those changes required by EPA to correct these deficiencies. She stated that there had been no written comments received on these proposed changes, and asked that the proposed rule, as amended, be recommended for adoption by the Environmental Quality Board as a permanent rule. Dr. Sheedy then fielded questions from the Council and audience. Mr. Branecky called for a motion to recommend the rule to the Environmental Quality Board for permanent adoption. Mr. Wilson made the motion and Dr. Lynch made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

Rulemaking – OAC 252:100-1 General Provisions [AMENDED]

Michelle Martinez stated that staff planned to recommend that the rule be continued to the Council's next regular meeting. She then read the proposed changes into the record stating that proposed changes to Subchapters 1, 7, 17, 31, 35, 37 and 39 were a single action to simplify and clarify language and remove redundant definitions from Chapter 100 as a part of the Agency's re-right/de-wrong initiative. Ms. Martinez identified each of the changes and referred to an "action document" in the agenda packet for better understanding of the action taken on each definition. She related that staff had received a comment letter from Trinity Consultants and agreed with their two comments; and also comments were received from the EPA on October 15 in support of the changes being made. She entered those letters into the record and encouraged others who had additional comments or questions to submit them as soon as possible to enable staff to consider them more completely. Along with Joyce Sheedy and Lisa Donovan, she fielded questions of the Council and audience.

Mr. Paden of the ODEQ Board congratulated the staff on better organizing the definitions section of the air rules and asked Mr. Terrill to encourage other division directors to undertake a similar kind of exercise. He suggested that for the Board members, the action document might be more useful divided up similar to Ms. Martinez' presentation.

Mr. Branecky reminded Council that staff recommended continuance of this rule until the next regularly scheduled meeting in January and called for a motion. Ms. Myers made that motion and Mr. Wilson made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

OAC 252:100-4 New Source Performance Standards. [AMENDED]

Ms. Martinez advised Council that as a condition of program approval from EPA, DEQ must regularly update incorporations by reference (IBR) of the federal New Source Performance Standards. The proposed changes update the IBR from July 1, 2001, to July 1, 2002. Ms. Martinez identified the subject matter of each amendment that the EPA had incorporated since July 1, 2001.

Ms. Martinez entered into the record a letter of comment from the EPA in support of the incorporations by reference. Staff's suggestion was that Council recommend permanent adoption of the proposed rule to the Environmental Quality Board.

Following discussion, Mr. Branecky called for a motion for approval. Mr. Martin made the motion and Mr. Treeman made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

OAC 252:100-47 Control of Emission from Existing Municipal Solid Waste Landfills [AMENDED]

Ms. Lisa Donovan spoke regarding proposed changes to Subchapter 47 that would update the incorporations by reference of the federal standards for existing municipal solid waste landfills from July 1, 2000, to July 1, 2002. She advised that on October 17, 2000, the U.S. Environmental Protection Agency published in the Federal Register technical corrections to the New Source Performance Standards for Municipal Solid Waste Landfills which were not considered substantive. These incorporations by reference must be regularly reported in order for Oklahoma to maintain its federally-approved program. Subchapter 47, the enforcement mechanism in Oklahoma's EPA-approved State 111(d) Plan, incorporates by reference sections of the New Source Performance Standards at 40 CFR 60, Subpart WWW.

Ms. Donovan entered into the record a letter of comment from the EPA in support of the updates and suggested Council recommendation to the Environmental Quality Board for permanent adoption of the proposed rule.

Mr. Branecky called for a motion to approve the amendments as presented. Dr. Lynch made the motion and Mr. Wilson made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

OAC 252:100-41-15 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants [AMENDED]

Ms. Cheryl Bradley advised that proposed revisions would update the incorporations by reference of Part 61 NESHAP and Part 63 Maximum Achievable Control Technology (MACT) Standards. She added that the EPA delegated to the DEQ authority to implement and enforce these standards and that references in agency rules are updated annually to keep them current. For the record, Ms. Bradley specifically mentioned the individual standards. She also entered into the record comments received from the EPA Air Planning Section stating its support of the proposed amendments. Staff requested Council recommendation to the Environmental Quality Board for permanent adoption of the proposed rules. Mr. Branecky entertained a motion. Ms. Myers moved to accept the changes to incorporate by reference and Mr. Martin made the second to that motion.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

OAC 252:100-5-2.3 Registration, Emissions Inventory and Annual Operating Fees [NEW]

Mr. Max Price advised that the proposed revisions required the owners and operators of stationary internal combustion engines, gas-fired turbines, and boilers meet certain thresholds to conduct stack tests to verify the emissions of oxides of nitrogen, carbon monoxide, VOC's and PM-10 on a periodic basis. He added that the proposals were first presented to the Council on April 17, 2002, and again July 17, 2002. He referred to

letters of comment from American Electric Power and the EPA that were not included in the agenda packet and entered those into the record. He continued that considerable changes had been made to this rule since the notice was published for the sake of simplicity. Staff recommended that the rule be continued to the Council's next regularly scheduled meeting to allow time to re-publish the notice.

Mr. Price fielded questions and comments from the Council and the public. New issues were discussed and will be addressed at the next meeting. Mr. Howard Ground, AEP, entered his comments into the record.

Mr. Branecky called for a motion to continue the hearing to the January meeting. Mr. Martin made that motion and Ms. Myers made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

OAC 252:100-17 Incinerators [AMENDED]

Ms. Cheryl Bradley advised that proposed amendments to OAC 252:100-17, Incinerators, Parts 1, 5, and 7 and the addition of a new Part 9, Commercial and Industrial Solid Waste Incinerators would provide the means for implementing and enforcing the federal emission guidelines at 40 CFR 60, Subpart CCCC. In addition to establishing emission standards for certain regulated pollutants, the new rule establishes requirements for operator qualifications and training, waste management plans, testing and monitoring of pollutants, and operating parameters. Ms. Bradley described the proposed provisions in each section. She pointed out that a compilation of the source emission inventories is expected to be available at Council's next regular meeting. Ms. Bradley indicated that the proposed rule changes will be submitted to EPA as amendments to Oklahoma's federally-approved State 111/d Plans. Staff recommended that the rule be continued to the Council's next regular meeting.

Ms. Bradley entered into the record a letter of comments received October 15 from EPA Region 6 Air Planning Section affirming support of the proposed changes. She then fielded questions from the public and audience.

Ms. Nadine Barton, CASE, raised concerns regarding the 'certificate of need' concerning the burning of treated medical waste that she remembered applied to all incinerators. Ms. Bradley advised that the certificate of need requirement is imposed under the solid waste portion of the Land Protection rules and promised to look into it.

Staff asked that the rule be continued to the next Council meeting. Ms. Bradley then fielded comments and questions from the Council and the public.

Mr. Branecky called for a motion to continue. Mr. Treeman made the motion and Dr. Lynch made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

OAC 252:100-31 Control of Emissions of Sulfur Compounds [AMENDED]

Dr. Joyce Sheedy advised that proposed revisions would clarify that the ambient air concentration standard in OAC 252:100-31-7(a) for sulfur oxides is measured in terms of facility-wide impact on the ambient air concentration. She added that the Department also proposes to reinstate the annual ambient air concentration limit for sulfur oxides, which was erroneously revoked. Dr. Sheedy added that written comments had been received from the EPA. Dr. Sheedy asked that Council recommend the proposed changes as amended to the Board for adoption as a permanent rule.

Dr. Sheedy introduced Ms. Lee Warden who assisted in answering questions asked by the Council. There were questions regarding the definitions. Ms. Cody, Legal Counsel, suggested that Council continue the hearing in order that questions can be resolved.

Mr. Branecky called for a motion on Council's preference to approve with staff making the changes as discussed or to continue the hearing. Ms. Myers moved to continue it to January and give staff a chance to review the issues related to the definitions. Dr. Lynch made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

**OAC 252:100-39 Emission of Volatile Organic Compounds (VOCs) in
Nonattainment Areas and Former Nonattainment Areas. Part 7 [AMENDED]
OAC 252:100-43 Sampling and Testing Methods [AMENDED]
OAC 252:100-45 Monitoring of Emissions [REVOKED]**

Mr. Max Priced advised that the proposed changes were presented to Council at the April 17 and July 17 meetings. Staff proposes the following changes as a single action. These changes clarify the conditions under which the Division Director may exercise the authority to require monitoring, testing and recordkeeping and simplify and clarify the monitoring, testing, and recordkeeping requirements. Considerable reorganization has been undertaken. Staff proposes to merge the requirements of 252:100-45, Monitoring of Emissions, into Subchapter 43, and then revoke Subchapter 45. Staff also proposes to amend and move Section 252:100-43-15 to a new section in Subchapter 39, and amend Section 252:100-39-41.1 to reflect this change.

Mr. Price detailed the proposed changes and entered into the record a comment letter from EPA. Staff's recommendation was that Council vote to send these proposals to the DEQ Board for adoption as permanent rules. Mr. Price fielded questions and comments from the Council and the public.

Jim Haught, Mid-Continent Oil and Gas Association and Don Whitney of Trinity Consultants, made comments. New issues were raised that Council felt could be taken care of during a break; therefore, Mr. Branecky called for a motion to continue the hearing until later in the day. Mr. Price, Ms. Cody, Mr. Haught, and Mr. Whitney dismissed themselves from the meeting to work through those issues and made the changes.

Ms. Barton, CASE, questioned the legality of accommodating an industry member when other industry members have not had an opportunity to make comment to one industry member's recommendation. Ms. Cody, Legal Counsel, felt that the changes discussed were not substantive but for clarification only.

Mr. Wilson made motion to continue the hearing until later in the day. Mrs. Martin made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

The hearing was reconvened on Item 5J, OAC 252:100-39-43-45 and Mr. Dyke called upon Ms. Kendall Cody to set forth the clarification amendments that had been decided upon during the break. Ms. Cody advised that nothing substantive had been added, but the test method had been clarified. Mr. Branecky confirmed that the changes as presented were agreeable with industry members and the public. Mr. Whitney and Mr. Haught agreed to the changes and thanked Council and staff for their cooperation and for making the changes.

Mr. Branecky called for a motion for approval and recommendation to the Environmental Quality Board of the proposed changes as amended for permanent adoption. Mr. Wilson made the motion and Mr. Treeman made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

OAC 252:100-41 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants & Appendix O. Toxic Air Contaminants [AMENDED]

Ms. Cheryl Bradley advised that the proposed changes to Parts 1 and 5 of SC 41 would simplify language, clarify requirements, and remove redundant language or requirements. Substantive changes were also proposed including the addition of a new Appendix O titled Toxic Air Contaminants. Ms. Bradley advised that the Council had considered amendments to Parts 1 and 5 during its February 21, 2001, April 18, 2001, and July 17, 2002, meetings and that staff continues to work on improving these rules by addressing several issues including: de minimis levels; the list in Appendix O; the definition of toxic air contaminants; determining which sources must install Best Available Control Technologies (BACT); and a way to determine how to address exceedances of the MAAC or the ambient concentrations that result from emissions from multiple sources.

Ms. Bradley entered into the record a letter from EPA Region 6 Air Planning Section expressing support of the proposed changes. Staff suggested that the Council continue the hearing on the proposed rule to the April meeting, which would bypass January and allow staff additional time to clarify the issues.

Mr. Branecky agreed and entertained that motion. Ms. Myers moved to continue to Council's April meeting and Dr. Lynch made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

Petition for Rulemaking - Council discussed the petition filed by Dr. Richard Dawson and decided that they would not ask staff to initiate rulemaking. Mr. Branecky called for a motion to deny the petition. Mr. Wilson made the motion and Ms. Myers made the second.

Roll call.		Gary Martin	Yes
Rick Treeman	Yes	Joel Wilson	Yes
Bob Lynch	Yes	David Branecky	Yes
Sharon Myers	Yes		Motion carried.

Division Director's Report - Mr. Terrill advised that the Open Burning Rule will be reopened in order to address interpretation problems for rural communities and for clarity of the definitions. Substantive changes to that rule will also be made to make the rule more easily enforceable.

A copy of the hearing transcripts are attached and made an official part of these Minutes.

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS
PUBLIC HEARING OAC 252:100-8
PERMITS FOR PART 70 SOURCES
PRESENTED BY: JOYCE SHEEDY
HELD ON OCTOBER 16, 2002, AT 9:00 A.M.
707 NORTH ROBINSON
IN OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

COPY

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 MEMBERS OF THE COUNCIL</p> <p>3</p> <p>4 1. MR. GARY KILPATRICK - MEMBER</p> <p>5 2. MR. FALLON - MEMBER</p> <p>6 3. MR. JOEL WILSON - MEMBER</p> <p>7 4. MS. SHARON MYERS - MEMBER</p> <p>8 5. MR. DAVID BRANECKY - MEMBER</p> <p>9 6. MR. BILL BREISCH - CHAIRMAN</p> <p>10 7. MS. MYRNA BRUCE - SECRETARY</p> <p>11 8. MR. DAVID DYKE - PROTOCOL OFFICER</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 full approval of Oklahoma's Title V permit</p> <p>2 program.</p> <p>3 Subsequently, EPA entered a</p> <p>4 settlement with -- in a lawsuit brought by</p> <p>5 the Sierra Club, under which all states</p> <p>6 that had not received final approval of</p> <p>7 their Title V program were required to</p> <p>8 remedy significant deficiencies to their</p> <p>9 program by December 1, 2001.</p> <p>10 In a letter dated June 12, 2001, EPA</p> <p>11 listed deficiencies in the Oklahoma program</p> <p>12 as submitted in 1998. Discussions between</p> <p>13 the Department staff and EPA resulted in</p> <p>14 the identification of the deficiencies</p> <p>15 listed in the letter that EPA considered to</p> <p>16 be significant and which had to be</p> <p>17 corrected prior to December 1, 2001, in</p> <p>18 order for the Department to retain its</p> <p>19 Title V program.</p> <p>20 These deficiencies were corrected by</p> <p>21 rule changes brought to the Council on</p> <p>22 August 15, 2001, and approved by the Board</p> <p>23 at their meeting on August 21, 2001. EPA</p> <p>24 approved our full Title V operating permits</p> <p>25 program effective November 30, 2001.</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 PROCEEDINGS</p> <p>3 MR. DYKE: The next item on the</p> <p>4 agenda is Item 5B, OAC 252:100-8, Permits</p> <p>5 for Part 70 Sources. Dr. Sheedy.</p> <p>6 DR. SHEEDY: Mr. Chairman,</p> <p>7 Members of the Council, ladies and</p> <p>8 gentlemen, the staff is proposing changes</p> <p>9 to Sections 5 and 7.2 of 252:100-8, Permits</p> <p>10 for Part 70 Sources.</p> <p>11 These changes are a condition of</p> <p>12 EPA's full approval of our Title V</p> <p>13 operating permits program. At the same</p> <p>14 time, we are proposing some changes to</p> <p>15 these sections that are "housekeeping" in</p> <p>16 nature and are not substantive.</p> <p>17 The State of Oklahoma received final</p> <p>18 interim approval of its Title V operating</p> <p>19 permit program effective March 6, 1996.</p> <p>20 Full approval was conditioned on correction</p> <p>21 of identified deficiencies.</p> <p>22 On July 27, 1998, the correction of</p> <p>23 -- after correction of the identified</p> <p>24 deficiencies, the Governor of Oklahoma</p> <p>25 submitted a request to EPA Region 6 for</p>	<p style="text-align: right;">Page 5</p> <p>1 Other non-significant deficiencies</p> <p>2 were identified in a letter from EPA Region</p> <p>3 6, dated May 21, 2002. A copy of that</p> <p>4 letter is included in the Council packet</p> <p>5 and will be part of the record. Staff has</p> <p>6 worked closely with Region 6 in resolving</p> <p>7 the issues contained in their letter.</p> <p>8 The Department proposes three</p> <p>9 changes required by EPA in their May 21,</p> <p>10 2002 letter.</p> <p>11 These are, on page 2, the revision</p> <p>12 of the language in 8-5(e)(3) to make clear</p> <p>13 that the fugitive emissions from sources</p> <p>14 subject to the Part 70 operating permit</p> <p>15 program must be included in the permit</p> <p>16 application and the permit in the same</p> <p>17 manner as stack emissions, regardless of</p> <p>18 whether the source category in question is</p> <p>19 included in the list of sources contained</p> <p>20 in the definition of major source.</p> <p>21 On page six, the deletion of "upon</p> <p>22 Administrator's request" from 7.2(a)(3)(B),</p> <p>23 the federal rule requires that all</p> <p>24 administrative amendments be provided to</p> <p>25 EPA. EPA does not have to request them.</p>

Page 6

1 And the third one is on page eight,
 2 the deletion of "unless waived by the
 3 Administrator" from 7.2(b)(1)(C), the
 4 federal rule does not allow for waiver of
 5 EPA's objection or petition rights.
 6 The proposed housekeeping changes
 7 are as follows:
 8 The Department proposes to change
 9 references to OAC 252, Chapter 2 to the
 10 appropriate sections of Chapter 4. Chapter
 11 4 has Chapter 2. This includes on page
 12 one, the deletion of "in accordance with
 13 OAC 252:2-15". This is not -- this
 14 information is not in Chapter 4.
 15 On page five, The replacement of
 16 "252:2-15" with "252:4-7" in 8-7.2(b)(1)(B)
 17 and (D).
 18 The Department proposes to change
 19 the format of the citations in Section 5
 20 and 7.2 for clarity and uniformity. This
 21 includes on page three, changes in the
 22 format of citations in 5(e)(3)(A) and (B).
 23 On page five, changes in the format
 24 of citation in 5(e)(9).
 25 And on page seven, changes in the

Page 7

1 format of citations in (A)(4) and (B). And
 2 on page nine, change in the formation of
 3 the citation in (b)(1)(E).
 4 The Department also proposes to
 5 hyphenate "case by case" on page two
 6 (d)(1)(A).
 7 We have received no written comments
 8 on these proposed changes. Although this
 9 is the first time that this proposed
 10 revision has appeared before the Council,
 11 staff asks that the proposed rule, as
 12 amended, be recommended for adoption by the
 13 Board as a permanent rule.
 14 MR. DYKE: Questions from the
 15 Council?
 16 MR. WILSON: I have one question.
 17 I don't understand the issue on fugitive
 18 emissions and why it says in the same
 19 manner as stack emissions. And then
 20 further explain, if you would, the issue of
 21 regardless whether the source category in
 22 question is included in the list of sources
 23 contained in the definition of major
 24 source. I'm a little confused by that.
 25 DR. SHEEDY: Okay. What this is

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1 saying is that, once you have determined
 2 that a source is subject to Title V, then
 3 any fugitive emissions that that source may
 4 have needs to be handled in the permit in
 5 the same manner that you would handle a
 6 stack emission. That is, you would say
 7 where it is and you would put conditions on
 8 it, that sort of thing.
 9 MR. WILSON: Okay.
 10 DR. SHEEDY: And --
 11 MR. WILSON: Was that not
 12 happening?
 13 DR. SHEEDY: I think it was, yes.
 14 But it wasn't clear enough, apparently.
 15 MR. WILSON: Okay.
 16 DR. SHEEDY: That the way we had
 17 written it wasn't as clear as this.
 18 MR. WILSON: Okay.
 19 DR. SHEEDY: It was, I guess;
 20 maybe more inferred, but it was happening.
 21 MR. WILSON: I mean, when you say
 22 all emissions, I don't see that that
 23 excludes fugitive emissions.
 24 DR. SHEEDY: Yes. And it didn't.
 25 MR. WILSON: It was a sticking

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1 point with EPA?
 2 DR. SHEEDY: I think so. And so
 3 we made a clearer statement. And the
 4 reason for adding whether or not it's one
 5 of the categories is because if you're one
 6 of those categories, then fugitive
 7 emissions count in determining whether or
 8 not you are Title V. So they're saying it
 9 doesn't matter if fugitive emissions were
 10 used to determine that you're Title V, once
 11 you're Title V, you will count them, you
 12 will treat them as a stack emission.
 13 MR. WILSON: Okay. That's very
 14 helpful, Joyce. I appreciate that--
 15 DR. SHEEDY: Okay.
 16 MR. DYKE: Additional questions
 17 from the Council? Anyone wishing to speak
 18 on this rule? Questions from the public?
 19 Anything further from the Council? Mr.
 20 Chairman.
 21 MR. BRANECKY: Okay. Staff has
 22 asked for adoption. I guess I need a
 23 motion to so move.
 24 MR. WILSON: I'll motion to adopt
 25 it.

1 DR. LYNCH: Second that.
2 MR. BRANECKY: Okay. I have a
3 motion for adoption and a second. Myrna.
4 MS. BRUCE: Mr. Treeman.
5 MR. FREEMAN: Aye.
6 MS. BRUCE: Dr. Lynch.
7 DR. LYNCH: Yes.
8 MS. BRUCE: Ms. Myers.
9 MS. MYERS: Yes.
10 MS. BRUCE: Mr. Martin.
11 MR. MARTIN: Yes.
12 MS. BRUCE: Mr. Wilson.
13 MR. WILSON: Yes.
14 MS. BRUCE: Mr. Branecky.
15 MR. BRANECKY: Yes.

16 (End of Proceedings)
17
18
19
20
21
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23
24
25

1 C E R T I F I C A T E

2 STATE OF OKLAHOMA)
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 are the truth, the whole truth,
8 and nothing but the truth, in the
9 proceedings aforesaid; that the foregoing
10 proceeding was taken by me in shorthand and
11 thereafter transcribed under my direction;
12 that said proceedings was taken on the 16th
13 day of October, 2002, at Oklahoma City,
14 Oklahoma; and that I am neither attorney
15 for nor relative of any of said parties,
16 nor otherwise interested in said
17 proceedings.

18 IN WITNESS WHEREOF, I have hereunto
19 set my hand and official seal on this, the
20 29th day of October, 2002.
21
22

23 CHRISTY A. MYERS, C.S.R.
24 Certificate No. 310
25



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

AIR QUALITY COUNCIL
Public Hearing and Meeting

Attendance Record

October 16, 2002

Page One

NAME/AFFILIATION	ADDRESS	TELEPHONE
1. Kim Wainee, Trinity Consultants	1816 N. Crawford	(405) 228-3292
2. DG. DOUGHTY		341-8068
3. TERESA WHEELER	TRIKER	734-7071
4. Ada Johnson	TAFB	734-4548
5. DAVID CANNING	TAFB	734-4567
6. DON WHITNEY	TRINITY CONSULTANTS	228-3292
7. Howard Ground	AEP	214-777-1711
8. MARK GIPSON	AEP	405.841.1333
9. Stephen Henderson	ENGELX	405-530-7447
10. Jim Haught	Mid-Continent Oil & Gas Assoc.	
11. Henry McLaurie	Culpine	713-830-8881
12. Robert Lind / OYHSC	801 NE 13th	405-271-2070
13. Steve Moyer / Sinclair	Tulsa	918 588 1197
14. Julia Bevers	OGE	405 553 3439
15. Summer Goebel	OGE	405-553-3523
16. Steve Landers	G-P	918-683-7671
17. Glenn Travis	Tulsa, OK	918-594-6572
18. Phonda Jeffries	DEQ-Tulsa	918 293 1626
19. Bob Keeloff	OKC	405 235-0808
20. Dennis Pool / OZPA	Kinnishen OK RR/ Box 24-B	2/05 203 4934
21. Sammy M. Orlin	5122 S. Yukon Tulsa	918-583-3925
22. Deborah Perry	Attains - Tulsa	918 496-0059
23. LES BADEW	ODEQ BOARD	918-743-7007
24. Kathryn Crenshaw	P.O. Box 890 Valliant, OK	405-933-1449
25. Madeline Barton	CASE Tulsa TX	
26. Melody Martin	OGE	553-3297

REGULAR MEETING AGENDA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OKLAHOMA ENVIRONMENTAL QUALITY BOARD

A Public Meeting: 9:30 a.m., Thursday, November 14, 2002
Great Plains Technology Center
2001 East Gladstone
Frederick, Oklahoma¹

1. Call to Order – Jerry Johnston, Chair
2. Roll Call – Myrna Bruce
3. Approval of Minutes of the September 10, 2002, Regular Meeting
4. **Rulemaking – OAC 252:4 Rules of Practice and Procedure**
The DEQ proposes changes to address Title V program deficiencies identified by the U.S. Environmental Protection Agency. The six changes affect only Air Quality Division actions. Three changes deal with public notice; a fourth relates to public review of construction permits for new sources; a fifth moves two specific Tier I activities to the Tier II level; and the sixth deletes the reference to minor source operating permit renewals from the Tier II listing since minor source operating permits do not require renewals.
 - A. Presentation – David Branecky, Chair, Air Quality Advisory Council
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion by the Board
 - E. Roll call vote on permanent adoption
5. **Rulemaking – OAC 252:100 Air Pollution Control**
Five sets of changes are proposed:
 - Three Subchapter 8 amendments address the remaining minor Title V program deficiencies identified by the U.S. Environmental Protection Agency. One of these three relates to the way in which fugitive emissions are accounted for in permits and permit applications; the other two relate to the provision of certain types of permit information to EPA. The other Subchapter 8 amendments simply update and standardize the format of citations and references.
 - Subchapter 4 is amended to update the incorporation by reference of federal New Source Performance Standards from July 1, 2001, to July 1, 2002. The update includes NSPS changes relating to large municipal waste combustors, electric utility steam generating units, and industrial-commercial-institutional steam generating units.
 - The Subchapter 41 amendments update the incorporation by reference of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) and the Maximum Achievable Control Technology (MACT) standards from July 1, 2001, to July 31, 2002. New and amended MACT standards affect a very wide range of facilities, operations and equipment.
 - Subchapter 47 is amended to update the incorporation by reference of federal New Source Performance Standards for municipal solid waste landfills from July 1, 2000, to July 1, 2002. The newly incorporated provisions represent technical corrections and other non-substantive changes.
 - Amendments to Subchapters 39, 43 and 45 are forwarded as a single action. Generally speaking, the changes simplify and clarify the monitoring, testing and recordkeeping requirements for sources subject to the Air Pollution Control Rules in Oklahoma, including

clarifying the conditions under which the Air Quality Division Director may exercise the authority to require monitoring, testing and recordkeeping. The streamlining includes moving requirements from Subchapter 45 into Subchapter 43, and revoking Subchapter 45.

- A. Presentation – David Branecky, Chair, Air Quality Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion by the Board
- E. Roll call votes on permanent adoption

6. **Rulemaking – OAC 252:510, 515, 520 Regulations for the Management of Solid Waste**

The proposed new Chapter 515 combines Chapters 510 (Municipal Solid Waste Landfills) and 520 (Solid Waste Management), both of which will be revoked concurrently with the adoption of Chapter 515. Chapter 515 is the result of a lengthy and comprehensive review and rewrite of existing rules, and was developed by a committee of volunteers comprised of DEQ staff and a broad cross-section of stakeholders. Among the most significant modifications were elimination of outdated or unneeded rules; addition of rules to address federal or statutory requirements; and revisions to address specific concerns of the regulated community and DEQ. A significant effort was made to make the rules more readable and understandable, and the rule format was brought into compliance with the requirements of the Office of Administrative Rules.

- A. Presentation – Ken Purdy, Chair, Solid Waste Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion by the Board
- E. Roll call vote on permanent revocation of Chapters 510 and 520 and permanent adoption of Chapter 515

7. **Rulemaking – OAC 252:520 Solid Waste Management**

The proposed amendments are designed to implement recent statutory requirements relating to landfill vegetation, landfill soil borrow areas, waste tire baling permits, installation of river bank stabilization and other conservation projects, incentive payments for use of landfill methane gas, and timelines for review of biomedical waste facility certificates of need. Similar provisions were adopted by the Board by emergency action in June and became effective in July, but those did not account for statutory amendments adopted late in the 2002 legislative session. The proposed rules now under consideration reflect those late statutory changes, and would supersede the rules adopted in June. (These rules have been incorporated into proposed Chapter 515 and will themselves be superseded if and when Chapter 515 becomes effective; see Item 6).

- A. Presentation – Ken Purdy, Chair, Solid Waste Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion by the Board
- E. Roll call vote on finding of emergency*
- F. Roll call vote on emergency adoption

8. **Consideration of and Action on the Environmental Quality Report**

The Oklahoma Environmental Quality Code requires the DEQ to prepare an “Oklahoma Environmental Quality Report” and to submit it to the Governor, Speaker of the House and Senate President Pro Tem by January 1st of each year. The statutorily prescribed purposes of this report are to outline the DEQ’s annual needs for providing environmental services within its jurisdiction, reflect any new federal mandates, and summarize DEQ-recommended statutory changes. The Environmental Quality Board is to review, amend (as necessary) and approve the report.

- A. Presentation – Larry Gales, Primary Division Director
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion by the Board
 - E. Roll call vote on approval
9. New Business (any matter not known about, or which could not have been reasonably foreseen prior to the time of posting of agenda)
10. Executive Director’s Report, including a brief status report on rulemaking petition
11. 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 have a disability and need an accommodation, please notify the DEQ three days in advance at 702-7100.

* Specification of proposed adoption by emergency rulemaking, by permanent rulemaking, or by both, is based on the recommendations of the respective advisory councils. Adoption or amendment of rules as emergency rulemaking requires a finding by the Board that a compelling extraordinary circumstance warrants the seeking of emergency certification, so that the rules will take effect immediately upon the Governor's signature. Absent a finding and certification of emergency, rules adopted today will not become effective until June of 2003.

¹ Some members of the Board, as well as senior staff members from the DEQ, will meet for dinner in Frederick the evening of November 13. 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**

SUBCHAPTER 4. NEW SOURCE PERFORMANCE STANDARDS

EXECUTIVE SUMMARY:

The DEQ is proposing to amend Subchapter 4 to incorporate by reference all federal New Source Performance Standards (NSPS) adopted or amended from July 1, 2001, to July 1, 2002. The U.S. Environmental Protection Agency has amended several previously incorporated NSPS Subparts since July 1, 2001. These are Subpart A, General Provisions, Subpart Eb, Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996, Subpart Da, Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, and Subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

There are no differences since this rule incorporates by reference the federal New Source Performance Standards.

ENVIRONMENTAL BENEFIT STATEMENT:

Not applicable since these rules are not more stringent than corresponding federal rules.

SUMMARY OF COMMENTS AND RESPONSES:

No comments have been received.

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

[OAR Docket #03-702]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 8. Permits for Part 70 Sources
Part 5. Permits for Part 70 Sources
252:100-8-5 [AMENDED]
252:100-8-7.2 [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:

September 16, 2002 through October 16, 2002
November 14, 2002

Public hearing:

October 16, 2002 and November 14, 2002

Adoption:

November 14, 2002

Submitted to Governor:

November 22, 2002

Submitted to House:

November 22, 2002

Submitted to Senate:

November 22, 2002

Gubernatorial approval:

January 2, 2003

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

Final adoption:

March 25, 2003

Effective:

June 1, 2003

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The Department is considering the following revisions to Subchapter 8 that are a condition of the full approval of our Title V program. The Department proposes to revise the language in OAC 252:100-8-5(e)(3) to make clear that the fugitive emissions from sources subject to the Part 70 operating permit program must be included in the permit application and the permit in the same manner as stack emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The Department proposes to delete "upon the Administrator's request" from OAC 252:100-8-7.2(a)(3)(B). The federal rule requires that all administrative amendments be provided to EPA. EPA does not have to request them. The Department proposes to delete "unless waived by the Administrator" from OAC 252:100-8-7.2(b)(1)(C). The federal rule does not allow for waiver of EPA's objection or petition rights.

The Department is also considering the following revisions that are "housekeeping" in nature and not substantive. The Department proposes to change references to OAC 252, Chapter 2 to the appropriate sections of Chapter 4 in OAC 252:100-8-5(c) and 252:100-8-7.2(b)(1)(B) and (D) because Chapter 4 has replaced Chapter 2. The Department proposes to change the format of the citations in OAC 252:100-8-5 and 252:100-8-7.2 for clarity and uniformity.

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 1, 2003:

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-5. Permit applications

(a) **Confidential information.** If a source submits information to the DEQ under a claim of confidentiality, the source shall also submit a copy of such information directly to the Administrator, if the DEQ requests that the source do so.

(b) **Duty to supplement or correct application.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) **Standard application form and required information.** Sources that are subject to the Part 70 permit program established by this Chapter shall file applications on the standard application form that the DEQ makes available for that purpose in accordance with OAC 252:2-15. The application must include information needed to determine the applicability of any applicable requirement, or state-only requirement, or to evaluate the fee amount required under the schedule approved pursuant to OAC 252:100-5-2.2(b)(2). The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted. The source must provide a list of any insignificant activities that are exempted because of size or production rate. Trivial activities need not be listed. The standard application form and any attachments shall require that the information required by OAC 252:100-8-5(d) and/or (e) be provided.

(d) **Construction permit applications.**

(1) An application for a construction permit shall provide data and information required by this Chapter and/or requested on the application form available from the DEQ pursuant to the requirements of this Chapter. Such data and information shall include but not be limited to site information, process description, emission data and when required, BACT, modeling and sampling point data as follows:

(A) **BACT determination.** To be approved for a construction permit, a major source must demonstrate that the control technology to be applied is the best that is available for each pollutant that would cause the source to be defined as a major source. This determination will be made on a ~~case-by-case~~ case-by-case basis taking into account energy, environmental,

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and economic impacts and other costs of alternative control systems. Unless required under Part 7 of this Subchapter, a BACT determination is not required for a modification that will result in an increase of emissions of less than 100 tons per year of any regulated air pollutant.

(B) **Modeling.** Any air quality modeling or ambient impact evaluation that is required shall be prepared in accordance with procedures acceptable to the DEQ and accomplished by the applicant.

(C) **Sampling points.** If required by the DEQ an application shall show how the new source will be equipped with sampling ports, instrumentation to monitor and record emission data and other sampling and/or testing equipment.

(2) Construction permit applications for new sources must also include the requirements for operating permits contained in OAC 252:100-8-5(e) to the extent they are applicable.

(e) **Operating permit applications.**

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(A) All emissions of pollutants for which the source is major, and all emissions (including fugitive emissions) of regulated air pollutants. Fugitive emissions shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under ~~subsection (e) of this Section OAC 252:100-8-5(c) or OAC 252:100-8-3(b).~~

(B) Identification and description of all points of emissions described in ~~subparagraph (e)(3)(A) of this Section OAC 252:100-8-5(e)(3)(A)~~ in sufficient detail to establish the basis for fees and applicability of the Act's requirements.

(C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard.

(D) The following information to the extent it is needed to determine or regulate emissions:

- (i) fuels,
- (ii) fuel use,
- (iii) raw materials,
- (iv) production rates, and
- (v) operating schedules.

(E) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(F) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source.

(G) Other information required by any applicable requirement, or state-only requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(H) Calculations on which the information in items (A) through (G) of this paragraph is based.

(4) The following air pollution control requirements:

(A) Citation and description of all applicable requirements and all state-only requirements.

(B) Description of or reference to any applicable test method for determining compliance with each applicable requirement and state-only requirement.

(5) Other specific information required under the DEQ's rules and statutes to implement and enforce other applicable requirements of the Act or of this Chapter or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements and state-only requirements.

(7) Additional information as determined to be necessary by the DEQ to define alternative operating scenarios identified by the source pursuant to OAC 252:100-8-6(a)(9) or to define permit terms and conditions implementing OAC 252:100-8-6(f) or 252:100-8-6(a)(10).

(8) A compliance plan for all covered sources that contains all the following:

(A) A description of the compliance status of the source with respect to all applicable requirements and state-only requirements as follows:

(i) For applicable requirements and state-only requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements and state-only requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(B) For sources not in complete compliance, a compliance schedule as follows:

(i) A schedule of compliance for sources that are not in compliance with all applicable requirements and state-only requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an

enforceable sequence of actions with milestones, leading to compliance with any applicable requirements and state-only requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.

(ii) A schedule for submission of certified progress reports no less frequently than every 6 months.

(C) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(A) A certification of compliance with all applicable requirements and state-only requirements by a responsible official consistent with ~~subsection (f) of this section~~ OAC 252:100-8-5(f) and section 114(a)(3) of the Act;

(B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(C) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement state-only requirements or by the permitting authority; and

(D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.

(f) **Certification.** Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Chapter shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

252:100-8-7.2. Administrative permit amendments and permit modifications

(a) **Administrative permit amendments.**

(1) An administrative permit amendment:

(A) Corrects typographical errors;

(B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(C) Requires more frequent monitoring or reporting by the permittee;

(D) Allows for a change in ownership or operational control of a source where no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the DEQ;

(E) Incorporates into the permit the requirements from preconstruction review permits issued by the DEQ under this Part.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

(3) An administrative permit amendment shall be made by the DEQ in accordance with the following:

(A) The DEQ shall take final action on a request for an administrative permit amendment within 60 days from the date of receipt of such a request, and may incorporate the proposed changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(B) The DEQ shall submit a copy of the revised permit to the Administrator ~~upon the Administrator's request.~~

(C) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The DEQ shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAC 252:100-8-6(d) for administrative permit amendments made pursuant to ~~subparagraph 7.2(a)(1)(E) of this Section~~ OAC 252:100-8-7.2(a)(1)(E).

(b) **Permit modification.** A permit modification is any revision to a permit that cannot be accomplished under ~~subsection (a) of this Section~~ OAC 252:100-8-7.2(a). A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

(1) **Minor permit modification procedures.**

(A) **Criteria.**

(i) Minor permit modification procedures may be used only for those permit modifications that:

(I) Do not violate any applicable requirement, or state-only requirements;

(II) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;

(III) Do not require or change a case-by-case determination of an emission limitation or

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other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(IV) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include federally-enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I and alternative emissions limits approved pursuant to regulations promulgated under § 112(i)(5) of the Act; and

(V) Are not modifications under any provision of Title I of the Act.

(ii) Notwithstanding OAC 252:100-8-7.2(b)(1)(A)(i) and 252:100-8-7.2(b)(2)(A), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State's implementation plan or in applicable requirements promulgated by EPA.

(B) **Application.** To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the permit application requirements of Tier I under OAC ~~252:2-15-252:4-7~~ and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs;

(ii) The source's suggested modification language;

(iii) Certification by a responsible official, that the application and the proposed modification meet the criteria for use of minor permit modification procedures; and

(iv) Completed forms for any notices required by OAC ~~252:2-15-252:4-7~~ and subparagraph (C) of this paragraph OAC 252:100-8-7.2(b)(1)(C).

(C) **EPA and affected state notification.** If the proposed minor modification is of a permit that underwent EPA review in accordance with OAC 252:100-8-8, the provisions of that section shall apply to the minor modification application ~~unless waived by the Administrator.~~

(D) **Timetable for issuance.** Within 90 days of the DEQ's receipt of a complete application under OAC ~~252:2-15-252:4-7~~ the DEQ shall:

(i) Issue the minor permit modification as approved;

(ii) Deny the minor permit modification application; or

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures or administrative amendment procedures.

(E) **Source's ability to make change.** Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change and until the DEQ takes any of the actions specified in ~~(1)(D)(i) through (iii) of this subsection~~ OAC 252:100-8-7.2(b)(1)(D)(i) through (iii), the source must comply with the applicable requirements and state-only requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(F) **Permit shield.** The permit shield under OAC 252:100-8-6(d) will not extend to minor permit modifications.

(G) **Permittee's risk in commencing construction.** The permittee assumes the risk of losing any investment it makes toward implementing a modification prior to receiving a permit amendment authorizing the modification. The DEQ will not consider the possibility of the permittee suffering financial loss due to such investment when deciding whether to approve, deny, or approve in modified form a minor permit amendment.

(2) **Significant modification procedures.**

(A) **Criteria.** Significant modification procedures shall be used for applications requesting permit modifications that:

(i) Involve any significant changes in existing monitoring requirements in the permit;

(ii) Relax any reporting or recordkeeping requirements.

(iii) Change any permit condition that is required to be based on a case-by-case determination of an emission limitation or other standard, on a source-specific determination of ambient impacts, or on a visibility or increment analysis;

(iv) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include:

- (I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;
 - (II) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act; and
 - (v) Are modifications under any provision of Title I of the Act; and,
 - (vi) Do not qualify as minor permit modifications or administrative amendments.
- (B) **Procedures for processing.** Significant permit modifications shall meet all requirements of these rules that are applicable to Tier II applications. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs.
- (C) **Issuance.** The DEQ shall complete review of significant permit modifications within nine months after receipt of a complete application, but shall be authorized to extend that date by up to three months for cause.

[OAR Docket #03-702; filed 4-21-03]

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

[OAR Docket #03-704]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 11. Alternative Emissions Reduction Plans and Authorizations
- 252:100-11-1 [AMENDED]
- 252:100-11-2 [AMENDED]
- 252:100-11-3 [AMENDED]
- 252:100-11-4 [AMENDED]
- 252:100-11-5 [AMENDED]
- 252:100-11-6 [AMENDED]
- 252:100-11-7 [NEW]

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:

- December 17, 2001 through January 16, 2002
- March 15, 2002 through April 17, 2002
- June 17, 2002 through July 17, 2002
- September 10, 2002

Public hearing:

January 16, 2002, April 17, 2002, July 17, 2002, and September 10, 2002

Adoption:

September 10, 2002

Submitted to Governor:

September 19, 2002

Submitted to House:

September 19, 2002

Submitted to Senate:

September 19, 2002

Gubernatorial approval:

October 29, 2002

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 25, 2003

Final adoption:

March 25, 2003

Effective:

June 1, 2003

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

Because Subchapter 11 is not part of Oklahoma's SIP, applicants for an alternative emissions reduction plan must secure approval from both the DEQ and EPA. The proposed changes are designed to enhance an applicant's chance of receiving EPA's approval of an alternative emissions reduction plan. New is a requirement that the plan provide a reduction in the facility's actual emissions of all regulated pollutants for which the plan is proposed. The applicant must quantify this reduction on a pollutant-by-pollutant basis and demonstrate that implementation of the plan will not result in violation of national ambient air quality standards. The definition of "net emissions reduction" is amended to clarify that net emissions reduction is calculated by subtracting the emissions allowed by the alternate emissions reduction plan from the smallest of the following: the facility's actual emissions, the amount allowed under the operating permit, or the amount allowed by rule. New definitions are included for the terms "actual emissions," "affected emission point," "affected pollutant," and "potential emissions". To clarify whether rule requirements apply to individual emission sources or to the entire facility, the term "source" is replaced with the term "facility" or the term "affected emission point," as appropriate. Additional information is required in an application for an alternative emissions reduction. Alternative emissions reduction plan requirements and limitations are clarified. To facilitate rule enforcement a new section specifies the facility's duty to comply with an authorized alternative emissions reduction plan. Other proposed changes are "housekeeping" in nature and are nonsubstantive. The public notice requirement is replaced with a reference to OAC 252:4-7-13, which contains public notice requirements for the Agency. The word "plan" has been added in subsection 11-4(b) for clarity, and the abbreviation "OAC" has been added before rule citations in subsection 11-4(c), paragraph 11-5(a)(1), and subsection 11-6(a) for consistency in format.

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 1, 2003:

SUBCHAPTER 11. ALTERNATIVE EMISSIONS REDUCTION PLANS AND AUTHORIZATIONS

252:100-11-1. Purpose

The purpose of this Subchapter is to provide ~~air-contaminant sources-facilities~~ located within the state an alternative means for reducing the total burden of regulated air pollutants released into the atmosphere.

252:100-11-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

April 14, 2004
Air Quality Advisory Council

June 22, 2004
Environmental Quality Board

Effective Date: June 15, 2005

508

RECEIVED

MAR 16 2004

DEQ LEGAL

Volume 21
Number 10
March 15, 2004
Pages 589 - 616

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 #04-244]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 8. Permits for Part 70 Sources

Part 5. Permits for Part 70 Sources

252:100-8-2. [AMENDED]

252:100-8-4. [AMENDED]

252:100-8-6. [AMENDED]

252:100-8-6.1. [AMENDED]

252:100-8-6.3. [AMENDED]

252:100-8-7. [AMENDED]

SUMMARY:

For clarity, the Department proposes to make minor textual changes to Section 252:100-8-6. Since Chapter 252:2 has been replaced by Chapter 252:4, the Department also proposes to correct references to 252:2 contained in Section 252:100-8-2, Paragraph 252:100-8-4(b)(10), Paragraph 252:100-8-6.1(b)(2), Subsection 252:100-8-6.3(a), and Section 252:100-8-7.

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 and permit exempt technical support document will be accepted prior to and at the hearing on April 14, 2004. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by March 31, 2004. Oral comments may be made at the April 14, 2004 hearing and the June 22, 2004 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, April 14, 2004, at OSU at Tulsa, North Hall Room 150, 707 North Greenwood, Tulsa, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on June 22, 2004 in Stillwater, Oklahoma (exact location to be announced).

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:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Max Price, 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.

[OAR Docket #04-244; filed 2-20-04]

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

[OAR Docket #04-245]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Additional Accreditation Requirements

252:110-9-1. [AMENDED]

252:110-9-3. [AMENDED]

252:110-9-4. [AMENDED]

252:110-9-6. [AMENDED]

Subchapter 11. Additional LBP Certification Requirements

252:110-11-4. [AMENDED]

252:110-11-6. [AMENDED]

SUMMARY:

The Department proposes to amend Subchapter 9, Additional Accreditation Requirements, to clarify requirements for accredited lead-based paint training programs. The Department also proposes to amend

Notices of Rulemaking Intent

Subchapter 11, Additional LBP Certification Requirements, to clarify lead-based paint certification requirements.

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 April 14, 2004. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by April 7, 2004.

Oral comments may be made at the April 14, 2004 hearing and the June 22, 2004 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, April 14, 2004 at OSU at Tulsa, North Hall, Room 150, 707 North Greenwood, Tulsa, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on June 22, 2004, Stillwater, Oklahoma (exact location to be announced).

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. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677, phone (405) 702-4100, fax (405) 702-4101.

[OAR Docket #04-245; filed 2-20-04]

REGULAR MEETING/ HEARING AGENDA
AIR QUALITY COUNCIL
April 14, 2004, 9:00 a.m.
OSU@ Tulsa Room 150
707 N Greenwood Avenue
Tulsa, Oklahoma

Please turn off your cell phones.

1. **Call to Order – Sharon Myers**
2. **Roll Call – Myrna Bruce**
3. **Approval of Minutes – January 14, 2004 Regular Meeting**
4. **Public Rulemaking Hearings**

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

The Department proposes to make minor textual changes to Section 252:100-8-6 for clarity. Since Chapter 252:2 has been replaced by Chapter 252:4, the Department also proposes to correct references to 252:2 contained in Section 252:100-8-2, paragraph 252:100-8-4(b)(10), paragraph 252:100-8-6.1(b)(2), Subsection 252:100-8-6.3(a), and Section 252:100-8-7.

1. Presentation – Max Price
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

B. OAC 252:110-9. Additional Accreditation Requirements [AMENDED]
OAC 252:110-11. Additional LBP Certification Requirements
[AMENDED]

The Department proposes to amend Subchapter 9, Additional Accreditation Requirements, to clarify requirements for accredited lead-based paint training programs. The Department also proposes to amend Subchapter 11, Additional LBP Certification Requirements, to establish lead-based paint certification requirements for individuals who are instructors in a Department accredited training program.

1. Presentation – Cheryl Bradley
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

5. **Division Director's Report – Eddie Terrill**
Funding alternatives, Future of Air Toxic Program, and Early Action Compacts.

6. **New Business** – (Any matter not known about, or which could not have been reasonably foreseen prior to the time of posting the Agenda.)

7. **Adjournment** -- Next Regular Meeting is proposed for 9 a.m. July 21, 2004, at the DEQ Building, 707 N Robinson, Oklahoma City, 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.

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.

"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 ~~252:100-2-15~~252:4-7 or affected State review under OAC 252:100-8-8.

252:100-8-4. Requirements for construction and operating permits

(b) Operating permits.

(10) **Application completeness.** See ~~Uniform Permitting Rules, OAC 252:2-15-70~~Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.

252:100-8-6. Permit content

(a) **Standard permit requirements.** Part 70 permits issued under this Chapter shall include all applicable requirements and state-only requirements (as defined in OAC 252:100-8-2) that apply to the permitted source at the time of issuance. Each permit shall include the following elements in paragraphs (1) through (4) of subsection (a) of this Section.

(1) **Emission limitations and standards.** The permit shall specify emissions limitations and standards that constitute applicable requirements and state-only requirements and shall include those operational conditions and limitations necessary to assure compliance with all such requirements.

(A) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement or state-only requirement upon which the term or condition is based.

(B) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by EPA.

(C) If the State implementation plan or an applicable requirement allows a source to comply through an

alternative emission limit or means of compliance, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicable procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.

(2) **Permit duration.**

(A) **Operating permits.** The permit shall specify a fixed term. The DEQ shall issue permits for any fixed period requested in the permit application, not to exceed five years, except as provided in subparagraphs (i) and (ii) of subparagraph (A) of this paragraph.

(i) Permits issued to affected sources shall in all cases have a fixed term of five years.

(ii) Permits issued to solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

(B) **Construction permits.** See OAC 252:100-8-1.4.

(3) **Monitoring and related recordkeeping and reporting requirements.**

(A) **Monitoring requirements.**

(i) ~~All~~ The permit shall specify all emissions monitoring and analysis procedures or test methods required under applicable requirements and state-only requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act.

(ii) ~~Where an applicable requirement or state-only requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring),~~ The permit shall specify periodic monitoring during the relevant time period sufficient to yield reliable data that are representative of the source's compliance with the permit, as reported pursuant to (a)(3)(C) of this section when an applicable requirement or state-only requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement or state-only requirement.

Recordkeeping provisions may be sufficient to meet the requirements of this subparagraph.

(iii) The permit shall specify ~~As~~ as necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(iv) The permit shall contain ~~Provisions~~ provisions for the permittee to request the use of alternative test methods or analysis procedures, and provisions for the DEQ to approve or disapprove the request within 60 days.

(B) **Recordkeeping requirements.** The permit shall incorporate all applicable recordkeeping requirements ~~and require, where applicable, the following.~~

(i) When applicable the permit shall require ~~Records~~ records of required monitoring information that include ~~the following~~:

(I) ~~The~~ the date, place as defined in the permit, and time of sampling or measurements;

(II) ~~The~~ the date(s) analyses were performed;

(III) ~~The~~ the company or entity that performed the analyses;

(IV) ~~The~~ the analytical techniques or methods used;

(V) ~~The~~ the results of such analyses; and

(VI) ~~The~~ the operating conditions existing at the time of sampling or measurement.

(ii) When applicable, the permit shall require ~~Retention~~ retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. Where appropriate, the permit may specify that records may be maintained in computerized form.

(C) **Reporting requirements.** The permit shall incorporate all applicable reporting requirements and ~~require~~ contain the following requirements.

(i) A permit issued under this Part shall require the permittee to submit a report of any required monitoring at least every six months. To the extent possible, the schedule for submission of such reports shall be timed to coincide with other periodic reports required by the permit, including the permittee's annual compliance certification.

However, the reports may be submitted at any time within the reporting period, as stipulated in the permit.

(ii) Each report submitted under (C)(I) of this paragraph shall identify any exceedances from permit requirements since the previous report that have been monitored by the monitoring systems required under the permit, and any exceedances from the monitoring, recordkeeping and reporting requirements under the permit.

(iii) In addition to semiannual monitoring reports, each permittee shall be required to submit the following supplemental reports ~~as follows~~.

(I) Any exceedance resulting from an emergency as defined in OAC 252:100-8-2 or upset conditions as defined in the permit shall be reported promptly but no later than 4:30 p.m. on the next working day after the permittee first becomes aware of the exceedance. The initial report must contain a description of the emergency or upset conditions, any steps taken to mitigate emissions, and corrective actions taken. Quantification of exceedances attributable to emergencies or upset conditions shall be made by the best available method. If the permittee wishes to assert the affirmative defense authorized under subsection (e) of this Section for emergencies, the permittee shall submit a followup written report within 10 working days of first becoming aware of the exceedance.

(II) Any exceedance that poses an imminent and substantial danger to public health, safety, or the environment shall be reported as soon as is practicable; but under no circumstance shall notification be more than 24 hours after exceedance.

(III) Any other exceedances that are identified in the permit as requiring more frequent reporting than the permittee's semiannual report shall be reported on the schedule specified in the permit.

(IV) All reports of exceedances shall identify the probable cause of the exceedances and any corrective actions or preventive measures taken.

(iv) Every report submitted under this subsection shall be certified by a responsible official,

except that if a report of an exceedance required under (C)(iii) of this paragraph must be submitted within ten days of the exceedance, the report may be submitted in the first instance without a certification if an appropriate certification is provided within ten days thereafter, together with any corrected or supplemental information required concerning the exceedance. Reports submitted shall be consistent with the requirements of OAC 252:100-9.

(4) **Risk management plans.** If the source is required to develop and register a risk management plan pursuant to section 112(r) of the Act, the permit need only specify that the permittee will comply with the requirement to register such a plan. Although the requirement to have a risk management plan may be a term of the permit, the risk management plan contents are not part of the permit.

(5) **Title IV allowances.**

(A) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(B) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(C) The permit shall prohibit emissions exceeding any allowance that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder. Compliance with this paragraph will be determined on January 31st of any given year and be based on actual emissions and the number of allowances held for the previous calendar year.

(6) **Severability clause.** The permit shall include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(7) **General requirements.** The permit shall include the following provisions ~~stating the following.~~

(A) The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Oklahoma Clean Air Act and is grounds for:

- (i) enforcement action;
- (ii) permit termination, revocation and reissuance, or modification; or
- (iii) denial of a permit renewal application.

(B) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to

halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. However, nothing in this subsection shall be construed as precluding consideration of a need to halt or reduce activity as a mitigating factor in assessing penalties for noncompliance if the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations.

(C) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. Except as provided under OAC 252:100-8-7.2(b)(1) for minor permit modifications, the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(D) The permit does not convey any property rights of any sort or any exclusive privilege.

(E) The permittee shall furnish to the DEQ, upon receipt of a written request and within a reasonable time, any information that the DEQ may request to determine whether cause exists for modifying, reopening, or revoking and reissuing or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the DEQ copies of records required to be kept by the permit. The permittee may make a claim of confidentiality pursuant to 27A O.S. § 2-5-105.18 for any information or records submitted under this paragraph.

(8) **Fees.** The permit shall provide that the permittee will pay fees to the DEQ consistent with the fee schedule established under OAC 252:100-5-2.2.

(9) **Emissions trading.** The permit shall provide that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(10) **Operating scenarios.** The permit shall include terms and conditions applicable to all operating scenarios described in the permit application and eligible for approval under applicable requirements and state-only requirements. The permit shall authorize the permittee to make changes among operating scenarios authorized in the permit without notice, but shall require the permittee contemporaneously with making a change from one operating scenario to another to record in a log at the permitted facility the scenario under which it is operating.

(11) **Emissions averaging.** The permit shall include terms

and conditions, if the permit applicant requests them, for the trading or averaging of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading or averaging such increases and decreases. Such terms and conditions shall include terms under subsections (a) and (c) of this Section to determine compliance and shall satisfy all requirements of the applicable requirements authorizing such trading or averaging.

(b) **Federally enforceable requirements.**

(1) Except as provided in paragraph (b)(2) of this Section, all terms and conditions in a permit issued under this Section, including any provisions designed to limit a source's potential to emit, are enforceable by the DEQ, by EPA, and by citizens under section 304 of the Act.

(2) Notwithstanding paragraph (b)(1) of this Section, the DEQ shall designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or any of its applicable requirements, and such terms and conditions shall not be enforceable by EPA and citizens under section 304 of the Act.

(c) **Compliance requirements.** All permits issued under this Part shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this Section, the permit shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit under this Part shall contain a certification by a responsible official as to the results of the required monitoring.

(2) The permit shall contain inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized officials of the DEQ to ~~perform the following:~~

(A) ~~Enter~~ enter upon the permittee's premises during reasonable/normal working hours where a source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) ~~Have~~ have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(C) ~~Inspect~~ inspect at reasonable times and using reasonable safety practices any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(D) ~~As~~ as authorized by the Oklahoma Clean Air Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit.

(3) The permit shall contain ~~A~~ a schedule of compliance if required under OAC 252:100-8-5(e)(8)(B).

(4) To the extent required under an applicable schedule of compliance and OAC 252:100-8-5(e)(8), the permit shall contain the requirement for progress reports, to be submitted semiannually or more frequently if specified in the applicable requirement or by the DEQ. Such progress reports shall contain ~~the following~~:

(A) ~~Dates~~ dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(B) ~~An~~ an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) The permit shall contain ~~Requirements~~ requirements for compliance certification with terms and conditions contained in the permit that are federally enforceable, including emission limitations, standards, or work practices. Each permit shall ~~specify~~ contain all of the following specifications and requirements.

(A) Each permit shall specify ~~The~~ the frequency (which shall be annually unless the applicable requirement or state-only requirement specifies submission more frequently) of submissions of compliance certifications.

(B) Each permit shall specify ~~in~~ in accordance with paragraph (a)(3) of this Section, a means for monitoring the compliance of the source with emissions limitations, standards, and work practices.

(C) Each permit shall include ~~A~~ a requirement that the compliance certification include ~~the following~~:

(i) ~~The~~ the identification of each term or condition of the permit that is the basis of the certification;

(ii) ~~The~~ the permittee's current compliance status, as shown by monitoring data and other information available to the permittee;

(iii) ~~Whether~~ whether compliance was continuous or intermittent;

(iv) ~~The~~ the method(s) used for determining the compliance status of the source, currently and over the reporting period as required by paragraph (a)(3) of this Section; and

(v) ~~Such~~ such other facts as the DEQ may require to determine the compliance status of the source.

(D) Each permit shall contain ~~A~~ a requirement that all compliance certifications be submitted to EPA as well as to the DEQ.

(E) Each permit shall contain such ~~such~~ additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act, ~~and~~.

(6) Each permit shall contain such ~~such~~ other provisions as the DEQ may require.

(d) **Permit shield.**

(1) Each operating permit issued under this Part shall include a "permit shield" provision, which shall state that compliance with the terms and conditions of the permit (including terms and conditions established for alternate operating scenarios, emissions trading, and emissions averaging, but excluding terms and conditions for which the permit shield is expressly prohibited under this Subchapter) shall be deemed compliance with the applicable requirements identified and included in the permit.

(2) Upon request, the DEQ shall include in the permit or in a separate written finding issued with the permit a determination identifying specific requirements that do not apply to the source. The source shall specify in its application for such a determination the requirements for which the determination is requested. If the determination is issued in a separate finding, that finding shall be summarized in the permit. The permit shall state that the permit shield applies to any requirements so identified. A request for a determination to extend the shield to requirements deemed inapplicable to the source may be made either in the original permit application or in a subsequent application for a permit modification.

(3) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(4) Nothing in this Section or in the permit shall alter or affect ~~the following~~:

(A) the provisions of section 303 of the Act, including the authority of the Administrator under that section;

(B) the liability of an owner or operator of a source for any violation of applicable requirements or state-only requirements prior to or at the time of permit issuance;

(C) the applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(D) the ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(e) **Emergencies.**

(1) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based

emission limitations if the conditions of paragraph (e) (3) of this Section and the reporting requirements of OAC 252:100-8-6(a) (3) (C) (iii) (I) are met.

(2) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that:

- (A) ~~An~~an emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (B) ~~The~~the permitted facility was at the time being properly operated;
- (C) ~~During~~during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.

(3) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(4) The provision in this subsection is in addition to any emergency or upset provision contained in any applicable requirement or OAC 252:100-9.

(f) **Operational flexibility.**

(1) **Applicant's duty to apply for alternative scenarios.** A facility may implement any operating scenario allowed for in its Part 70 permit without the need for any permit revision or any notification to the permitting authority. It is incumbent upon the Part 70 permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of initial or renewal permit application.

(2) **Changes resulting in no emissions increases.** A permitted Part 70 source may make the following changes within the facility ~~that~~.

- (A) ~~Are~~Such a source may make changes that are not modifications under any provision of Title I of the Act.
- (B) ~~Do~~Such a source may make changes that do not cause any hourly or annual permitted emission rate of any existing emissions unit to be exceeded, ~~and~~.
- (C) ~~Result~~Such a source may make changes that result in a net change in emissions of zero, provided that the facility notifies the DEQ and EPA in writing at least 7 days in advance of the proposed changes. The source, DEQ, and EPA shall attach each such notice to their copy of the relevant permit. For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield described in OAC 252:100-8-6(d) does

not apply to any change made pursuant to this subsection.

252:100-8-6.1. General permits

(b) **Authorization.**

(2) See ~~252:2-15~~OAC 252:4-7 for Tier I permitting ~~procedures~~processes and timelines for individual authorizations under general permits. The DEQ shall act to approve or deny the application within 90 days of filing.

252:100-8-6.3. Special provisions for affected (acid rain) sources

(a) **Application binding until permit issuance or denial.** A complete acid rain permit application is binding on the applicant and enforceable as a permit until an acid rain permit is issued or denied. For applicable permitting ~~procedures~~processes, see ~~252:2-15~~OAC 252:4-7.

252:100-8-7. Permit issuance

(a) **Criteria for issuance.** A permit, permit modification, or renewal may be issued only if the applicable requirements of 27A O.S. §§ 2-14-101 through 2-14-401; ~~OAC 252:2-15~~OAC 252:4-7; and this Chapter have been met and the DEQ has determined that the conditions of the permit provide for compliance with all applicable requirements and, for applications subject to OAC 252:100-8-8, that the requirements of that Section have been satisfied.

(b) **Draft permits and notice thereof.** See ~~OAC 252:2-15~~OAC 252:4-7. A statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions) shall accompany the draft permit.

(c) **EPA review.** See OAC 252:100-8-8.

(d) **DEQ final action.** See ~~OAC 252:2-15~~OAC 252:4-7 and 252:100-8-8 when applicable.

(e) **Timeline for technical review and issuance.** The DEQ shall take final action on each application for a permit within 18 months after beginning its technical review in accordance with ~~OAC 252:2-15-70 through 252:2-15-72~~OAC 252:4-7-4 through 252:4-7-12 and OAC 252:4-7-31; and OAC 252:100-8-4 (b) (7).

DRAFT MINUTES
AIR QUALITY COUNCIL
April 14, 2004
Department of Environmental Quality
OSU @ Tulsa 700 North Greenwood
Tulsa Oklahoma

Draft for EQB June 22, 2004
For AQC Approval July 21, 2004

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. April 14, 2004 in North Hall 150, OSU @ Tulsa, 700 North Greenwood, Tulsa, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on 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. Ms. Sharon Myers called the meeting to order. Roll was called and a quorum confirmed.

MEMBERS PRESENT

Sharon Myers
David Branecky
Bill Breisch
Gary Martin
Rick Treeman

MEMBERS ABSENT

Gary Kilpatrick
Bob Lynch
Sandra Rose
Joel Wilson

DEQ STAFF PRESENT

Eddie Terrill
Beverly Botchlet-Smith
David Dyke
Scott Thomas
Kendall Cody
Joyce Sheedy
Pat Sullivan
Dawson Lasseter
Rhonda Jeffries
Myrna Bruce

OTHERS PRESENT Sign-in sheet is attached
as an official part of these Minutes

Approval of Minutes Ms. Myers called for approval of the January 14, 2004 Minutes. Hearing no discussion, she called for a motion to approve the Minutes as presented. Mr. Martin made the motion with Mr. Treeman making the second.

Roll call.

David Branecky Yes
Rick Treeman Yes
Bill Breisch Yes

Gary Martin Yes
Sharon Myers Yes

Motion carried.

OAC 252:100-8 Permits for Part 70 Sources

Ms. Botchlet-Smith convened the hearings and called upon Mr. Max Price for staff presentation. Mr. Price pointed out the sections in Subchapter 8 where non-substantive changes were proposed and advised of staff's recommendation to forward these to the

Environmental Quality Board for permanent rulemaking. Council had questions and discussion regarding some of the wording that could be substantive changes; therefore, Mr. Terrill suggested that the rulemaking be continued to the next regular meeting to address the issues raised. Dr. Sheedy suggested that continuing the hearing could tie up the PSD Section of 8, Part 7 and nonattainment Parts 9 and would interfere with the upcoming New Source Review process. Mr. Terrill noted that the comments made would be considered and would be brought before the Council at a later time. With that commitment, Mr. Martin made motion to approve the amendments proposed and amended his motion to include language as suggested by Mr. Branecky. Mr. Treeman made the second.

Roll call.			
David Branecky	Yes	Gary Martin	Yes
Rick Treeman	Yes	Sharon Myers	Yes
Bill Breisch	Yes		Motion carried.

OAC 252:110-9 Additional Accreditation Requirements

OAC 252:110-11 Additional LBP Certification Requirements

Ms. Cheryl Bradley, Program Manager of the Lead-Based Paint Program, advised that the Department proposed revisions were to clarify requirements for accredited lead-based paint training programs and to establish lead-based paint certification requirements for instructors in Department-accredited training programs. Ms. Bradley added that this was the first time these changes had been proposed to the Council and since comments had been received, staff's recommendation was to continue to the next regular meeting so that staff can address the comments and make the necessary changes to update references 40 CFR 745, Subpart L. Mr. Branecky made motion to continue the hearing and Mr. Breisch seconded.

Roll call.			
David Branecky	Yes	Gary Martin	Yes
Rick Treeman	Yes	Sharon Myers	Yes
Bill Breisch	Yes		Motion carried.

Division Director's Report Mr. Terrill provided updates on funding alternatives, Subchapter 41 revisions, NSR reform timelines, the Early Action Compact, and new procedures for public access to Air Quality Division files.

NEW BUSINESS - None

ADJOURNMENT - 11:00 a.m. Next meeting scheduled for July 21, 2004.

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS
OF THE AIR QUALITY ADVISORY COUNCIL
OF PUBLIC HEARING ON ITEM NOS. 1-4A

OAC 252:10-8

PERMITS FOR PART 70 SOURCES
HELD ON APRIL 14, 2004, AT 9:00 A.M.
IN TULSA, OKLAHOMA

* * * * *

REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE
(405) 721-2882

Page 2

1
2 MEMBERS OF THE COUNCIL
3
4
5 1. MR. DAVID BRANECKY - MEMBER
6 2. MR. BILL BREISCH - MEMBER
7 3. DR. BOB LYNCH - VICE CHAIRMAN
8 4. MR. GARY MARTIN - MEMBER
9 5. MS. SHARON MYERS - CHAIR
10 6. MR. RICK TREEMAN - MEMBER
11 7. MR. JOEL WILSON - MEMBER
12
13 STAFF MEMBERS
14
15 MS. MYRNA BRUCE - SECRETARY
16 MR. EDDIE TERRILL - DIVISION DIRECTOR
17 MS. SCOTT THOMAS - AQD
18 DR. JOYCE SHEEDY - AQD
19 MS. KENDAL CODY - LEGAL
20 MR. MAX PRICE - AQD
21 MS. BEVERLY BOTCHLET-SMITH - AQD
22 MS. CHERYL BRADLEY - AQD
23 MS. PAT SULLIVAN - AQD
24
25

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1
2 PROCEEDINGS
3
4 MS. MYERS: Good morning. Let's
5 call the meeting to order, please. Myrna,
6 would you call roll to see if we have a
7 quorum, please?
8 MS. BRUCE: Mr. Branecky.
9 MR. BRANECKY: Here.
10 MS. BRUCE: Mr. Treeman.
11 MR. TREEMAN: Here.
12 MS. BRUCE: Mr. Breisch.
13 MR. BREISCH: Here.
14 MS. BRUCE: Mr. Martin.
15 MR. MARTIN: Here.
16 MS. BRUCE: Ms. Myers.
17 MS. MYERS: Here.
18 MS. BRUCE: For the record,
19 absent are Dr. Lynch and Joel Wilson; and
20 Gary Kilpatrick and Sandra Rose have both
21 resigned. And we do have a quorum.
22 MS. MYERS: Okay. The next item
23 on the Agenda is the approval of the
24 Minutes. Do we have any comments? I'll
25 entertain a motion.

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1 MR. MARTIN: Motion to approve.
2 MR. TREEMAN: Second.
3 MS. BRUCE: Mr. Branecky.
4 MR. BRANECKY: Yes.
5 MS. BRUCE: Mr. Treeman.
6 MR. TREEMAN: Yes.
7 MS. BRUCE: Mr. Breisch.
8 MR. BREISCH: Yes.
9 MS. BRUCE: Mr. Martin.
10 MR. MARTIN: Yes.
11 MS. BRUCE: Ms. Myers.
12 MS. MYERS: Yes. Beverly.
13 MS. BOTCHLET-SMITH: Good
14 morning. I am Beverly Botchlet-Smith,
15 Environmental Program Manager of the Air
16 Quality Division. And I will be serving as
17 the protocol officer for today's hearings.
18 These hearings will be convened by
19 the Air Quality Council in compliance with
20 the Oklahoma Administrative Procedures Act
21 and Title 40 of the Code of Federal
22 Regulations, Part 51, as well as the
23 authority of Title 27A of the Oklahoma
24 Statutes, Section 2-2-201, Sections 2-5-101
25 through 2-5-118.

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1 These hearings were advertised in
2 the Oklahoma Register on October 13, 2003
3 for the purpose of receiving comments
4 pertaining to the proposed OAC Title 252
5 Chapter 100 rules as listed on the Agenda
6 and will be entered into each record along
7 with the Oklahoma Register filing.
8 If you wish to make a statement, it
9 is very important that you complete the
10 form at the registration table, just
11 outside the room here, and you will be
12 called upon at the appropriate time to
13 speak. Audience members, please come to
14 the podium here in the front to make your
15 comments and please state your name before
16 speaking.
17 At this time, we will proceed with
18 what's marked as Agenda Item No. 4A on the
19 Hearing Agenda, that's OAC 252:100-8,
20 Permits for Part 70 Sources. We call upon
21 Mr. Max Price who will give the staff
22 position on proposed rule.
23 MR. PRICE: Madam Chairman,
24 Members of the Air Quality Council, Ladies
25 and Gentlemen, staff is recommending the

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1 following amendments to Section 252:100-8-
2 6, Section 252:100-8-2, Paragraph 252:100-
3 8-4(b)(10), Paragraph 252:100-8-6.1(b)(2),
4 Subsection 252:100-8-6.3(a), and Section
5 252:100-8-7, we're proposing these changes
6 to correct references and make needed, if
7 minor, textual changes for clarity. None
8 of these proposed changes are substantive.
9 As of this date, the staff has not
10 received any comments concerning these
11 proposed changes and we will ask the
12 Council to vote to forward these changes to
13 the DEQ Board for approval as permanent
14 rules.
15 MS. BOTCHLET-SMITH: Do we have
16 any questions from the Council?
17 MR. BRANECKY: I have some
18 comments and questions for Mr. Price. 8-6,
19 I guess, (a)(1) -- (A)(2)(A).
20 MR. PRICE: (A)(2)(A)?
21 MR. BRANECKY: Yeah. Operating
22 Permits.
23 MR. PRICE: Yes, sir.
24 MR. BRANECKY: I guess, you know,
25 we've made these changes trying to clarify

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1 things and make things simpler to
2 understand. The second sentence, to me,
3 when I read that -- it says the DEQ shall
4 issue permits for any fixed period
5 requested in the permit application, not to
6 exceed five years, except as provided in
7 paragraphs (i) and (ii) of subparagraph (A)
8 of this paragraph.
9 MR. PRICE: Uh-huh.
10 MR. BRANECKY: I'm sorry, but I -
11 -
12 MR. PRICE: It doesn't seem like
13 it makes it any clearer, does it?
14 MR. BRANECKY: Yeah. I'm trying
15 to figure out what is the paragraph and
16 what is the subparagraph and what is the
17 section. Why can't we just say "not to
18 exceed five years, except for the
19 following", and colon and then -- because
20 you know -- otherwise, I'm not sure I knew
21 what we were talking about. I had to go
22 back and search for subparagraph (a) of
23 this paragraph. Just to make it easier for
24 people to follow, can you just say "not to
25 exceed five years, except for the

Page 8

1 following", and put a colon, and then it's
2 understood that it's (i) and (ii) right
3 there: I'm just trying make it easier for
4 people to figure out what you're talking
5 about.
6 MR. PRICE: It's been a while. I
7 don't have a problem with anything you want
8 to do on this. If you want to do it that
9 way, it's fine with me.
10 MR. BRANECKY: Well, like I said
11 it's just trying to figure out what --
12 MR. PRICE: It seems like the
13 sentence is a little complicated.
14 MR. BRANECKY: Yeah. It just
15 made it a little more complicated than I
16 think it needed to be.
17 The other comments I had over on --
18 my pages aren't numbered -- little (c),
19 under Compliance Requirements.
20 MR. PRICE: Is that still under
21 the same section?
22 MR. BRANECKY: I guess. Yeah, 8-
23 6(c)(2)(D). We make a statement "as
24 authorized by the Oklahoma Clean Air Act".
25 Isn't everything we do in the rule

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1 authorized by the Clean Air Act, the
2 Oklahoma Clean Air Act?
3 MR. PRICE: It's supposed to be.
4 MR. BRANECKY: Do we even need
5 that wording then?
6 MR. PRICE: Not in my opinion.
7 MR. BRANECKY: I just assumed
8 that everything we did was authorized by
9 the Clean Air Act.
10 MR. PRICE: Uh-huh.
11 MR. TERRILL: That language has
12 been in there, though, probably since this
13 regulation was written, and I would be a
14 little bit reluctant to take that out
15 without doing some type of -- having our
16 lawyers take a look at that and see if
17 there might be some reason for that. I
18 don't know why it would need to be in there
19 either, but that is not something we have
20 added, that is something that has always
21 been there.
22 MR. PRICE: That might be a
23 substantive change.
24 MR. TERRILL: It could be, but it
25 also -- I guess if someone were looking at

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1 these rules for the first time, they may
2 not know there is an Oklahoma Clean Air
3 Act, and it may give them some notice that
4 there is a controlling body of authority
5 that governs this. So since that is not--
6 our change proposed today, I'd like to go
7 ahead and maybe take a look at that with
8 the idea we might take it out the next time
9 we do this.

10 MR. BRANECKY: Is there a
11 difference then -- you talk about
12 "authorized by the Oklahoma Clean Air Act",
13 and then in other parts of the rule it
14 references "the Act". Are they the same
15 thing?

16 MR. TERRILL: I believe they are.
17 I don't know whether -- there is no other
18 Act that I'm aware of.

19 MR. BRANECKY: Well, there's the
20 Federal Clean Air Act.

21 MR. TERRILL: Well, but that's --

22 MR. BRANECKY: And I assume "Act"
23 is defined somewhere in the early part of
24 Subchapter 8 or Subchapter 1.

25 MR. PRICE: The Act, I think, is

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1 Subchapter 1. It's probably not referenced
2 in this.

3 MR. TERRILL: It's not defined
4 either. It's probably defined at the
5 beginning of the section where it's being
6 used. That is generally the way that works
7 --

8 MR. PRICE: Yes.

9 MR. TERRILL: -- if it's
10 different than is normally used. In our
11 case, it would be the Oklahoma Clean Air
12 Act.

13 DR. SHEEDY: It's defined in 8-
14 1.1 as "Act" means the Federal Clean Air
15 Act as amended 42 USC 7401 et seq.

16 MR. BRANECKY: Okay.

17 MS. BOTCHLET-SMITH: You have
18 other comments, David?

19 MR. BRANECKY: Yes, I had two
20 more. Down on that same page. 5(c)(b) or
21 5, I guess -- and also it probably goes
22 along the same line in 6 on the next page.
23 If you go over to 6, it says "each permit
24 shall contain such other provisions as the
25 DEQ may require". Well, I guess I have a

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1 little reservation about giving the DEQ a
2 blanket -- a blank check to require
3 anything they want to, even though I trust
4 Eddie and Eddie, I assume, trusts me.

5 On 6, "each permit shall contain
6 such other provisions as the DEQ may
7 require". Can we put some language in
8 there that maybe would say "each permit
9 shall contain such other provisions as the
10 DEQ may require to insure compliance with
11 applicable rule"?

12 MR. PRICE: I haven't a clue
13 where you are. If I had page numbers, I
14 would know.

15 MS. BOTCHLET-SMITH: It's on the
16 facing page to where his last comment was.

17 MR. BRANECKY: On 6.

18 MR. PRICE: Okay.

19 MS. BOTCHLET-SMITH: Permit
20 Shield is one of the headings.

21 MR. PRICE: Okay. Here we go,
22 operating permits.

23 MR. BRANECKY: And along the same
24 line, under 5(v) it says "such other facts
25 as the DEQ may require to determine the

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1 compliance status of the source". Maybe
2 we could put "such other facts as may be
3 necessary to determine compliance status of
4 the source". Like I said, I trust Eddie,
5 but Eddie and I may not be here some time
6 in the future to maybe insure that the DEQ
7 is not doing anything unnecessary for
8 compliance purposes, that I'd like to have
9 that language inserted. I'd be happy to
10 discuss that with the other Council Members
11 and see if that's appropriate or not.
12 That's just a thought I had.

13 MS. MYERS: I think it adds some
14 clarification.

15 MR. TERRILL: Do we know why we
16 put that in there like that? I would
17 assume there is a reason for that, why we
18 worded it that way.

19 MR. PRICE: Well, I imagine we
20 worded it that way to give you the option
21 to add what you think is necessary.

22 MR. BRANECKY: That's what scares
23 me.

24 MR. PRICE: It depends on the
25 circumstances.

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1 MR. THOMAS: This is existing
2 language.
3 MR. PRICE: It is existing
4 language, yeah, it has been there since,
5 whenever.
6 MS. MYERS: While the rule is
7 open it gives us an opportunity to change
8 and clarify it.
9 MR. TERRILL: If it's existing
10 language, why is it underlined then?
11 MR. PRICE: Oh, is it? I'm still
12 not at the right section then.
13 MR. BRANECKY: Under 6 -- 6 has
14 some underlines.
15 MR. TERRILL: Okay, I see what
16 they've done here.
17 MR. BRANECKY: They've just re-
18 worded it.
19 MS. BRADLEY: It's primarily for
20 grammar, I believe.
21 MR. BRANECKY: Yeah, it is.
22 MR. PRICE: That makes sense.
23 DR. SHEEDY: We had complaints
24 because it was a sentence fragment. But
25 then the rules are loaded with them. So is

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1 everybody else's, I discovered.
2 MR. PRICE: Yeah. These
3 corrections we've made in here were
4 strictly textural. We weren't thinking
5 about anything substantive at all. It was
6 strictly to clean up the sentence fragments
7 and the gobly gook. At least, that was the
8 attempt that was made, sort of a
9 housekeeping rule change we're asking for
10 here.
11 MR. BRANECKY: And I understand
12 that once I -- every time I read through
13 these things, something else jumps up at me
14 and it's just one of those things that --
15 MR. PRICE: We can go through it
16 -- I can read this thing six weeks from now
17 and find a thousand mistakes again.
18 MR. TERRILL: If we're going to
19 make substantive changes to this rule,
20 we're going to have to carry it over.
21 MR. BRANECKY: Is that a problem?
22 MR. TERRILL: Yeah, that's a
23 problem. Because for one thing, I want my
24 staff to take a look at the changes that
25 are being made to make sure that we're not

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1 creating problems that are unintended.
2 MR. BRANECKY: I mean, is it a
3 problem to carry it to the next meeting?
4 We don't have to do this today?
5 MR. TERRILL: No.
6 MR. BRANECKY: Because these are
7 just --
8 MR. TERRILL: No. There would be
9 no problem with that. I just don't want to
10 -- and I'm not opposed to doing the
11 changes, we just didn't notice it that way
12 and there could be someone that may look at
13 this in a different light and have problems
14 with what we've done. So we just need to
15 note the changes that you all want to make
16 and then we'll come back at the next
17 Council meeting and say we're making some
18 substantive changes. That will give us a
19 chance to take a look and make sure we're
20 not doing something unintended.
21 MR. BREISCH: Well, David, on
22 this wording when it says "DEQ", do you
23 think it should be distinguished that it's
24 a Council or -- I mean, I would have
25 assumed by reading this, that we are part

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1 of the DEQ and now that you've mentioned it
2 I can see that we're a Council and we're
3 not as a Council, DEQ. That's a different
4 meaning, I guess is what you're trying to
5 say.
6 MR. BRANECKY: What I'm trying
7 to say is, I'm concerned that the statement
8 is "such other provisions as the DEQ may
9 require", that's just kind of an open ended
10 -- they can do anything they want to do or
11 ask for anything that they'd like to ask
12 for. What I'm trying to limit them to is -
13 - they may require things that are
14 necessary to insure compliance. Not just -
15 -
16 MR. BREISCH: You're not saying
17 it ought to be under the Council or the
18 Board --
19 MR. BRANECKY: No. No. I'm just
20 saying that they need to have a good reason
21 for asking for it, not just given a blank
22 check that's --
23 MR. TERRILL: And I think there's
24 a statement in the Clean Air Act that goes
25 back to this and I think it's a little bit

1 more, that's why we need to make sure that
2 the changes we make aren't going to
3 conflict with what the Act says, because I
4 think there may be something in there
5 that's fairly broad, knowing that the
6 permits generally are negotiated-type
7 instruments but they do reflect, or they're
8 supposed to reflect Federal and State
9 Requirements. Yes, Kendal.

10 MS. CODY: I would also say that
11 we're --

12 MR. TERRILL: Identify yourself.

13 MS. CODY: Kendal Cody with the
14 DEQ. I would also say we're also under the
15 arbitrary and (inaudible) conflicting
16 standard. So nothing in a permit that
17 we're going to get in a permit can go
18 against that. So we cannot arbitrarily put
19 something in an Air Quality permit.

20 MR. BRANECKY: And what's the
21 arbitrary breach of standard?

22 MS. CODY: Well, I mean -- it's
23 defined under case law and it's basically,
24 we cannot over step our bounds as defined
25 by the Clean Air Act.

1 hand too, if this is not going to create a
2 problem with what is in the Clean Air Act,
3 I don't know if it makes any difference to
4 change the language. We just need to go
5 through the notice process and do that.

6 MR. BREISCH: Well, this hasn't
7 changed anything up to now, has it?

8 MR. TERRILL: Not that I'm aware
9 of.

10 MR. BREISCH: How long has this
11 been enforced?

12 MR. TERRILL: A long time. But
13 then again, not everybody may agree with
14 that, too. I mean, it depends on -- it's
15 in the eye of the beholder. I'm sure we
16 can rustle up a few permittees that have
17 gotten permits down through the years that
18 may have a different attitude about that.
19 But we really are very conscience about
20 what we put in our permits and it goes
21 through a fairly rigorous process. And we
22 get a lot of push back from -- and
23 rightfully so, from the folks that we issue
24 the permits to, if there are things in
25 there that they don't believe are

1 MR. TERRILL: Or as I think
2 appropriate.

3 (Laughter)

4 MS. CODY: We cannot overstep our
5 bounds and what our duties are and what as
6 an agency, we're defined to do. So if we
7 do overstep our bounds, that's where a
8 permittee can take their permit through the
9 administrative hearing process and things
10 like that. So there are other remedies
11 that are out there. So if you think that
12 we're over stepping our bounds --

13 MR. BRANECKY: I didn't say you
14 were over stepping your bounds. But I know
15 Eddie, we all know each other and we have
16 some form of trust. But Eddie is going to
17 retire and I'm going to retire, and some
18 guy down the road may see that and have at
19 it.

20 MS. CODY: Right. But there are
21 other built in --

22 MR. BRANECKY: Yeah. Okay.

23 MS. CODY: -- built in things in
24 the system.

25 MR. TERRILL: Well, on the other

1 appropriate. But again, I don't think we
2 have any stake in this one way or the
3 other, as long as it doesn't create a
4 conflict with what's in the Clean Air Act.
5 So, again, we're not opposed to making
6 these changes, we just need to go through
7 the process of notice to say we're making
8 potentially substantive changes and give us
9 some time to do some analysis and come back
10 at the next Council meeting.

11 MR. BREISCH: Are you concerned
12 that this is a substantive change?

13 MR. TERRILL: Well, it could be.
14 The notice we gave when we did the notice
15 on this particular rule was that we were
16 just doing grammatical and clarification
17 changes. And if we start adding language
18 beyond just that, it's possible that we
19 could, and I wouldn't want to run the risk
20 of someone at some point challenging that
21 and having it come back. If there's really
22 -- since there's really no need -- no
23 pressing need to get this passed, it's just
24 safer to carry it over and come back to the
25 Council. That way there's no problems that

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1 might surface -- and it always surfaces at
2 inopportune times that you hadn't thought
3 about, and possibly even three or four
4 years down the road somebody may see
5 something that they didn't like or
6 whatever, and want to challenge what the
7 Council did because of insufficient notice.
8 So it's just cleaner to do it this way, if
9 we want to make changes beyond what we've -
10 -
11 MR. BREISCH: David, would you
12 like to carry it over?
13 MR. BRANECKY: Yeah. I think so.
14 It's up to the Council, but it would be my
15 recommendation.
16 MR. TERRILL: You need to keep in
17 mind, too, we have made changes at the
18 Council meeting that sometimes are
19 substantive. But we really don't like to
20 do that unless there is a pressing need to
21 get the rule passed. We have the ability,
22 because this is an open meeting, to do that
23 to a limited degree. I just don't want to
24 do that unless we just absolutely have to.
25 In this instance, we don't. I'd just

Page 23

1 prefer to carry it over, just so that we
2 make sure that there are no problems down
3 the road.
4 MR. PRICE: Can I make a comment
5 here? We are only dealing with one small
6 section of 8. Would not these same
7 problems, Dave, that you are talking about,
8 be manifest all through the chapter --
9 subchapter? So just changing this little
10 piece is not really going to change the
11 whole thing. You understand what I'm
12 getting at?
13 MR. BRANECKY: So you're saying
14 that there would be other references in
15 other parts?
16 MR. PRICE: Yeah. Because this
17 is only one section we're talking about out
18 of the whole eight. And if we hold it
19 over, in my opinion, it would be best if we
20 had to do that -- I hope we don't -- then
21 we'd have to go back and look at the whole
22 subchapter 8 to make sure if there's
23 anything wrong with it, from what you've
24 been telling us.
25 Do we really want to do that? Can

Page 24

1 we go ahead and pass this now, and then
2 start that process because it will take a
3 long time to do Chapter 8 and then we'll
4 have to look at 7 as well?
5 DR. SHEEDY: Excuse me, this is
6 Joyce Sheedy. We don't want to tie up the
7 PSD Section of 8, part 7 and nonattainment
8 parts 9 with this, because we have the new
9 source review and reform thing to work on
10 this year.
11 MR. PRICE: And we also have some
12 changes that change references to entire
13 chapters in there as one package on this
14 particular change and I'd hate to have to
15 put that off.
16 MR. TERRILL: Since were going to
17 be opening that up anyway, maybe we could
18 do those changes that might show up as part
19 of that.
20 DR. SHEEDY: The ones that are in
21 the PSD, yeah, we can handle anything like
22 that. Maybe that's the best way to handle
23 these, as we have a section open, we fix
24 it. I don't know if we need to do the
25 whole thing at once or how many places

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1 might be a problem.
2 MS. SULLIVAN: We try not to --
3 we try to open very specific portions of
4 the rule instead of having everything up
5 for conversation each time we open a rule,
6 because we would never finish. So we try
7 to be very specific about what we're
8 opening to change, and then close it. That
9 keeps our process working better.
10 MR. PRICE: The point I was
11 trying to make is that if the concerns that
12 you have, about this one section of 8, are
13 truly something that needs to be looked at,
14 then we need to look at the whole
15 subchapter. Because I'm sure the same
16 problems you're finding now, it's manifest
17 all the way through the subchapter. And
18 changing this one section won't solve the
19 problem, it will simply hold up this small
20 part of fixing up the grammar and the non-
21 substantive things. Also, it will hold up
22 changing those references in other
23 sections, which I think need to be changed,
24 because we're referring to a chapter that
25 doesn't exist. So I would suggest that we

1 go ahead and pass this and then go back and
2 look at the whole subchapter and see what
3 changes, based on what you said, need to be
4 made and then bring it up again.

5 MR. TERRILL: Let's ask a
6 question of our legal counsel. If we go
7 ahead and pass this, do we have to wait
8 until this thing is codified through the
9 legislature before it re-opens again?

10 MS. CODY: I do not know.

11 DR. SHEEDY: I've always been
12 told that we do.

13 MS. BRADLEY: Is it impossible to
14 withdraw portions of an approved rule
15 making?

16 MS. CODY: No.

17 MS. BOTCHLET-SMITH: Do we have
18 any other questions from the Council? Do
19 we have any comments from the public? I
20 don't have any comment sheets, but does
21 anyone wish to make a comment? Steven
22 Royer.

23 MR. ROYER: Steven Royer with
24 Sinclair. I guess I would just say in
25 general, I think that if we make a stance

1 gives Eddie the authority to require
2 certain records and whatever. That's
3 probably repeated several times, the same
4 phraseology all through there. It causes
5 us to have a conflict in the rules. This
6 one particular section that you don't have
7 to (inaudible), and then the other parts of
8 it, the requirements are the same thing,
9 you would require them to have a less
10 stringent part. It's a conflict and we
11 need to look at that and see where we have
12 to change it all at one time. And then
13 bring up those sections that need to be
14 changed if that's something that the
15 Council wants to do. Do you understand
16 what I mean?

17 MR. ROYER: It's a different
18 approach. I don't see the value of
19 waiting, because then you are opening up a
20 bigger piece of the rule which just creates
21 more issues. But I said my peace, so --

22 MR. TERRILL: Let me just say
23 something because you bring up a good
24 point. The purpose of the re-write/de-
25 wrong that all state agencies went through,

1 that we won't address small issues as we
2 open rules, in the long term we will never
3 get those small changes done. Because
4 we're just told that you are not going to
5 open -- you are going to do your best not
6 to open an entire chapter, because that
7 opens up a lot of stuff for discussion that
8 you don't want to deal with. So why not
9 take the opportunity to do it when we have
10 the opportunity to do it, even if it is
11 this small piece. I guess in my mind, as I
12 think through the opportunities we have to
13 correct rules, we should take whatever
14 opportunity we have to make the corrections
15 we feel is prudent.

16 MR. PRICE: My rebuttal to that
17 is only this, everything affects everything
18 else. If we change something that's
19 substantive in this, we need to look and
20 see where it changes in other parts of the
21 chapter.

22 MR. ROYER: But, I haven't heard
23 --

24 MR. PRICE: You're talking about
25 the term -- the phraseology used that -- it

1 was to try to clear up and simplify the
2 existing rules. Because there's a tendency
3 that once rules get put in place, you
4 really, except for some minor tinkering,
5 really don't take a look at the whole
6 context to see if they're antiquated or if
7 there are better ways to do it that have
8 evolved, that as the particular agency
9 evolves, and we try to do some of that. We
10 have done -- all of our rules, except for
11 Subchapter 41 have gone through a re-
12 write/de-wrong. I think we did a lot of
13 that, but the problem with opening up a
14 whole rule is, if it's not the changes that
15 we put forth and someone has some problems
16 with it, we haven't had time to look at
17 what changes that are being asked for
18 really mean. That's what the staff is
19 alluding to about opening up the whole
20 rule. Because when you do that and only
21 make specific changes to parts of that rule
22 and open up the whole thing, invariably,
23 you're going to have people come with
24 questions about rules that have been on the
25 books for years, and been interpreted the

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1 same for years, and it just creates a lot
2 more problems than what we were trying to
3 address. So that's the reason we are very
4 limited in what we open up. On the other
5 hand, I agree with Max, too, that we have
6 got to be real careful that changes that we
7 did not contemplate making at the time the
8 rule was opened need to be analyzed in the
9 context of the whole rule, not that small
10 portion, otherwise, it just looks like a
11 computer program. You change a part of it
12 and you may have unintended consequences
13 all the way down the line. And that's the
14 problem we've got. We're not opposed to
15 looking at these changes, but we need to
16 look at it in context of the whole rule not
17 this one small piece and we don't need to
18 make a decision to make a rule change
19 without having the time to analyze it and
20 make all the other changes within that
21 rule, so that we don't create an unintended
22 problem or unintended consequence or
23 confusion more so than these rules already
24 are. So I guess if we're going to make --
25 if we want to make these substantive

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1 changes, we just need to hold over the
2 rule. And we probably need to take a look
3 at all the rule itself to see what changes
4 need to be made. And it could be that we
5 will not bring this rule back until we are
6 ready to look at NSR. Because we'll need
7 to make absolutely sure that -- we don't
8 want to get in a situation where we can't
9 do anything with this rule because we've
10 got to wait for it to get codified, because
11 that will be next July and that will give
12 us three months to pass some kind of a NSR
13 rule. We just need to be real careful. We
14 may very well not bring this rule back next
15 time if we're going to make substantive
16 changes to it if it looks like it may
17 impede our NSR process.

18 MS. BOTCHLET-SMITH: Do we have
19 any further comments from the public? From
20 the Council?

21 MR. MARTIN: I guess I'll make
22 one comment. I think staff brought this to
23 us to just clean up some language. I think
24 if we don't approve of this today, then
25 we're going to discourage staff from doing

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1 that in the future, because otherwise, we
2 just open up everything and start all over
3 again on every issue. So I support going
4 ahead and passing it. If we want to go
5 back and review the whole section, we can
6 do that at a later point.

7 MR. TERRILL: And we can do that
8 with a commitment that when we do the NSR
9 stuff, we'll take a look at that and make
10 those changes, just like we've made the
11 commitment to go back and look at the forty
12 ton exemption rule. And if we ever get any
13 comments, we'll go back and look at the
14 excess emission rule for changes. So it's
15 not like -- you brought up some good points
16 that we probably need to look at, we just
17 weren't prepared to do that today. It's
18 whatever the pleasure of the Council is. I
19 don't know that it will discourage us from
20 bringing it back, because we've got to do
21 something.

22 MR. MARTIN: But the Council
23 could bring that back and ask you to do
24 that at a later date?

25 MR. TERRILL: Sure, absolutely.

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1 And it's on the record that this concern
2 has been raised. So we'll be glad to do
3 it, but I just want to make sure that we
4 don't impede our NSR process.

5 MS. MYERS: Any more questions or
6 comments from the Council? From the
7 public? In that case, I'll entertain a
8 motion.

9 MR. MARTIN: Okay. I would make
10 a motion we approve the amendments to the
11 proposal.

12 MS. MYERS: We have a motion. Do
13 we have a second?

14 MR. TREEMAN: I'll second it.

15 MS. MYERS: Was there some
16 language that you had talked about earlier?

17 MR. BRANECKY: Right. Is that
18 going to be -- is that part of the motion?

19 MR. MARTIN: To include your
20 amendments that you discussed that you want
21 along with the changes?

22 MS. MYERS: We need to be
23 specific because we raised a couple of
24 issues --

25 (Several people talking)

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1 MR. MARTIN: Because I didn't
2 think anyone objected to those changes.
3 MR. BRANECKY: The reference to
4 Subparagraph (A) of this paragraph.
5 MS. MYERS: Uh-huh. Yes.
6 MR. BRANECKY: That's 8-
7 6(a)(2)(A), where I suggested that, that
8 sentence read at the end "not to exceed
9 five years, except for the following" with
10 a colon.
11 DR. SHEEDY: And do you want to
12 put a period there?
13 MR. BRANECKY: Period. Whatever
14 is grammatically correct.
15 DR. SHEEDY: I think a period
16 might work because those others following
17 it I believe are complete sentences.
18 MR. BRANECKY: Okay.
19 DR. SHEEDY: And not completion
20 of that.
21 MR. TERRILL: We can do that,
22 that's a non-substantive change.
23 MR. BRANECKY: And then I would
24 assume the staff has made a commitment at
25 sometime in the future to look at

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1 (c)(2)(D), where the reference is to,
2 "authorized by the Clean Air Act". Do we
3 need that in there at all? And then the
4 other two references in (c)(5)(c)(v) and 6
5 where we talk about Board changes, limiting
6 the discretion of the DEQ.
7 MR. TERRILL: Yes. We'll take a
8 look at that as a part of our NSR review or
9 earlier. Whichever is the quickest.
10 MR. MARTIN: Can I amend my
11 motion to include Mr. Branecky's
12 recommendations on the changes to OAC
13 252:100-8.
14 MS. MYERS: We have a motion. Do
15 we have a second?
16 MR. TREEMAN: I'll second.
17 MS. MYERS: Myrna.
18 MS. BRUCE: Mr. Branecky.
19 MR. BRANECKY: Aye,
20 MS. BRUCE: Mr. Treeman.
21 MR. TREEMAN: Yes.
22 MS. BRUCE: Mr. Breisch.
23 MR. BREISCH: Yes.
24 MS. BRUCE: Mr. Martin.
25 MR. MARTIN: Yes.

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1 MS. BRUCE: Ms. Myers.
2 MS. MYERS: Yes.
3 MS. BRUCE: Motion passed.
4 MR. PRICE: Thank you.
5 (End of Proceedings)
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8 AGENDA ITEM NO. 4B
9 OAC 252:100-9
10 ADDITIONAL ACCREDITATION REQUIREMENTS
11 OAC 252:100-11
12 ADDITIONAL OBP CERTIFICATION REQUIREMENTS
13 APRIL 14, 2004, 9:00 A.M.
14 IN TULSA, OKLAHOMA
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2 PROCEEDINGS
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4 MS. BOTCHLET-SMITH: The next item
5 on the Agenda is Item 4(B), OAC 252:110-9,
6 the Additional Accreditation Requirements,
7 and OAC 252:110-11, Additional OBP
8 Certification Requirements. And Ms. Cheryl
9 Bradley will give a staff position on the
10 proposed rule.
11 MS. BRADLEY: Good morning.
12 Madam Chairman, Members of the Council,
13 ladies and gentlemen. It's been about a
14 year since I've had the pleasure of
15 addressing the Council. And for those of
16 you who may not know me, my name is Cheryl
17 Bradley, and I am the Program Manager of
18 the Lead-Based Paint Management Program in
19 Oklahoma.
20 The Department is proposing
21 revisions to OAC 252:110, Lead-Based Paint
22 Management. These rules contain the
23 procedures and requirements for
24 certification for accreditation of lead-
25 based paint services training programs,

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1 procedures and requirements for the
2 certification of individuals and firms
3 engaged in lead-based paint services, and
4 work practice standards for performing such
5 services.
6 EPA authorized the Department of
7 Environmental Quality to administer and
8 enforce the provisions of its regulations
9 for Lead-Based Paint found at (40) CFR 745,
10 Subpart L. While the Department's Lead-
11 Based Paint rules do not directly affect
12 the Department's air pollution control
13 program, our legal counsel advises that
14 this is the appropriate forum, and that the
15 Air Quality Council consider them because
16 the personnel responsible for implementing
17 and enforcing the program are part of the
18 Air Quality Division. No other DEQ Council
19 has clear jurisdiction, and the proposed
20 rules must be recommended to the
21 Environmental Quality Board by a DEQ
22 Council.
23 On January 12, 2004, the Lead-Based
24 Paint staff held an Accredited Training
25 Providers' Roundtable meeting to update the

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1 training providers on new changes in the
2 program, and discuss ambiguities in the
3 state and federal rules. Representatives
4 from Oklahoma's two accredited training
5 providers attended. The University of
6 Oklahoma's Institute for Environmental
7 Management and Metro Technology Centers.
8 The proposed rule changes came out of these
9 discussions.
10 The Department proposes to clarify
11 training provider duties and certification
12 refresher training requirements for
13 accredited instructors under OAC 252:110.
14 Training providers would be required to
15 include a hands-on component for each
16 initial or refresher course taught. Course
17 curriculum would be required to include a
18 review of OAC 252:110, the Lead-Based Paint
19 Management Rules and any related Department
20 updates. Proposed rule amendments would
21 limit the time a guest speaker would be
22 able to instruct a class. Accredited
23 training instructors would be required to
24 take and pass a certification exam every
25 three years for each discipline they desire

Page 4.

1 to teach. The Department also proposes to
2 add language to allow instructors eight
3 hours of refresher credit for instructional
4 class time. Instructors would be required
5 to pass a Department approved third party
6 certification exam or a certification exam
7 administered by the Department.
8 Notice to the proposed rule changes
9 was published in the Oklahoma Register on
10 March 15, 2004 and comments were requested
11 from the public. The Lead-Based Paint
12 staff, sent letters to EPA Region VI's
13 Lead-Based Paint program director on March
14 11, 2004, and to accredited training
15 providers and certified lead-based paint
16 firms on March 15, 2004. We sent out
17 approximately a hundred letters. To date,
18 staff has received five letters of comments
19 from five individuals, two from lead-based
20 paint training instructors and three are
21 from lead-based paint service
22 professionals. Copies of one of these
23 letters was included in the Council packet,
24 and copies of the other four have been made
25 available to the Council today. I offer

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1 the four additional letters for inclusion
 2 in the hearing record. Four commenters
 3 disapproved of the proposed revisions to
 4 allow lead-based paint training instructors
 5 refresher credit in a discipline for
 6 instructional class time because it may
 7 afford instructors who are certified lead-
 8 based paint professionals an unfair
 9 advantage. An additional comment about the
 10 need to repeat Department administered
 11 certification exams every three years is
 12 currently under review by the Lead-Based
 13 Paint staff.
 14 Also, staff received four comments
 15 requesting that the proposed limit for
 16 class instruction by a guest instructor be
 17 increased from one hour to two hours per
 18 eight hours of class instruction.
 19 Throughout the rule text, the word
 20 "Department" is used but is not defined.
 21 We need to define that. Today, EPA has
 22 submitted no written comments on our
 23 proposals.
 24 On April 8, 2004, EPA published in
 25 the Federal Register amendments to 40 CFR

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1 745 Subpart L that would become effective
 2 on May 10, 2004. Portions of Subpart L
 3 have been incorporated by reference in the
 4 Department's rules in Chapter 110 and will
 5 need to be updated to include the recent
 6 federal amendments. However, our legal
 7 counsel advises that this incorporation by
 8 reference should not be accomplished before
 9 the federal regulations become effective.
 10 EPA did not provide the Department any
 11 forewarning of their intent to amend
 12 Subpart L, so staff did not factor in the
 13 need to update references to the federal
 14 rules when initiating the proposed
 15 rulemaking before the Council today.
 16 In light of this new development and
 17 comments received, staff suggests that the
 18 Council continue the hearing on the
 19 proposed rule changes to its July meeting
 20 so that staff can address the comments
 21 received and simultaneously make the
 22 necessary changes to Chapter 110 to update
 23 references 40 CFR 745, Subpart L.
 24 MS. BOTCHLET-SMITH: Do we have
 25 any questions from the Council for Ms.

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1 Bradley?
 2 MR. BRANECKY: So the four
 3 letters we have before us today are
 4 basically the same?
 5 MS. BRADLEY: They were. They
 6 were.
 7 MR. BRANECKY: Okay.
 8 MS. BOTCHLET-SMITH: Other
 9 questions from the Council? From the
 10 public? No other questions from the
 11 Council or the public? Sharon.
 12 MS. MYERS: At this point in time
 13 we'll entertain a motion.
 14 MR. BRANECKY: I'll move that we
 15 continue this rule to the next Council
 16 meeting in order to give the staff time to
 17 address the comments that were received.
 18 BREISCH: I'll second it.
 19 MS. MYERS: We have a motion and
 20 a second. Myrna, would you call roll,
 21 please?
 22 MS. BRUCE: Mr. Branecky.
 23 MR. BRANECKY: Yes.
 24 MS. BRUCE: Mr. Treeman.
 25 MR. TREEMAN: Yes.

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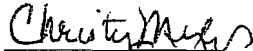
1 MS. BRUCE: Mr. Breisch.
 2 MR. BREISCH: Yes.
 3 MS. BRUCE: Mr. Martin.
 4 MR. MARTIN: Yes.
 5 MS. BRUCE: Ms. Myers.
 6 MS. MYERS: Yes.
 7 (End of proceedings)
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C E R T I F I C A T E

1
2 STATE OF OKLAHOMA)
3 COUNTY OF OKLAHOMA) s:

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 taken by me in
10 shorthand and thereafter transcribed under
11 my direction; that said proceedings were
12 taken on the 14th day of April, 2004, in
13 Tulsa, 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 26th day of April, 2004.

20 
21 CHRISTY A. MYERS, Q.S.R.
22 Certificate No. 00310
23
24
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AIR QUALITY COUNCIL

Attendance Record

April 14, 2004

Page Two

NAME / AFFILIATION

Contact Information

Address and/or Phone and/or E-Mail

DAVID DYKE	DEQ	702-7129
Beverly Botchlet-Smith	DEQ	Beverly.Botchlet-Smith@deq.state.ok.us
ANGIE BURCKHALTER	OIPA	3555 NW 58 th STE 400 OKC OK 73112 405-942-2334
LARRY MOORE	WHIRLPOOL	7301 WHIRLPOOL DRIVE TULSA 74117
Steve Moyer	Sindair	SMoyer@trsoc.com
Perry Friedrich	GRDA	pfriedrich@grda.com
Steve Henderson	Engex	henderson@engex.com
Howard Ground	PSO	hlground@aep.com
Bonnie McGilbra	BarlowTulsa	Bonnie.McGilbra@BarlowTulsa.com
Mary Lambeth	ONEOK	mary.lambeth@oneok.com
Rhonda Jeffries	ODEQ	Rhonda.Jeffries@deq.state.ok.us
David Youngman	ODEQ	David.Youngman@deq.state.ok.us
Jim Haught	ONEOK	jhaught@oneok.com (918)588-7640
JAY EUBANKS	MOGA/BP	eubankjm@bp.com (918)465-4167
TERRI WALTMAN	APAC-OKlahoma	tlwaltman@ashland.com
Julia Bevers	OGE	beversjo@oge.com
Dustin Givens	Fort James	4901 Chandler Rd. muskogeese 74403 dustin.givens@gapec.com
Laura Wortler	Benham	Laura.Wortler@benham.com
Gerald Butcher	WPTC	g-butcher@wptc.com
Mike Bumside	Bumside and Associates	leadpaintservice@netscape.net
Bob JAMES	OKLA READY MIXED CONCRETE Assoc.	bjames@ORMCA.com

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

A Public Meeting: 9:30 a.m., Tuesday June 22, 2004
Oklahoma State University
Sequoyah Room 280 Student Union Center
Stillwater, Oklahoma

1. Call to Order – Richard Wuerflein, Chair
2. Roll Call – Myrna Bruce
3. Approval of Minutes of the February 27, 2004 Regular Meeting
4. **Rulemaking - OAC 252:20 Emergency Planning and Community Right-to-Know**
In 1999, EPA raised the thresholds that trigger Material Safety Data Sheet (MSDS) reporting and annual chemical inventory reporting for gasoline and diesel fuel stored underground at retail gas stations that comply with underground storage tank (UST) requirements. The DEQ has followed the federal rule change but the state rule has not been updated to conform. The proposed amendment in OAC 252:20-1-3 updates the incorporation by reference to include EPA's 1999 changes. The Code of Federal Regulations is published in July each year, so the most current CFR date of July 1, 2003, is proposed as the incorporation by reference date. Other proposed amendments simply update addresses.
 - A. Presentation – Judy Duncan, Director, Customer Services Division
 - 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 roll call votes on permanent adoption
5. **Rulemaking – OAC 252:100 Air Pollution Control**
All proposed amendments are in Subchapter 8. Proposed textual changes to Section 252:100-8-6 are for clarity. Since OAC Chapter 252:2 has been replaced by Chapter 252:4, the Department also proposes to correct references to 252:2 contained in several sections of Subchapter 8.
 - A. Presentation – Sharon Myers, 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. **Rulemaking - OAC 252:300 Laboratory Accreditation**
The proposed textual amendment adds radionuclides to the list of drinking water categories for which laboratories may be accredited. This action also requires a corresponding change to Appendix A.
 - A. Presentation – Anthony Bright, Chair, Laboratory Services 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 roll call vote(s) on emergency* and/or permanent adoption

7. Annual Performance Review of Executive Director

Among the statutory duties of the Board are responsibilities to appoint and set the compensation of the Executive Director and to assist the Department in conducting periodic reviews and planning activities related to the goals, objectives, priorities, and policies of the Department. In connection with these responsibilities, the Board has determined that it should perform an annual performance review of the Executive Director.

- A. Discussion by the Board in open session
- B. Possible executive session pursuant to Title 25 Oklahoma Statutes § 307(A) (discussion of employment actions related to any individual salaried public officer or employee), if authorized by recorded majority vote of the Board members present
 - (1) Vote in open session on whether to enter executive session
 - (2) If executive session approved, designation in open session of person to keep minutes in executive session
 - (3) Discussion in executive session of Executive Director's performance
- C. Further discussion by the Board in open session
- D. Possible roll call vote on specific actions or recommendations as a result of performance review

(Executive Session held in adjacent room)

- 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, including a summary of key actions in the recent legislative session and the disclosure of certain employee financial interests as required by statute. These actions are for informational purposes and do not require action by the Board.
- 10. Adjournment

* Specification of proposed adoption by emergency rulemaking is based on the recommendation of the advisory council. Adoption or amendment of a rule by emergency requires a finding by the Board that a compelling public interest warrants emergency rulemaking, so that the rule will take effect immediately upon the Governor's signature. Absent a finding and approval of emergency, rules adopted today will not become effective until June of 2005.

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 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 Stillwater the evening of June 21. This is a social occasion. No Board or DEQ business will be conducted or discussed.

June 22, 2002

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

SUBCHAPTER 8

**Permits for Part 70 Sources
Section 252:100-8-2,
Paragraph 252:100-8-4(b)(10),
Section 252:100-8-6,
Paragraph 252:100-8-6.1(b)(2),
Subsection 252:100-8-6.3(a), and
Section 252:100-8-7.**

EXECUTIVE SUMMARY:

For clarity, the staff is proposing to make minor textual changes to Section 252:100-8-6. Since Chapter 252:2 has been replaced by Chapter 252:4, the staff is also proposing to correct references to 252:2 contained in Section 252:100-8-2, Paragraph 252:100-8-4(b)(10), Paragraph 252:100-8-6.1(b)(2), Subsection 252:100-8-6.3(a), and Section 252:100-8-7.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

Not applicable.

ENVIRONMENTAL BENEFIT STATEMENT:

Not applicable.

SUMMARY OF COMMENTS AND RESPONSES:

None received.

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

[OAR Docket #05-686]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 8. Permits for Part 70 Sources
- Part 5. Permits for Part 70 Sources
- 252:100-8-2. [AMENDED]
- 252:100-8-4. [AMENDED]
- 252:100-8-6. [AMENDED]
- 252:100-8-6.1. [AMENDED]
- 252:100-8-6.3. [AMENDED]
- 252:100-8-7. [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.*

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None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The proposed amendments will make minor textual corrections for clarity and correct references to Chapter 252:4.

CONTACT PERSON:

Max Price, 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 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);
- (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;

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(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.

"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 ~~252:100-2-15~~ 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) through (C) 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 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 HAP's, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

(C) 0.6 tons per year for any one category A substance, 1.2 tons per year for any one category B substance or 6 tons per year for any one category C substance as defined in OAC 252:100-41-40.

"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 tons per year ("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 that fraction of particulate matter that exhibits an average aerodynamic particle diameter of more than 10 micrometers) (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;
- (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) non-attainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

"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

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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.

"**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 operation of one or more manufacturing, 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 Subchapter, 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 in so far 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 Subchapter.

"**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.

"**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.

252:100-8-4. Requirements for construction and operating permits

(a) Construction permits.

- (1) **Construction permit required.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit. A construction permit is also required prior to reconstruction of a major affected source under 40 CFR Part 63, reconstruction of a major source if it would then become a major affected source under 40 CFR 63, or for any physical change that would be a significant modification under OAC 252:100-8-7.2(b)(2). In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this

Subchapter must also meet the applicable requirements contained therein.

(2) **Requirement for case-by-case MACT determinations.**

(A) **Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

(B) **Exclusions.** The following sources are not subject to this subsection.

- (i) Electric utility steam generating units unless and until these units are added to the source category list.
- (ii) Stationary sources that are within a source category that has been deleted from the source category list.
- (iii) Research and development activities as defined in 40 CFR § 63.41.

(C) **MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

(b) **Operating permits.**

(1) **Operating permits required.** Except as provided in subparagraphs (A) and (B) of this section, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

(A) If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

(B) If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

(C) Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.** Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in OAC 252:100-8-4(b)(4). A timely application is one that is postmarked on or before the relevant date listed below. In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.

(4) **Application submittal schedule.** The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule.

(A) No later than September 5, 1996:

(i) Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act, §407.

(ii) Any owner or operator shall submit no less than one-third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):

- (I) Petroleum and Natural Gas, 1311;
- (II) Natural Gas Liquids, 1321;
- (III) Electric Services, 4911, 4961;
- (IV) Natural Gas Transmission, 4922;
- (V) Natural Gas Transmission and Distribution, 4923; and
- (VI) Petroleum Bulk Stations and Terminals, 5171.

(B) All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.

(C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

- (i) Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,
- (ii) Brick Plants, 3251, 3297,
- (iii) Commercial Printing, 2752, 2761.

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(D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

- (i) Refineries, 2911;
- (ii) Cement Plants, 3241;
- (iii) Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;
- (iv) Petroleum Transportation/Terminals/Storage, 4612, 4613;
- (v) Food Products, 2013, 2074, 2095.

(E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.

(5) **Newly regulated sources.** A source that becomes subject to the operating permit program established by this Chapter at any time following the effective date shall file an administratively complete operating permit application within 180 days of commencement of operation.

(6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.

(7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.

(8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least six months before the date of permit expiration, unless a longer period (not to exceed 18 months) is specified in the permit. Renewal periods greater than six months are subject to negotiation on a case-by-case basis.

(9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).

(10) **Application completeness.** See ~~Uniform Permitting Rules, OAC 252:2-15-70 Environmental Permit Process, OAC 252:4-7-7~~ and the definition of "administratively complete" in OAC 252:100-8-2.

252:100-8-6. Permit content

(a) **Standard permit requirements.** Part 70 permits issued under this Chapter shall include all applicable requirements and state-only requirements (as defined in OAC 252:100-8-2) that apply to the permitted source at the time of issuance. Each permit shall include the following elements: in paragraphs (1) through (4) of subsection (a) of this Section.

(1) **Emission limitations and standards.** The permit shall specify emissions limitations and standards that constitute applicable requirements and state-only requirements and shall include those operational conditions and limitations necessary to assure compliance with all such requirements.

(A) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement or state-only requirement upon which the term or condition is based.

(B) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by EPA.

(C) If the State implementation plan or an applicable requirement allows a source to comply through an alternative emission limit or means of compliance, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicable procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.

(2) **Permit duration.**

(A) **Operating permits.** The permit shall specify a fixed term. The DEQ shall issue permits for any fixed period requested in the permit application, not to exceed five years, except as ~~provided in subparagraphs (i) and (ii) of this paragraph follows:~~

(i) Permits issued to affected sources shall in all cases have a fixed term of five years.

(ii) Permits issued to solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

(B) **Construction permits.** See OAC 252:100-8-1.4.

(3) **Monitoring and related recordkeeping and reporting requirements.**

(A) **Monitoring requirements.**

(i) ~~All The permit shall specify all~~ emissions monitoring and analysis procedures or test methods required under applicable requirements and state-only requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act.

(ii) ~~Where an applicable requirement or state-only requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), The permit~~

shall specify periodic monitoring during the relevant time period sufficient to yield reliable data that are representative of the source's compliance with the permit, as reported pursuant to (a)(3)(C) of this section when an applicable requirement or state-only requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement or state-only requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subparagraph.

(iii) ~~As~~ The permit shall specify as necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(iv) ~~Provisions~~ The permit shall contain provisions for the permittee to request the use of alternative test methods or analysis procedures, and provisions for the DEQ to approve or disapprove the request within 60 days.

(B) **Recordkeeping requirements.** The permit shall incorporate all applicable recordkeeping requirements ~~and require, where applicable, the following:~~

(i) ~~Records~~ When applicable the permit shall require records of required monitoring information that include ~~the following:~~

- (I) ~~The~~ the date, place as defined in the permit, and time of sampling or measurements;
- (II) ~~The~~ the date(s) analyses were performed;
- (III) ~~The~~ the company or entity that performed the analyses;
- (IV) ~~The~~ the analytical techniques or methods used;
- (V) ~~The~~ the results of such analyses; and
- (VI) ~~The~~ the operating conditions existing at the time of sampling or measurement.

(ii) ~~Retention~~ When applicable, the permit shall require retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. Where appropriate, the permit may specify that records may be maintained in computerized form.

(C) **Reporting requirements.** The permit shall incorporate all applicable reporting requirements and ~~require~~ contain the following requirements:

(i) A permit issued under this Part shall require the permittee to submit a report of any required monitoring at least every six months. To the extent possible, the schedule for submission of such reports shall be timed to coincide with other periodic reports required by the permit, including the permittee's annual compliance certification. However, the reports may be submitted at any time within the reporting period, as stipulated in the permit.

(ii) Each report submitted under (C)(I) of this paragraph shall identify any exceedances from permit requirements since the previous report that have been monitored by the monitoring systems required under the permit, and any exceedances from the monitoring, recordkeeping and reporting requirements under the permit.

(iii) In addition to semiannual monitoring reports, each permittee shall be required to submit the following supplemental reports as follows:

(I) Any exceedance resulting from an emergency as defined in OAC 252:100-8-2 or upset conditions as defined in the permit shall be reported promptly but no later than 4:30 p.m. on the next working day after the permittee first becomes aware of the exceedance. The initial report must contain a description of the emergency or upset conditions, any steps taken to mitigate emissions, and corrective actions taken. Quantification of exceedances attributable to emergencies or upset conditions shall be made by the best available method. If the permittee wishes to assert the affirmative defense authorized under subsection (e) of this Section for emergencies, the permittee shall submit a followup written report within 10 working days of first becoming aware of the exceedance.

(II) Any exceedance that poses an imminent and substantial danger to public health, safety, or the environment shall be reported as soon as is practicable; but under no circumstance shall notification be more than 24 hours after exceedance.

(III) Any other exceedances that are identified in the permit as requiring more frequent reporting than the permittee's semiannual report shall be reported on the schedule specified in the permit.

(IV) All reports of exceedances shall identify the probable cause of the exceedances and any corrective actions or preventive measures taken.

(iv) Every report submitted under this subsection shall be certified by a responsible official, except that if a report of an exceedance required under (C)(iii) of this paragraph must be submitted within ten days of the exceedance, the report may be submitted in the first instance without a

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certification if an appropriate certification is provided within ten days thereafter, together with any corrected or supplemental information required concerning the exceedance. Reports submitted shall be consistent with the requirements of OAC 252:100-9.

(4) **Risk management plans.** If the source is required to develop and register a risk management plan pursuant to section 112(r) of the Act, the permit need only specify that the permittee will comply with the requirement to register such a plan. Although the requirement to have a risk management plan may be a term of the permit, the risk management plan contents are not part of the permit.

(5) **Title IV allowances.**

(A) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(B) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(C) The permit shall prohibit emissions exceeding any allowance that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder. Compliance with this paragraph will be determined on January 31st of any given year and be based on actual emissions and the number of allowances held for the previous calendar year.

(6) **Severability clause.** The permit shall include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(7) **General requirements.** The permit shall include the following provisions stating the following:

(A) The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Oklahoma Clean Air Act and is grounds for:

- (i) enforcement action;
- (ii) permit termination, revocation and reissuance, or modification; or
- (iii) denial of a permit renewal application.

(B) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. However, nothing in this subsection shall be construed as precluding consideration of a need to halt or reduce activity as a mitigating factor in assessing penalties for noncompliance if the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations.

(C) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. Except

as provided under OAC 252:100-8-7.2(b)(1) for minor permit modifications, the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(D) The permit does not convey any property rights of any sort or any exclusive privilege.

(E) The permittee shall furnish to the DEQ, upon receipt of a written request and within a reasonable time, any information that the DEQ may request to determine whether cause exists for modifying, reopening, or revoking and reissuing or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the DEQ copies of records required to be kept by the permit. The permittee may make a claim of confidentiality pursuant to 27A O.S. § 2-5-105.18 for any information or records submitted under this paragraph.

(8) **Fees.** The permit shall provide that the permittee will pay fees to the DEQ consistent with the fee schedule established under OAC 252:100-5-2.2.

(9) **Emissions trading.** The permit shall provide that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(10) **Operating scenarios.** The permit shall include terms and conditions applicable to all operating scenarios described in the permit application and eligible for approval under applicable requirements and state-only requirements. The permit shall authorize the permittee to make changes among operating scenarios authorized in the permit without notice, but shall require the permittee contemporaneously with making a change from one operating scenario to another to record in a log at the permitted facility the scenario under which it is operating.

(11) **Emissions averaging.** The permit shall include terms and conditions, if the permit applicant requests them, for the trading or averaging of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading or averaging such increases and decreases. Such terms and conditions shall include terms under subsections (a) and (c) of this Section to determine compliance and shall satisfy all requirements of the applicable requirements authorizing such trading or averaging.

(b) **Federally enforceable requirements.**

(1) Except as provided in paragraph (b)(2) of this Section, all terms and conditions in a permit issued under this Section, including any provisions designed to limit a source's potential to emit, are enforceable by the DEQ, by EPA, and by citizens under section 304 of the Act.

(2) Notwithstanding paragraph (b)(1) of this Section, the DEQ shall designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or any of its

applicable requirements, and such terms and conditions shall not be enforceable by EPA and citizens under section 304 of the Act.

(c) **Compliance requirements.** All permits issued under this Part shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this Section, the permit shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit under this Part shall contain a certification by a responsible official as to the results of the required monitoring.

(2) ~~Inspection~~ The permit shall contain inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized officials of the DEQ to ~~perform the following~~:

(A) ~~Enter~~ enter upon the permittee's premises during reasonable/normal working hours where a source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) ~~Have~~ have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(C) ~~Inspect~~ inspect at reasonable times and using reasonable safety practices any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(D) ~~As~~ as authorized by the Oklahoma Clean Air Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit.

(3) ~~A~~ The permit shall contain a schedule of compliance if required under OAC 252:100-8-5(e)(8)(B).

(4) To the extent required under an applicable schedule of compliance and OAC 252:100-8-5(e)(8), the permit shall contain the requirement for progress reports; to be submitted semiannually or more frequently if specified in the applicable requirement or by the DEQ. Such progress reports shall contain ~~the following~~:

(A) ~~Dates~~ dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(B) ~~An~~ an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) ~~Requirements~~ The permit shall contain requirements for compliance certification with terms and conditions contained in the permit that are federally enforceable, including emission limitations, standards, or work practices. Each permit shall ~~specify~~ contain all of the following specifications and requirements.

(A) ~~The~~ Each permit shall specify the frequency (which shall be annually unless the applicable requirement or state-only requirement specifies submission more frequently) of submissions of compliance certifications;

(B) ~~In~~ Each permit shall specify in accordance with paragraph (a)(3) of this Section, a means for monitoring the compliance of the source with emissions limitations, standards, and work practices;

(C) ~~A~~ Each permit shall include a requirement that the compliance certification include the following:

(i) ~~The~~ the identification of each term or condition of the permit that is the basis of the certification;

(ii) ~~The~~ the permittee's current compliance status, as shown by monitoring data and other information available to the permittee;

(iii) ~~Whether~~ whether compliance was continuous or intermittent;

(iv) ~~The~~ the method(s) used for determining the compliance status of the source, currently and over the reporting period as required by paragraph (a)(3) of this Section; and

(v) ~~Such~~ such other facts as the DEQ may require to determine the compliance status of the source;

(D) ~~A~~ Each permit shall contain a requirement that all compliance certifications be submitted to EPA as well as to the DEQ;

(E) ~~Such~~ Each permit shall contain such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act; and

(6) ~~Such~~ Each permit shall contain such other provisions as the DEQ may require.

(d) **Permit shield.**

(1) Each operating permit issued under this Part shall include a "permit shield" provision, which shall state that compliance with the terms and conditions of the permit (including terms and conditions established for alternate operating scenarios, emissions trading, and emissions averaging, but excluding terms and conditions for which the permit shield is expressly prohibited under this Subchapter) shall be deemed compliance with the applicable requirements identified and included in the permit.

(2) Upon request, the DEQ shall include in the permit or in a separate written finding issued with the permit a determination identifying specific requirements that do not apply to the source. The source shall specify in its application for such a determination the requirements for which the determination is requested. If the determination is issued in a separate finding, that finding shall be summarized in the permit. The permit shall state that the permit shield applies to any requirements so identified. A request for a determination to extend the shield to requirements deemed inapplicable to the source may be made either in the original permit application or in a subsequent application for a permit modification.

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(3) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(4) Nothing in this Section or in the permit shall alter or affect the following:

(A) the provisions of section 303 of the Act, including the authority of the Administrator under that section;

(B) the liability of an owner or operator of a source for any violation of applicable requirements or state-only requirements prior to or at the time of permit issuance;

(C) the applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(D) the ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(e) **Emergencies.**

(1) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (e)(3) of this Section and the reporting requirements of OAC 252:100-8-6(a)(3)(C)(iii)(I) are met.

(2) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that:

(A) ~~An~~ an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(B) ~~The~~ the permitted facility was at the time being properly operated;

(C) ~~During~~ during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.

(3) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(4) The provision in this subsection is in addition to any emergency or upset provision contained in any applicable requirement or OAC 252:100-9.

(f) **Operational flexibility.**

(1) **Applicant's duty to apply for alternative scenarios.** A facility may implement any operating scenario allowed for in its Part 70 permit without the need for any permit revision or any notification to the permitting authority. It is incumbent upon the Part 70 permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of initial or renewal permit application.

(2) **Changes resulting in no emissions increases.** A permitted Part 70 source may make the following changes within the facility ~~that~~:

(A) ~~Are~~ Such a source may make changes that are not modifications under any provision of Title I of the Act;

(B) ~~Do~~ Such a source may make changes that do not cause any hourly or annual permitted emission rate of any existing emissions unit to be exceeded; and

(C) ~~Result~~ Such a source may make changes that result in a net change in emissions of zero, provided that the facility notifies the DEQ and EPA in writing at least 7 days in advance of the proposed changes. The source, DEQ, and EPA shall attach each such notice to their copy of the relevant permit. For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield described in OAC 252:100-8-6(d) does not apply to any change made pursuant to this subsection.

252:100-8-6.1. General permits

(a) **Applicability.**

(1) The DEQ may, after notice and opportunity for public participation, issue a general permit for any source category if it concludes that the category is appropriate for permitting on a generic basis. Any general permit shall comply with all requirements applicable to other Part 70 permits. No general permit may be issued for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) A general permit may be issued for a source category based upon an application from a source within the source category or upon the DEQ's own initiative. The DEQ shall, following receipt of an application for a general permit, or upon a determination that issuance of a general permit for a category of sources may be appropriate, follow the same procedures for issuance of a general permit as for any other permit issued under this part.

(3) A general permit may be issued to establish:

(A) Terms and conditions to implement applicable requirements and state-only requirements for a source category.

(B) Terms and conditions to implement applicable requirements and state-only requirements for specified categories of changes to permitted sources.

(C) Terms and conditions for new requirements that apply to sources with existing permits.

(D) Federally-enforceable caps on emissions from sources in a specified category.

(4) The DEQ may issue a general permit if it finds that:

(A) There are several permittees, permit applicants, or potential permit applicants who:

(i) Have the same or substantially similar operations, emissions, activities, or facilities.

(ii) Emit the same types of regulated air pollutants.

(B) The operations, emissions, activities, or facilities are subject to the same or similar:

(i) Standards, limitations, and operating requirements.

(ii) Monitoring requirements.

- (5) If some, but not all, of a source's operations, activities, and emissions are eligible for coverage under one or more general permits, the source must apply for an individual Part 70 permit for all of its covered sources.
- (6) Facilities located in areas that are federally designated as non-attainment are not eligible for coverage under a general permit.
- (7) Sites that are not in compliance with all applicable State and Federal air regulations are eligible for a general operating permit only if:
- (A) They submit to DEQ an approvable compliance plan, and
 - (B) The facility submits to Tier II public review.
- (8) Facilities with existing state operating permits are eligible for coverage under a general operating permit.
- (9) Facilities existing prior to the effective date of any applicable standard that would have created specific quantifiable and enforceable emission rates are eligible for coverage under a general operating permit.
- (b) **Authorization.**
- (1) A general permit issued under this section shall identify criteria by which sources may qualify for the general permit. After a general permit has been issued, any source may submit a request to be covered under the permit in the form of an application for authorization to operate under the general permit. Such application shall identify the source and provide information sufficient to demonstrate that it falls within the source category covered by the general permit, together with any additional information that may be specified in the general permit.
 - (2) See ~~252:2-15~~ OAC 252:4-7 for Tier I permitting ~~procedures~~ processes and timelines for individual authorizations under general permits. The DEQ shall act to approve or deny the application within 90 days of filing.
 - (3) A final action approving an authorization to operate under a general permit shall not be subject to public comment or judicial review.
 - (4) The DEQ will publish, at least monthly, an updated list of sources approved for inclusion under the general permit and any aggrieved person may petition the DEQ to review the approval of any stationary source for inclusion under a general permit within 30 days after publication of the list.
 - (5) A copy of the general permit, together with a list of sources approved for coverage under it, shall be kept on file for public review at the offices of the DEQ.
- (c) **Permit shield.** A general permit issued under this section shall provide that any source approved for coverage under a general permit shall be entitled to the protection of the permit shield for all operations, activities, and emissions addressed by the general permit, unless and to the extent that it is subsequently determined that the source does not qualify for the conditions and terms of the general permit.
- (d) **Revisions.**
- (1) If an owner or operator of a source(s) makes a change to a source covered by a general permit that affects any applicability information supplied in the general permit application, but the source is still eligible for coverage under a general permit, the owner or operator must revise the general permit application and submit it to the DEQ within 60 days.
 - (2) After coverage is granted to a source under the general permit, physical changes to the facility which result in the addition of equipment new to the facility, either as a replacement (except like-kind replacements) or net addition, will require a construction permit or a new authorization. Any significant modification to a stationary source included under a general permit shall subject the source to a Tier II review.
 - (3) If equipment new to the facility is newly purchased or is relocated from another facility where a permit was issued with enforceable emissions limits on that equipment, then authorization under the general permit shall be modified or amended to include an emissions limit for the newly purchased or relocated equipment. "Grandfathered" emissions sources at the facility will retain only the equipment descriptions as permit conditions. "Grandfathered" means a unit that was in existence prior to the effective date of any applicable regulation that would have created specific quantifiable and enforceable emissions rate limits.
 - (4) For a general operating permit, if emissions change for any reason that subjects the facility to PSD permitting requirements, then the facility no longer qualifies for a general operating permit. However, the existing general operating permit will remain valid during the time period covered by the PSD construction permit until the facility receives a Part 70 site specific operating permit for the entire facility.
- (e) **Permit content.** Specific terms and conditions that will make the applicable rules and requirements enforceable shall be stipulated in the general permit.
- (f) **Renewal of general operating permits.**
- (1) The DEQ will initiate the renewal process for a general operating permit at least 180 days prior to the permit's expiration date and will follow the requirements in 252:100-8-7(a).
 - (2) Owners or operators shall apply to renew an authorization at least 60 days prior to expiration of the existing authorization. Upon submittal of a timely and administratively complete application, the applicant may continue to operate until such time as the DEQ grants or denies coverage under the general operating permit.
- 252:100-8-6.3. Special provisions for affected (acid rain) sources**
- (a) **Application binding until permit issuance or denial.** A complete acid rain permit application is binding on the applicant and enforceable as a permit until an acid rain permit is issued or denied. For applicable permitting ~~procedures~~ processes, see ~~252:2-15~~ OAC 252:4-7.
 - (b) **Exemption petitions.** Applicants with small units that burn low sulfur fuel or sources that retire a unit can petition to have such units exempted from certain permitting and monitoring requirements under the acid rain regulations.

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- (c) **Permit shield.** The acid rain portion of every operating permit is covered by a permit shield. This shield assures that an applicant operating in accordance with a permit issued in accordance with Title IV of the Act, will be deemed to be operating in compliance with the Acid Rain Program.
- (d) **Modifications.** See 40 CFR 72.82.
- (e) **Duration.** Acid rain permits will have a term of five years commencing on the permits effective date. The DEQ may issue a permit with a future effective date.
- (f) **Right of intervention.** The Administrator may intervene as a matter of right in any administrative appeal involving an Acid Rain permit or denial of an Acid Rain permit.
- (g) **Administrative appeal.** The administrative appeal period shall be no more than 90 days following the issuance of the Acid Rain permit and the judicial appeal period shall be no more than 90 days following a final agency action.
- (h) **Adoption of 40 CFR Part 72 by reference.** DEQ hereby adopts and incorporates by reference the provisions of 40 CFR Part 72, as published in the Federal Register on January 11, 1993, on March 23, 1993, and on October 24, 1997, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Act. The term "permitting authority" shall mean the Oklahoma Department of Environmental Quality and the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in 252:100-8, the Part 72 provisions and requirements shall apply and take precedence.

252:100-8-7. Permit issuance

- (a) **Criteria for issuance.** A permit, permit modification, or renewal may be issued only if the applicable requirements of 27A O.S. §§ 2-14-101 through 2-14-401; OAC ~~252:2-15 252:4-7~~; and this Chapter have been met and the DEQ has determined that the conditions of the permit provide for compliance with all applicable requirements and, for applications subject to OAC 252:100-8-8, that the requirements of that Section have been satisfied.
- (b) **Draft permits and notice thereof.** See OAC ~~252:2-15 252:4-7~~. A statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions) shall accompany the draft permit.
- (c) **EPA review.** See OAC 252:100-8-8.
- (d) **DEQ final action.** See OAC ~~252:2-15 252:4-7~~ and 252:100-8-8 when applicable.
- (e) **Timeline for technical review and issuance.** The DEQ shall take final action on each application for a permit within 18 months after beginning its technical review in accordance with OAC ~~252:2-15 70 through 252:2-15 72 252:4-7-4 through 252:4-7-12 and OAC 252:4-7-31~~; and OAC 252:100-8-4(b)(7).

[OAR Docket #05-686; filed 4-20-05]

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

[OAR Docket #05-685]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
252:110-1-7. [AMENDED]
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]

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.*

DATES:

Comment period:

March 15, 2004 through April 14, 2004
June 15, 2004 through July 21, 2004

Public hearing:

April 14, 2004, 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:

Incorporated standards:

40 CFR 745 Subpart L, Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities

Incorporating rules:

OAC 252:110-5-1

Availability:

From the contact person listed below

ANALYSIS:

The Department proposes to incorporate by reference recent amendments to 40 CFR 745, Subpart L, that became effective May 10, 2004. These amendments will be adopted in their entirety with the exception of the means for submitting abatement projects and lead-based paint course update notifications.

The Department also proposes to add and amend language to clarify requirements of accredited lead-based paint (LBP) training providers and instructors. Training providers would be required to include a hands-on

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Environmental Quality Board

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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 #07-1218]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

RULES:

- Subchapter 1. General Provisions
- 252:100-1-3. Definitions [AMENDED]
- Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
- 252:100-5-2.2. Annual operating fees [AMENDED]
- Subchapter 7. Permits for Minor Facilities
- Part 1. General Provisions
- 252:100-7-2. Requirement for permits for minor facilities [AMENDED]
- Part 3. Construction Permits
- 252:100-7-15. Construction permit [AMENDED]
- Part 4. Operating Permits
- 252:100-7-18. Operating permit [AMENDED]
- Subchapter 8. Permits for Part 70 Sources
- Part 1. General Provisions
- 252:100-8-1.1. Definitions [AMENDED]
- Subchapter 17. Incinerators
- Part 5. Municipal Waste Combustors
- 252:100-17-14.1. Definitions [AMENDED]
- 252:100-17-16. Standards for particulate matter and opacity [AMENDED]
- 252:100-17-17. Standards for municipal waste combustor metals [AMENDED]
- 252:100-17-19. Standards for municipal waste combustor organics expressed as total mass dioxins/furans [AMENDED]
- 252:100-17-20. Standards for nitrogen oxides [AMENDED]
- 252:100-17-21. Standards for municipal waste combustor operating practices [AMENDED]
- 252:100-17-24. Standards for municipal waste combustor operator training and certification [AMENDED]
- 252:100-17-25. Compliance and performance testing [AMENDED]
- 252:100-17-26. Reporting and recordkeeping requirements [AMENDED]
- Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)
- Part 1. General Provisions

- 252:100-37-2. Definitions [AMENDED]
- Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
- Part 1. General Provisions
- 252:100-39-2. Definitions [AMENDED]
- Subchapter 44. Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units [NEW]
- 252:100-44-1. Purpose [NEW]
- 252:100-44-2. [RESERVED]
- 252:100-44-3. Reference to 40 CFR [NEW]

SUMMARY:

The Department is proposing to amend OAC 252:100-1-3, 252:100-8-1.1, 252:100-37-2 and 252:100-39-2 to clarify definitions.

The Department is considering increases in fees found in OAC 252:100-5-2.2(b)(2) for both minor facilities and Part 70 sources. Additional income resulting from a fee increase is needed to cover current and anticipated staffing requirements in administering the Department's programs.

The Department is proposing to amend OAC 252:100-7-2, 252:100-7-15 and 252:100-7-18. The proposed revision will provide consistency with state statutes and other Air Pollution Control rules; remove reference to Subchapter 41, which has been revoked; delete the emissions calculation methods for determining if a permit is required; clarify when construction permits are required; and provide for administrative amendments to operating permits for minor facilities.

The Department proposes to amend OAC 252:100-17, Part 5, to meet federal requirements for state plans under section 111(d) of the federal Clean Air Act applicable to existing sources. The proposed changes would incorporate standards (40 CFR 60, Subpart Cb) published on May 5, 2006, in the Federal Register that apply to Municipal Waste Combustor (MWC) units with the capacity to combust more than 250 tons per day of municipal solid waste. The proposed changes to Subchapter 17 are accompanied by a 111(d) plan. Staff intends that the July 18, 2007, Council meeting serve as a public hearing for both the rule and the plan.

The Department is proposing a new Subchapter 44, Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units. The proposed new subchapter will incorporate by reference the federal Clean Air Mercury Rule (CAMR) issued in March 2005 with proposed allocations and set-asides. Prior to and at the July 18, 2007, public hearing, the Department will accept public comments regarding the proposed rule and the 111(d) plan. Staff intends this Council

Notices of Rulemaking Intent

meeting to serve as a public hearing for both the rule and the 111(d) plan.

AUTHORITY:

Environmental Quality Board 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.*

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on July 18, 2007. For comments received at least 5 business days prior to the Council meeting, staff will post written responses on the Department's web page at least 1 day prior to the Council meeting and provide hard copy written responses to these comments to the Council and the public at that Council meeting. Oral comments may be made at the July 18, 2007, hearing and at the appropriate Environmental Quality Board meeting.

PUBLIC HEARING:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, July 18, 2007, in Ponca City, Oklahoma. Before the Environmental Quality Board on August 21, 2007, in Guthrie, Oklahoma.

The Council hearing shall also serve as the public hearing to receive comments on the proposed revisions to the SIP under the requirements of 40 CFR § 51.102 of the EPA regulations concerning the SIPs and 27A O.S. § 2-5-107(6)(c).

REQUESTS 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 at the Air Quality Division of the Department at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm. Copies may also be obtained from the Department by calling Cheryl Bradley, Environmental Programs Manager, at (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained by contacting Cheryl Bradley at (405) 702-4100.

CONTACT PERSON:

Please send written comments on the proposed rule changes to Cheryl Bradley at cheryl.bradley@deq.state.ok.us. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl Bradley. The Air Quality Division FAX is (405)702-4101.

ADDITIONAL INFORMATION:

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 #07-1218; filed 5-25-07]

REGULAR MEETING/HEARING AGENDA

AIR QUALITY ADVISORY COUNCIL

July 18, 2007, 9:00 a.m.

4th Street Clubhouse, 1500 4th Street
Ponca City, OK

1. Call to Order – David Branecky, Chair
2. Roll Call – Myrna Bruce
3. Approval of Minutes – April 18, 2007 Regular Meeting
4. Public Rulemaking Hearings

A. OAC 252:100-17. Incinerators [AMENDED]

The Department proposes to amend Subchapter 17, Part 5 to meet federal requirements for state plans under Section 111(d) of the federal Clean Air Act applicable to existing sources.

1. Presentation - Pat Sullivan, Environmental Programs Specialist, DEQ Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and action by the Council, which may include a roll call vote on permanent adoption

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

The Department is proposing to amend Subchapter 7 to provide consistency with State Statutes and other Air Pollution Control rules; remove reference to Subchapter 41, Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants, which has been revoked; correct the emissions calculation methods for determining if a permit is required; clarify when construction permits are required; and provide for administrative amendments to operating permits for minor facilities.

1. Presentation - Dr. Joyce Sheedy, Engineer, DEQ Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and action by the Council, which may include a roll call vote on permanent adoption

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

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

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

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

The Department is proposing to amend Subchapters 1, 8, 37 and 39 to clarify certain definitions.

1. Presentation - Max Price, Environmental Programs Specialist, DEQ Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and action by the Council, which may include a roll call vote on permanent adoption

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

The Department is proposing a new Subchapter 44, Control of Mercury Emissions from Coal Fired Electric

Steam Generating Units, which would incorporate by reference the federal Clean Air Mercury Rule (CAMR) issued in May 2005. The Clean Air Act requires a state to prepare a 111(d) plan in order to incorporate the CAMR. This Council meeting will serve as a public hearing for the 111(d) plan.

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

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

The Department is considering increases in OAC 252:100-5-2.2 fees for minor facilities and for Part 70 sources.

1. Presentation - Nancy Marshment, Environmental Programs Specialist, and
Beverly Botchlet-Smith, Assistant Director, DEQ Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and action by the Council

5. Subchapter 19. Control of Emission of Particulate Matter – Dawson Lasseter, Engineer Manager, DEQ Air Quality Division

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 October 17, 2007, in Oklahoma City.

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. Hearing impaired persons may call the text telephone (TDD) Relay Number at 1-800-722-0353 for TDD machine use only.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 1. GENERAL PROVISIONS

252:100-8-1.1. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this section, terms used in this Subchapter retain the meaning accorded them under the applicable requirements of the Act.

"**A stack in existence**" means for purposes of OAC 252:100-8-1.5 that the owner or operator had:

(A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

(B) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

"**Actual emissions**" means, except for Parts 7 and 9 of this Subchapter, the total amount of any regulated air pollutants emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

"**Adverse impact on visibility**" means, for purposes of Parts 7 and 11, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made by the DEQ on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

"**Dispersion technique**" means for purposes of OAC 252:100-8-1.5 any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height; varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters or combining exhaust gases from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceding sentence does not include:

(A) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.

(B) The merging of exhaust gas streams where:

(i) the source owner or operator documents that the facility was originally designed and constructed with such merged streams;

(ii) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from "dispersion technique" applicability shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(iii) before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation existed prior to the merging, there was an increase in the quantity of pollutants actually emitted prior to the merging, it shall be presumed that merging was primarily intended as a means of gaining emissions credit for greater dispersion. Before such credit can be allowed, the owner or operator must satisfactorily demonstrate that merging was not carried out for the primary purpose of gaining credit for greater dispersion.

(C) Manipulation of exhaust gas parameters, merging of exhaust gas streams from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise in those cases where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emission limitations and emission standards" means for purposes of OAC 252:100-8-1.5 requirements that limit the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to assure continuous reduction.

"Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

"Secondary emissions" means, for purposes of Parts 7 and 9 of this Subchapter, emissions which occur as a result of the construction or operation of a major stationary source or modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

- (A) emissions from trains coming to or from the new or modified stationary source; and,
- (B) emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or modification.

"Stack" means for purposes of OAC 252:100-8-1.5 any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct but not including flares.

"Visibility impairment" means any humanly perceptible reduction in visibility (light extinction, visual range, contrast, and coloration) from that which would have existed under natural conditions.

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

For AQC Approval
October 17, 2007

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. July 18, 2007 in the Fourth Street Clubhouse, Ponca City, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on November 30, 2006. Agendas were posted at the meeting facility and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting.

Ms. Beverly Botchlet-Smith convened the hearings by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51, and Title 27A, Oklahoma Statutes, Sections 2-5-201 and 2-5-101 - 2-5-118. Ms. Smith entered the Agenda and the Oklahoma Register Notice into the record and announced that forms were available at the sign-in table for anyone wishing to comment on any of the rules. Mr. Eddie Terrill, Director, Air Quality Division, welcomed Mr. Jim Haught to the Council replacing Bob Curtis. David Branecky, Council Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed.

MEMBERS PRESENT

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

MEMBERS ABSENT

Don Smith

DEQ STAFF PRESENT

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

OTHERS PRESENT

Christy Myers, Court Reporter
Brita Cantrell, EQB

DEQ STAFF PRESENT

Matt Paque
Dawson Lasseter
Nancy Marshment
Myrna Bruce

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

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

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

OAC 252:100-17. Incinerators [AMENDED] Ms. Pat Sullivan advised that the proposes would amend Subchapter 17, Part 5 to meet federal requirements for state plans under section 111(d) of the federal Clean Air Act applicable to existing sources. She explained that at Council's last meeting, staff had asked that this rule be continued while

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New Business None

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

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

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE AIR QUALITY COUNCIL
REGULAR MEETING
ITEM NUMBER 4C
HELD ON JULY 18, 2007, AT 9:00 A.M.
IN PONCA CITY, OKLAHOMA

18-37-39

* * * * *

MYERS REPORTING SERVICE
(405) 721-2882

ORIGINAL

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 MEMBERS OF THE COUNCIL</p> <p>3</p> <p>4 DAVID BRANECKY - CHAIRMAN</p> <p>5 RICK TREEMAN - VICE-CHAIRMAN</p> <p>6 JERRY PURKAPLE - MEMBER</p> <p>7 JIM HAUGHT - MEMBER</p> <p>8 SHARON MYERS - MEMBER</p> <p>9 GARY MARTIN - MEMBER</p> <p>10 DR. BOB LYNCH - MEMBER</p> <p>11 LAURA WORTHEN - MEMBER</p> <p>12 DON SMITH - ABSENT</p> <p>13</p> <p>14 STAFF MEMBERS</p> <p>15</p> <p>16 MYRNA BRUCE - SECRETARY</p> <p>17 EDDIE TERRILL - DIVISION DIRECTOR</p> <p>18 BEVERLY BOTCHLET-SMITH - A QD</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 amendments approved by the Council, staff</p> <p>2 has removed the troublesome definitions for</p> <p>3 filterable and condensable PM from this</p> <p>4 proposal.</p> <p>5 We ask that the Council vote to send</p> <p>6 these proposals to the Environmental</p> <p>7 Quality Board with a recommendation that</p> <p>8 they be adopted as permanent rules. Thank</p> <p>9 you.</p> <p>10 MS. BOTCHLET-SMITH: Do we have</p> <p>11 any questions from the Council?</p> <p>12 DR. LYNCH: Excuse me, I'll just</p> <p>13 make a comment. On the face of it, the</p> <p>14 definition of VOCs seems -- I was thinking</p> <p>15 of VOCs in terms of vapor pressure or</p> <p>16 something, not really defining what it is</p> <p>17 as what it does.</p> <p>18 MR. PRICE: Yes, sir. If you</p> <p>19 look at the original definitions for</p> <p>20 Volatile Organic Compounds the vapor</p> <p>21 pressure is irrelevant. It's actually --</p> <p>22 it's full of chemical reactivity under a</p> <p>23 certain test that the EPA conducts.</p> <p>24 DR. LYNCH: I just wonder if it</p> <p>25 ought not to be called something other than</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 PROCEEDINGS</p> <p>3</p> <p>4 MS. BOTCHLET-SMITH: The next</p> <p>5 item on the Agenda is Item Number 4C. This</p> <p>6 is OAC 252:100-1 General Provisions;, OAC</p> <p>7 252:100-8 Permits for Part 70 Sources; OAC</p> <p>8 252:100-37 Control of Emission of Volatile</p> <p>9 Organic Compounds; OAC 252:100-39 Emission</p> <p>10 of Volatile Organic Compounds in</p> <p>11 Nonattainment Areas and Former</p> <p>12 Nonattainment Areas. And Mr. Max Price</p> <p>13 will be giving the staff presentations.</p> <p>14 MR. PRICE: Thank you, Beverly.</p> <p>15 Mr. Chairman, Members of the</p> <p>16 Council, ladies and gentlemen.</p> <p>17 These proposed amendments to the</p> <p>18 definition Sections 1-3, 8-1.1, 37-2 and</p> <p>19 39-2 are being undertaken to clarify and/or</p> <p>20 remove redundant definitions from Chapter</p> <p>21 100. Among the proposals is a refined</p> <p>22 definition for volatile organic compounds.</p> <p>23 This will be the fourth time for the</p> <p>24 Council to hear these amendments. In hopes</p> <p>25 of having these necessary definition</p>	<p style="text-align: right;">Page 5</p> <p>1 VOCs. The Lab does not see that as a VOC;</p> <p>2 to the Lab, the VOC is something totally</p> <p>3 different.</p> <p>4 MR. PRICE: I understand that.</p> <p>5 But the definition is pretty well set by</p> <p>6 NSPS and the NESHAP rules. We would be</p> <p>7 hard pressed to change the name of it.</p> <p>8 MR. TERRILL: It's kind of</p> <p>9 ingrained in EPA's lexicon. They're just -</p> <p>10 - I know what you're saying, but we'd have</p> <p>11 a mess if we tried to do that.</p> <p>12 MR. LYNCH: The confusion I can</p> <p>13 see is if someone's out measuring VOCs and</p> <p>14 ambient air in terms of a potential</p> <p>15 exposure to something toxic, this is not</p> <p>16 like they're -- wondering maybe they think</p> <p>17 they're measuring one thing and somebody is</p> <p>18 measuring something totally -- a little</p> <p>19 difference so that could create a problems.</p> <p>20 MR. TERRILL: We'll take a look</p> <p>21 at that, but we may (inaudible) somewhere</p> <p>22 else.</p> <p>23 MR. PURKAPLE: Max?</p> <p>24 MR. PRICE: Yes, sir.</p> <p>25 MR. PURKAPLE: Have the questions</p>

1 or concerns expressed in previous meetings
 2 concerning the confusion of the effluent,
 3 what's it, (inaudible) separators?
 4 MS. WORTHEN: Effluent water
 5 separators.
 6 MR. PURKAPLE: Effluent water
 7 separators, have those all been resolved or
 8 --
 9 MR. PRICE: I believe so, sir.
 10 That was actually a problem. It wasn't a
 11 problem with the definition, it was a
 12 problem with the way that it was being
 13 interpreted at one time. And I'd like to
 14 point out that the -- to show you how badly
 15 this thing was done, the definition in
 16 question was in Subchapter 1, which was a
 17 general definition, but the actual, what I
 18 call applicable definitions, were in the
 19 Subchapters that actually applied to those
 20 things and those definitions were much more
 21 detailed and much more -- this mistake
 22 should never have occurred. So I believe
 23 it can be resolved and that's the reason we
 24 took out the waste water from that proposed
 25 change from last time.

1 MR. PURKAPLE: Thank you.
 2 MS. BOTCHLET-SMITH: It looks
 3 like we have one commentor from the public
 4 who would like to comment.
 5 Be sure and state your name when you
 6 come to the podium.
 7 MS. SHELBY: Sharon Shelby, AES
 8 at Shady Point. Just looking at the
 9 definition on Page 8 it looks like there
 10 might be a typo and I just wanted to double
 11 check that as I was reading it.
 12 In the strikeout where it lists the
 13 excluded compounds it has "carbonic acid"
 14 but then down in the underline it has
 15 "carbolic acid." Just checking to see if
 16 that's actually supposed to be a change or
 17 just a typo.
 18 MR. PRICE: I'm glad you pointed
 19 that out. That should be -- let me find
 20 the definition of VOC here.
 21 That should be "carbonic acid."
 22 That's a good catch. And chances are that
 23 is also on 37 and 39, in that definition.
 24 So that's one change that we need to make,
 25 immediately upon passage of it.

1 MR. LASSETER: It looks like on
 2 37 and 39 you struck VOCs all together.
 3 MR. PRICE: That is correct.
 4 MS. BOTCHLET-SMITH: It doesn't
 5 appear anyone else from the public has a
 6 comment on this. So if we don't have any
 7 other comments or questions for the
 8 Council, then go ahead David.
 9 MR. BRANECKY: Staff has
 10 recommended we adopt this rule and send it
 11 to the Board as a permanent rule. I'll
 12 entertain a Motion for whatever the Council
 13 wishes to do.
 14 MS. MYERS: I make a motion that
 15 we pass it and send it to the Board.
 16 MR. BRANECKY: We have a motion -
 17 - is that --
 18 MS. MYERS: I make a motion that
 19 we pass this onto the Board.
 20 MS. WORTHEN: I'll second.
 21 MR. BRANECKY: -- motion with the
 22 change made?
 23 MS. MYERS: Yes. With the change
 24 that was made.
 25 MR. BRANECKY: Okay. All right.

1 We have a motion and a second. Myrna.
 2 MS. BRUCE: Jerry Purkaple.
 3 MR. PURKAPLE: Yes.
 4 MS. BRUCE: Sharon Myers.
 5 MS. MYERS: Yes.
 6 MS. BRUCE: Jim Haught.
 7 MR. HAUGHT: Yes.
 8 MS. BRUCE: Rick Treeman.
 9 MR. TREEMAN: Yes.
 10 MS. BRUCE: Gary Martin.
 11 MR. MARTIN: Yes.
 12 MS. BRUCE: Bob Lynch.
 13 DR. LYNCH: Yes.
 14 MS. BRUCE: Laura Worthen.
 15 MS. WORTHEN: Yes.
 16 MS. BRUCE: David Branecky.
 17 MR. BRANECKY: Yes.
 18 MS. BRUCE: Motion passed.
 19 MR. TERRILL: Chairman, before we
 20 go on to mercury, while I'm thinking about
 21 it, for those of you who follow these rules
 22 through the Board process, I want to let
 23 everybody know that these rules will not be
 24 going with the August Board meeting in
 25 Guthrie. There was a problem with the

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

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

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

21 (End of Item 4C)

22
 23
 24
 25

C E R T I F I C A T E

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

5
 6 I, CHRISTY A. MYERS, Certified
 7 Shorthand Reporter in and for the State of
 8 Oklahoma, do hereby certify that the above
 9 proceedings is the truth, the whole truth,
 10 and nothing but the truth; that the
 11 foregoing proceeding was recorded by
 12 shorthand by me and thereafter transcribed
 13 under my direction to the best of my
 14 ability; that said proceedings were taken
 15 on the 18th day of July, 2007, at
 16 PoncaCity, Oklahoma; and that I am neither
 17 attorney for nor relative of any of said
 18 parties, nor otherwise interested in said
 19 action.

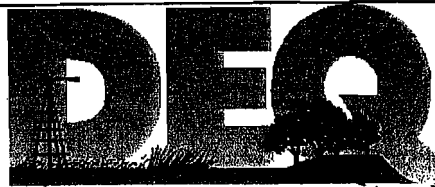
20 IN WITNESS WHEREOF, I have hereunto
 21 set my hand and official seal on this, the
 22 18th day of August, 2007.

23
 24
 25

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

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

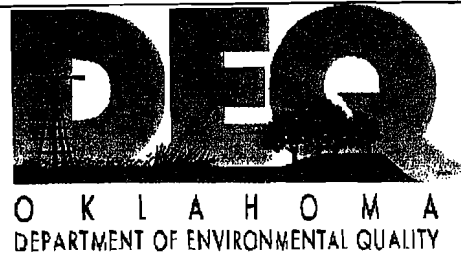
AIR QUALITY COUNCIL

Attendance Record

July 18, 2007

Ponca City, Oklahoma

<u>NAME and/or AFFILIATION</u>	<u>Address and/or Phone and/or E-Mail</u>
Heather Bragg	DEQ -x4176
Beverly Bitchler Smith	DEQ 4156
MI Juli	DEQ 4154
EARL HATLEY	LEAD Agency, ERATLEY@NORCON.com
DANSON LASSETER	ODEQ 4185
Philly Fielder	DEQ 4180
M Pin	DEQ —
ANGIE BUECKHALTER	OIPA 405-942-2334 x221
Cheryl Bradley	DEQ 405 702 4218
Jayce D. Sheedy	DEQ
MORRIS MOFFETT	DEQ
LAWRENCE R. EDMISSON	Sierra Club 405-996-8990
Julia Bews	OGE
Melody MARTIN	OGE
Perry Friedrich	GRDA (918) 824-1034
Mymna Bruce	DEQ 102-7170
PAT PHILLIPS	INDIVIDUAL 918-775-4010
DARRYL PHILLIPS	SELF 918-775-4010
Glen TRAVIS	Seneca 594-6572
Karim Assaf	Sinclair 5943266
Bud Ground	PSO hlgound@aep.com
JEFF EDWARDS	RT1 Box 943, Roland, OK ⁷⁴⁴⁵⁴ 918-427-1475
Steve Moyer	Sinclair 718 588 1197
Calvin Pryor	OGE 405-553-3667
Sen. Paul Muegge	580-628-3600
Bob Lynch	OUHSC
Jim Haught	AQC



AIR QUALITY COUNCIL

Attendance Record

July 18, 2007

Ponca City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Gerald Butcher	WFEC	405-247-4341
KEN RUFFIN	PSO	214-777-1112
Rusty Krull	DSDA	918 582 1211
BOB BETTS	CONT. RES. INC	580 548 5766
Chuck Gross	Sustainability N.O.W.	918-337-0538
SYLVIA PRATT		sjpratt@ponaccity.net
GARY MARTIN	CITY PC	580-262-0340
Mark Lawson	Spirit Aero Systems	Mark.Lawson@spiritaero.com
BRANDON BRASHEARS	DCL M30STREAM	405-705-7435
Karen Hadden	SEED Coalition	512-797-8481
Kathryn Crenwold	Weyerhaeuser	580-933-1449
Gray Elliott	Valero Ardmore Refinery	580-221-6232
STEVE NICHOLS	VALERO	210-395-4616
Sidney Coburn	Wynnewood Refining	405 665 6601
David Provenza	Cherison Phillips Cherison	918-661-7999
Sharon Shelby	AES Shady Point	sharon.shelby@aes.com
Mantelle Clark	OSN	mantelle@cox.net
Lydia Patitsas	Sustainable Green Country	mail4lydia@cox.net
DAVID DYGE	ODEQ	
Bill Parris	STANTECH	bparris@stantech.com
Bob Gusnard	ECT	
Pat Sullivan	DEQ-AQ	



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

AIR QUALITY COUNCIL

Attendance Record

July 18, 2007

Ponca City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Cheryl McCreary

DEQ

Seneca Scott

3271 E. 2nd St chiefseneca@

~~CARDINAL~~

hotmail.com

JASON LIPSCOMB

CARDINAL ENGINEERING 842-1066

j1@cardinalengineers.com

Dwain Crump

Ponca City, Ok.

Harlan Hentges

harlan@lavokc.com

REGULAR MEETING AGENDA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OKLAHOMA ENVIRONMENTAL QUALITY BOARD

A Public Meeting: - 9:30-a.m. Thursday, November 15, 2007
Southwestern Oklahoma State University
Ballroom, Student Union Building
North Custer Street
Weatherford, Oklahoma 73096

1. **Call to Order** – Brita Cantrell, Vice-Chair
2. **Roll Call** – Myrna Bruce, Secretary, Board & Councils
3. **Approval of Minutes** of the August 21, 2007 Regular Meeting
4. **Rulemaking – OAC 252:100 Air Quality Control**
Five items are proposed for consideration:
 - A. Section 37-38, relating to pumps and compressors, is proposed for revocation because the requirements are outdated and addressed in operating permits where required.
 - B. The proposed updates to Appendices E and F, which relate to primary and secondary ambient air quality standards, are for consistency with federal standards. The update to Appendix E makes it correspond to the federal particulate matter primary standards and the update to Appendix F makes it correspond to the federal carbon monoxide and particulate matter secondary standards.
 - C. The proposed amendments to Subchapters 1, 8, 37 and 39 clarify certain definitions, including "particulate matter" and "volatile organic compounds."
 - D. The proposed revisions to Subchapter 7 provide consistency with state statutes and other Air Pollution Control rules; remove references to Subchapter 41, which has been revoked; correct the emissions calculation methods for determining whether a permit is required; clarify when construction permits are required; and provide for administrative amendments to operating permits for minor facilities.
 - E. The proposed Appendix Q amendments incorporate by reference the latest changes to federal regulations, including New Source Performance Standards in 40 C.F.R. Part 60 and National Emission Standards for Hazardous Air Pollutants in 40 C.F.R. Part 63. Standards being unincorporated because they were vacated by the D.C. Circuit Court include 40 C.F.R Part 63 Subparts JJJJ (Brick MACT), KKKKK (Clay MACT) and DDDDD (Boilers and Process Heaters MACT).
 - (i) Presentation – David Branecky, Chair, Air Quality Advisory Council
 - (ii) Questions and discussion by the Board
 - (iii) Questions, comments and discussion by the public
 - (iv) Discussion and possible action by the Board, which may include roll call votes on permanent adoption

5. Rulemaking – OAC 252:205 Hazardous Waste Management

The proposed rulemaking updates to July 1, 2007, the incorporation by reference of federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279. The update does not involve any major changes to existing requirements.

- (i) Presentation – Bob Kennedy, Chair, Hazardous Waste Management Advisory Council
- (ii) Questions and discussion by the Board
- (iii) Questions, comments and discussion by the public
- (iv) Discussion and possible action by the Board, which may include a roll call vote on permanent adoption

6. Rulemaking – OAC 252:515 Solid Waste Management

Two items are proposed for consideration:

- A. The proposed amendments to Subchapter 19 arise from legislation enacted in 2007, effective July 1, 2007. Senate Bill 509 changed the wheel wash law by eliminating the provision for “recoupment” and providing instead for “reimbursement”. The rule changes are to correspond to the changes in statute.
- B. The proposed revision to Appendix C deletes the “Suggested Methods” and “PQL” (Practical Quantitation Limits) columns to correspond to the current Appendix II to 40 CFR 258. Deleting the two columns generally will allow regulated entities to use any appropriate analytical test methods, rather than just SW-846 methods, in demonstrating compliance with the RCRA regulations.
 - (i) Presentation – Jeff Shepherd, Vice-Chair, Solid Waste Management Advisory Council
 - (ii) Questions and discussion by the Board
 - (iii) Questions, comments and discussion by the public
 - (iv) Discussion and possible action by the Board, which may include roll call votes on permanent and emergency adoption of the Subchapter 19 amendments and on permanent adoption of the revised Appendix C

7. Rulemaking – OAC 252:004 Rules of Practice and Procedure

The proposed changes to the Water Quality Application Tier rules make the classifications of Tier I permits consistent, clarify that modifications to or the addition of impoundments to an existing permitted industrial wastewater system is a Tier I application, and clarify that a new industrial wastewater treatment system application is a Tier II application.

- (i) Presentation – Jeffrey Short, Vice-Chair, Water Quality Management Advisory Council
- (ii) Questions and discussion by the Board
- (iii) Questions, comments and discussion by the public
- (iv) Discussion and possible action by the Board, which may include a roll call vote on permanent adoption

8. Rulemaking – OAC 252:633 Drinking Water State Revolving Fund

Proposed revisions to the Priority Project System and the Finding Priority Formula are necessary to meet federal and state requirements. Additionally, some of the proposed changes reconcile the requirements of this chapter with the DWSRF requirements of the Oklahoma Water Resources Board. The remaining changes are for clarification and to correct typographical errors.

- (i) Presentation – Jeffrey Short, Vice-Chair, Water Quality Management Advisory Council
- (ii) Questions and discussion by the Board
- (iii) Questions, comments and discussion by the public
- (iv) Discussion and possible action by the Board, which may include a roll call vote on permanent adoption

9. Rulemaking – OAC 252:710 Waterworks & Wastewater Works Operator Certification

The proposed amendment adds the words “and/or collection system” to the “Wastewater Works” column of Appendix A to make clear that a certified operator is required to operate a wastewater collection system.

- (i) Presentation – Arnold Miller, Chair, Waterworks and Wastewater Works Advisory Council
- (ii) Questions and discussion by the Board
- (iii) Questions, comments and discussion by the public
- (iv) Discussion and possible action by the Board, which may include a roll call vote on permanent adoption

10. Consideration of and Action on the Environmental Quality Report:

The Oklahoma Environmental Quality Code requires the DEQ to prepare an “Oklahoma Environmental Quality Report” and to submit it to the Governor, Speaker of the House and Senate President Pro Tem by January 1st of each year. Despite the statutory title, the statutorily prescribed purpose of this report is to outline the DEQ’s annual needs for providing environmental services within its jurisdiction, reflect any new federal mandates, and summarize DEQ-recommended statutory changes. The Environmental Quality Board is to review, amend (as necessary) and approve the report.

- (i) Presentation – Wendy Caperton, DEQ Director of Policy and Planning
- (ii) Questions and discussion by the Board
- (iii) Questions, comments and discussion by the public
- (iv) Discussion and possible action by the Board, which may include a roll call vote on approval

11. New Business (any matter not known about and which could not have been reasonably foreseen prior to the time of posting of agenda)

12. Executive Director’s Report – Steve Thompson

13. Adjournment

2008 Meetings: February 29, DEQ; August 19, Duncan; November 18, Tahlequah

Public Forum (after 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 Weatherford the evening of November 14. 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.

**SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO OAC 252:100-1-3. DEFINITIONS**

**COMMENTS RECEIVED PRIOR TO AND AT THE
JULY 19, 2006, AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

EPA Region 6 – Letter dated July 13, 2006, received by FAX on July 13, 2006, signed by Thomas H. Diggs, Chief, Air Planning Section and David Neleigh, Chief, Air Permits Section.

1. **COMMENT:** We [EPA] provided comments on the amended definition for VOCs (Subchapter 1) in a letter dated July 13, 2005. As we indicated in that letter, we support the ODEQ revision to exempt tert-butyl acetate (tBAC) from VOC emissions limitations [Subchapters 1, 9, 37 and 39], but we cannot support the exemption of tBAC from emissions reporting and recordkeeping requirements. EPA made clear in its revisions to 40 CFR Part 51- Requirements for Preparation, Adoption and Submittal of Implementation Plans that tBAC was not being exempted for the purposes of recordkeeping and reporting (§51.100(s)(5)) and our Federal Register of November 29, 2004 (69 FR 69298) provides details of why exemption from reporting and recordkeeping could not be allowed. We will work with you in drafting revised language to require reporting and recordkeeping for tBAC; however, we will not be able to approve a revision to the plan that exempts tBAC from reporting and recordkeeping requirements.

RESPONSE: DEQ appreciates EPA's concerns, but this particular rule change only exempts TBAC as a VOC. DEQ is working with EPA on this issue and, if necessary, will address EPA's concerns in future rule making.

Mike Peters (Ryan, Whaley & Coldiron), attachment to email dated July 17, 2006

2. **COMMENT:** The proposed changes to the definitions in OAC 252:100-1-3 of the OAPCR seek to specifically include both "Condensable particulate matter" and "Filterable particulate matter" in the determination of "Particulate matter" and "Particulate matter emissions." If promulgated as currently proposed, how will compliance with the existing permit particulate matter ("PM") emissions limitations (some of which are based solely on filterable PM (sometimes referenced as the "front half") be determined?

RESPONSE: PM has always had these two distinct components, filterable and condensable PM. Filterable PM refers to the fraction of PM emissions in a sampling train that is a solid or a liquid at sampling conditions. Condensable PM, on the other hand, is the fraction of PM that is vapor at sampling conditions, but which will condense into both liquid and solid PM once cooled. Both these fractions are emitted to the atmosphere as PM emissions and it is standard for DEQ to require testing for both to show compliance with state PM emission regulations. However, staff agrees that the way the proposed terms "condensable PM" and "filterable PM" were added to the definition of "PM emissions" implied a requirement to test for both in all cases. This was not the intent of the rule change and the proposed change to the definition for "PM emissions" has been modified accordingly.

As previously stated, DEQ requires “back half” testing to show compliance with state PM emission regulations (Subchapter 19). Conversely, DEQ has always followed EPA guidelines concerning testing to show compliance with any federal regulation (NSPS) DEQ administers.

3. **COMMENT:** If such rules are adopted, how will the DEQ allow/authorize industry to review existing permit PM emission limitations and revise the currently permitted emission limitations as necessary to account for potential PM emissions increases associated with the inclusion of condensable PM (sometimes referenced as the “back half”) which were not previously required, identified or included in previous permit determinations?

RESPONSE: DEQ has modified the original proposal. See response two (2) above. DEQ will continue to require “back half” testing to show compliance with state PM emission regulations (Subchapter 19). Most existing permit PM emissions limitations are based upon filterable and condensable PM.

4. **COMMENT:** If such rules are adopted and assuming the DEQ allows/authorizes industry the opportunity to revise existing PM emission limitations to incorporate condensable PM, will affected industry be authorized to continue current operations at currently permitted PM emission rates until such time as the permit emission limitations are revised?

RESPONSE: See response two (2) above. Most existing permit PM emissions limitations are based upon filterable and condensable PM.

5. **COMMENT:** For those facilities which are currently subject to an NSPS standard which includes a PM emission limitation which has been adopted and /or otherwise incorporated in the currently applicable permit, will compliance with such limitation be based on the currently proposed PM definitions (i.e., filterable and condensable PM) or will compliance be based on filterable PM only as previously determined by EPA?

RESPONSE: DEQ has always followed EPA guidelines concerning testing to show compliance with any federal regulation (NSPS) DEQ administers.

6. **COMMENT:** How will the increased levels of water born, non-process related solids which are naturally occurring be accounted for by the DEQ?

RESPONSE: DEQ will continue to follow testing procedures set forth in OAC 252:100 and applicable EPA guidelines and methods concerning testing.

7. **COMMENT:** For those facilities which previously did not report condensable PM, will the DEQ require such facilities to file amended emissions inventory documents and remit past annual operating fees based on the indicated level of condensable PM?

RESPONSE: See response two (2) above. It is believed that most existing permit PM emissions limitations take condensable PM into account. Facilities are required to submit emissions inventories each year that accurately reflect emissions levels.

8. **COMMENT:** Will the DEQ seek to differentiate between process generated condensable PM vs. non-process generated condensable PM?

RESPONSE: DEQ will continue to follow testing procedures set forth in OAC 252:100 and applicable EPA guidelines and methods concerning testing. In most cases all condensable PM is process generated.

**VERBAL COMMENTS RECEIVED
AT THE JULY 19, 2006 COUNCIL MEETING**

9. **COMMENT:** Mike Peters (Ryan, Whaley & Coldiron) reiterated his written comments above.

RESPONSE: See response two (2) above.

10. **COMMENT:** Rusty Kroll (Doerner, Saunders, Daniel and Anderson) reiterated Mr. Peters' comments.

RESPONSE: See response two (2) above.

**COMMENTS RECEIVED PRIOR TO THE
OCTOBER 18, 2006, AIR QUALITY ADVISORY COUNCIL MEETING**

Mark Lawson (Spirit AeroSystems, Inc.) email dated September 20, 2006

11. **COMMENT:** The change in the particulate matter definition brings in the law of unintended consequences.

"Particulate matter emissions" means filterable and/or condensable particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method. (252:100-1-3. Definitions)

The particulate matter proposed definition includes condensable particulate matter. By definition condensable matter is

"Condensable particulate matter" means material that is vapor at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack. Condensable particulate matter is considered PM-2.5. (252:100-1-3. Definitions)

Steam, visible as a white emission, coming out of a stack vent (i.e. from a boiler or a cooling tower) becomes condensable particulate matter since it is cooled and diluted in the ambient air and forms fine liquid particulate matter (which gives it the white appearance) after discharge from the stack and would now count in our annual air emission inventory as PM2.5.

Was water intended to be counted as condensable particulate matter?

RESPONSE: The methods used to measure condensable PM emissions exclude water because water is not a regulated air pollutant.

Rusty Kroll (Doerner, Saunders, Daniel & Anderson, L.L.P.) written comments hand delivered to the Air Quality Advisory Council on July 19, 2006 and forwarded to staff on October 10, 2006.

- 12 **COMMENT:** The proposed rules depart from the long-standing definition of “particulate matter” and “particulate matter emissions”, which include only liquid or solid in a finely divided form. The proposed definition broadens the current definition to include materials that exist as vapor when exiting a source, but condense in certain testing equipment. This proposed expansion in the definition is not a clarification but a new substantive requirement of the regulations.

RESPONSE: Not true. The proposed rule changes do not depart from the long standing definitions of “particulate matter” or “particulate matter emissions” nor do they broaden the definitions. Before June of 2003 the definitions for these were:

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

"Particulate matter emissions" means are finely divided solid or liquid material as measured during a stack test of the source's emissions.

After June of 2003 the definition were changed to:

"Particulate matter" 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.

As can be readily seen, the change in June of 2003 merely removed redundant language from the definition of “particulate matter emissions” while leaving the definition for “particulate matter” unchanged. The proposed change adds the term, “filterable and/or condensable” to the definition of “particulate matter emissions.” This does not add a new requirement because the addition is a dependent clause “as measured by applicable reference methods.” These methods test for both filterable and condensable PM and thus the inclusion of the term in question is justified.

- 13 **COMMENT:** We believe that for many regulated entities in the State of Oklahoma, ODEQ has not previously required that condensable particulate matter be counted to determine compliance with various state particulate matter regulations. We believe that ODEQ’s records will show that many entities’ permits incorporated a test that captured only filterable particulate matter. Accordingly, for entities, the requirement of the proposed rules to include condensable particulate matter, may affect the ability of their facilities to achieve and maintain compliance with applicable particulate matter standards.

RESPONSE: The ODEQ has always required that condensable and filterable emissions be counted when determining compliance with state particulate matter emission rules (252:100-19).

- 14 **COMMENT:** Additionally, the proposed regulations will have a significant impact on air emissions fees paid by such entities. We believe that a significant number of entities in the State of Oklahoma have reported particulate matter emissions in annual air emissions inventories based upon test results or emission factors that did not include condensable particulate matter within their scope.

RESPONSE: Test methods or emission factors used to show compliance with applicable state and federal emission regulations are not linked to the responsibility of owner or operators to provide “true, accurate and complete” emission inventories. Reported actual particulate matter emission should be complete and include both condensable and filterable particulate matter emissions.

- 15 **COMMENT:** Oklahoma law requires that before a state regulation that is more stringent than a federal requirement can be proposed, the ODEQ must prepare a justification analysis of the economic impact compared to the environmental benefit of the rule, which must be submitted to the Governor and State Legislature. To our knowledge, this required analysis has not been performed and, if that is the case, applicable rulemaking procedures have not been followed. The Rule Impact Statement states that the proposed regulations will not have any impact on public, health, safety or the environment. It appears that no information on any benefit of the proposed rule has been developed by ODEQ.

RESPONSE: Such an analysis was not required because there are no new emission regulations being proposed in this rule making. The PM emissions limitation contained in Subchapter 19 predate any applicable federal PM emission regulations (NSPS).

COMMENTS RECEIVED PRIOR TO THE April 18, 2007, AIR QUALITY ADVISORY COUNCIL MEETING

Environmental Federation of Oklahoma - Letter dated January 12, 2007, received on January 12, 2007, signed by James Barnett, President and General Counsel

- 16 **COMMENT (paraphrased):** It is unclear whether or not condensable particulate matter would be counted to show compliance with particulate matter emission limits set in Subchapter 19 or NSPS.

RESPONSE: See response two (2) above.

- 17 **COMMENT:** ... Historically, for measurement of particulates pursuant to this subchapter [OAC 252:100-19], permits written by the Division have specified the use of EPA Method 5 or other approved methods that do not measure the condensable emissions. This appears to provide context that clearly indicates the condensable fraction is not included for purposes of Subchapter 19. However, this is not consistent with recent industry experience with the

Department's compliance and enforcement staff.

RESPONSE: A search of historical permits shows that determinations of condensable particulate matter to show compliance with Subchapter 19 date back to at least 1997 (10 years). In addition, The Air Quality Division has conducted an intensive search of past historical records and found documentation that shows that the Division has required back-half testing to show compliance with Subchapter 19 at least since 1974 (33 years).

EPA Region Six - Email from Shar Alan, dated March 21, 2007

- 18 **COMMENT:** The current 252:100-1-3 (Definitions) states "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.

Although this specific portion of the Definitions is not being proposed for revision at this time, for consistency purposes we recommend that ODEQ adopt EPA's long standing definition of RACT from 44 FR 53761, September 17, 1979 "the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility" in 252:100-1-3.

RESPONSE: RACT is defined in two different subchapters in Chapter 100. Both definitions are slightly different from the definition recommended in the above comment. The Division will not propose a change these definitions at this time, but will consider changing the definitions for RACT in the next round of definition changes.

**WRITTEN COMMENTS RECEIVED AT THE
April 18, 2007, AIR QUALITY ADVISORY COUNCIL MEETING**

Rusty Kroll (Doerner, Saunders, Daniel & Anderson, L.L.P.) written comments hand delivered to the Air Quality Advisory Council and staff on April 18, 2007.

19. **COMMENT (paraphrased):** The inclusion of a definition for "condensable particulate matter" in OAC 252:100-1-3 has the effect of creating a new standard for compliance in OAC 252:100-19 which is more stringent than the federal NSPS standards for coal-fired steam generating units.

RESPONSE: See responses 1, 5, 12, 13, 16 and 17 above.

**VERBAL COMMENTS RECEIVED
AT THE April 18, 2007, AIR QUALITY ADVISORY COUNCIL MEETING**

20. **COMMENTS (paraphrased):** From Mr. Jay Eubanks and Ms. Angie Burckhalter (Oklahoma Independent Petroleum Association). Effluent water separators (EWS) are not normally found at oil and gas production sites, yet in the past the Department has taken

enforcement actions based the misidentification of other tank types as EWS. We want this definition changed so that such things can not happen in the future.

RESPONSE (paraphrased): No definition change is necessary because the problem was actually procedural in nature and that problem has since been resolved. In addition changing the definition could result in other as yet unrecognized problems in its application in other rules.

DRAFT DOCUMENT - DO NOT CITE OR QUOTE

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

Dear Mr. Thomas:

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

Subchapter 1	General Provisions
Subchapter 2	Incorporations by Reference
Subchapter 4	New Source Performance Standards
Subchapter 5	Registration, Emission Inventory and Annual Operating Fees
Subchapter 7	General Provisions
Subchapter 8	Permits for Major Sources
Subchapter 9	Excess Emission Reporting Requirements
Subchapter 17	Incinerators
Subchapter 23	Control of Emissions from Cotton Gins
Subchapter 37	Control of Emission of Volatile Organic Compounds (VOCs)
Subchapter 39	Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Subchapter 40	Control of Emission of Friable Asbestos During Demolition and Renovation Operations
Subchapter 41	Control of Emission Hazardous Air Pollutants and Toxic Air Contaminants
Subchapter 44	Control of Mercury Emissions
Appendix H	De Minimis Facilities List
Appendix I	Insignificant Activities (Registration) List
Appendix J	Trivial Activities (de Minimis) List
Appendix P	Regulated Air Pollutants
Appendix Q	Title 40, Code of Federal Regulations, Incorporation by Reference

Subchapters 1, 2, and 4

We provided comments on the amended definition for VOCs (Subchapter 1) in a letter dated July 13, 2005. As we indicated in that letter, we support the ODEQ revision to exempt tert-butyl acetate (tBAC) from VOC emissions limitations, but we cannot support the exemption of tBAC from emissions reporting and recordkeeping requirements. EPA made clear in its revisions to 40 CFR Part 51- Requirements for Preparation, Adoption and Submittal of Implementation Plans that tBAC was not being exempted for the purposes of recordkeeping and

reporting (§51.100(s)(5)) and our Federal Register of November 29, 2004 (69 FR 69298) provides details of why exemption from reporting and recordkeeping could not be allowed. We will work with you in drafting revised language to require reporting and recordkeeping for tBAC; however, we will not be able to approve a revision to the plan that exempts tBAC from reporting and recordkeeping requirements.

The Air Permits Section will provide additional comments, as necessary, in a separate communication.

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

We provided comments on the proposed amendment to the definition of regulated air pollutant in Subchapters 5-1.1, 7-1.1, and 9-2 in a letter dated April 12, 2006. The current amendment addresses the concerns we raised; we support the current proposed rule and have no adverse comments.

Subchapters 7 and 8

The Air Permits Section will provide comments as necessary in a separate communication.

Subchapter 9 Excess Emission Reporting Requirements

See the comment for Subchapter 5 above regarding the proposed amendment to the definition of regulated air pollutant in Subchapter 9-2.

Subchapter 17 Incinerators

Per our April 12, 2006 letter, we support the proposed rule and have no adverse comments.

Subchapter 23 Control of Emissions from Cotton Gins

The current amendment deletes the reference to Total Suspended Particulate (TSP) but does not substitute Gross Particulate Matter for TSP. It is not clear that the concerns expressed in our April 12, 2006 letter have been addressed.

Subchapters 37 and 39

The current amendment deletes the definition for VOC in Subchapters 37 and 39. Our concern is with the amended definition for VOC proposed for Subchapter 1, as indicated above.

DRAFT DOCUMENT - DO NOT CITE OR QUOTE

**Subchapter 40 Control of Emission of Friable Asbestos During Demolition and
Renovation Operations**

The Air Enforcement Section will provide comments as necessary in a separate communication.

Subchapters 41 and 44, and all Appendices

The Air Permits Section will provide comments as necessary in a separate communication.

We appreciate the opportunity to review and comment on the proposed rules prior to the public hearing on July 19, 2006. If you have questions regarding any of these comments, please feel free to contact me or Carrie Paige at (214) 665-6521.

Sincerely yours,

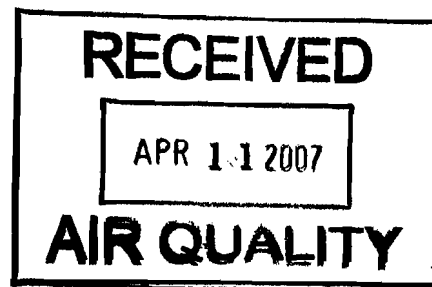
Thomas H. Diggs
Chief
Air Planning Section

cc: Heather Bragg, ODEQ
Morris Moffitt, ODEQ
Max Price, ODEQ
Joyce Sheedy, ODEQ
David Neleigh, 6PD-R
Ragan Tate, 6RC-M
Esteban Herrera, 6EN-AT



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

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



Dear Ms. Bradley:

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

Subchapter 1	General Provisions
Subchapter 7	Permits for Minor Facilities
Subchapter 8	Permits for Major Sources
Subchapter 9	Excess Emission Reporting Requirements
Subchapter 17	Incinerators
Subchapter 37	Control of Emission of Volatile Organic Compounds (VOCs)
Subchapter 39	Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Subchapter 44	Mercury Emissions from Coal-fired Electric Steam Generating Units
Appendix E	Primary Ambient Air Quality Standards
Appendix F	Secondary Ambient Air Quality Standards

We provided comments on proposed revisions to the Subchapters listed above in a letter dated January 11, 2007. In addition, while the current definition of "**Reasonably Available Control Technology**" or "**RACT**" in Subchapter 1 (252:100-1-3) is not being proposed for revision at this time, for consistency we recommend that Oklahoma adopt EPA's definition of RACT, per 44 FR 53761, September 17, 1979: "*the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility.*"

Appendices E and F

We support the proposed revisions, which are consistent with the National Ambient Air Quality Standards for particulate matter and carbon monoxide.

We appreciate the opportunity to review and comment on the proposed rules prior to the public hearing on April 18, 2007. We have incorporated comments provided by the Air Permitting Section. If you have questions regarding any of these comments, please feel free to contact me or Carrie Paige at (214) 665-6521.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas H. Diggs". The signature is written in a cursive style with a large, stylized initial 'T'.

Thomas H. Diggs
Chief
Air Planning Section

cc: Dr. Joyce Sheedy, ODEQ
Max Price, ODEQ
Morris Moffett, ODEQ
Pat Sullivan, ODEQ
Jeff Robinson, EPA
Victoria Johnson, EPA

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

ATTORNEYS AT LAW

SAM P. DANIEL
WILLIAM C. ANDERSON
G. MICHAEL LEWIS
LAWRENCE T. CHAMBERS, JR.
DALLAS E. FERGUSON
SAM G. BRATTON II
GARY M. McDONALD
H. WAYNE COOPER
KEVIN C. COUTANT
RICHARD P. HIX
WILLIAM F. RIGGS
LEWIS N. CARTER
LINDA C. MARTIN
JAMES P. McCANN
RICHARD H. FOSTER
CHARLES S. PLUMB
LEONARD I. PATAKI
S. DOUGLAS DODD
ELISE DUNITZ BRENNAN
JON E. BRIGHTMIRE
TOM Q. FERGUSON
REBECCA M. FOWLER
MICHAEL C. REDMAN
STEVEN K. METCALF
RUSSELL W. KROLL
RACHEL BLUE

320 SOUTH BOSTON AVENUE, SUITE 500
TULSA, OKLAHOMA 74103-3725
TELEPHONE (918) 582-1211
FACSIMILE (918) 591-5360
www.dsda.com

201 ROBERT S. KERR AVENUE, SUITE 700
OKLAHOMA CITY, OKLAHOMA 73102-4203
TELEPHONE (405) 319-3500
FACSIMILE (405) 319-3509

WRITER'S DIRECT:
(918) 591-5330 (telephone)
(918) 925-5330 (facsimile)
rkroll@dsda.com

JAMES C. MILTON
AUDRA K. HAMILTON
DAVID McCULLOUGH
WILLIAM H. SPITLER
JOHNATHAN D. HORTON
LESLEY FORD RICHER
N. LANCE BRYAN
CHAD J. KUTMAS
HEATHER FLYNN EARNHART
MCLAINE DEWITT HERNDON
ELIZABETH W. CARROLL
COURTNEY BRU
SHAROLYN C. WHITING
MATTHEW L. CHRISTENSEN
M. SCOTT HALL
BRYAN J. NOWLIN

Of Counsel:
VARLEY H. TAYLOR, JR.
MICHAEL MINNIS
HARRY V. ROUSE, P.C.
JAMES F. HARVEY, III
CYNTHIA J. BECKER

E. J. DOERNER (1897-1980)
DICKSON M. SAUNDERS (1920-2001)

April 18, 2007

Mr. Max Price
Air Quality Division
Oklahoma Department of Environmental Quality
707 North Robinson
P.O. Box 1677
Oklahoma City, OK 73101-1677

Re: Proposed Rules Amending Chapter 100 of Title 252 of the Oklahoma
Administrative Code, before the Air Quality Council on April 18, 2007

Dear Mr. Price:

These comments are submitted on behalf of Public Service Company of Oklahoma ("PSO"), and supplement its comments of July 17, 2006 and October 18, 2006 concerning the proposed definitional change in particulate matter and particulate matter emissions at OAC 252, Chapter 100, Subchapter 1.

PSO's prior comments pointed out that proposed inclusion of condensables in the definition of particulate matter and particulate matter emissions, makes Oklahoma's PM rule in Subchapter 19 more stringent than its federal NSPS counterpart as it applies to fossil fuel fired steam generating units such as those at PSO's Northeastern Station in Oologah, Oklahoma. Accordingly, because the proposed definitional change makes Oklahoma PM regulation more stringent than its federal counterpart, pursuant to Title 27A, Section 1-1-206 of the Oklahoma Statutes, the regulation must be accompanied by a cost benefit analysis justifying the increased stringency, and be subject to additional procedures, including, among other things, submittals to the Governor and State Legislature. At the October 18, 2006 Air Quality Council meeting, several Council members requested that industry present data to support comments made that inclusion of condensables resulted in Subchapter 19 being more strict than federal regulations. Accordingly, PSO is submitting these comments for that purpose.

In its Final Promulgation of the Standards of Performance for New Stationary Sources, EPA directly addressed the back half contribution to particulate matter for steam generators at 37 Fed. Reg. 5767 (March 21, 1972) (attached). There, EPA explained that its originally proposed standard of 0.20 lb/mmbtu for steam generators included the full sample train, including the front half (that removed in the filter) and back half (that removed in the impinger). EPA stated that the originally proposed standard was based upon the best controlled steam generators that it had tested. EPA further stated: "In the case of steam generators, the installations which were found to be best controlled showed reasonably large concentration (about 50 percent) of materials in the impingers [back half]." EPA ultimately decided to base the final NSPS standard on only the front half (filterable portion) of the sample train because of concerns that materials captured in the impingers may include "artifacts" of particulate matter created through chemical reactions caused by the sampling apparatus, that would never be "particulates in the atmosphere under normal dispersion conditions."¹ Because the data indicated that approximately 50% of the particulates from steam generators were captured in the impingers, it set the standard based upon the front half only at 0.10 lb/mmbtu (1/2 of the originally proposed standard).

A recent technical article provides further support for the large contribution of back-half condensables at coal burning power plant. Corio & Sherwell, *In-Stack Condensible Particulate Matter Measurements and Issues*, 60 Journal of the Air & Waste Management Association 207 (Feb. 2000) evaluated available data on the contribution of back-half condensables at various power plants. That paper reported eighteen (18) test results for coal-fired boilers for seven (7) different facilities. It concluded: "The overall average condensible PM percentage for all plants shown in the table is approximately 49%, which is similar to the EPA survey result (44%). The condensable PM fractions for the collection of power plant test results vary between 12 and 92%"

Testing at PSO's Northeastern Station has also confirmed the substantial back half contribution to PM as follows:

PSO, Northeastern, (Oklahoma)	Front half (%) ¹	Back half (%) ¹
Unit 3, 1980	25.6%	75.4%
Unit 3, 1981	53.3%	46.7%
Unit 4, 1980	18.8%	81.1%
Unit 3, 2006	37.7%	62.3%
Unit 4, 2006	43.9%	56.1%

¹Percentage of total PM.

¹ The accuracy and reliability of the back half test methods is still not resolved even today. Most recently, EPA commissioned a study to, among other things, evaluate the positive bias such artifacts have on EPA's Method 202. See *Laboratory Test Plan and Quality Assurance Project Plan for Method 202 Assessment and Evaluation for Bias and Other Uses*, Eastern Research Group (Nov. 2, 2006).

Testing at AEP Texas facilities has shown similar results.

CSW, Welsh (Texas)	Front half (%) ¹	Back half (%) ¹
Unit 1, 2004	55.3%	44.7%
Unit 2, 2004	29.1%	70.9%
Unit 3, 2004	31.5%	68.5%

¹Percentage of total PM.

Based upon this data, it is clear that the proposed definitional change to include condensable materials as part of PM will have the effect of making the state Subchapter 19 rule as applied to steam generators more stringent than the federal NSPS, which measures compliance with only a front half analysis. The expected impact is illustrated in the tables below:

For 10,000 MMBTU/HR Rating
 Subchapter 19 Limit 0.10 lb/MMBTU (Appendix C)

Percentage of Back Half Contribution to Total PM	Subchapter 19 Limit (lb/MMBTU)	Front Half PM Contribution of the Subchapter 19 Standard (lb/MMBTU)	Federal Standard 40 C.F.R. 60.42 front half (lb/MMBTU)
50	0.10	0.05	0.10
60	0.10	0.04	0.10
70	0.10	0.03	0.10
80	0.10	0.02	0.10

For 6280 MMBTU/HR Rating
 Subchapter 19 Limit 0.12 lb/MMBTU (Appendix C)

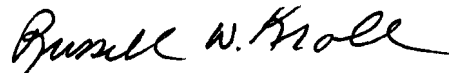
Percentage of Back Half Contribution to Total PM	Subchapter 19 Limit (lb/MMBTU)	Front Half PM Contribution of the Subchapter 19 Standard (lb/MMBTU)	Federal Standard 40 C.F.R. 60.42 front half (lb/MMBTU)
50	0.12	0.06	0.10
60	0.12	0.05	0.10
70	0.12	0.04	0.10
80	0.12	0.02	0.10

As the above table demonstrates, the proposed rules, in the case of steam generating units, result in a PM limit that is significantly lower than the corresponding federal NSPS standard. The proposed rules will obviously impact existing facilities' ability to comply with the more stringent standards. This is particularly true where existing PM controls such as the electrostatic precipitators at Northeastern Station are not designed to control condensable PM. The cost benefit analysis required by Oklahoma law should address impacts on existing facilities including any costs that the new regulation will impose on them to comply.

Texas has a rule similar to Oklahoma's OAC 252:100, Subchapter 19, which measures PM compliance through a full sampling train, including back and front half. In recognition of the significant back half contribution, Texas set its limit applicable to steam generating units to 0.30 lb/mmbtu—that is 3 times the federal NSPS limit. *See* Texas Administrative Code, tit. 30, § 111.153. Increasing the Subchapter 19 limits to account for the condensables is one alternative Oklahoma could look at to avoid creating limits more stringent than the federal standard.

For these reasons, PSO respectfully requests the Council not to adopt the proposed regulations as currently drafted.

Sincerely,



Russell W. Kroll of
DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

RWK:dc

federal register

TUESDAY, MARCH 21, 1972

WASHINGTON, D.C.

Volume 37 ■ Number 55

Pages 5735-5805



PART I

(Part II begins on page 5795)

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Just Released

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[A Cumulative checklist of OFR issuances for 1972 appears in the first issue of the Federal Register each month under Title 1]

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Affairs), Office of the Secretary of Defense.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.72-4286 Filed 3-20-72;8:49 am]

DEPARTMENT OF THE INTERIOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by non-career executive assignment in the excepted service the position of Associate Director, Office of Oil and Gas, Office of the Secretary, Office of the Assistant Secretary for Mineral Resources.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.72-4283 Filed 3-20-72;8:49 am]

DEPARTMENT OF THE INTERIOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by non-career executive assignment in the excepted service the position of Deputy Assistant Secretary, Mineral Resources (Energy Programs), Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.72-4284 Filed 3-20-72;8:49 am]

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Notice of Title Change in Noncareer Executive Assignment

By notice of June 5, 1970, F.R. Doc. 70-8997 the Civil Service Commission authorized the U.S. Arms Control and Disarmament Agency to fill by noncareer executive assignment the position of Deputy Assistant Director, Economic Bureau. This is notice that the title of this position is now being changed to Deputy Assistant Director, Economic Affairs Bureau.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.72-4287 Filed 3-20-72;8:49 am]

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the U.S. Arms Control and Disarmament Agency to fill by noncareer executive assignment in the excepted service the position of Disarmament Adviser, Disarmament Advisory Staff.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.72-4285 Filed 3-20-72;8:49 am]

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the U.S. Arms Control and Disarmament Agency to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Director, Economics Bureau.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.72-4282 Filed 3-20-72;8:49 am]

ENVIRONMENTAL PROTECTION AGENCY

MOTOR VEHICLE POLLUTION CONTROL

Suspension Request; Notice of Public Hearing; Procedures Therefor

Section 202(b) (5) (A) of the Clean Air Act, as amended, provides that at any time after January 1, 1972, any automobile manufacturer may file with the Administrator an application requesting the suspension for 1 year only of the effective date, with respect to that manufacturer, of the carbon monoxide or hydrocarbon (or both) emission standards applicable to light duty vehicles manufactured beginning with the model year 1975. Section 202(b) (5) (D) provides that the Administrator shall make his determination with respect to any such application within 60 days.

If the Administrator determines that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim

emission standards which shall apply to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles manufactured during model year 1975. Section 202(b) (5) (C) provides that such interim standards shall reflect the greatest degree of emission control which the Administrator determines is available, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers.

Section 202(b) (5) (D) provides that the Administrator shall issue a decision granting such suspension after a public hearing and only if he determines that (1) such suspension is essential to the public interest or the public health and welfare of the United States, (2) all good faith efforts have been made to meet the established standards, (3) the applicant has established that effective control technology, processes, operating methods or other alternatives are not available or have not been available for a sufficient period of time to achieve compliance prior to the effective date of such standards, and (4) the study and investigation of the National Academy of Sciences and other information available to him have not indicated that technology, processes, or other alternatives are available to meet such standards.

On March 13, 1972, Volvo, Inc., filed with the Administrator an application for a 1-year suspension with respect to that company, of the effective date of the 1975 emission standards. A public hearing on this application will be held in Washington, D.C., commencing at 10 a.m. on April 10, 1972. A subsequent FEDERAL REGISTER notice will specify the location of the public hearing.

The public hearing is intended to provide an opportunity for interested persons to state their views or arguments, or to provide pertinent information concerning the action requested of the Administrator by the applicant. Any person desiring to make an oral statement at the hearing should file a notice of such intention and, if practicable, five copies of his proposed statement with the Director, Mobile Source Enforcement Division, Environmental Protection Agency, Room 3609, 401 M Street SW., Washington, DC 20460, not later than April 6, 1972. Written statements and information may be submitted to the Director, Mobile Source Enforcement Division, at the above address for inclusion in the record of the hearing at any time prior to completion of the hearing.

The hydrocarbon and carbon monoxide emission standards for model year 1975 light duty vehicles subject to suspension are contained in 40 CFR Part 85.21(a). The application and such portions of the applicant's supporting documentation as may properly be made public will be available for public inspection in the Office of Public Affairs, Environmental Protection Agency, Room 3241, 401 M Street SW., 20460. Any person may obtain copies of public portions of the applications as provided for by 40 CFR Part 2.

Procedures. Since the public hearing is designed to give all interested members of the public an opportunity to participate in this proceeding, participants may present data, views, arguments, or other pertinent information concerning the action requested of the Administrator and may submit written questions to be propounded to the applicant by the hearing panel to the extent practicable. Appropriate representatives of the applicant will be required to attend the hearing and respond to questions propounded by the hearing panel. Questions submitted by the public to be propounded to Volvo, Inc., must be received by the Director, Mobile Source Enforcement Division no later than April 5, 1972. The panel may limit the length of oral presentations, may exclude irrelevant or redundant material or questions, and may direct that corroborative material be submitted in writing rather than presented orally.

Presentations by participants shall be addressed exclusively to the following considerations:

1. Whether the requested suspension is essential to the public interest or the public health and welfare of the United States.

2. Whether the applicant has made all good faith efforts to meet the standard or standards for which suspension is sought.

3. Whether the applicant has shown that there is not available effective control technology, processes, operating methods, or other alternatives that would enable the applicant to achieve compliance prior to the effective date of such standards.

4. Whether the study conducted by the National Academy of Sciences and other information indicate that technology, processes, or other alternatives are available for any manufacturer to meet such standards.

5. What interim standards for the 1975 model year would reflect the greatest degree of emission control achievable by available technology, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers.

A verbatim transcript of the proceeding will be made and copies will be available from the reporter at the expense of any person requesting them.

Dated: March 16, 1972.

WILLIAM D. RUCKELSHAUS,
Administrator.

[FR Doc. 72-4337 Filed 3-20-72; 8:51 am]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Supplemental Statement in Connection With Final Promulgation

I. EPA published Standards of Performance for New Stationary Sources in final form, prefaced by a "concise general statement of their basis and pur-

pose" as required by section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(c), on December 23, 1971. 36 F.R. 24876. Petitions for review of certain of these standards were filed on January 21 and 24 by the Essex Chemical Corp. et al., the Portland Cement Association, and the Appalachian Power Co. et al. (U.S. Court of Appeals for the District of Columbia, Nos. 72-1072, 72-1073, and 72-1079).

On February 18, 1972, almost 2 months after EPA published the New Stationary Source Standards, the U.S. Court of Appeals for the District of Columbia Circuit handed down its decision in "Kennecott Copper Corp. v. Environmental Protection Agency" (C.A.D.C. No. 71-1410), which concerned a national secondary ambient air quality standard promulgated by EPA pursuant to section 109(b) of the Clean Air Amendments of 1970, 42 U.S.C. 1857C-4(b). The court there held that although the "concise general statement" prefacing the standard involved satisfied the requirements of section 4(c) of the Administrative Procedure Act, it would nonetheless remand the cause to the Administrator for a more specific explanation of how he had arrived at the standard.

In light of the decision in "Kennecott Copper," and in the interest of a speedy judicial determination of the validity of the Standards of Performance for New Stationary Sources, we have prepared this statement of the basis of the Administrator's decision to promulgate the standards to supplement that appearing as the preface to the final standards as published in December 1971. Although if the point were raised it might ultimately be determined that this statement was not necessary to satisfy the doctrine expressed by the "Kennecott Copper" opinion, EPA considers it fundamental to the national policy embodied in the Clean Air Amendments of 1970 to expedite all steps of promulgation and enforcement of standards and implementation plans to bring about clean air. The speedy eradication of any uncertainty as to the validity of the standards for new stationary sources is an important part of this process. Accordingly, considering the particular sequence of events and pressures of time involved here, we think it most appropriate to include this supplementary statement in the record now, thereby ensuring the rapid conclusion of judicial review of the validity of the standards.

II. 1. **The Particulate Test Method.** Particulate emission limits were proposed for steam generators, incinerators, and cement plants, based on measurements made with the full EPA sampling train, which includes a dry filter as well as impingers, which contain water and act as condensers and scrubbers. In the impingers the gases are cooled to about 70° F. before metering.

There were objections to the use of impingers in the EPA sampling train,

with suggestions that the particulate standards be based either on the "front half" (probe and filter) of the EPA sampling train or on the American Society of Mechanical Engineers test procedure. Both of these methods measure only those materials that are solids or liquids at 250° F. and greater temperatures.

It is the opinion of EPA engineers that particulate standards based either on the front half or the full EPA sampling train will require the same degree of control if appropriate limits are applied. Analyses by EPA show that the material collected in the impingers of the sampling train is usually although not in every case a consistent fraction of the total particulate loading. Nevertheless, there is some question that all of the material collected in the impingers would truly form particulates in the atmosphere under normal dispersion conditions. For instance, gaseous sulfur dioxide may be oxidized to a particulate form—sulfur trioxide and sulfuric acid—in the sampling train. Much of the material found in the impingers is sulfuric acid and sulfates. There has been only limited sampling with the full EPA train such that the occasional anomalies cannot be explained fully at this time. In any case, the front half of the EPA train is considered a more acceptable means of measuring filterable particulates than the ASME method in that a more efficient filter is required and the filter has far less mass than the principal ASME filter in relation to the sample collected. The latter position was reinforced by a recommendation of the Air Pollution Control Association.

Accordingly, we determined that, for the three affected source categories, steam generators, incinerators, and cement plants, particulate standards should be based on the front half of the EPA sampling train with mass emission limits adjusted as follows:

	Originally proposed particulate standards, full EPA train	Recommended particulate standards revised sample method (front half only)
Steam Generators—pounds per million Btu heat input	0.20	0.10
Incinerator—grams per standard cubic foot at 12 percent CO ₂	0.10	0.08
Cement Kilns—pounds per ton fed	0.20	0.20
Cement Coals—pounds per ton fed	0.10	0.10

The adjusted standards are based on EPA sampling results and are designed to provide the same degree of control as the originally proposed standards. In the case of steam generators, the installations which were found to be best controlled showed reasonably large concentrations (about 50 percent) of materials in the impingers. The five incinerator

TABLE I—SULFUR DIOXIDE REMOVAL SYSTEMS AT U.S. STEAM-ELECTRIC PLANTS

Power station	Unit size	Designer SO ₂ system	New or retro-fit	Scheduled startup	Anticipated efficiency of SO ₂ removal
Limestone Scrubbing:					
1. Union Electric Co., Meramec No. 2.	477	Combustion Engineer.	R	September 1969....	Operated at 73% efficiency during EPA test.
2. Kansas Power & Light, Lawrence Station No. 4.	125	Combustion Engineer.	R	December 1968....	Do.
3. Kansas Power & Light, Lawrence Station No. 6.	430	Combustion Engineer.	N	December 1971....	Will start at 65% and be upgraded to 67%. Guaranteed 70%.
4. Kansas City Power & Light, Hawthorne Station No. 3.	100	Combustion Engineer.	R	Late 1972.....	Do.
5. Kansas City Power & Light, Hawthorne, Station No. 4.	100	Combustion Engineer.	R	Late 1972.....	Do.
6. Kansas City Power & Light, Lecky Station.	800	Babcock & Wilcox.....	N	Late 1972.....	89% as target.
7. Detroit Edison Co., St. Clair Station No. 3.	180	Peabody.....	R	Late 1972.....	90% as target.
8. Detroit Edison Co., River Rouge Station No. 1.	265	Peabody.....	R	Late 1972.....	Do.
9. Commonwealth Edison Co., Will County Station No. 1.	175	Babcock & Wilcox.....	R	February 1972....	Guaranteed 89%.
10. Northern States Power Co., Sherburne County Station, Minn., No. 1.	700	Combustion Engineer.	N	1970.....	
11. Arizona Public Service, Cholla Station Co.	115	Research Cottrell.....	R	December 1973....	
12. Tennessee Valley Authority, Widow's Creek Station No. 8.	550	Undecided.....	R	1974-76.....	
13. Duquesne Light Co., Phillips Station.	100	Chamico.....	R	March 1973.....	Do.
14. Louisville Gas & Electric Co., Paddy's Run Station.	70	Combustion Engineer.	R	Mid-late 1972.....	Do.
15. City of Key West, Stock Island. ¹	87	Zurn.....	N	Early 1972.....	Guaranteed 85% removal.
16. Union Electric Co., Meramec No. 1.	125	Combustion Engineer.	R	Spring 1973.....	89% as target.
Sodium Hydroxide Scrubbing Installations:					
1. Nevada Power Co., Reed Gardner Station.	250	Combustion Equipment Associates.	R	1973.....	Guaranteed 99% SO ₂ while burning 1% S coal.
Magnesium Oxide Scrubbing Installations:					
1. Boston Edison Co., Myrtle Station No. 4. ²	150	Chamico.....	R	February 1972....	90% target.
2. Potomac Electric Power, Dickerson No. 3.	195do.....	R	Early 1974.....	90%.
Catalytic Oxidation:					
1. Illinois Power, Wood River 1.	100	Monsanto.....	R	June 1973.....	Guaranteed 85% SO ₂ removal.

¹ Oil-fired plants (remainder are coal-fired).
² Partial EPA funding.

tests which showed compliance with the originally proposed standard all indicated impinger catches of 20 to 30 percent. All five of these tests indicate compliance with the original and the revised standard.

In the case of cement plants, holding to the same allowable emission rate while changing the sampling method results in a slight relaxation of the standard. This permits an electrostatic precipitator as well as a fabric filter to meet the emission standard.

2. *The Sulfur Dioxide Standard for Steam Generators of 1.2 Pounds Per Million B.T.U. Heat Input.* The Administrator took into account the following facts in determining that there has been adequate demonstration of the achievability of the standard.

There are at present three SO₂ removal systems in operation at U.S. power stations. Moreover, a total of 13 electric power companies have contracted for the construction of seventeen additional units, most of which will become operational in the next 2 years. Most of these employ lime or limestone scrubbing, but magnesium oxide and sodium hydroxide scrubbing and catalytic oxidation also will be used. In addition, seven units will be equipped with water scrubbers for fly ash collection in the anticipation that they may be converted to SO₂ removal in the future. Eight different firms are designing the installations. One of the installations, a sodium hydroxide scrubber, is guaranteed by the designer to achieve 90 percent or better SO₂ removal. Four others are guaranteed at 80 percent or better. Table I summarizes information about these installations. Generally, the standard of 1.2 pounds of sulfur dioxide per million B.t.u. input can be met by the removal of 70-75 percent of the sulfur dioxide formed in the burning of coal of average sulfur content (i.e., 2.8-3 percent).

A 125-megawatt unit now operated by the Kansas Power and Light Co. at Lawrence, Kans., was put into operation in December 1968. Several problems were experienced originally and appreciable revisions have been made to improve the system. The most successful operation of the scrubber has occurred during 1971.

In some respects the plant is atypical in that it is not required to burn coal continually. Natural gas is available much of the time, and the station also has a supply of fuel oil that can be burned in emergencies when natural gas is not available. Kansas Power and Light has used this flexibility to advantage in the operation of the scrubber. It frequently switches the unit from coal to natural gas, bypassing the scrubber, so that they can inspect the internals for possible malfunction. The generating unit was seldom operated longer than 4 weeks on coal firing without making such inspections. In most instances, little or no maintenance was required during the outage, and the company then merely inspected the scrubber.

All water from the pond is recycled back to the scrubber. Blowdown from cooling towers constitutes makeup water. The sludge oxidizes to sulfate in the pond. Eventually, sulfate may be removed from the system and taken with the ash to landfills.

The limestone system for the new 430-megawatt steam-electric unit at the Lawrence station is essentially the same as the smaller unit. It has been operated only on a limited basis to date. The company plans to operate at 65 percent SO₂ removal, then upgrade to 80 percent or more based on experience with the 125-megawatt unit. With the new system sulfate crystallization will be accomplished in tanks. The company plans to run clarified liquor from the crystallizers directly back to the scrubbers. A solids content of 6-10 percent will be maintained in the recycle liquor to prevent scaling in exposed surfaces.

Combustion engineering pilot studies. Pilot studies conducted by the Combustion Engineering Co. on a 1 mw. equivalent stream showed 95 percent SO₂ removal with continuous crystallization and 100 percent water recycle from crystallizers. The studies form the basis upon

which CE is guaranteeing that its new installations will remove at least 70 percent of SO₂.

Battersea scrubber. The principle of alkaline scrubbing has been demonstrated at the Battersea Power Station in England, where a scrubber has been in use since 1932. A multiple stage process is employed. Alkaline river water is used in the first stage and lime-neutralized liquor in subsequent stages. The steam generator is of 3,500 million B.t.u. rating. Reports indicate that the efficiency of this system exceeds 90 percent when the boiler is fired with 0.8 to 1 percent sulfur coal. Similar systems are in operation on two 150-mw. oil-fired boilers at the Bankside Power Station in England.

Swansea scrubber. Lime scrubbing processes were installed on coal-fired units at the Swansea Power Station and the Fulham Power Station in England prior to World War II. The system at the Fulham Station reportedly operated successfully until shut down for security reasons early during World War II. It was not reactivated after the war. The Swansea installation was operated for about 2 years on a coal-fired power boiler

and is not now in service. Unlike the Battersea and Bankside operations, these units utilized a continuous liquid recycle. The systems were reported to operate at SO₂ efficiencies of 90 percent or greater.

Bahco lime scrubbing. The two-stage system has been demonstrated at about 98 percent SO₂ removal over a 6-month period on a 7-mw. oil-fired steam generator in Sweden. The process is now being offered under license in the United States by Research Cottrell. None of the Bahco systems have yet been installed on coal-fired boilers. Nevertheless, the two-stage scheme appears to offer definite advantages over single-stage processes in achieving high removal efficiencies.

Wellman power gas sulfite scrubbing. The sulfite-bisulfite system has been installed on two oil-fired boilers in Japan. The combined capacity is about 650 million B.t.u. per hour. Since it was put into operation in June 1971, removal efficiencies of 95 percent have been reported with exit levels of about 0.2 pounds SO₂ per million B.t.u. The system has not been operated on a coal-fired boiler. However, since precipitators have been shown to remove particulates down to the same level as oil-fired units, application of the sulfite system to coal-fired boilers should be feasible.

A principal difficulty in operating lime based scrubbing systems has been the tendency to form scale on scrubber surfaces. Union Electric, TVA, and to a lesser extent Kansas Power and Light have reported scaling problems. The experience of Kansas Power and Light and European and Japanese installations show that scaling can be held to a tolerable level. Present designs probably will be revised to optimize cost versus scaling. The use of two or more stages would appear desirable for high sulfur coals.

In all probability, there will be some scale formation in all closed circuit lime scrubbing systems for SO₂ abatement. At the Bahco installation as at the Kansas Power and Light installation in the United States, this is minimized by keeping the solution pH in the acid region. In addition to this, a Mitsubishi Heavy Industries pilot plant in Japan has employed seed crystals and a delay tank and was reportedly able to operate for 500 hours without any sign of scaling (i.e., the scaling took place on the seed crystals).

In addition to operating at an acid pH, the Bahco system employs a wide open scrubber that can tolerate appreciable scale deposits. It was reported that the installation of additional spray heads to more thoroughly wash the wetted surfaces at the Bischoff installation in West Germany helped to prevent scale formations.

All three installations cited above have reported successful periods of operation while employing the above-mentioned techniques. The most successful of these is the Bahco unit which has had no serious operational difficulties since November 1969. These examples show that lime systems can be operated without unscheduled shutdown due to scale problems.

3. *Cost of compliance with steam generator standards.* The economic impact of the new source performance standards and requisite pollution control expenditures have been developed for a typical new coal-fired unit of 600-megawatt (MW) capacity. The investment cost for such a plant would be \$120 million plus \$18 million for sulfur dioxide and particulate control and \$1 million for nitrogen oxide control. The \$19 million total can be compared to \$3.6 million which would have been expended for particulate control if sulfur dioxide and nitrogen oxide abatement were not required.

On an annualized basis the pollution control costs would be 0.13 cents per kw.-hr. for sulfur dioxide and particulate control plus 0.01 cents per kw.-hr. for nitrogen oxide control. Particulate control alone would cost 0.01 cents per kw.-hr. An average revenue of 1.56 cents per kw.-hr. is assumed. Based on these figures, the cost of pollution control will be about 9 percent of the delivered cost of electricity if all plants operated by the utility in question had to incur a comparable cost. Using a figure of \$130 per year as the average residential electric bill, the increased cost of electricity to a residential customer would be about \$1 per month if the total cost of control is passed on to the customer.

An indication of the impact of increased electricity cost on industrial consumers may be obtained by examining the relationship of electricity cost to production costs. An upper limit may be approximated by considering the aluminum industry, a large consumer of electrical energy. If the aluminum industry were to incur an increase of nine percent in electricity cost, production costs would increase by about 1.4 percent. Although aluminum smelters usually consume hydroelectric power and would not realize pollution control costs increases, nonetheless, the figures show that even for a large consumer the impact of increased electricity cost is fairly small. In general, the estimated electricity cost increase will have only a minor impact on production costs.

Each year the power industry puts into operation about 49 new steam-electric units. On the average, 29 are fired with coal, seven with oil, and 13 with natural gas. Most of the oil-fired units and a few of the coal-fired units may burn low sulfur fuel. The number requiring flue gas desulfurization is estimated to be between 20 and 30 per year. Most of these, 15 to 20, will be located east of the Mississippi River.

The foregoing cost projections are based on estimated costs of \$30 per installed kilowatt for sulfur dioxide scrubbing systems which will also be capable of controlling coal particulate to the level of the standard. Some power distributors have questioned the figure and suggest that the actual cost may be close to \$70 per kw. Nevertheless, a review of applicable cost estimates for calcium base SO₂ scrubbing system shows support for the EPA estimate.

The four estimates listed in table II for new plants range from \$18.7 to \$25.67

per kw. Three of the plants are large—680 to 1,000 mw. All five estimates for retrofitting existing plants show greater cost, ranging from \$28.6 to \$61.8 per kw. The retrofit estimates tend to cover smaller steam generators, only one of the five being greater than 180 mw. In addition, the retrofit costs tend to reflect unusual circumstances which would not be expected at new plants. All are closed circuit limestone or calcium hydroxide systems except for the small unit at Key West, Fla. In the closed circuit system, all waters are recycled to avoid problems of liquid and solid waste disposal.

TABLE II

COST ESTIMATES FOR EQUIPPING COAL FIRED STEAM-ELECTRIC PLANTS WITH CALCIUM BASE SCRUBBING SYSTEMS (1971 ESTIMATES)

Source of estimate	Size	Capital cost
Zurn Industries (Key West Installation)	37 MW (New)	\$20.4/kw.
Northern States Power Co.	2-130 MW (New)	\$19.7/kw.
Datsock & Wilcox (Hydrothermal plant in mid-west)	600 MW (New)	\$25.67/kw.
Tennessee Valley Authority	160 MW (New)	\$19.20/kw.
Do.....	120 MW (Retrofit)	\$24.5 to \$61.8/kw.
Louisville Gas & Electric Co.	70 MW (Retrofit)	\$23.6/kw.
Duquesne Light Co.....	160 MW (Retrofit)	\$35/kw.
Commonwealth Edison Co.	175 MW (Retrofit)	\$40/kw.
Detroit Edison Co.....	4-160 MW (Retrofit)	\$42.6/kw.

Projected capital costs for nitrogen control will range from nil to \$3.50 per kw. The greatest cost will be incurred from those units which will use combinations of flue gas recirculation and off-stoichiometric combustion to achieve the standard. Many of these will be gas-fired boilers which will not have to expend any capital for sulfur dioxide or particulate control. The least cost will be for corner-fired coal burning boilers which should be able to meet the standards without any modification. Corner-fired units are sold by only one of the four major U.S. power boiler manufacturers. The other three firms have experience with nitrogen oxide reduction schemes for gas and oil burning but it is uncertain what methods they will employ with coal burning. Consequently, precise costs are uncertain, but it is expected that the nitrogen oxide standard will stimulate interest in combustion techniques which can achieve the required emission levels at little or no increase in cost.

4. *The nitrogen oxide standard for coal-fired steam generators.* The standards set an emission limit of 0.7 pound of nitrogen oxide per million B.t.u. coal-fired steam generators. This is roughly equivalent to a stack gas concentration of 550 parts per million for a bituminous-fired operation. Several electric utilities and three of the four major boiler manufacturers commented that the technology was not fully demonstrated to achieve the standard.

The coal standard is based principally on nitrogen oxide levels achieved with corner-fired boilers which are manufactured by only one company—Combustion Engineering. This firm has confirmed in writing that it will guarantee to meet the nitrogen oxide standard. Investigations by an EPA contractor showed that other types of boilers could meet the standard under modified burning conditions. In fact, two of the three remaining companies have informed EPA they will guarantee that their new installations will meet the EPA standard of 0.7 pound/million B.t.u. on new installations.

5. Particulate standards for kilns in portland cement plants. Particulate emission limits of 0.3 pound per ton of feed to the kiln were proposed for cement kilns. This is roughly equivalent to a stack gas concentration of 0.03 grains per standard cubic foot.

The Portland Cement Association, American Mining Congress, a local control agency and the major cement producers commented that the kiln standard was either too strict or it is not based on adequately demonstrated technology, i.e. fabric filters can not be used for all types of cement plants. On the other hand, a comment was received from an equipment manufacturer stating that equipment other than fabric filters also can be used to meet the standard and citing supportive data for electrostatic precipitators. In addition, the AMC, a local agency and cement producers commented that the particulate standards for cement kilns are stricter than those promulgated for power plants and municipal incinerators. Further they objected to the test method to be used to determine compliance.

The proposed standard was based principally on particulate levels achieved at a kiln controlled by a fabric filter. Several other kilns controlled by fabric filters had no visible emissions but could not be tested due to the physical layout of the equipment. After proposal, but prior to promulgation a second kiln controlled by a fabric filter was tested and found to have particulate emissions in excess of the proposed standard. However, based on the revised particulate test method, the second installation showed particulate emissions to be less than 0.3 pound per ton of kiln feed.

The promulgated standard is roughly equivalent to a stack gas concentration of 0.03 grains per standard cubic foot. The power plant standard is equivalent to 0.06 grains per standard cubic foot at normal excess air rates. The incinerators standard is 0.08 grains per standard cubic foot corrected to 12 percent carbon dioxide. Uncorrected, at normal conditions of 7.5 percent carbon dioxide it is equivalent to 0.05 grains per standard cubic foot. The difference between the particulate standard for cement plants and those for steam generators and incinerators is attributable to the superior technology available therefor (that is, fabric

filter technology has not been applied to coal-fired steam generators or incinerators).

In sum, considering the revision of the particulate test method, there are sufficient data to indicate that cement plants equipped with fabric filters and precipitators can meet the standard.

6. Cost of achieving particulate standard for kilns at portland cement plants. A limit of 0.3 pounds per ton of feed to the kiln was proposed. The limit applies to all new wet or dry process cement kilns.

Three cement producers commented that a well-controlled plant would cost much more than indicated by EPA. A meeting between American Mining Congress and EPA revealed that that association felt the cost of an uncontrolled cement plant as reported by EPA was low by a factor of 1.5 to 2. However, the association agreed that EPA had accurately estimated the cost of the pollution control equipment itself. Accordingly, no change in the standard was warranted on account of cost. Indeed, if the industry is correct in asserting that the cost of an uncontrolled plant is higher than that estimated by EPA, that means that the cost of pollution control expressed as a percentage of total cost is less than the 12 percent figure cited in the background document, APTD-0711, which was distributed by EPA at the time the standards were proposed.

7. Sulfur dioxide and acid mist standards for sulfuric acid plants. Sulfur dioxide emission limits of 4 pounds per ton of acid produced and acid mist emission limits of 0.15 pounds per ton of acid produced were proposed for sulfuric acid plants.

Several sulfuric acid manufacturers and the Manufacturing Chemists Association commented that the proposed SO₂ standard is unattainable in day-to-day operation at one of the plants tested or that it is unduly restrictive. They asserted that to meet the standard, the plant would have to be "designed to 2 pounds per ton" to allow for the inevitable gradual loss of conversion efficiency during a period of operation, and that units capable of such performance have not been demonstrated in this country. Essentially, the same parties commented that there is published data showing that due to the vapor pressure of sulfuric acid, the acid mist standard is not attainable.

The proposed standard was based principally on sulfur dioxide levels achieved with dual absorption acid plants and one single absorption plant controlling emissions with a sodium sulfite SO₂ recovery system. There are only three dual absorption plants in this country. Company emission data at one of the plants tested indicates the plant was meeting the proposed standard for a year of operation when the production rate was less than 600 tons per day. The plant is rated at 700 tons per day. At the second U.S. plant, emissions were about 2 pounds per ton about two months after startup. Dis-

cussion with foreign dual absorption plant designers and operators indicates normal operation at 99.8 percent conversion or higher for 99 percent of the time over a period of years. This conversion efficiency is equivalent to approximately 2.5 pounds per ton of acid produced.

Complaints from the industry that it cannot meet the acid mist standard appear to be based on experience with other test methods than EPA's. Such other methods measure more sulfur trioxide and acid vapor, in addition to acid mist, than does the EPA method. Tests of several plants with the EPA test method have shown acid mist emissions will be below the emission limits as set in the standards.

8. Cost of achieving sulfur dioxide standard at sulfuric acid plants. A limit of 4 pounds of sulfur dioxide per ton of acid produced is set by the regulation. The limit applies to all types of new contact acid plants except those operated for control purposes, as at smelters.

The sulfuric acid industry has commented that (1) the cost of achieving the proposed sulfur dioxide standard is about three times the EPA estimate, and (2) promulgation of a standard 60 percent less restrictive than proposed by EPA would reduce the control cost 47 percent.

In developing the parallel cost estimates, both the industry and EPA assume the dual absorption process will be used to control sulfur burning plants and many spent acid plants. The more costly Wellman-Power Gas sulfite scrubbing system will be used with plants which process the most contaminated spent acid feedstocks where capital investment historically is 80 percent greater than sulfur burning plants. The Wellman-Power Gas process would also be used for retrofitting existing plants where appropriate. Both the dual absorption and Wellman-Power Gas processes have been demonstrated on commercial installations. Seventy-six dual absorption plants have been constructed or designed since the first in 1904. Only three, however, are located in this country. One sulfite scrubbing process is now in operation in the United States and four more will be put into service in 1972. All are retrofit installations. Two other such scrubbers are being operated in Japan. These seven installations consist of three acid plants, two Claus sulfur recovery plants, an oil-fired boiler, and a kraft pulp mill boiler.

Control costs. EPA engineers have reviewed the industry analysis and find no reason to change their original cost estimate. As summarized in Table III, EPA estimates that the cost of achieving the standard is \$1.07 to \$1.32 per ton of acid for dual absorption systems and \$3.50 per ton for sulfite scrubbing systems. The industry estimate for a sulfur burning dual absorption plant is \$2.31 greater than EPA's. We believe the industry's estimate to be excessive for the following reasons.

TABLE III

ESTIMATED COSTS OF CONTROLLING SULFUR DIOXIDE FROM CONTACT SULFURIC ACID PLANTS

	Dual absorption process		Sodium sulfite scrubbing	
	Industry	EPA	Industry	EPA
Sulfur burning plants:				
Direct Investment (Thousands of \$)---	2,000	550	Not anticipated for new plants.	
Total Added Cost (\$/Ton) ^a -----	3.33	1.07		
Spent acid plants:				
Direct Investment (Thousands of \$)---	3,100	900	2,200	2,300
Total Added Cost (\$/Ton) ^a -----	4.45	1.32	4.11	3.50

^a Total added cost includes depreciation, taxes, 16% return on investment after taxes and other allocated costs.

Seventy-two percent of the difference between the Du Pont and EPA estimates is due to direct investment, plant overhead, and operating costs for auxiliary process and storage equipment which Du Pont predicts will be necessary to satisfy the standards. EPA does not believe that such auxiliary equipment will be necessary in practice to meet the standard.

Twenty percent of the difference is due to differences in estimates of the cost and consumption of utilities. Elimination of auxiliary equipment referred to above reduces the consumption rate of both electricity and steam. Eight percent results from the industry's apportionment of "other allocated costs" (Corporate Administration, i.e., sales, research, and development, main office, etc.) in proportion to their estimate of the additional investment required for control. Although an accepted procedure for internal cost accounting, this does not represent a true out-of-pocket cost.

In sum, the EPA analysis shows that meeting the proposed standard with a dual absorption plant requires a substantial investment over an uncontrolled plant but only 30 percent as great as indicated by the industry. Moreover, relaxation of the proposed standard by 60 percent (to the level recommended by the industry) would decrease the cost of control in dual absorption plants only 10 to 15 percent. For sulfur burning plants the cost differential would be \$0.10 per ton of acid. For spent acid plants, it would be \$0.17.

Economic impact of proposed standard. Most sulfuric acid production is captive to large vertically integrated chemical, petroleum, or fertilizer manufacturers. An increasing volume of production also results from the recovery of sulfur dioxide from stack gases or the regeneration of spent acid instead of its discharge into streams.

Depending on the abatement process selected and the plant size, the direct investment for control can range from 14 to 38 percent of the investment in an uncontrolled acid plant.

The added cost of air pollution control, coupled with the inherent market disadvantage of the small manufacturer, may make future construction of plants

of less than 500 tons per day economically unattractive except as a sulfur recovery system for another manufacturing process.

It is estimated that the average market price will increase by \$1.07 per ton reflecting the lower end of the cost range. This represents a small increase in the \$31 per ton market price and will have little effect on the demand for acid.

The increasing production of recovered and regenerated acid, as a result of abatement efforts, will inhibit the growth of conventional acid production and threaten eventually to displace much of that production.

WILLIAM D. RUCKELSHAUS,
Administrator.

MARCH 16, 1972.

[FR Doc.72-4338 Filed 3-20-72;8:51 am]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below-indicated vessels, pursuant to Part 542 of Title 46 CFR and section 11(p) (1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	Owner/operator and vessels
01039	Den Norske Amerikalinje A/S (Norwegian America Line): Kongstjord.
01049	Delos Maritime Co., Ltd.: Black Knight.
01065	Reederi Richard Schröder: Erich Schröder.
01071	Kommanditselskabet AP 19. August 1963 (Komplementar: P.F.S. Heering): Heering Kirco.
01075	Valdemar Skogland A/S: Notos.
01107	N.V. Stoomvaart-Maatschappij "Oceano" (Curacao) (Steamship Co. "Oceano" (Curacao), Ltd.: Poinclana.
01108	Hvalfangerselskabet "Rokka-havet" & "Vestfold" (Rokka-havet) Whaling Co., Ltd. & "Vestfold" Whaling Co., Ltd.: Ross Lake.
01155	Ernst Jacob, Reeder und Schiffmakler: Steinhoff.
01318	Aug. Nolten, Wm. Miller's Nachfolger: Bell Volunteer.
01323	Manchester Liners, Ltd.: Manchester Port, Manchester Progress, Manchester City, Manchester Renown.
01334	American President Lines, Ltd.: President Folk.
01413	Kinyras Shipping Co., Ltd., of Nicosia, Cyprus: Paphos.
01454	Hunting (Eden) Tankers, Ltd.: Gretafield.

Certificate No.	Owner/operator and vessels
01481	Chlor Shipping Co., Ltd.: Chlor.
01517	Salamis A/S: Stolt Skaukar.
01530	Herm. Daublerberg, Bremen: Bellavia, Sicilia.
01627	Atlantic Oil Carriers, Ltd.: Eugenio Livanao.
01714	Ellos S.p.A.-Palermo: Penelope.
01769	Morania Compania Naviera S.A.: Etolia.
01815	Aug.-Thyssenhütte A.G., Duisburg, as Bareboat Chartered Owners: Francesca.
01844	Nationale Tankvaart Maatschappij N.V.: Forest Hill.
01891	BP Tanker Co., Ltd.: British Spartman, British Guardian, British Engineer, British Fame.
01019	Almjeselskabet Pelagos: Fontia.
01035	Intercentrakab Melllem Aktieselskabet Dampskibsselskabet Svendborg & Damp . . . AP 1912 Aktieselskabet: Caroline Maerz.
01085	Aktiebolaget Svansta Atlant Linien: Sagaholm, Odensholm.
01080	Aktiebolaget Transmarin: Astrid.
01088	Angfartygsaktiebolaget Tirning: Atland.
02010	A. L. McChling Barge Lines, Inc.: MBL-18T, JIH 14, JIH 16.
02043	Suomen Tankkilaiva oy Finska Tankfartyg AB: Wica.
02069	World Dale Corp.: World Dale.
02093	Thor Tanker Corp.: World Majesty.
02094	Lycander Shipping Co.: World Memory.
02095	Urania Tanker Corp.: World Merchant.
02131	Houlder Line, Ltd.: Oowestry Grange.
02133	South American Saint Line, Ltd.: St. Meriel.
02138	Sioux City & New Orleans Barge Lines, Inc.: Ellis 1301, Ellis 1302, Ellis 1303, UMI 1250, UMI 1251.
02163	Rederiet "Ocean" A/S, Copen-hagen: Roman Reeder.
02181	James L. Bryan: BEC-2002, BEC-2001.
02184	Compagnie Generale Transatlan-tique: Carimare.
02202	Humble Oil & Refining Co.: Eco 15.
02264	Dr. Erich Retzlaff: Ronste Retzlaff, Emma Retzlaff, Indal Retzlaff.
02370	Enco-Gutzalt Oakeyhtto: Finnharz, Finneagle, Finnarrow.

RYAN, WHALEY & COLDIRON

A Professional Corporation
Attorneys and Counselors at Law
900 Robinson Renaissance
119 North Robinson Avenue
Oklahoma City, Oklahoma 73102
Telephone: (405) 239-6040
Facsimile: (405) 239-6766
www.ryanwhaley.com

MICHAEL A. PETERS
mpeters@ryanwhaley.com
(405) 228-2137

July 17, 2006

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

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

RE: Submittal of Written Comments
Proposed Rulemaking - OAC 252:100-1, -8, -37, and -39
Definition of "Particulate Matter"

Dear Mr. Cook and Mr. Thomas:

The law firm of Ryan, Whaley & Coldiron ("RWC"), on behalf of Continental Carbon Company ("CCC"), respectfully submits the following written comments regarding the proposed rule changes to the Oklahoma Air Pollution Control Rules ("OAPCR") – Oklahoma Administrative Code ("OAC"), Title 252, Chapter 100, regarding the scope and applicability of the proposed definitions which impact the determination of "Particulate matter emissions." The following comments identify concerns regarding the proposed revisions which would specifically include both "Filterable particulate matter" and "Condensable particulate matter" in the determination of "Particulate matter emissions."

CCC appreciates the opportunity to submit comments on the proposed rule changes. To the extent possible, CCC would like to work with the DEQ to address the below comments and questions as the proposed rule changes have the potential to significantly affect ongoing operations and compliance determinations at a number of facilities (including CCC) currently operating in the State of Oklahoma.

COMMENTS AND QUESTIONS:

No. 1: The proposed changes to the definitions in OAC 252:100-1-3 of the OAPCR seek to specifically include both "Condensable particulate matter" and "Filterable particulate matter" in the determination of "Particulate matter" and "Particulate matter emissions." If promulgated as currently proposed, how will compliance with existing permit particulate matter ("PM") emission limitations (some of which are based solely on filterable PM (sometimes referenced as the "front half") be determined?

No. 2: If such rules are adopted, how will the DEQ allow/authorize industry to review existing permit PM emission limitations and revise the currently permitted emission limitations as necessary to account for potential PM emissions increases associated with the inclusion of condensable PM (sometimes referenced as the "back half") which were not previously required, identified or included in previous permit determinations?

No. 3: If such rules are adopted, and assuming the DEQ allows/authorizes industry the opportunity to revise existing PM emission limitations to incorporate condensable PM, will affected industry be authorized to continue current operations at currently permitted PM emission rates until such time as the permit emission limitations are revised?

No. 4: For those facilities which are currently subject to an NSPS standard which includes a PM emission limitation which has been adopted and/or otherwise incorporated in the currently applicable permit, will compliance with such limitation be based on the currently proposed PM definitions (i.e., filterable and condensable PM) or will compliance be based on filterable PM only as previously determined by EPA?

No. 5: How will the increased levels of water born, non-process related solids which are naturally occurring be accounted for by the DEQ?

No. 6: For those facilities which previously did not report condensable PM, will the DEQ require such facilities to file amended emissions inventory documents and remit past annual operating fees based on the indicated level of condensable PM?

No. 7: Will the DEQ seek to differentiate between process generated condensable PM vs. non-process generated condensable PM?

DISCUSSION:

Currently, numerous facilities located in the State of Oklahoma (including CCC's Ponca City plant) are subject to permit emission limitations addressing particulate matter ("PM") and/or PM with an aerodynamic diameter less than or equal to 10 micrometers ("PM₁₀"). Such permits either expressly state or otherwise indicate (based on the calculation methodology utilized and/or the compliance demonstration method specified) such limitations are based on and/or compliance is demonstrated based solely on the filterable PM emission rate. Such limits can be specifically stated in the permit or the associated permit memorandum that discusses the origination of the permit emission limitation, or it can be established by the performance testing methodology required pursuant to the permit to demonstrate compliance with such emissions limitations [*i.e.*, Reference Method 5-Determination of Particulate Matter Emissions From Stationary Sources ("Method 5") in Appendix A of the Standards of Performance for New Stationary Sources, 40 CFR Part 60 ("NSPS")]. Additionally, numerous existing permit PM emissions limitations are based on and/or directly incorporate applicable PM emission standards from the NSPS, compliance with which has historically been demonstrated pursuant to Method 5.¹

Reference Method 5 was originally proposed on August 17, 1971 by the U.S. Environmental Protection Agency ("EPA") as an appendix to the initially proposed NSPS (40 CFR part 466, §§ 466.10).² As proposed, PM emissions were determined based on the total amount of PM collected from the sum of the weights of the PM collected in the following containers of the test apparatus:

- Container No. 1 – glass fiber filter,
- Container No. 2 – loose PM and acetone washings from sample-exposed surfaces prior to the filter,
- Container No. 3a – water rinsings of all samples –exposed surfaces between the filter and fourth impinger (organic particulate extract fraction)
- Container No. 3b – silica gel from the fourth impinger (residual water fraction from spent silica), and
- Container No. 5 – acetone washings from all sample-exposed surfaces between the filter and fourth impinger.³

¹ For example, each of the following NSPS standards contain applicable PM emission standards:

- Subpart D-Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971 (40 CFR §§ 60.40 *et seq.*);
- Subpart Da-Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978 (40 CFR §§ 60.40a *et seq.*);
- Subpart Db-Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units (40 CFR §§ 60.40b *et seq.*);
- Subpart F-Standards of Performance for Portland Cement Plants (40 CFR §§ 60.60 *et seq.*);
- Subpart BB-Standards of Performance for Kraft Pulp Mills (40 CFR §§ 60.280 *et seq.*);
- Subpart OOO-Standards of Performance for Nonmetallic Mineral Processing Plants (40 CFR §§ 60.670 *et seq.*).

² See 36 Fed. Reg. 15704 (August 17, 1971); copy attached as Exhibit 1.

³ *Id.* at pp. 15715 and 15716.

Following public comment and further review by EPA, reference Method 5 was subsequently promulgated on December 23, 1971.⁴ As stated in the preamble to the final regulation, Method 5 was specifically limited to filterable PM (or the "front-half"):

1. Particulate matter performance testing procedures have been revised to eliminate the requirement for impingers in the sampling train. Compliance will be based only on material collected in the dry filter and the probe preceding the filter. ... (Emphasis added)⁵

As promulgated, the total particulate weight used to determine PM emissions pursuant to Reference Method 5 was based on the PM collected from the glass filter (Container No. 1) and the loose material and acetone washings from all sample-exposed surfaces *prior to the filter* (Container No. 2) which is commonly known as the filterable fraction or front-half of the Method 5 sampling train. The demonstrated methods of calculations contained in Method 5 to determine PM clearly show that only the filterable fraction or front-half results are considered in the calculus.⁶

Concerns regarding the inclusion of condensable PM or the back-half of the Method 5 sampling train were identified and discussed by EPA in response to subsequent rulemaking, where EPA explained its reasons for not using the back-half results from Method 5 as follows:

The citizens group suggested that the method for determining compliance with a mass particulate standard during pushing should be to analyze particulate matter caught in front and back halves of the sampling train. EPA believes that front half analysis is adequate to determine compliance with a mass particulate standard of .040 lb/ton of coke pushed, for a number of reasons. EPA agrees that a full train sampling methodology would capture some of the finer particulate matter which is not collected by the front half, but also *cautions that the back half train also tends to collect materials which condense or react in the impingers of the back half and which do not exist as particulate matter in the ambient air.* Therefore, while the front half analysis may permit a small quantity of very fine particulate to escape undetected, *the back half catch is generally not totally representative of the particulate matter which exists in the atmosphere.* Furthermore, EPA's Reference Method 5 does not specify a methodology for analyzing particulate matter captured in the back half of the sampling train. Finally, EPA notes that *all of the performance tests upon which EPA and the States have relied in their determinations that certain standards are RACT and are achievable are based upon measuring particulate matter which is captured in the front half of the sampling train.* (Emphasis added).⁷

As a result of this federal rule making which was adopted by Oklahoma and incorporated by reference in the OAPCR (*see* OAC 252:100-4-5), analysis and inclusion of condensable PM (the back-half of the Method 5 sampling train) has not previously been considered for purposes of determining compliance with existing NSPS PM emission standards or included in permit limits.

⁴ See 36 Fed. Reg. 24876 (December 23, 1971); copy attached as Exhibit 2.

⁵ *Id.* at p. 24876.

⁶ *Id.* at pp. 24889 and 24890

⁷ See 48 Fed. Reg. 54599, 54611 (December 6, 1983) (partial copy attached as Exhibit 3) commenting on and explaining the determination of PM pursuant to Method 5 testing.

Many facilities utilize captured rainwater and/or clean-up/wash down water as part of their process. This use/reuse of water reduces natural resource demand on surface and groundwater supplies. Recycled water contains increased levels of suspended and dissolved water solids; however, its use is encouraged by the Water Quality Division of the DEQ. The background level of water hardness in Oklahoma normally contains approximately 250 mg/liter (plus or minus 50 mg/liter) of dissolved and suspended solids. Therefore, a large portion of the condensable PM may be directly attributed to the beneficial use/reuse of water as encouraged by the DEQ.

To determine compliance with the proposed changes, a significant number of facilities will be required to undertake stack testing to determine potential emissions of condensable PM as previous permitting and required testing did not address the same. Certain emission sources (e.g., cooling towers, chillers, etc.) will require testing to determine their emissions. As these sources previously were not tested (let alone on a frequent basis), the inclusion of condensable PM could potentially reclassify such sources and/or previous modifications as being "major stationary sources" or resulting in "significant net emission increases," respectively, thereby triggering additional permit requirements. Further, to the extent condensable PM emissions were not previously identified or required to be reported, inclusion of the same could significantly impact (i.e., increase) the annual operating fees required to be paid by industry.

CONCLUSION:

The proposed revisions to the definitions of PM in the OAPCR carry with them significant and profound impacts for major sectors of industry currently operating in the State of Oklahoma and would create "noncompliance" by such rule change on CCC's plant unless appropriate consideration of increasing permitted PM emissions limitations is recognized and allowed. Such consideration should not impose unreasonable cost of compliance requirements on industry for back-half considerations that may or may not exist in the atmosphere.

We are cognizant of EPA's requirements for emission inventories to include condensable PM as well as other contaminants, in part, to allow an expanded use of dispersion modeling to predict ambient air concentrations in support of such things as attainment determinations/plans. Further, we are aware of additional PM test methods which have been promulgated over the past few years (or are expected to be promulgated in the near future) which specifically pertain to condensable PM. However, industry is currently subject to and required to comply with existing permit requirements and emissions limitations which were developed based on prior applicable requirements and test methods. Therefore, to the extent the proposed revisions to the PM definitions will, in many cases, contravene existing permit requirements, careful review, consideration (including the above-referenced comments), and permitting relief should be undertaken prior to or as part of the adoption of the proposed revisions. Otherwise, imposing such rule changes will unfairly impose noncompliance conditions and increased annual operating fee requirements on Oklahoma industry and could force shut downs or complete closures if such relief is not allowed as part of the rulemaking. This consideration is clearly indicated for a standard that has existed for 30 plus years and as part thereof, EPA specifically considered and rejected the need to incorporate such "back half" for permitting purposes.

Mr. Eddie Terrill and Mr. Max Price
July 17, 2006
Page 6 of 6

Upon your receipt and review, please contact me should you have any questions or wish to discuss the above comments in further detail prior to the July 19th, 2006 Air Quality Council meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Peters". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

MICHAEL A. PETERS
For the Firm

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

ATTORNEYS AT LAW

SAM P. DANIEL
WILLIAM C. ANDERSON
G. MICHAEL LEWIS
LAWRENCE T. CHAMBERS, JR.
DALLAS E. FERGUSON
SAM G. BRATTON II
GARY M. McDONALD
H. WAYNE COOPER
KEVIN C. COUTANT
RICHARD P. HIX
WILLIAM F. RIGGS
LEWIS N. CARTER
LINDA C. MARTIN
JAMES P. McCANN
RICHARD H. FOSTER
CHARLES S. PLUMB
LEONARD I. PATAKI
S. DOUGLAS DODD
ELISE DUNITZ BRENNAN
JON E. BRIGHTMIRE
TOM Q. FERGUSON
RICHARD J. EAGLETON
REBECCA M. FOWLER
MICHAEL C. REDMAN
STEVEN K. METCALF
RUSSELL W. KROLL

320 SOUTH BOSTON AVENUE, SUITE 500
TULSA, OKLAHOMA 74103-3725
TELEPHONE (918) 582-1211
FACSIMILE (918) 591-5360

ONE LEADERSHIP SQUARE, SUITE 501
211 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102-7112
TELEPHONE (405) 319-3500
FACSIMILE (405) 319-3509

WRITER'S DIRECT:
(918) 591-5330 (telephone)
(918) 925-5330 (facsimile)
rkroll@dstda.com

RACHEL BLUE
JAMES C. MILTON
AUDRA K. HAMILTON
WILLIAM H. SPITLER
YOUNG PEI
JOHNATHAN D. HORTON
ROBERT SPOO
LESLEY FORD RICHER
N. LANCE BRYAN
CHAD J. KUTMAS
HEATHER FLYNN EARNHART
MCLAINE DEWITT HERNDON
ELIZABETH W. CARROLL
RAYMOND H. TIPTON, III

Of Counsel:
VARLEY H. TAYLOR, JR.
MICHAEL MINNIS & ASSOCIATES, P.C.
MICHAEL MINNIS
DAVID McCULLOUGH
HARRY V. ROUSEY, P.C.
JAMES F. HARVEY, III
CYNTHIA J. BECKER

E. J. DOERNER (1897-1980)
DICKSON M. SAUNDERS (1920-2001)

July 18, 2006

Mr. Max Price
Oklahoma Department of
Environmental Quality
Air Quality Division
707 North Robinson
P.O. Box 1677
Oklahoma City, OK 73101-1677
max.price@deq.state.ok.us

Re: Proposed Rules Amending Chapter 100 of Title 252 of the Oklahoma
Administrative Code Proposed June 15, 2006, before the Air Quality Council on
July 19, 2006

Dear Mr. Price:

We represent Public Service Company of Oklahoma ("PSO") and are submitting these comments on its behalf on the Proposed Rules Amending Chapter 100 of Title 252 of the Oklahoma Administrative Code, published at 23 Okla. Reg. 19 on June 15, 2006. Our comments primarily focus on Subchapter 1.

EXECUTIVE SUMMARY

The ODEQ proposed permanent rulemaking on June 15, 2006, which is set for hearing before the Air Quality Council on July 19, 2006. One aspect of the proposed rules is a change in the definition of "particulate matter emissions" to include condensable particulate matter or PM-2.5. In the Rule Impact Statement, ODEQ has described the proposed rules as merely clarifying the existing rules. We do not agree that the proposed change is merely a clarification.

In the Rule Impact Statement, ODEQ states that no persons will be impacted by the proposed rules and that no new costs will be associated with them as well. If the new rules are

promulgated as currently drafted, they will have a significant impact to regulated entities in the State of Oklahoma.

The proposed rules depart from the long-standing definition of “particulate matter” and “particulate matter emissions”, which include only liquid or solid in a finely divided form. The proposed definition broadens the current definition to include materials that exist as vapor when exiting a source, but condense in certain testing equipment. This proposed expansion in the definition is not a clarification but a new substantive requirement of the regulations.

We believe that for many regulated entities in the State of Oklahoma, ODEQ has not previously required that condensable particulate matter be counted to determine compliance with various state particulate matter regulations. We believe ODEQ’s records will show that many entities’ permits incorporated a test method that captured only filterable particulate matter. Accordingly, for many entities, the requirement of the proposed rules to include condensable particulate matter, may affect the ability of their facilities to achieve and maintain compliance with applicable particulate matter standards.

Additionally, the proposed regulations will have a significant impact on air emissions fees paid by such entities. We believe that a significant number of entities in the State of Oklahoma have reported particulate matter emissions in annual air emissions inventories based upon test results or emissions factors that did not include condensable particulate matter within their scope. Because inclusion of condensable particulate matter will increase the reported quantity of emissions, the air emissions fees paid by the regulated community to ODEQ will increase as a result of the proposed regulations. In recent stack tests at PSO’s NE station, coal fire generation units, condensable particulate matter was about twice the amount of filterable particulate matter shown by a Method 5 test result. Thus, in some circumstances, the admissions fees paid based on particulate matter emissions could double or triple as a result of the proposed regulations.

Furthermore, some of the proposed regulations are more stringent than federal law, and as a result, cannot be implemented without the justification analysis set forth in 27A O.S. § 1-1-206. In the case of PSO’s Northeastern Station, the applicable federal New Source Performance Standard (“NSPS”) does not require condensable particulate matter to be included to establish compliance with the applicable federal standard in 40 C.F.R. § 60.42 for steam generating equipment. PSO has historically relied on an interpretation of the equivalent applicable state particulate matter regulations as not including condensable particulate matter, consistent with federal law. The proposed regulations now including condensable particulate matter, have the potential to be more stringent than applicable federal regulations for steam generating equipment. We expect other industries may be similarly affected.

Oklahoma law requires that before a state regulation that is more stringent than federal requirements can be proposed, the ODEQ must prepare a justification analysis of the economic impact compared to the environmental benefit of the rule, which must be submitted to the Governor and State Legislature. To our knowledge, this required analysis has not been performed and, if that is the case, applicable rulemaking procedures have not been followed. The

Rule Impact Statement states that the proposed regulations will not have any impact on public, health, safety or the environment.* It thus appears that no information on any benefit of the proposed rule has been developed by ODEQ.

PSO has made open records requests to ODEQ for the purpose, among other things, of determining ODEQ's practice with respect to requiring condensable particulate matter to be included for the purpose of determining compliance with applicable particulate matter standards. Additionally, open records requests have been made to determine to what extent air emissions fees paid by industries have historically been based on particulate matter measurements that do not include condensable particulate matter. This data is necessary to understand the extent of the impact on the regulated community of the proposed rules and was required by Oklahoma law to have been examined by ODEQ prior to this stage of the rulemaking process. The current rulemaking cannot legally proceed absent an analysis of this data. PSO's open records requests are pending.

PSO requests that the proposed rules not be considered for approval unless and until ODEQ develops the required data, and follows the applicable procedures. PSO reserves the right to submit additional comments as more information becomes available.

DISCUSSION

The Oklahoma Department of Environmental Quality ("ODEQ") published a notice of proposed permanent rulemaking in the Oklahoma Register on June 15, 2006.¹ Among other things, ODEQ is proposing to amend Okla. Admin. Code § 252:100-1-3 to change the definitions of "PM-10 emissions" and "particulate matter emissions" to include both filterable and condensable particulate matter.² Additionally, ODEQ proposes to add definitions for "filterable particulate matter," "condensable particulate," and "PM-2.5" as follows:

Condensable particulate matter means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack. Condensable particulate matter is considered PM-2.5.

Filterable particulate matter means particles that are directly emitted by a source as a solid or liquid at stack or release conditions and captured on the filter of a stack test train.

PM-2.5 means condensable and/or filterable particulate matter with a nominal aerodynamic diameter of 2.5 micrometers or less.³

¹ 23 Okla. Reg. 19 (June 15, 2006).

² Id.

³ Id.

Pursuant to the Oklahoma Administrative Procedure Act (APA),⁴ ODEQ issued a Rule Impact Statement, which states the purpose of the definition changes is “to clarify and/or remove redundant definitions.”⁵ In assessing who would bear the costs of the proposed amendment and the probable economic impact upon the persons bearing the cost, the ODEQ predicted no new costs associated with these rule changes because “the proposed changes do not add any new requirements.”⁶ Additionally, ODEQ determined the proposed changes “will have no net effect on public health, safety or environment.”⁷

1. The ODEQ’s Proposed Definitional Changes May Have Great Economic Impact.

Okla. Admin. Code § 252:100-1-3 currently defines “particulate matter” as “any material that exists in a finely divided form as a liquid or a solid.” The term “particulate matter emissions” is defined as “particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.”⁸

The proposed regulation is fundamentally changing these definitions to now include a different form of matter (i.e. vapor) in addition to liquid and solid that is emitted from a source as part of particulate matter. From the plain language of the regulations, it is apparent that the proposed change fundamentally modifies the regulations in a substantive way.

Moreover, the proposal modifies by implication the Reference Test Methods that can be employed to determine “particulate matter emissions.” The regulations contain no definition for “applicable reference methods.” Acceptable methods are set forth at OAC 252:100-43-5, which states:

Acceptable testing methods for determining compliance with all state emissions limits include, as applicable:

[M]ethods required by rule or permit, ASTM methods, and methods contained in 40 CFR parts 51, 60, 61 and 75. The owner or operator may modify an acceptable method or use an alternate method, if the owner or operator can demonstrate to the satisfaction of the Director that:

- (1) proposed modification or alternative method is necessary;
- (2) the results of the proposed modification or alternative method will be at least as accurate as the unmodified method for the purpose intended; and

⁴ Okla. Stat. tit. 75, Chap. 8 Administrative Procedure Act.

⁵ ODEQ Rule Impact Statement for Air Pollution Control Rules Subchapters 1, 8, 37 and 39.

⁶ Id.

⁷ Id.

⁸ Okla. Admin. Code § 252:100-1-3 (2006).

(3) such modification or alternative method is allowed by any applicable federal rule.⁹

The proposed amendments change the definition of “particulate matter” and “particulate matter emission” to include both condensable and filterable particulate matter. Some acceptable testing methods, however, only measure “filterable particulate matter.” For example, Test Method 5 as described in 40 C.F.R. Part 60, Appendix A measures only filterable or front half particulate matter to determine if a source is in compliance with New Source Performance Standards.¹⁰ In contrast, Test Method 202, as described in 40 C.F.R. Part 51 Appendix M, measures condensable particulate matter.¹¹ In altering the definition of “particulate matter,” the ODEQ is effectively limiting the acceptable testing or measuring methods to only those methods that measure both filterable and condensable particulate matter. Contrary to the ODEQ’s Rule Impact Statement, to the extent facilities have used Test Method 5 to determine compliance or report emissions, this may have a great economic impact on regulated entities.

For example, new testing methods could affect emission inventories and subsequent operating fees. The ODEQ requires the owner or operator of any facility that is a source of air emissions to submit an annual emission inventory.¹² The owner or operator bears the burden of selecting the best available data at the time he/she prepares the emission inventory “based on an acceptable method of calculation.”¹³ Acceptable methods of calculation include stack tests “using appropriate EPA test methods.”¹⁴ The ODEQ calculates operating fees “on a source-specific basis and based on actual emissions of regulated pollutants (for fee calculation) as set forth in the facility emission inventory...” If the applicable test methods now are limited to those measuring condensable particulate matter, emissions inventories will be affected.

Not only could the new tests affect operating fees, they could also affect construction and operating permits. The ODEQ prohibits causing or allowing the construction or installation of any new minor facility without first obtaining an ODEQ-issued air quality construction permit.¹⁵ A construction permit is also necessary for adding a piece of equipment or process “that results in an increase in actual emissions of any one regulated air pollutant by more than 5 tpy at an existing facility covered by an individual permit.”¹⁶ Applications for individual and general permits must provide data and information “required by this Chapter on an application form available from the ODEQ.” This data and information includes emission data. Furthermore, the

⁹ Id. at § 252:100-43-5.

¹⁰ 40 C.F.R. Part 60 Appendix A

¹¹ 40 C.F.R. Part 51 Appendix M

¹² Okla. Admin. Code § 252:100-5-2.1.

¹³ Id. at § 252:100-5-2.1(d).

¹⁴ Id. at § 252:100-5-2.1(d)(2).

¹⁵ Id. at § 252: 100-7-15.

ODEQ prohibits causing or authorizing the operation of a new or modified minor facility for more than a sixty day period without applying for a ODEQ permit to operate. Before granting a permit to operate a new or modified minor facility, the ODEQ may require emissions tests in accordance with methods approved by the ODEQ. The ODEQ incorporates and enforces the emission limitations established and made a part of a construction permit in the subsequently issued operating permit.¹⁷

Importantly, limited testing methods will affect any facility currently meeting particulate matter emission standards utilizing a testing method that only measures filterable particulate matter. By limiting the testing methods available to tests that measure additional emissions, the ODEQ is essentially lowering the standard for particulate emissions in many cases, with a commensurate cost to the facility.

2. The ODEQ's Proposed Definitional Amendments Are Substantive Changes That Affect Individual Rights And Not Mere Clarifications.

Oklahoma courts have addressed whether an amendment changes or merely clarifies an existing rule in the context of applying amendments retrospectively. The Oklahoma Supreme Court has found generally statutes operate prospectively unless the Legislature clearly expresses a contrary intent.¹⁸ Courts may, however, apply retrospectively a new rule that simply clarifies an old one, only if it does not impair vested rights.¹⁹

The ODEQ's proposed definitional changes will impact regulated entities for the reasons stated above. The ODEQ's amendments do not clarify these standards, but rather they alter a person's substantive rights by effectively changing substantive particulate matter standards by inclusion of condensable material in particular the proposed definition of particulate matter.

Oklahoma's original definitions of "particulate matter" and "particulate matter emissions" were patterned after the EPA's guidance to the state's for development of state implementation plans ("SIPS"). See 40 C.F.R. 51.100(oo), (pp). As such Oklahoma's definitions are similar to the definitions used by other states. In 1990, EPA revised its regulations to emphasize that states not clearly setting forth the requirements and test methods to include condensables in particulate matter were required to amend their SIPs to specifically provide for this. 55 Fed. Reg. 14246 (April 17, 1990) ("If a state intends to require the

¹⁷ Id. at § 252:100-7-18(d)(1).

¹⁸ Forest Oil Corp. v. Corp. Comm'n of Okla., 807 P.2d 774, 781-82 (Okla. 1990) (citing Matter of McNeely, 734 P.2d 1294, 1296 (Okla. 1987); Seal v. Corp. Comm'n, 725 P.2d 278, 294 (Okla. 1986); Hammons v. Muskogee Medical Center Auth., 697 P.2d 539, 542 (Okla. 1985)).

¹⁹ See Texas County Irrigation, 803 P.2d at 1122 (citing Magnolia Pipeline Co. v. Okla. Tax Comm'n, 167 P.2d 884, 888 (Okla. 1946) ("Where the earlier statute definitely expressed an intent or had been judicially interpreted, the legislature is presumed to have changed an existing law, but where the meaning of the earlier statute was in doubt or where the conflict as to the law's meaning did exist, a presumption arises that the amendment was designed to "more clearly express the legislative intent previously indefinitely expressed").

measurement of condensable emissions, then an enforceable method for the measurement of condensable emissions shall also be included in the SIP”). Other states that include condensable particulate matter have amended their regulations to clearly add this requirement. For instance, Texas defines “particulate matter” as “any materials, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions” as well as the test requirement using Method 5 “modified to include particulate caught by an impinger train.” Tex. Admin. Code tit. 30, Sec. 101.1.

It is clear that the EPA did not think the definitions of “particulate matter” and “particulate matter emissions” that were included in the original SIP guidance to states, and upon which Oklahoma’s definitions were based included condensable particulate matter. This clearly supports the conclusion that ODEQ’s proposed regulations constitute new requirements, not clarifications of existing rules.

In discussions with ODEQ representatives, we have been told that it is ODEQ’s current policy to include condensable particulate matter for purposes of determination of compliance with Oklahoma’s particulate matter standards. Based upon ODEQ’s responses, if such a policy exists, it has never been submitted to EPA for inclusion in Oklahoma’s SIP. Nor has it ever been promulgated in a regulation or rule. To the extent such a policy exists, it has not been through the required rulemaking procedures and therefore cannot form the basis of an enforceable regulation.

In discussions with ODEQ representatives, we have also been told that the regulatory basis for the ODEQ’s current policy lies in OAC 252:100-42-4, which purportedly gives the Director discretion to require certain tests to determine compliance. Assuming for the purposes of argument only that it does, the proposed rulemaking, to the extent it now requires condensables to be measured to determine compliance, takes the matter away from the discretion of the Director. This again supports the conclusions that the proposed regulation is a new requirement, not a clarification of existing rules.

3. Oklahoma Law, Which Requires an Economic Cost-Benefit Analysis to Precede State Air Rules That Are More Stringent Than Federal Standards, Has Not Been Met

Okla. Stat. tit 27A, § 1-1-206 requires each state environmental agency, prior to submitting for public comment and review any rule more stringent than corresponding federal requirements, to determine the economic impact and the environmental benefit of the rule on the people of Oklahoma, unless a state statute authorizes such stringency.²⁰ The agency must issue this written determination prior to or within fifteen days after the date of publishing the proposed permanent rule adoption notice and must submit the statement to the Governor and the Legislature pursuant to the APA,²¹ along with any public comments and agency responses

²⁰ Okla. Stat. tit 27A, § 1-1-206(A) (2006). The Legislature passed this statute in 1994, and it became effective Sept. 1, 1994.

²¹ Id.; See Okla. Stat. tit. 75, §§ 303.1, 308.

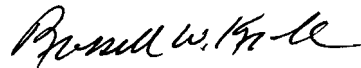
July 18, 2006

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concerning the statement “demonstrating a reasoned evaluation of the relative impacts and benefits of the more stringent regulation.”²² We understand that no analysis of this has been performed to date and accordingly, the procedural rules applicable to the proposed regulations have not been met.

For the above and foregoing reasons, PSO requests that the proposed rules not be considered for approval.

Sincerely,



Russell W. Kroll of
DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

RWK:ta

²² Id. at § 1-1-206(B) and (C).

Marshment, Nancy

Subject: FW: Please review OK proposed revisions {COMMENTS}

-----Original Message-----

From: Shar.Alan@epamail.epa.gov [mailto:Shar.Alan@epamail.epa.gov]
Sent: Wednesday, March 21, 2007 10:48 AM
To: Bradley, Cheryl
Subject: Fw: Please review OK proposed revisions

----- Forwarded by Alan Shar/R6/USEPA/US on 03/21/2007 10:45 AM -----

Alan
Shar/R6/USEPA/US

03/19/2007 03:03
PM

Carrie Paige/R6/USEPA/US

To

cc

Subject

Re: Please review OK proposed
revisions (Document link: Alan
Shar)

Carrie - My comment in blue:

The current 252:100-1-3 (Definitions) states "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.

Although this specific portion of the Definitions is not being proposed for revision at this time, for consistency purposes we recommend that ODEQ adopt EPA's long standing definition of RACT from 44 FR 53761, September 17, 1979 "the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility" in 252:100-1-3.

Alan

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Number 17
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Pages 1011 - 1482

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MAY 15 2008

DEQ LEGAL

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The proposed changes to the Water Quality Application Tier rules clean up language to make the classifications of Tier I permits consistent, clarify that modifications to or the addition of impoundments to an existing permitted industrial wastewater system is a Tier I application, and add language to clarify that a new industrial wastewater treatment system application is classified as a Tier II.

CONTACT PERSON:

Donald D. Maisch, don.maisch@deq.state.ok.us, at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

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, 2008:

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 7. WATER QUALITY DIVISION TIERS AND TIME LINES

252:4-7-73. Water quality applications - Tier I

The following water quality authorizations require Tier I applications.

- (1) Permit for flow-through impoundment(s) as part of the pretreatment process.
- (2) Permit renewal for a facility with an expiring permit for industrial non-discharging impoundment or industrial septic tank system.
- (3) Permit renewal for an expiring permit with minor or no change(s) for land application of sludge and/or wastewater for same site.
- (4) New, modified or renewed authorization under a general permit.
- (5) Approval of new pretreatment program.
- (6) Closure plan approval.
- (7) Certifications issued pursuant to Section 401 of the Clean Water Act.
- (8) Approval of exemption for water line extensions.
- (9) Approval of exemption for water distribution and wastewater collection systems.
- (10) Approval for alternative individual on-site sewage treatment systems.
- (11) Approval for alternative small public on-site sewage treatment systems.
- (12) Residential development approval.
- (13) Transfer of discharge permit.
- (14) Minor modification of discharge permit.
- (15) Modification of an existing individual municipal permit for land application of biosolids and/or wastewater.

- (16) Modification of or addition to a an existing permitted municipal wastewater treatment system (including sewer line extensions).
- (17) Modification of or addition to a an existing permitted public water supply treatment and/or distribution system (including line extensions).
- (18) Modification of or addition to an existing permitted industrial non-discharging impoundment, and/or industrial septic tank system, and/or industrial wastewater treatment system permit.
- (19) Modification of an approved pretreatment program.
- (20) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.
- (21) New, modified or renewed individual categorical or significant industrial user pretreatment permit.
- (22) Modification of or addition of impoundment(s) to an existing permitted industrial wastewater treatment system.

252:4-7-74. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

- (1) Permit to construct a new municipal wastewater treatment, and/or collection system, excluding line extensions.
- (2) Permit to construct a new public water supply treatment and/or distribution system, excluding water line extensions.
- (3) New discharge permit for minor facility.
- (4) Individual storm water permit.
- (5) New permit for industrial non-discharging impoundment, or industrial septic tank, or industrial wastewater system.
- (6) New individual permit for land application of sludge, biosolids and/or wastewater.
- (7) Permit renewal for a facility with expiring discharge permit.
- (8) Permit renewal for a facility with expiring individual storm water discharge permit.
- (9) Variance including thermal components of effluent limitations for an individual discharge permit.
- (10) Major modification of discharge permit.
- (11) Modification of an individual industrial permit for land application of sludge and/or wastewater.
- (12) New, modified or renewed general permit.

[OAR Docket #08-645; filed 4-11-08]

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

[OAR Docket #08-646]

RULEMAKING ACTION:
PERMANENT final adoption

Permanent Final Adoptions

RULES:

Subchapter 1. General Provisions
252:100-1-3. Definitions [AMENDED]
Subchapter 8. Permits for Part 70 Sources
Part 1. General Provisions
252:100-8-1.1. Definitions [AMENDED]
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)
Part 1. General Provisions
252:100-37-2. Definitions [AMENDED]
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Part 1. General Provisions
252:100-39-2. Definitions [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and 2-5-101 *et seq.*

DATES:

Comment period:

June 15, 2006, through July 18, 2007
July 18, 2007

Public hearing:

July 19, 2006
October 18, 2006
April 18, 2007
July 18, 2007
November 15, 2007

Adoption:

November 15, 2007

Submitted to Governor:

November 26, 2007

Submitted to House:

November 26, 2007

Submitted to Senate:

November 26, 2007

Gubernatorial approval:

December 27, 2007

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 27, 2008

Final adoption:

March 27, 2008

Effective:

July 1, 2008

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The Department is proposing amendments to the Chapter 100 definition sections 252:100-1-3, 252:100-8-1.1, 252:100-37-2 and 252:100-39-2 to clarify and/or remove redundant definitions from Chapter 100. Among the proposals is a refined definition for volatile organic compounds including an exemption for tert-butyl acetate (TBAc). These changes will clarify these terms as they are meant to be used in the Chapter.

CONTACT PERSON:

Cheryl Bradley, 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 JULY 1, 2008:

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.

"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.

"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.

"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

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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 than or equal to a nominal 10 micrometers, as measured during a stack test of the source's emissions by applicable reference methods, or an equivalent or alternative method.

"PM-10 (particulate matter—10 micrometers)" means particulate matter with an aerodynamic diameter of 10 micrometers or less than or equal to a nominal 10 micrometers as measured by a federal reference method based on Appendix J of 40 CFR Part 50.

"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.

"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

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which is passed into the atmosphere and which is perceptible to the human eye.

"Volatile organic compound" or "VOC" means any ~~compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonates,~~ organic compound which 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 Any organic compound ~~compounds~~ listed in 40 CFR 51.100(s)(1) ~~will be~~ are presumed to have negligible photochemical reactivity and ~~will be~~ are not ~~be~~ considered to be a VOC.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 1. GENERAL PROVISIONS

252:100-8-1.1. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this section, terms used in this Subchapter retain the meaning accorded them under the applicable requirements of the Act.

"A stack in existence" means for purposes of OAC 252:100-8-1.5 that the owner or operator had:

- (A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or
- (B) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

"Actual emissions" means, except for Parts 7 and 9 of this Subchapter, the total amount of any regulated air pollutants emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

"Adverse impact on visibility" means, for purposes of Parts 7 and 11, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made by the DEQ on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

"Dispersion technique" means for purposes of OAC 252:100-8-1.5 any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height; varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations

of that pollutant; or increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters or combining exhaust gases from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceding sentence does not include:

- (A) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
- (B) The merging of exhaust gas streams where:
 - (i) the source owner or operator documents that the facility was originally designed and constructed with such merged streams;
 - (ii) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from "dispersion technique" applicability shall apply only to the emission limitation for the pollutant affected by such change in operation; or
 - (iii) before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation existed prior to the merging, there was an increase in the quantity of pollutants actually emitted prior to the merging, it shall be presumed that merging was primarily intended as a means of gaining emissions credit for greater dispersion. Before such credit can be allowed, the owner or operator must satisfactorily demonstrate that merging was not carried out for the primary purpose of gaining credit for greater dispersion.
- (C) Manipulation of exhaust gas parameters, merging of exhaust gas streams from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise in those cases where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emission limitations and emission standards" means for purposes of OAC 252:100-8-1.5 requirements that limit the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to assure continuous reduction.

"Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

"Secondary emissions" means, for purposes of Parts 7 and 9 of this Subchapter, emissions which occur as a result of the construction or operation of a major stationary source or

modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

- (A) emissions from trains coming to or from the new or modified stationary source; and,
- (B) emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or modification.

"**Stack**" means for purposes of OAC 252:100-8-1.5 any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct but not including flares.

"**Visibility impairment**" means any humanly perceptible reduction in visibility (light extinction, visual range, contrast, and coloration) from that which would have existed under natural conditions.

SUBCHAPTER 37. CONTROL OF EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCS)

PART 1. GENERAL PROVISIONS

252:100-37-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

"**Acrylic**" means a chemical coating containing polymers or co-polymers of acrylic or substitute acrylic acid in combination with resinous modifiers. The primary mode of cure is solvent evaporation.

"**Alkyd primer**" means a chemical coating composed primarily of alkyd applied to a surface to provide a firm bond between the substrate and any additional coating.

"**Condensate**" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature and/or pressure and remains liquid at normal operating conditions.

"**Custom product finish**" means a proprietary chemical coating designed for a specific customer and use.

"**Drilling or production facility**" means all drilling and servicing equipment, wells, flow lines, separators, equipment, gathering lines, and auxiliary non-transportation-related equipment used in the production of petroleum but does not include natural gasoline plants.

"**Effluent water separator**" means any container in which any VOC floating on, entrained in, or contained in water entering the container is physically separated and removed from the water prior to discharge of the water from the container.

"**Epoxy**" means a chemical coating containing epoxy groups and suitable chemical cross-linking agents. The primary mode of cure involves a chemical reaction between the epoxy and the cross-linking agent.

"**External floating roof**" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

"**Lease custody transfer**" means the transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other form of transportation.

"**Maintenance finish**" means a chemical coating that protects a given substrate from adverse chemical or physical conditions.

"**Nitrocellulose lacquer (NC lacquer)**" means a chemical coating containing nitrocellulose and suitable resinous modifiers. The primary mode of cure is solvent evaporation.

"**Submerged fill pipe**" means any fill pipe or discharge nozzle that meets any one of the following conditions.

(A) The bottom of the discharge pipe or nozzle is below the surface of the liquid in the receiving vessel for at least 95 percent of the volume filled.

(B) The bottom of the discharge pipe or nozzle is less than 6 inches from the bottom of the receiving vessel.

(C) The bottom of the discharge pipe or nozzle is less than 2 pipe or nozzle diameters from the bottom of the receiving vessel.

"**Vinyl**" means a chemical coating containing plasticized or unplasticized polymers and co-polymers of vinyl acetate, vinyl chloride, polyvinyl alcohols or their condensation products. The primary mode of cure is solvent evaporation.

"**Volatil organic compound (VOC)**" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. Any organic compound listed in 40 CFR 51.100(s)(1) will be presumed to have negligible photochemical reactivity and will not be considered to be a VOC.

SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCS) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS

PART 1. GENERAL PROVISIONS

252:100-39-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

"**Petroleum refinery**" means any facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of crude oil or other hydrocarbons or through redistillation, cracking, rearrangement or reforming or unfinished petroleum derivatives.

July 16, 2008
Air Quality Advisory Council

August 19, 2008
Environmental Quality Board

Effective Date: July 1, 2009

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 #08-1002]

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 5. Registration, Emission Inventory and Annual Operating Fees
 - 252:100-5-1.1. Definitions [AMENDED]
- Subchapter 8. Permits for Part 70 Sources
 - Part 5. Permits for Part 70 Sources
 - 252:100-8-2. Definitions [AMENDED]
 - 252:100-8-4. Requirements for construction and operating permits [AMENDED]
 - Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
 - 252:100-8-30. Applicability [AMENDED]
 - 252:100-8-31. Definitions [AMENDED]
 - 252:100-8-33. Exemptions [AMENDED]
 - 252:100-8-37. Innovative control technology [AMENDED]
 - 252:100-8-38. Actuals PAL [AMENDED]
 - Part 9. Major Sources Affecting Nonattainment Areas
 - 252:100-8-50. Applicability [AMENDED]
 - 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]
 - 252:100-8-53. Exemptions [AMENDED]
 - 252:100-8-54.1. Ozone and PM-10 precursors [NEW]
 - 252:100-8-55. Source obligation [AMENDED]
 - 252:100-8-56. Actuals PAL [AMENDED]
 - Subchapter 9. Excess Emission Reporting Requirements
 - 252:100-9-1. Purpose [AMENDED]
 - 252:100-9-1.1. Applicability [NEW]
 - 252:100-9-2. Definitions [AMENDED]
 - 252:100-9-3.1. Excess emission reporting requirements [AMENDED AND RENUMBERED TO 252:100-9-7]

252:100-9-3.3. Demonstration of cause [AMENDED AND RENUMBERED TO 252:100-9-8]

252:100-9-7. Excess emission reporting requirements [NEW]

252:100-9-8. Affirmative defenses [NEW]

Subchapter 33. Control of Emission of Nitrogen Oxides

252:100-33-1.1. Definitions [AMENDED]

252:100-33-1.2. Applicability [AMENDED]

252:100-33-2. Emission limits [AMENDED]

SUMMARY:

Staff is proposing to amend the definitions sections in OAC 252:100-1-3, 252:100-1-4 and 252:100-5-1.1 to remove redundant definitions.

The Department is proposing revisions to OAC 252:100-8 that will correct errors in the existing rule; make changes required by revisions to the federal rule published in the *Federal Register* on November 29, 2005, May 1, 2007, and June 13, 2007; and resolve a conflict between OAC 252:100-8-4(b)(8) and 252:100-8-7.1(d) regarding permit renewal and expiration.

The Department is proposing to amend OAC 252:100-9, Excess Emission Reporting Requirements, to clarify its requirements and make them more compatible with EPA guidelines.

The Department is proposing to revise OAC 252:100-33 to resolve issues regarding emission standards for direct-fired fuel burning equipment, standards for fuel burning equipment that uses more than one type of fuel, and equipment with technological limitations.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101 and 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 hearing on July 16, 2008. For comments received at least 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 and provide hard copy written responses to the comments to the Council and the public at that Council meeting. Oral comments may be made at the July 16, 2008, hearing and at the August 19, 2008, Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, July 16, 2008, at the 4th Street Clubhouse, 1500 4th St., Ponca City, Oklahoma.

Notices of Rulemaking Intent

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, August 19, 2008, at the Red River Technology Center, Business and Industry Building, Room 108, 3300 W. Bois D'Arc, Duncan, 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 of the EPA regulations and 27A O.S., § 2-5-107(6)(c).
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 at the Air Quality Division of the Department at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm.

or copies may be obtained from the Department by calling Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained by contacting Cheryl E. Bradley at (405) 702-4100.

CONTACT PERSON:

Please send written comments on the proposed rule changes to Cheryl E. Bradley at cheryl.bradley@deq.state.ok.us. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl Bradley. The Air Quality Division FAX is (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)702-4216. 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 #08-1002; filed 5-21-08]

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

**July 16, 2008, 9:00 a.m.
4th Street Clubhouse, 1500 4th Street
Ponca City, OK**

Please turn off cell phones.

1. **Call to Order - David Branecky, Chair**
2. **Roll Call - Myrna Bruce**
3. **Approval of Minutes - April 16, 2008 Regular Meeting**
4. **Resolution for Mr. Martin - David Branecky, Chair**
5. **Public Rulemaking Hearings**

- A. OAC 252:100-1. General Provisions [AMENDED]
OAC 252:100-5. Registration, Emission Inventory and Annual Operating Fees
[AMENDED]**

passed to EQB

The Department proposes to amend the definitions sections in OAC 252:100-1-3, 252:100-1-4 and 252:100-5-1.1 to remove redundant definitions.

1. Presentation - Max Price, Environmental Programs Specialist, DEQ Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and action by the Council, which may include a roll call vote on permanent adoption

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

passed to EQB

The Department is proposing to amend Subchapter 8 to correct errors in the existing rule; make changes required by revisions to the federal rule published in the *Federal Register* on November 29, 2005, May 1, 2007, and June 13, 2007; and resolve a conflict between OAC 252:100-8-4(b)(8) and 252:100-8-7.1(d) regarding permit renewal and expiration.

1. Presentation - Dr. Joyce Sheedy, Engineer, DEQ Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and action by the Council, which may include a roll call vote on permanent adoption

- C. OAC 252:100-9. Excess Emission Reporting Requirements [AMENDED]**

held over to Oct

The Department is proposing to amend Subchapter 9 to clarify its requirements and make them more compatible with EPA guidelines.

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

D. OAC 252:100-33. Control of Emission of Nitrogen Oxides [AMENDED]

*heldover
to Oct*

The Department is proposing to revise OAC 252:100-33 to resolve issues regarding emission standards for direct-fired fuel burning equipment, standards for fuel burning equipment that uses more than one type of fuel; and equipment with technological limitations.

1. Presentation - Dr. Joyce Sheedy, Engineer, DEQ Air Quality Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and action by the Council, which may include a roll call vote on 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

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.

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);
- (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 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 HAP's, 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 tons per year ("tpy")~~ TPY or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, ~~25 tpy~~ 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~~ TPY or more of any regulated air pollutant (~~except that fraction of particulate matter that exhibits an average aerodynamic particle diameter of more than 10 micrometers~~ GPM) (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 TPY or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50-tpy TPY or more in areas classified as "serious," 25-tpy TPY or more in areas classified as "severe," and 10-tpy TPY or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10-tpy 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 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 TPY or more of carbon monoxide; and
 - (iv) For particulate matter (PM-10) non-attainment areas classified as "serious," sources with the potential to emit 70-tpy TPY or more of PM-10.

"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.

~~**"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 operation of one or more manufacturing, 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 Subchapter, 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 in so far 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 Subchapter.~~~~

"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.

"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.

252:100-8-4. Requirements for construction and operating permits

(a) Construction permits.

(1) **Construction permit required.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit. A construction permit is also required prior to reconstruction of a major affected source under 40 CFR Part 63, reconstruction of a major source if it would then become a major affected source under 40 CFR 63, or for any physical change that would be a significant modification under OAC 252:100-8-7.2(b)(2). In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

(2) Requirement for case-by-case MACT determinations.

(A) **Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from

regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

(B) **Exclusions.** The following sources are not subject to this subsection.

(i) Electric utility steam generating units unless and until these units are added to the source category list.

(ii) Stationary sources that are within a source category that has been deleted from the source category list.

(iii) Research and development activities as defined in 40 CFR § 63.41.

(C) **MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

(b) **Operating permits.**

(1) **Operating permits required.** Except as provided in subparagraphs (A) and (B) of this section, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

(A) If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

(B) If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

(C) Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.** Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in OAC 252:100-8-4(b)(4). A timely application is one that is postmarked on or before the relevant date listed below. In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.

(4) **Application submittal schedule.** The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule.

(A) No later than September 5, 1996:

(i) Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act,

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(ii) Any owner or operator shall submit no less than one-third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):

- (I) Petroleum and Natural Gas, 1311;
- (II) Natural Gas Liquids, 1321;
- (III) Electric Services, 4911, 4961;
- (IV) Natural Gas Transmission, 4922;
- (V) Natural Gas Transmission and Distribution, 4923; and
- (VI) Petroleum Bulk Stations and Terminals, 5171.

(B) All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.

(C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

- (i) Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,
- (ii) Brick Plants, 3251, 3297,
- (iii) Commercial Printing, 2752, 2761.

(D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

- (i) Refineries, 2911;
- (ii) Cement Plants, 3241;
- (iii) Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;
- (iv) Petroleum Transportation/Terminals/Storage, 4612, 4613;
- (v) Food Products, 2013, 2074, 2095.

(E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.

(5) **Newly regulated sources.** A source that becomes subject to the operating permit program established by this Chapter at any time following the effective date shall file an administratively complete operating permit application within 180 days of commencement of operation.

(6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.

(7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.

(8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least ~~six months~~ 180 days before the date of permit expiration, unless

a longer period (not to exceed ~~18 months~~ 540 days) is specified in the permit. Renewal periods greater than ~~six months~~ 180 days are subject to negotiation on a case-by-case basis.

(9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).

(10) **Application completeness.** See Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.

PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

252:100-8-30. Applicability

(a) General applicability.

(1) The requirements of this Part shall apply to the construction of any new major stationary source or any project that is a major modification at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(2) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Part otherwise provides.

(3) No new major stationary source or major modification to which the requirements of OAC 252:100-8-34 through 252:100-8-36.2(b) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

(4) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of all new major stationary sources and major modifications.

(b) Major modification.

(1) Major modification applicability determination.

(A) Except as otherwise provided in OAC 252:100-8-30(c), and consistent with the definition of "major modification", a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases:

(i) a significant emissions increase and

(ii) a significant net emissions increase.

(B) The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) **Calculating significant emissions increase and significant net emissions increase before beginning actual construction.** The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, according to OAC 252:100-8-30(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase". This is the second step in the process of determining if a proposed modification is a major modification. Both steps occur prior to the beginning of actual construction. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual

emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.

(5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in OAC 252:100-8-30(b)(3) or (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant. ~~For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in OAC 252:100-8-30(b)(3) for the existing unit and determined using the method specified in 252:100-8-30(b)(4) for the new emissions unit.~~

(6) **Actual-to-potential test for projects that only involve existing emissions units.** In lieu of using the actual-to-projected-actual test, owners or operators may choose to use the actual-to-potential test to determine if a significant emissions increase of a regulated NSR pollutant will result from a proposed project. A significant emissions increase of a regulated NSR pollutant will occur if the sum of the difference between the potential emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant. Owners or operators who use the actual to potential test will not be subject to the recordkeeping requirements in OAC 252:100-8-36.2(c).

(c) **Plantwide applicability limitation (PAL).** Major stationary sources seeking to obtain or maintain a PAL shall comply with the requirements under OAC 252:100-8-38.

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 ~~Subsection~~ 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 ~~of~~ 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) 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 equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(A) Area redesignations under section 107(d)(1)(D) or (E) 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 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 and sulfur dioxide, January 6, 1975, and
- (ii) in the case of nitrogen dioxide, February 8, 1988.

(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 and sulfur dioxide, August 7, 1977, and
- (ii) in the case of nitrogen dioxide, February 8, 1988.

(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) 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 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 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 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 constituents or precursors for such pollutants identified by the Administrator (*e.g.*, VOC and NO_x are precursors for ozone);
 - (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.
- (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 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 emissions,
- (v) ozone: 40 TPY of VOC or NO_x,
- (vi) lead: 0.6 TPY,
- (vii) fluorides: 3 TPY,
- (viii) sulfuric acid mist: 7 TPY,
- (ix) hydrogen sulfide (H₂S): 10 TPY,
- (x) total reduced sulfur (including H₂S): 10 TPY,
- (xi) reduced sulfur compounds (including H₂S): 10 TPY,
- (xii) municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.5×10^{-6} TPY,
- (xiii) municipal waste combustor metals (measured as particulate matter): 15 TPY,
- (xiv) municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 40 TPY,
- (xv) municipal solid waste landfill emissions (measured as nonmethane organic compounds): 50 TPY.

(B) Notwithstanding (A) of this definition, "significant" means 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 $1 \mu\text{g}/\text{m}^3$ (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.

"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:

- (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) Particulate matter - 10 $\mu\text{g}/\text{m}^3$, TSP—or PM-10, 24-hour average,
- (D) Sulfur dioxide -13 $\mu\text{g}/\text{m}^3$, 24-hour average,
- (E) 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) Lead - 0.1 $\mu\text{g}/\text{m}^3$, 24-hour 3-month average,
- (G) Fluorides - 0.25 $\mu\text{g}/\text{m}^3$, 24-hour average,
- (H) Total reduced sulfur - 10 $\mu\text{g}/\text{m}^3$, 1-hour average,
- (I) Hydrogen sulfide - 0.2 $\mu\text{g}/\text{m}^3$, 1-hour average, or
- (J) Reduced sulfur compounds - 10 $\mu\text{g}/\text{m}^3$, 1-hour average.

(2) 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 PM-10 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 PM-10 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). The permitting requirements of OAC 252:100-8-35(a)(2) 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.

252:100-8-37. Innovative control technology

(a) An applicant for a permit for a proposed major stationary source or major modification may request the Director in writing to approve a system of innovative control technology.

(b) The Director may determine that the innovative control technology is permissible if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function.

(2) The applicant agrees to achieve a level of continuous emissions reductions equivalent to that which would have been required for BACT under OAC 252:100-8-34(b)(1) by a date specified by the Director. Such date shall not be later than 4 years from the time of start-up or 7 years from permit issuance.

- (3) The source or modification would meet the requirements equivalent to those in OAC 252:100-8-34 and 252:100-8-35(a) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Director.
- (4) The source or modification would not, before the date specified, cause or contribute to any violation of the applicable NAAQS, or impact any Class I area or area where an applicable increment is known to be violated.
- (5) All other applicable requirements including those for public participation have been met.
- (6) The provisions of OAC 252:100-8-36 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.
- (c) The Director shall withdraw approval to employ a system of innovative control technology made under OAC 252:100-8-37, if:
- (1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or,
 - (2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or,
 - (3) The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.
- (d) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with OAC 252:100-8-37(c), the Director may allow the source or modification up to an additional 3 years to meet the requirement for application of BACT through the use of a demonstrated system of control.

252:100-8-38. Actuals PAL

- (a) **Incorporation by reference.** With the exception of the definitions in OAC 252:100-8-38(c), 40 CFR 51.166(w), Actuals PALs, is hereby incorporated by reference, as it exists on ~~January 2, 2006~~ July 2, 2007, and does not include any subsequent amendments or editions to the referenced material.
- (b) **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.
- (c) **Terminology related to 40 CFR 51.166(w).** For purposes of interfacing with 40 CFR, the following terms 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 252:100-8-31.
 - (5) "Net emissions increase" is synonymous with the definition of "net emissions increase" in OAC 252:100-8-31.
 - (6) "Reviewing authority" is synonymous with "Director".
 - (7) "State implementation plan" is synonymous with OAC 252:100.
 - (8) "Volatile organic compound (VOC)" is synonymous with the definition of "volatile organic compound" or "VOC" in OAC 252:100-1-3.

PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS

252:100-8-50. Applicability

(a) General applicability.

(1) The requirements of this Part shall apply to the construction of any new major stationary source or major modification which would locate in or affect a nonattainment area located in Oklahoma, designated under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification is major for the pollutant for which the area is designated nonattainment.

(2) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of any new major stationary source or major modification.

(3) In addition, the requirements of a PSD review (OAC 252:100-8, Part 7) would be applicable if any regulated NSR pollutant other than the nonattainment pollutant is emitted in significant amounts by that source or modification.

(b) Major modification.

(1) Major modification applicability determination.

(A) Except as otherwise provided in OAC 252:100-8-50(c), and consistent with the definition of "major modification" contained in OAC 252:100-8-51, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases:

- (i) a significant emissions increase, and
- (ii) a significant net emissions increase.

(B) The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) **Calculating significant emissions increase and significant net emissions increase.** The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions unit(s) being modified, according to OAC 252:100-8-50(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase" in OAC 252:100-8-50.1 and 252:100-8-51. This is the second step in the process of determining if a proposed modification is a major modification. Both steps occur prior to the beginning of actual construction. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, as applicable, for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.

(5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions

increases for each emissions unit, using the method specified in OAC 252:100-8-50(b)(3) and (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in OAC 252:100-8-50(b)(3) for the existing unit and determined using the method specified in 252:100-8-50(b)(4) for the new emissions unit.

(c) **Plantwide applicability limitation (PAL).** Major stationary sources seeking to obtain or maintain a PAL shall comply with requirements under OAC 252:100-8-56.

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) "Reviewing authority" is synonymous with "Director".

(7) "Secondary emissions" is synonymous with the definition of "secondary emissions" in OAC 252:100-8-1.1.

(8) "State implementation plan" is synonymous with OAC 252:100.

(9) "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 ~~January 2, 2006~~ July 2, 2007, except for the definitions found at 40 CFR 51.165(a)(1)(xxxv) "baseline actual emissions"; (ii) "building, structure, facility, or installation"; ~~(xxix) "Clean Unit";~~ (xlv) "fixed capital cost"; (xlv) "functionally equivalent component"; (v) "major modification"; (vi) "net emissions increase"; ~~(xxv) "pollution control project (PCP)";~~ (xliii) "process unit"; ~~(xxxviii) "reviewing authority";~~ (viii) "secondary emissions"; (xlv) "total capital investment"; and (xix) "volatile organic compound (VOC)". With the exception of ~~"pollution control project (PCP)"; "Clean Unit"; and "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, 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.

252:100-8-51.1. Emissions reductions and offsets

(a) The requirements in 40 CFR 51.165(a)(3) regarding emissions reductions and offsets, except for 40 CFR 51.165(a)(3)(ii)(I) and (I), are hereby incorporated by reference as they exist on January 2, 2006 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.

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 ~~January 2, 2006~~ July 2, 2007.

(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(1)~~ 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.

252:100-8-53. Exemptions

(a) ~~The requirement requirements~~ in 40 CFR 51.165(a)(4) regarding exemption of fugitive emissions in determining if a source or modification is major are hereby incorporated by reference as they exist on ~~January 2, 2006~~ July 2, 2007.

(b) Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if the source or modification was not subject to 40 CFR Part 51, Appendix S (emission offset interpretative ruling) as it existed on January 16, 1979, and the source:

- (1) obtained all final federal and state construction permits before August 7, 1980;
- (2) commenced construction within 18 months from August 7, 1980, or any earlier time required by the State Implementation Plan; and,
- (3) did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

(c) Secondary emissions are excluded in determining the potential to emit. However, upon determination of the Director, if a source is subject to the requirements on the basis of its direct emissions, the applicable requirements must also be met for secondary emissions but the source would be exempt from the conditions of ~~OAC-252:100-8-52(4)~~ 252:100-8-52(d) and 252:100-8-54(1) through 252:100-8-54(3). Also, the indirect impacts of mobile sources are excluded.

(d) As specified in the applicable definitions, the requirements of Part 7 for PSD and Part 9 for nonattainment areas of this Subchapter are not applicable to a modification if the existing source was not major on August 7, 1980, unless the proposed addition to the existing minor source is major in its own right.

252:100-8-54.1 Ozone and PM-10 precursors

(a) Ozone. The requirements of Part 9 of OAC 252:100-8 applicable to major stationary sources and major modifications of VOCs shall apply to NO_x emissions from major stationary sources and major

modifications of NO_x in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a NO_x waiver applying the standards set forth under section 182(f) of the Act and the waiver continues to apply.

(b) **PM-10 precursors.** The requirements of Part 9 of OAC 252:100-8 applicable to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

252:100-8-55. Source obligation

(a) **Construction permits required.** An owner or operator shall obtain a construction permit prior to commencing construction of a new major stationary source or major modification.

(b) **Responsibility to comply and the consequences of relaxation of permit conditions.** The requirements in 40 CFR 51.165(a)(5) regarding the responsibility to comply with applicable local State or Federal law and the consequences of becoming a major source by virtue of a relaxation in any enforcement limitation are hereby incorporated by reference as they exist on ~~January 2, 2006~~ July 2, 2007.

(c) **Requirements when using projected actual emissions.**

(1) The specific provisions in 40 CFR 51.165(a)(6)(i) through (v) ~~(as they exist on July 2, 2007)~~ shall apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) when the owner or operator elects to use the methods specified in the definition of "projected actual emissions" at ~~40 CFR 51.165(a)(xxviii)(B)(1) through (3)~~ 40 CFR 51.165(a)(1)(xxviii)(B)(1) through (3) ~~(as they existed on January 2, 2006)~~ for calculating projected actual emissions.

(2) The requirements in 40 CFR 51.165(a)(6)(i) through (v) are hereby incorporated by reference as they existed on ~~January 2, 2006~~ July 2, 2007.

(d) **Availability of information.** The requirements in 40 CFR 51.165(a)(7) regarding availability of information required to document the use of projected actual emissions for determining if a project is a major modification are hereby incorporated by reference as they existed on ~~January 2, 2006~~ July 2, 2007.

252:100-8-56. Actuals PAL

The requirements in 40 CFR 51.165(f) regarding actuals PAL except for the terminology contained in OAC 252:100-8-50.1(b), are hereby incorporated by reference as they existed on ~~January 2, 2006~~ July 2, 2007.

**DRAFT MINUTES
AIR QUALITY COUNCIL
July 16, 2008
4th-Street Clubhouse, 1500 4th Street
Ponca City, Oklahoma**

For EQB August 19, 2008
For AQC Approved October 15, 2008

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. July 16, 2008 in the 4th Street Clubhouse, Ponca City, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on November 2, 2007. Agendas were posted at the meeting facility and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting. Ms. Beverly Botchlet-Smith convened the hearings by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51, and Title 27A, Oklahoma Statutes, Sections 2-5-201 and 2-5-101 - 2-5-118. Ms. Smith entered the Agenda and the Oklahoma Register Notice into the record and announced that forms were available at the sign-in table for anyone wishing to comment on any of the rules. Mr. David Branecky, Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed.

MEMBERS PRESENT

David Branecky
Montelle Clark
Jim Haught
Laura Worthen Lodes
Bob Lynch
Sharon Myers
Jerry Purkable
Rick Treeman

MEMBERS ABSENT

VACANCY

DEQ STAFF PRESENT

Eddie Terrill
Beverly Botchlet-Smith
Scott Thomas
Cheryl Bradley
Joyce Sheedy
Max Price

OTHERS PRESENT

Christy Myers, Court Reporter

DEQ STAFF PRESENT

Nancy Marshment
Sarah Penn
Rob Singletary
Dawson Lasseter
Kendall Stegmann
Myrna Bruce

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

Approval of Minutes Mr. Haught made motion to approve as amended with Ms. Lodes making the second.

Jerry Purkable	Yes	Jim Haught	Yes
Laura Lodes	Yes	Bob Lynch	Yes
Sharon Myers	Yes	Montelle Clark	Yes
Rick Treeman	Yes	David Branecky	Yes

Resolution for Mr. Martin – Mr. Branecky read into the record a resolution acknowledging Mr. Martin’s contribution to the Council.

OAC 252:100-1 General Provisions [AMENDED]

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

Mr. Max Price identified definitions that the proposal would amend in OAC 252:100-1-3, 252:100-1-4 and 252:200-5-1.1. He noted that the changes are housekeeping in nature and asked Council’s approval to forward to the Environmental Quality Board for permanent adoption. Hearing no discussion, Mr. Branecky called for a motion. Ms. Myers made the motion and Dr. Lynch made the second.

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

OAC 252:100-8 Permits for Part 70 Sources [AMENDED] Dr. Joyce Sheedy indicated changes proposed that would amend Subchapter 8 to correct errors in the existing rule; make changes required by revisions to the federal rule published in the *Federal Register* on November 29, 2005, May 1, 2007, and June 13, 2007; and resolve a conflict between OAC 252:100-8-4(b)(8) and 252:200-8-7.1(d) regarding permit renewal and expiration time periods. Comments received from Council included the need for “ozone transport region” to be defined. Ms. Sarah Penn, staff attorney, explained that the citation for the definition is located in U.S.C.42 §7511c. referencing control of interstate ozone air pollution. Ms. Lodes then made a motion to pass the rule with the changes noted and Ms. Myers made the second.

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

OAC 252:100-9 Excess Emission Reporting Requirements [AMENDED] Mr. Max Price advised that the proposal would amend OAC 252:100-9 to modify excess emissions reporting requirements to make the rule consistent with the current interpretation of the EPA guidelines on excess emissions. He explained that a workgroup had been working on proposed language and asked that the rulemaking be continued to Council’s next meeting. After comments, Mr. Branecky called for a motion. Mr. Purkaple made the motion to continue and Ms. Lodes made the second.

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

OAC 252:100-33 Control of Emission of Nitrogen Oxides Ms. Cheryl Bradley related that the Department proposed to revise Subchapter 33 to resolve issues regarding emissions standards for direct-fired fuel burning equipment, standards for fuel burning equipment that uses more than one type of fuel, and equipment with technological limitations. Ms. Bradley also identified non-substantive changes for consistencies with the other rules in Chapter 100 and corrections to grammatical errors. Mr. Terrill conveyed how staff would be looking at these rule changes and how they would be presented to the Council for permanent approval. Mr. Branecky called for a motion to continue this rulemaking to Council’s October meeting. Motion was made by Ms. Myers and second was made by Mr. Purkaple.

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

Division Director’s Report – Mr. Terrill stated that Council had requested that in future, his report would become part of the transcript. He provided an update on the fish flesh analysis activity; explained that the DC Circuit Court had vacated and remanded the Clean Air Interstate Rule (CAIR) back to the EPA; spoke about climate change and the Climate Registry; advised that within the next few weeks they hoped to have an audit

proposal to the Council Finance Committee; and lastly, commented about the ozone season.

New Business – Mr. Branecky announced that the current Vice-Chair, Rick Treeman, resigned effective July 18, 2008. He thanked Mr. Treeman for his help and support during his time spent on the Council. Mr. Branecky called for nominations for replacement of the Vice-Chair position. Sharon Myers nominated Laura Worthen Lodes and the second was made by Mr. Purkapple.

Jerry Purkapple	Yes	Jim Haught	Yes
Laura Lodes	Yes	Bob Lynch	Yes
Sharon Myers	Yes	Montelle Clark	Yes
Rick Treeman	Yes	David Branecky	Yes

Mr. Terrill suggested that the October 15 meeting currently scheduled in Broken Bow should be moved to the DEQ office. After spirited discussion, Dr. Lynch moved that the next meeting be held in Oklahoma City at the DEQ. Mr. Haught made the second.

Jerry Purkapple	Yes	Jim Haught	Yes
Laura Lodes	Yes	Bob Lynch	Yes
Sharon Myers	No	Montelle Clark	No
Rick Treeman	Abstain	David Branecky	Yes

Adjournment -- Meeting adjourned at 11:00 a.m.

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

THE AIR QUALITY COUNCIL
 RULEMAKING RECOMMENDATION
 TO THE ENVIRONMENTAL QUALITY BOARD

Identification of Proposed Rulemaking:

Chapter Number and Title:

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

On July 16, 2008, 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:

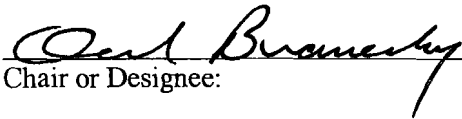
 x permanent [take effect after legislative review]

 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: 7/16/08

	VOTING TO APPROVE	VOTING AGAINST	ABSTAIN	ABSENT
David Branecky	x			
Montelle Clark	x			
Jim Haught	x			
Laura Lodes	x			
Robert Lynch	x			
Sharon Myers	x			
Jerry Purkale	x			
Rick Treeman	x			
Vacant				

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED MEETING
OF THE AIR QUALITY
ADVISORY COUNCIL

ITEM 5B

HELD ON July 16, 2008

AT 9:00 A.M.

PONCA CITY, OKLAHOMA

* * * * *

MYERS REPORTING SERVICE
Christy Myers, CSR
P.O. BOX 721532
OKLAHOMA CITY, OKLAHOMA 73172-1532
405-721-2882
c_myers@cox.net

ORIGINAL

<p style="text-align: right;">Page 2</p> <p>1 COUNCIL MEMBERS</p> <p>2</p> <p>3 DAVID BRANECKY, CHAIRMAN</p> <p>4 RICK TREEMAN, VICE-CHAIRMAN</p> <p>5 JIM HAUGHT, MEMBER</p> <p>6 DR. ROBERT LYNCH, MEMBER</p> <p>7 SHARON MYERS, MEMBER</p> <p>8 JERRY PURKAPLE, MEMBER</p> <p>9 LAURA LODES, MEMBER</p> <p>10 MONTELLE CLARK, MEMBER</p> <p>11</p> <p>12 DEQ STAFF</p> <p>13</p> <p>14 EDDIE TERRILL - DIRECTOR</p> <p>15 BEVERLY BOTCHLET-SMITH - ASSISTANT DIRECTOR</p> <p>16 MYRNA BRUCE - SECRETARY</p> <p>17 CHERYL BRADLEY - ENVIRONMENTAL PROGRAMS</p> <p>18 MANAGER</p> <p>19 DR. JOYCE SHEEDY - ENGINEER</p> <p>20 MAX PRICE - ENVIRONMENTAL PROGRAM</p> <p>21 SPECIALIST</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 On Page 3, in the third line of</p> <p>2 Paragraph (A)(I) in the definition of</p> <p>3 "major source" in OAC 252:100-8-2, the</p> <p>4 draft rule in your packet includes striking</p> <p>5 the words "10 tons per year"; however for</p> <p>6 improved clarity, we now propose to leave</p> <p>7 "10 tons per year" as it is and strike the</p> <p>8 lower case "TPY" in parentheses and replace</p> <p>9 it with upper case "TPY" in parentheses.</p> <p>10 On Page 3, Paragraph (B) in the</p> <p>11 definition of "major source" also in OAC</p> <p>12 252:100-8-2. We replaced "that fraction of</p> <p>13 particulate matter that exhibits an average</p> <p>14 aerodynamic particle diameter of more than</p> <p>15 10 micrometers" with "GPM" which we wish to</p> <p>16 change to "gross particulate matter".</p> <p>17 Gross particulate matter is defined as</p> <p>18 particulate matter with an aerodynamic</p> <p>19 diameter greater than 10 micrometers.</p> <p>20 On Page 4, the proposed change to</p> <p>21 paragraph (B)(xx) of the definition of</p> <p>22 "major source" for Part 70 sources, was</p> <p>23 revised to exclude certain ethanol</p> <p>24 production facilities from being considered</p> <p>25 chemical process plants and thus the</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 PROCEEDINGS</p> <p>3</p> <p>4 MS. BOTCHLET-SMITH: The next</p> <p>5 item on today's agenda is Number 5B, OAC</p> <p>6 252:100-8. This is Permits for Part 70</p> <p>7 Sources. And Dr. Joyce Sheedy of the DEQ</p> <p>8 staff will make the presentation.</p> <p>9 DR. SHEEDY: Mr. Chairman,</p> <p>10 Members of the Council, ladies and</p> <p>11 gentlemen, we are proposing to amend</p> <p>12 Subchapter 8 to correct errors in the</p> <p>13 existing rules; make the changes required</p> <p>14 by revisions to the federal Title V, PSD</p> <p>15 and NSR rules published in the Federal</p> <p>16 Register on November 29, 2005, May 1, 2007,</p> <p>17 and June 13, 2007; and resolve a conflict</p> <p>18 regarding permit renewal and expiration</p> <p>19 time periods.</p> <p>20 On March 27, 2008 EPA published its</p> <p>21 finding that Oklahoma's State</p> <p>22 Implementation Plan did not include all the</p> <p>23 basic program elements for implementation</p> <p>24 of the 1997 8-hour ozone NAAQS. The</p> <p>25 proposed changes address these</p>	<p style="text-align: right;">Page 5</p> <p>1 fugitive emissions from these facilities</p> <p>2 will no longer be used to determine if a</p> <p>3 source is major for Part 70. This is from</p> <p>4 the 5-1-07 Federal Register.</p> <p>5 On Page 5, the definition of</p> <p>6 "responsible official" has been deleted</p> <p>7 since it is essentially the same as the</p> <p>8 definition in Subchapter 1.</p> <p>9 On Pages 8 and 9, the time period in</p> <p>10 OAC 252:100-8-4(b)(8) for a timely</p> <p>11 application for permit renewal is 6 months</p> <p>12 prior to the date of permit expiration and</p> <p>13 the time period in 252:100-8-7.1(d)(1) for</p> <p>14 a timely renewal application is 180 days</p> <p>15 before the date of expiration. Although</p> <p>16 used interchangeably, the two time periods</p> <p>17 are not necessarily the same. Since 180</p> <p>18 days is the more precise term, the 6 months</p> <p>19 time period in OAC 252:100-8-4(b)(8) has</p> <p>20 been changed to 180 days. For consistency</p> <p>21 18 months has also been changed to 540</p> <p>22 days.</p> <p>23 On Page 10, the last sentence of OAC</p> <p>24 252:100-8-30(b)(5) was deleted in the</p> <p>25 revision to the federal rule published in</p>

<p style="text-align: right;">Page 6</p> <p>1 the Federal Register on June 13, 2007, in 2 response to the DC Circuit Court Decision 3 of June 24, 2005. We, therefore, propose 4 to delete this sentence from our rule. 5 On Page 10, in the second sentence 6 in the first paragraph of 252:100-8-31, we 7 propose to replace "Subsection" with 8 "Section" to correct an error. 9 On Page 15, in Paragraph 8-1 under 10 (A)(I) the definition of "major 11 modification" in OAC 252:100-8-31 is 12 changed to indicate that a major stationary 13 source that is significant for NOx shall be 14 considered significant for ozone. This is 15 from the November 29, 2005 Federal 16 Register. 17 On Page 16, in (A)(i)(III) of the 18 definition of "major stationary source" in 19 252:100-8-31 was revised to exclude certain 20 ethanol production facilities from being 21 considered chemical process plants and this 22 changed their PSD threshold emission rate 23 from 100 tons per year to 250 tons per 24 year. This change is from the June 1, 2007 25 Federal Register.</p>	<p style="text-align: right;">Page 8</p> <p>1 Federal Register. 2 On Page 23, the incorporation by 3 reference date in 252:100-8-38(a) was 4 updated to July 2, 2007 for consistency 5 with IBR dates in Part 9. 6 On Page 23, language was added to 7 252:100-8-38(c)(3) to clarify that the term 8 "EPA" in section 40 CFR 51.166(w) which was 9 incorporated by reference, is usually 10 synonymous with DEQ unless the context 11 clearly indicates that EPA means EPA. 12 On Page 25, the last sentence of OAC 13 252:100-8-50(b)(5) was deleted in the 14 revision to the federal rule published in 15 the Federal Register on June 13, 2007, in 16 response to the DC Circuit Court Decision 17 of June 24, 2005. We, therefore, propose 18 to delete this sentence from our rule. 19 On Page 25, language was added to 20 OAC 252:100-8-50.1(b)(3) to clarify that 21 the term "EPA" in 40 CFR 51.165, portions 22 of which were incorporated by reference is 23 usually synonymous with DEQ unless the 24 context clearly indicates that EPA means 25 EPA.</p>
<p style="text-align: right;">Page 7</p> <p>1 On Page 17, Paragraph (B) of the 2 definition of "major stationary source" 3 being 252:100-8-31, was changed to indicate 4 that a major stationary source that is 5 significant for NOx shall be considered 6 significant for ozone. This is from the 7 November 29, 2005 Federal Register. 8 On Page 19, Paragraph (A)(i) of the 9 definition of regulated NSR pollutant was 10 changed to list NOx as a precursor for 11 ozone. This is also from the 11-29-05 12 Federal Register. 13 On Page 20, Paragraph (A)(v) of the 14 definition of "significant" in 252:100-8-31 15 was changed to list the significant level 16 for ozone as 40 tons per year of VOC or 17 NOx. This is based on the revision to the 18 federal rule contained in the November 29, 19 2005 Federal Register. 20 On Page 21, Subsection (c) of OAC 21 252:100-8-33 was changed to allow exemption 22 from some air quality analysis requirements 23 for ozone if the air quality impacts are 24 less than 100 tons per year of NOx. This 25 change is from the November 29, 2005</p>	<p style="text-align: right;">Page 9</p> <p>1 On Page 25, the incorporation by 2 reference date in the first paragraph of 3 252:100-8-51 was updated to include the 4 later changes made to the federal rule. 5 On Page 26, new paragraphs (c) and 6 (D) were added to the definition of major 7 modification in 252:100-8-51. 8 Paragraph (c), in conjunction with 9 252:100-8-54.1(a), makes the VOC 10 requirements in Part 9 of Subchapter 8 also 11 apply to NOx emissions and paragraph (D) 12 provides that any physical change or change 13 in operation of a major source of VOC that 14 results in any increase in VOC emissions 15 shall be considered a major modification 16 for ozone if the source is located in an 17 extreme ozone nonattainment area. These 18 changes are based on the revision to the 19 Federal Register that was dated 11-29-05. 20 On Page 27, we propose to update the 21 incorporation by reference date in 22 252:100-8-51.1(a) to include later changes 23 made in the federal rule. 24 On Page 27 new subsection 25 252:100-8-51.1(b) incorporates by reference</p>

<p style="text-align: right;">Page 10</p> <p>1 the emission offset requirements in 40 CFR 2 51.165(a)(9). This is from the November 3 29, 2005 Federal Register. 4 On Page 27, we propose to update the 5 incorporation by reference date in 6 252:100-8-52(a) for consistency with other 7 IBR dates in Part 9. 8 On Page 28, we propose to correct an 9 error to OAC 252:100-8-52(c) by replacing 10 OAC 252:100-8-52(1) with OAC 11 252:100-8-52(a). 12 On Page 28, we propose to update the 13 incorporation by reference date in OAC 14 252:100-8-53 to include later changes made 15 in the federal rule. 16 On Page 28, we propose to correct an 17 error in OAC 252:100-8-53(c) by replacing 18 OAC 252:100-8-52(4) with OAC 19 252:100-8-52(d). 20 On Pages 28 and 29, a new subsection 21 252:100-8-54.1(a) makes the requirements of 22 Part 9 to major sources and modifications 23 of VOC applicable to NOx in certain 24 circumstances. This was from the November 25 29, 2005 Federal Register.</p>	<p style="text-align: right;">Page 12</p> <p>1 Several non-substantive scrivener's 2 errors were also corrected. Except as 3 noted earlier, the lower case "TPY" was 4 replaced with an uppercase "TPY" throughout 5 the revision. 6 Notice of the proposed rule changes 7 was published in the Oklahoma Register on 8 June 16, 2008 and comments were requested 9 from members of the public. 10 We received comments from EPA in 11 which they stated they have no comments. 12 We received no other written comments, to 13 date. 14 Although this is the first time this 15 proposed revision to Subchapter 8 has been 16 presented to the council, because it 17 consists primarily of corrections of errors 18 and to correct deficiencies in our program 19 brought about by revisions to federal 20 regulations, we request that the Council 21 recommend this revision to the 22 Environmental Quality Board for adoption as 23 a permanent rule. Thank you. 24 MS. BOTCHLET-SMITH: Do we have 25 questions from the Council?</p>
<p style="text-align: right;">Page 11</p> <p>1 On Page 29, the new subsection OAC 2 252:100-8-54.1(b) makes the PM-10 3 requirements in Part 9 of Subchapter 8 also 4 apply to PM-10 precursors. This was added 5 in response to changes in the federal rule 6 contained in the November 29, 2005 Federal 7 Register. 8 On Page 29, we propose to update the 9 incorporation by reference date in 10 252:100-8-55(b) for consistency with other 11 IBR dates in Part 9. 12 On Page 29, an error in a reference 13 was corrected in OAC 252:100-8-55(c)(1) 14 and (2) and the dates of incorporation on 15 Page 29 has been updated for consistency 16 with other IBR dates in Part 9 of 17 Subchapter 8. 18 Also on Page 29, we propose to 19 update the incorporation by reference date 20 in 252:100-8-55(c) for consistency with 21 other IBR Part 9 dates. 22 Again on Page 29, we propose to 23 update the incorporation by reference to 24 252:100-8-56 for consistency with other IBR 25 dates.</p>	<p style="text-align: right;">Page 13</p> <p>1 MS. LODES: I have some comments. 2 Under insignificant activities, you have 3 tons per year spelled out for both the 4 fives (5's). 5 On Page 2, since that's the first 6 place the "tons per year" seems to appear, 7 why don't you put the parenthesis "TPY" on 8 that one. I'm being nit-picky. Under 9 insignificant activities, to be consistent 10 with where you're changing it. 11 DR. SHEEDY: Insignificant 12 activities. 13 MS. LODES: At the bottom of the 14 page. 15 DR. SHEEDY: Yeah, I don't see 16 why we can't do that. 17 MS. LODES: Okay. Just to be 18 consistent with where -- since you went to 19 the effort to change it everywhere else. 20 DR. SHEEDY: I'm sorry, I just 21 missed that. 22 MS. LODES: Okay. And then the 23 only other question I have is on Page 29 24 where we get into adding ozone -- for major 25 modifications of NOx and other transport</p>

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1 region or in an ozone nonattainment area.
 2 DR. SHEEDY: On Page 29?
 3 MS. LODES: Yes. The top of the
 4 page.
 5 DR. SHEEDY: Okay.
 6 MS. LODES: Where is ozone
 7 transport region defined; do we know?
 8 DR. SHEEDY: At this point in
 9 time, I don't know where it's defined, or
 10 if it's defined.
 11 MS. LODES: Okay.
 12 MR. HAUGHT: I was going to ask
 13 the same thing, the same reference is on
 14 Page 26, in (c) the first time I saw --
 15 when I read through it. And I got the same
 16 question. It's just not a term I'm
 17 familiar with the definition of.
 18 MS. LODES: I just want to know,
 19 I guess, how liberally or conservatively is
 20 that defined in regards to Oklahoma.
 21 Because all of Oklahoma could be defined as
 22 an ozone transport region from Texas. And
 23 are we going to put ourselves into a really
 24 stringent --
 25 DR. SHEEDY: Does anyone know the

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1 answer to that question?
 2 MR. TERRILL: I think it's
 3 defined in the Clean Air Act, if I'm not
 4 mistaken. I think it is in the ozone, but
 5 I'm not 100 percent sure about that. But
 6 I'm pretty sure this came -- this came
 7 directly from the Federal Register; didn't
 8 it Joyce?
 9 DR. SHEEDY: Yes, it did.
 10 MR. TERRILL: I'm pretty sure
 11 that that's defined in the Clean Air Act.
 12 So I don't know that we're going to be able
 13 to change that even if we wanted to. I
 14 thought about bringing the Clean Air Act
 15 with me. I had it laid out and I didn't do
 16 it. I don't know what made me even think
 17 about it this time.
 18 MS. LODES: And my big question
 19 is, is Oklahoma an ozone transport region
 20 or not under this definition?
 21 MR. TERRILL: Well, according to
 22 the modeling they did for CAIR, no. But
 23 then CAIR doesn't exist anymore.
 24 MS. LODES: Right.
 25 MR. TERRILL: I think that's

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1 decided at a time when you have a
 2 nonattainment situation, either within the
 3 state or in a bordering state. So, again
 4 I'm almost positive that that's defined in
 5 the Clean Air Act as -- is where that came
 6 from.
 7 MR. THOMAS: Eddie, I'm pretty
 8 sure that they might also be talking about
 9 the formalized ozone transport regions in
 10 which states have joined together in
 11 compacts like the Northeast and where they
 12 have made a large -- you know
 13 nonattainment area with those problems. I
 14 know we have the ozone northeast-type of
 15 thing.
 16 MR. TERRILL: So the
 17 OTC -- the Ozone Transport Commission?
 18 MR. THOMAS: Yeah. I don't know
 19 how (inaudible).
 20 MR. TERRILL: That may be
 21 correct. It may be in relation to that.
 22 MR. HAUGHT: We're used to seeing
 23 real defined boundaries and borders for
 24 nonattainment areas. But now the ozone
 25 transport -- I'm just not familiar with.

Page 17

1 MS. LODES: I'm just worried
 2 about how nebulous -- I realize it's
 3 probably the Clean Air Act, but how
 4 nebulous that is and what does that mean
 5 the way we have it in here --
 6 MR. HAUGHT: If we don't define
 7 it --
 8 (Both talking at the same time)
 9 MS. LODES: Whether they're
 10 permitting applications of we don't put a
 11 citation as to where this is defined.
 12 Because you know is, say Walters, Oklahoma
 13 a transport region.
 14 MR. TERRILL: I don't know, I
 15 can't see that. To be honest with you, I
 16 don't think that this is that big of a deal
 17 because I think in the overall scheme of
 18 doing your analysis, the definition of that
 19 is going to be minuscule compared to the
 20 other issues you are going to have.
 21 Obviously, we're doing this in response to
 22 the notice in the Federal Register of the
 23 deficiency in our SIP.
 24 Joyce, if we wanted to hold this
 25 over, is there going to be a big -- I don't

Page 18

1 know that there would be a big concern if
 2 we wanted to take a look at this. I've got
 3 a feeling that we may -- if we wanted to
 4 define it, it's probably going to be a
 5 repetition of what already exists, or maybe
 6 a reference back to where this is at in
 7 either the Clean Air Act or the Federal
 8 Register.
 9 MS. LODES: Actually, I'd just
 10 like to see a citation to where it is in
 11 the Federal Register or the Clean Air Act,
 12 so that you've got an idea of where to go
 13 look.
 14 MR. PRICE: I have a proposal
 15 here. The only person that really knows
 16 about this is Leon Ashford, and I think he
 17 is in the office. I can call him and ask
 18 him precisely about that. He's not there?
 19 Okay.
 20 MS. BRADLEY: With regard to the
 21 consequence, EPA published the findings of
 22 deficiency, which sets a two-year clock for
 23 the state to have approved SIP provision in
 24 place.
 25 And with regard to holding it over,

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1 ultimately it adds more work for us for the
 2 next meeting. That's my concern. However,
 3 it will not change ultimately the effective
 4 date of the rule and the timeline for
 5 submitting the change for approval as a SIP
 6 provision.
 7 MS. LODES: I would really like
 8 to see a citation as to where it is. I
 9 mean, even if it is just a citation in the
 10 Clean Air Act so that we've got something
 11 spelled out when going to look at it, to
 12 try to make your determination.
 13 MR. BRANECKY: Could we say as
 14 defined in the Clean Air Act; be more
 15 specific? Or is defined okay?
 16 MS. LODES: Are we totally sure
 17 it is defined in the Clean Air Act?
 18 MR. BRANECKY: Is there any way
 19 we can find out this morning?
 20 MS. BOTCHLET-SMITH: Let's go
 21 ahead and call for any questions from the
 22 public.
 23 MR. BRANECKY: What we can do --
 24 we can, I guess -- do you want me to table
 25 this and go on and come back to it?

Page 20

1 MS. BOTCHLET-SMITH: We could
 2 table it but I'll go ahead and take
 3 comments.
 4 MR. BRANECKY: We can take
 5 comments and then we can --
 6 MR. CLARK: I actually have one
 7 question.
 8 MS. BOTCHLET-SMITH: I'm sorry
 9 Montelle has a question.
 10 MR. CLARK: It's a minor
 11 question, but under the definitions, Dr.
 12 Sheedy, this is the first time I've seen a
 13 reference to -- maybe it's in here in other
 14 places too, but extreme ozone nonattainment
 15 area. I wondered if extreme is a technical
 16 definition or is it more descriptive?
 17 DR. SHEEDY: This is not as
 18 simple as one would hope. Extreme ozone
 19 nonattainment area is defined in the Clean
 20 Air Act -- there is a table that has it on
 21 it. However, it's for the one-hour
 22 standard, which doesn't exist anymore. And
 23 not the eight-hour standard. It's not as
 24 simple as us writing a definition into here
 25 or we cited that. It actually already is

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1 cited where you can find in the --
 2 MS. BRADLEY: Joyce, would you
 3 like for me to explain that?
 4 DR. SHEEDY: Yes, would you like
 5 to? You're more familiar with this than I
 6 am.
 7 MS. BRADLEY: Extreme
 8 nonattainment areas definition made by EPA.
 9 The power or the authority for
 10 making those designations is included in
 11 the rule, under the Subpart 2, Part D,
 12 Title 1. And as Joyce alluded to when the
 13 Clean Air Act amendments were adopted, they
 14 were tailored from one-hour standards.
 15 Subsequent to that we went to the
 16 eight-hour ozone standard. So we had case
 17 law and other changes so it's not -- coming
 18 up with a specific definition would be
 19 difficult for us. We have a moving target,
 20 and since we do not as an Agency make the
 21 designations, those are made by EPA. Under
 22 this authority, we evaluated the pros and
 23 cons and have elected not to include an
 24 additional definition. Because it would be
 25 limiting for us. And when the extreme

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1 nonattainment areas are designated, it's
 2 very (inaudible) and a national notice in
 3 the Federal Register. So at this point, I
 4 think we've got enough to actually identify
 5 that. And that information is readily
 6 available. And the boundaries for those
 7 areas will be clear.

8 MR. CLARK: We don't have any
 9 extreme nonattainment in Oklahoma; correct?

10 MS. BRADLEY: No. I don't expect
 11 that we would.

12 MS. LODES: I don't even know,
 13 Montelle, that Houston or Los Angeles are
 14 extreme. I think they're just severe;
 15 aren't they?

16 MS. BOTCHLET-SMITH: It's
 17 marginal, moderate, severe and extreme are
 18 I think the four EPA designations, and it
 19 spelled out by County when you're looking
 20 at the Clean Air Act for the tables.

21 MR. CLARK: Okay.

22 MS. BRADLEY: Houston, I think
 23 was just bumped up or was proposed to bump
 24 and they did not go to extreme.

25 MS. LODES: Well, they dropped

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1 all the way down I think to marginal, so
 2 they went back to 100 ton threshold for
 3 Title V to coming in from the 25 ton, then
 4 with the change they went back to 25 ton.

5 MS. BOTCHLET-SMITH: Do we have
 6 any other questions?

7 MS. LODES: So it's not a concern
 8 here.

9 MR. CLARK: No, no. I have just
 10 not ran across that before.

11 MS. BOTCHLET-SMITH: Do we have
 12 any other questions that we want to ask
 13 right now about other parts of the rule;
 14 from the Council?

15 MR. BRANECKY: I would then
 16 suggest that we table this and then come
 17 back to it later on this morning, while
 18 staff is trying to find an answer to it.
 19 So do we need to take vote on that or how
 20 do we table something?

21 MS. BOTCHLET-SMITH: I think you
 22 need a motion to table a rule, a second,
 23 and then we'll bring it back.

24 Let's take a short break, ten
 25 minutes.

Page 24

1 MR. BRANECKY: It's easier that
 2 way, take a break.

3 (Break)

4 MS. PENN: In response to your
 5 question, the cite is found in Section
 6 184(a). And the cite that we would like to
 7 use in the rule to reference ozone
 8 transport region would be U.S.C. 42,
 9 Section 7511c, period. And this is -- that
 10 particular section references control of
 11 interstate ozone air pollution. And under
 12 Section A, it states ozone transport
 13 regions. And it defines ozone transport
 14 regions as a certain block of states. I
 15 don't know how to say this, but they're
 16 simply the northeast region of the country.
 17 And then Section B references the
 18 opportunity for -- it essentially explains
 19 how other states would necessarily be put
 20 into the ozone transport region. Oklahoma
 21 is not in that, and we are not listed as
 22 one of the ozone transport region states.
 23 So, therefore, there is really no
 24 applicability to us. It could happen in
 25 the future, but it seems remote based on

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1 our standard of the laws. And so if you
 2 reduce reference U.S.C. 42, Section 7511c,
 3 period, that I believe would address your
 4 concern. Is that all right?

5 MS. LODES: That's fine.

6 MS. BOTCHLET-SMITH: Any other
 7 questions from the Council? I didn't have
 8 any notice of comment from the public.
 9 During our break, I didn't receive any
 10 additional ones. But if someone has a
 11 comment -- I'm looking for hands. Seeing
 12 none, David, the Council has no further
 13 comments or discussion. I'll give it back
 14 to you.

15 MR. BRANECKY: Okay. So if there
 16 is no further discussion from the Council,
 17 I would entertain a motion.

18 MS. LODES: I move to pass the
 19 rule with the changes noted to the "tons
 20 per year" in "insignificant activities" and
 21 with a citation added under 252:100-8-51,
 22 definitions, under (C). And as well as
 23 adding a citation under 252:100-8-54.1(a),
 24 citation for ozone transport region.

25 MS. MYERS: I second it.

1 MR. BRANECKY: Okay. Did staff
 2 get that? Did you understand the need for
 3 the additions?
 4 DR. SHEEDY: I think so.
 5 MR. BRANECKY: Okay. All right.
 6 I just wanted to make sure. I have a
 7 motion and a second. Myrna, will you call
 8 roll, please.
 9 MS. BRUCE: Jerry Purkaple.
 10 MR. PURKAPLE: Yes.
 11 MS. BRUCE: Laura Lodes.
 12 MS. LODES: Yes.
 13 MS. BRUCE: Sharon Myers.
 14 MS. MYERS: Yes.
 15 MS. BRUCE: Rick Treeman.
 16 MR. TREEMAN: Yes.
 17 MS. BRUCE: Jim Haught.
 18 MR. HAUGHT: Yes.
 19 MS. BRUCE: Bob Lynch.
 20 DR. LYNCH: Yes.
 21 MS. BRUCE: Montelle Clark
 22 MR. CLARK: Yes.
 23 MS. BRUCE: David Branecky.
 24 MR. BRANECKY: Yes.
 25 MS. BRUCE: Motion passed.

1
 2 C E R T I F I C A T E
 3 STATE OF OKLAHOMA)
 4 COUNTY OF OKLAHOMA) ss:
 5
 6 I, CHRISTY A. MYERS, Certified
 7 Shorthand Reporter in and for the State of
 8 Oklahoma, do hereby certify that the above
 9 proceedings is the truth, the whole truth,
 10 and nothing but the truth; that the
 11 foregoing proceedings were taken by me in
 12 shorthand and thereafter transcribed under
 13 my direction; that said proceedings were
 14 taken on the 16th day of July, 2008, at
 15 Ponca City, Oklahoma; and that I am neither
 16 attorney for nor relative of any of said
 17 parties, nor otherwise interested in said
 18 action.
 19 IN WITNESS WHEREOF, I have hereunto
 20 set my hand and official seal on this, the
 21 18th day of July, 2008.
 22
 23
 24 CHRISTY A. MYERS, C.S.R.
 25 Certificate No. 00310

1 (Item 5B Concluded)

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<p>11:1,13 Obviously [1] 17:21 office [1] 18:17 official [2] 5:6 28:20 offset [1] 10:1 Oklahoma [15] 1:2,15 1:23,23 12:7 14:20,21 15:19 17:12 22:9 24:20 28:3,4,8,15 Oklahoma's [1] 3:21 one [4] 13:8 20:6,18 24:22 one-hour [2] 20:21 21:14 ones [1] 25:10 operation [1] 9:13 opportunity [1] 24:18 OTC [1] 16:17 otherwise [1] 28:17 ourselves [1] 14:23 overall [1] 17:17 ozone [28] 3:24 6:14 7:6 7:11,16,23 9:16,17 13:24 14:1,6,22 15:4,19 16:9,14 16:17,24 20:14,18 21:16 24:7,11,12,13,20,22 25:24</p>	<p>person [1] 18:15 physical [1] 9:12 place [2] 13:6 18:24 places [1] 20:14 Plan [1] 3:22 plants [2] 4:25 6:21 PM-10 [1] 11:2 PM-10 [1] 11:4 point [2] 14:8 22:3 pollutant [1] 7:9 pollution [1] 24:11 Ponca [2] 1:15 28:15 portions [1] 8:21 positive [1] 16:4 power [1] 21:9 precise [1] 5:18 precisely [1] 18:18 precursor [1] 7:10 precursors [1] 11:4 presentation [1] 3:8 presented [1] 12:16 pretty [3] 15:6,10 16:7 PRICE [2] 2:20 18:14 primarily [1] 12:17 problems [1] 16:13 proceedings [5] 1:8 3:2 28:9,11,13 process [2] 4:25 6:21 production [2] 4:24 6:20 program [3] 2:20 3:23 12:18 PROGRAMS [1] 2:17 proposal [1] 18:14 propose [12] 4:6 6:3,7 8:17 9:20 10:4,8,12,16 11:8,18,22 proposed [5] 3:25 4:20 12:6,15 22:23 proposing [1] 3:11 pros [1] 21:22 provides [1] 9:12 provision [1] 18:23 19:6 PSD [2] 3:14 6:22 public [3] 12:9 19:22 25:8 published [6] 3:15,20 5:25 8:14 12:7 18:21 Purkale [3] 2:8 26:9,10 put [4] 13:7 14:23 17:10 24:19</p>	<p>rate [1] 6:22 read [1] 14:15 readily [1] 22:5 real [1] 16:23 realize [1] 17:2 really [4] 14:23 18:15 19:7 24:23 receive [1] 25:9 received [2] 12:10,12 recommend [1] 12:21 reduce [1] 25:2 reference [17] 8:3,9,22 9:2,21,25 10:5,13 11:9,12 11:19,23 14:13 18:6 20:13 24:7 25:2 references [2] 24:10,17 regard [2] 18:20,25 regarding [1] 3:18 regards [1] 14:20 region [10] 14:1,7,22 15:19 17:13 24:8,16,20 24:22 25:24 regions [3] 16:9 24:13 24:14 Register [20] 3:16 5:4 6:1 6:16,25 7:7,12,19 8:1,15 9:19 10:3,25 11:7 12:7 15:7 17:22 18:8,11 22:3 REGULARLY [1] 1:9 regulated [1] 7:9 regulations [1] 12:20 relation [1] 16:21 relative [1] 28:16 remote [1] 24:25 renewal [3] 3:18 5:11,14 repetition [1] 18:5 replace [2] 4:8 6:7 replaced [2] 4:12 12:4 replacing [2] 10:9,17 Reporter [1] 28:7 REPORTING [1] 1:22 request [1] 12:20 requested [1] 12:8 required [1] 3:13 requirements [5] 7:22 9:10 10:1,21 11:3 resolve [1] 3:17 response [5] 6:2 8:16 11:5 17:21 24:4 responsible [1] 5:6 results [1] 9:14 revised [2] 4:23 6:19 revision [7] 5:25 7:17 8:14 9:18 12:5,15,21 revisions [2] 3:14 12:19 Rick [2] 2:4 26:15 right [4] 15:24 23:13 25:4 26:5 ROBERT [1] 2:6 roll [1] 26:8 rule [18] 4:4 5:25 6:4 7:18</p>	<p>8:14,18 9:4,23 10:15 11:5 12:6,23 19:4 21:11 23:13 23:22 24:7 25:19 rules [2] 3:13,15 -S- saw [1] 14:14 SCHEDULED [1] 1:9 scheme [1] 17:17 scriveners [1] 12:1 seal [1] 28:20 second [4] 6:5 23:22 25:25 26:7 SECRETARY [1] 2:16 section [8] 6:8 8:8 24:5 24:9,10,12,17 25:2 see [4] 13:15 17:15 18:10 19:8 seeing [2] 16:22 25:11 sentence [5] 5:23 6:4,5 8:12,18 SERVICE [1] 1:22 set [1] 28:20 sets [1] 18:22 Several [1] 12:1 severe [2] 22:14,17 shall [3] 6:13 7:5 9:15 Sharon [2] 2:7 26:13 Sheedy [15] 2:19 3:7,9 13:11,15,20 14:2,5,8,25 15:9 20:12,17 21:4 26:4 short [1] 23:24 shorthand [2] 28:7,12 significant [6] 6:13,14 7:5,6,14,15 simple [2] 20:18,24 simply [1] 24:16 SIP [3] 17:23 18:23 19:5 situation [1] 16:2 someone [1] 25:10 sorry [2] 13:20 20:8 source [10] 4:3,11,22 5:3 6:13,18 7:2,4 9:13,16 sources [3] 3:7 4:22 10:22 SPECIALIST [1] 2:21 specific [2] 19:15 21:18 spelled [3] 13:3 19:11 22:19 ss [1] 28:3 staff [4] 2:12 3:8 23:18 26:1 standard [4] 20:22,23 21:16 25:1 standards [1] 21:14 state [7] 1:2 3:21 16:3,3 18:23 28:3,7 states [5] 16:10 24:12,14 24:19,22 stationary [4] 6:12,18 7:2,4 strike [1] 4:7</p>	<p>striking [1] 4:4 stringent [1] 14:24 Subchapter [6] 3:12 5:8 9:10 11:3,17 12:15 submitting [1] 19:5 Subpart [1] 21:11 subsection [5] 6:7 7:20 9:24 10:20 11:1 Subsequent [1] 21:15 suggest [1] 23:16 synonymous [2] 8:10 8:23 -T- T [2] 28:2,2 table [6] 19:24 20:2,20 23:16,20,22 tables [1] 22:20 tailored [1] 21:14 target [1] 21:19 technical [1] 20:15 ten [1] 23:24 term [4] 5:18 8:7,21 14:16 TERRILL [8] 2:14 15:2 15:10,21,25 16:16,20 17:14 Texas [1] 14:22 Thank [1] 12:23 thereafter [1] 28:12 therefore [3] 6:3 8:17 24:23 third [1] 4:1 THOMAS [2] 16:7,18 thought [1] 15:14 threshold [2] 6:22 23:2 through [1] 14:15 throughout [1] 12:4 timeline [1] 19:4 timely [2] 5:10,14 Title [3] 3:14 21:12 23:3 today's [1] 3:5 together [1] 16:10 ton [3] 23:2,3,4 tons [9] 4:5,7 6:23,23 7:16 7:24 13:3,6 25:19 too [1] 20:14 top [1] 14:3 totally [1] 19:16 TPY [5] 4:8,9 12:3,4 13:7 transcribed [1] 28:12 TRANSCRIPT [1] 1:8 transport [14] 13:25 14:7 14:22 15:19 16:9,17,25 17:13 24:8,12,13,20,22 25:24 Treeman [3] 2:4 26:15 26:16 truth [3] 28:9,9,10 try [1] 19:12 trying [1] 23:18 two [1] 5:16</p>
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<p>two-year [1] 18:22</p> <hr/> <p>-U-</p> <p>U.S.C [2] 24:8 25:2 ultimately [2] 19:1,3 under [12] 6:9 13:2,8 15:20 20:11 21:11,21 24:11 25:21,22,23 28:12 understand [1] 26:2 unless [2] 8:10,23 up [2] 21:18 22:23 update [6] 9:20 10:4,12 11:8,19,23 updated [3] 8:4 9:3 11:15 upper [1] 4:9 uppercase [1] 12:4 used [3] 5:2,16 16:22 usually [2] 8:9,23</p> <hr/> <p>-V-</p> <p>v [3] 3:14 7:13 23:3 VICE-CHAIRMAN [1] 2:4 VOC [5] 7:16 9:9,13,14 10:23 vote [1] 23:19</p> <hr/> <p>-W-</p> <p>w [1] 8:8 Walters [1] 17:12 WHEREOF [1] 28:19 whole [1] 28:9 wish [1] 4:15 within [1] 16:2 WITNESS [1] 28:19 wondered [1] 20:15 words [1] 4:5 worried [1] 17:1 writing [1] 20:24 written [1] 12:12</p> <hr/> <p>-X-</p> <p>xx [1] 4:21</p> <hr/> <p>-Y-</p> <p>year [9] 4:5,7 6:23,24 7:16 7:24 13:3,6 25:20</p>				
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O K L A H O M A
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY COUNCIL

Attendance Record

July 16, 2008

Ponca City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Wang Management	DEQ
Perry Friedrich GRDA	Cherokee OK (918) 291-0334 pfriedrich@grda.com
Cheryl Bradley DEQ	
JARROD GREGG ATLAS PIPELINE	918-574-3779 jgregg@atlas.com
Marcia Cole RWCS	405-228-2143
Laura Winkler Lides	405-701-3195
Diana Hinson	DEQ
Julia Bevers	OGE
David Brauckey	AQC
RICH ARMSTRONG DAL-TILE	rich-armstrong@mshowland.com
Kathryn Crenklee	Weyerhaeuser.com
Gerald Butcher	gbutcher@wfec.com
Kendal Stegmann	DEQ
Robert Singletary	DEQ
Phillip Fielder	DEQ
Brad Burris	Weyerhaeuser.
Sarah Penn	DEQ
Bud Ground	PSO
JAY ELI BANKS	MOSH
Missy Aspelund	"
ANGIE BURKHALTER	OIPA
Sheila Baker	StanTech
Ashley Bass	StanTech
Kandi Jones	StanTech
Rice Vickers	WB Johnston Grain
Maryna Bruce	DEQ



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

AIR QUALITY COUNCIL

Attendance Record

July 16, 2008

Ponca City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Jean Hill	DEQ	
Brandi Fitzgerald Chesapeake	405-767-4882	
Hillary Moser	DEQ	
Jim Schellhorn PERCA	918-266-9633	j.schellhorn@perca.com
David Provence OGE	provenpdca.ogc.com	
Beverly Patchlet-Smith	DEQ	
Adrienne Burchett Cardinal Eng.	405-842-1066	
Glenn Travis Service, Inc	918 594 6572	
Cynthia Campbell Chesapeake	405-879-7543	
Joseph E. Cowen, PE Buzzillican USA	Prysto, OK 918 824 4123	
Montelle Clark AQAC	Tulsa 918 592 5082	
Lydia Patitsas SBC/OSN	Tulsa 918 592 5082	
Ken Chaffin AEP-PSO	DALLAS 214-777-1112, kchaffin@aep.com	

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

A Public Meeting: 9:30 a.m. Tuesday, August 19, 2008
Red River Technology Center
Business & Industry Building
3300 W. Bois D'Arc
Duncan, Oklahoma

1. **Call to Order** – Jennifer Galvin, Chair
2. **Roll Call** – Myrna Bruce, Secretary, Board & Councils
3. **Approval of Minutes** of the February 29, 2008 Regular Meeting
4. **Rulemaking – OAC 252:100 Air Pollution Control**
 - A. The DEQ proposes to amend Subchapter 1, Sections 1-3 and 1-4 and Subchapter 5, Section 5-1.1 to make minor corrections and remove redundant definitions.
 - B. The DEQ proposes to amend Subchapter 8 to update incorporations by reference; correct errors; make changes required by revisions to federal rules; and resolve a conflict between Sections 8-4(b)(8) and 8-7.1(d) regarding permit renewal deadline.
 - C. The DEQ proposes to amend Subchapter 17 (Incinerators) to meet federal requirements for state plans under section 111(d) of the federal Clean Air Act applicable to existing sources. The requirements relate to municipal waste combustors.
 - D. The DEQ proposes amendments to Subchapter 19 (Control of Emission of Particulate Matter) and corresponding changes to three appendices. The changes clarify that the particulate matter emission rates in Section 19-11 (Allowable particulate matter emission rates from combined wood fuel and fossil fuel fired steam generating units) and the appendices refer to “total” particulate matter, *i.e.*, both condensable and filterable particulate matter.
 - Presentation – David Branecky, 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
5. **Executive Director’s Report** – Steve Thompson, DEQ Executive Director
The report will include (a) the disclosure of certain employee financial interests as required by statute and (b) a summary of key actions in the recent legislative session and implementation strategies. These updates and summaries are for informational purposes and do not require action by the Board. The report is presented at this point in the meeting because it may help provide context for agenda items 6 and 7.
6. **DEQ Operational Budget Request**
DEQ budget requests to the Governor through the Office of State Finance require approval of the Board. The operational budget request for State Fiscal Year 2010 (beginning July 1, 2009) must be submitted to the OSF by October 1st of this year. The law requires that all state agencies submit a five-year budget. The request for the coming year, SFY 2010, is the most critical. DEQ

is requesting additional state funding for the DEQ/OWRB Beneficial Use Monitoring Program and state funding for small municipal lagoon biosolids removal.

- Presentation – Steve Thompson, DEQ Executive Director
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include a roll call vote on approval of the budget request

7. Annual Performance Review of Executive Director

Among the statutory duties of the Board are responsibilities to appoint and set the compensation of the Executive Director and to assist the DEQ in conducting periodic reviews and planning activities related to the goals, objectives, priorities, and policies of the DEQ. In connection with these responsibilities, the Board has determined that it should perform an annual performance review of the Executive Director.

- A. Discussion by the Board in open session
- B. Possible executive session pursuant to Title 25 Oklahoma Statutes Section 307(B)(1) (discussion of employment actions related to any individual salaried public officer or employee), if authorized by recorded majority vote of the Board members present
 - (1) Vote in open session on entering into executive session
 - (2) If executive session approved, designation in open session of person to keep minutes in executive session
 - (3) Discussion in executive session of Executive Director's performance and of employment actions by the Board relating to the Executive Director (Executive Session will be held in Room B114)
- C. Further discussion by the Board in open session
- D. Possible roll call vote on specific actions or recommendations as a result of performance review

8. Calendar Year 2009 Board meeting dates and locations: Discussion and vote by the Board

9. New Business (any matter not known about and which could not have been reasonably foreseen prior to the time of posting of agenda)

10. Adjournment

Upcoming 2008 Meeting: November 18 at the Tahlequah Armory Municipal Center (Rm #3), 100 N. Water Street, Tahlequah, OK.

Public Forum (after 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 Duncan the evening of August 18. 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**

EXECUTIVE SUMMARY

SUBCHAPTER 17. INCINERATORS

PART 5. MUNICIPAL WASTE COMBUSTORS

Before the Air Quality Advisory Council on April 16, 2008
Before the Environmental Quality Board on August 19, 2008

EXECUTIVE SUMMARY:

The Department proposes to amend OAC 252:100-17, Part 5, Municipal Waste Combustors (MWC) to reflect new federal standards for existing and new MWC units with a combustion capacity greater than 250 tons per day. Standards for MWC units were promulgated in 1995 and implemented in 2000. The Clean Air Act (CAA) requires review of these standards every 5 years. The review was conducted in accordance with CAA section 129 and section 111. For existing MWC units, the goal of this action is to amend the standards to reflect the actual performance levels being achieved by existing MWC units. For new MWC units, the goal of this action is to amend the standards to reflect the performance level achievable by MWC units constructed in the future. Other technical improvements are also being made to the standards for MWC units. These proposed rule changes provide the means for implementing and enforcing the federal emission guidelines (40 CFR 60, Subpart Cb) and will be the enforcement mechanism in Oklahoma's State 111(d)/129 Plan. Amendments to Part 5 tighten the emission limits for existing MWC units for dioxin, cadmium, lead, mercury and particulate matter as well as nitrogen oxides emitted by mass burn rotary waterwall type MWC units. Emission limits for new MWC units are revised for cadmium, lead, mercury and particulate matter. Compliance testing provisions have been revised for both new and existing MWC units to require increased data availability from continuous emissions monitoring systems (CEMS). The revisions require CEMS to generate at least 95 percent data availability on a calendar year basis and at least 90 percent data availability on a calendar quarter basis. The emission guidelines and NSPS have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. In addition to establishing new emission standards for certain regulated pollutants, the new rule will modify requirements for operator training and qualifications. Proposed changes have been implemented by both modifying the rule text and updating incorporations by reference.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

The Clean Air Act (CAA) requires review of standards for MWC units every 5 years. The review was conducted in accordance with CAA section 129 and section 111. The proposed amendments reflect new federal standards for existing and new MWC units with a combustion capacity greater than 250 tons per day.

ENVIRONMENTAL BENEFIT STATEMENT:

Not required because the goal of this action is to amend the standards to reflect the actual performance levels already being achieved by existing MWC units. At present, Oklahoma has one existing MWC with capacity greater than 250 tons per day, and though officials representing

that facility indicate the facility is capable of meeting these requirements, at this time the facility is not operating.

SUMMARY OF COMMENTS AND RESPONSES:

United States Environmental Protection Agency-- Letter from Region 6 Chief, Air Planning Section Guy Donaldson.

COMMENT: "The revisions to Subchapter 17 are administrative in nature. We have no adverse comments on the proposed revisions."

RESPONSE: None required.

Permanent Final Adoptions

~~"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.~~

"Regulated pollutant (for fee calculation)", which is used only for purposes of this Subchapter, means any "regulated air pollutant" except the following:

- (A) Carbon monoxide.
- (B) Gross particulate matter (GPM).

[OAR Docket #09-738; filed 4-17-09]

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

[OAR Docket #09-739]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 8. Permits for Part 70 Sources
- Part 5. Permits for Part 70 Sources
- 252:100-8-2. Definitions [AMENDED]
- 252:100-8-4. Requirements for construction and operating permits [AMENDED]
- Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
- 252:100-8-30. Applicability [AMENDED]
- 252:100-8-31. Definitions [AMENDED]
- 252:100-8-33. Exemptions [AMENDED]
- 252:100-8-37. Innovative control technology [AMENDED]
- 252:100-8-38. Actuals PAL [AMENDED]
- Part 9. Major Sources Affecting Nonattainment Areas
- 252:100-8-50. Applicability [AMENDED]
- 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]
- 252:100-8-53. Exemptions [AMENDED]
- 252:100-8-54.1. Ozone and PM-10 precursors [NEW]
- 252:100-8-55. Source obligation [AMENDED]
- 252:100-8-56. Actuals PAL [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.*

DATES:

Comment period:

June 16, 2008, through July 16, 2008, and August 19, 2008

Public hearing:

July 16, 2008, and August 19, 2008

Adoption:

August 19, 2008

Submitted to Governor:

August 29, 2008

Submitted to House:

August 29, 2008

Submitted to Senate:

August 29, 2008

Gubernatorial approval:

September 24, 2008

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 24, 2009.

Final adoption:

March 24, 2009

Effective:

July 1, 2009

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated standards:

- 40 CFR 51.166(w), Actuals PALs, with some exceptions
- 40 CFR 51.165(a)(1) with some exceptions
- 40 CFR 51.165(a)(3)
- 40 CFR 51.165(a)(9)
- 40 CFR 51.165(b)
- 40 CFR 51.165(a)(4)
- 40 CFR 51.165(a)(5)
- 40 CFR 51.165(a)(6)(i) through (v)
- 40 CFR 51.165(a)(7)
- 40 CFR 51.165(f), Actuals PALs, with exceptions

Incorporating rules:

- 252:100-8-38(a)
- 252:100-8-51
- 252:100-8-51.1(a)
- 252:100-8-51.1(b)
- 252:100-8-52(a)
- 252:100-8-53(a)
- 252:100-8-55(b)
- 252:100-8-55(c)(1) and (2)
- 252:100-8-55(d)
- 252:100-8-56

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:

The Department proposes to amend OAC 252:100-8 to correct errors in the existing rule; make changes required by revisions to the federal rule published in the *Federal Register* on November 29, 2005, May 1, 2007, and June 13, 2007; and resolve a conflict between OAC 252:100-8-4(b)(8) and 252:100-8-7.1(d) regarding permit renewal and expiration. The following changes are to implement the requirements contained in the *Federal Register* dated November 29, 2005, when EPA took final action on the remaining elements of the program to implement the 8-hour ozone NAAQS:

1) Paragraph (A)(i) of the definition of major modification and paragraph (B) of the definition of major stationary source in OAC 252:100-8-31 were changed to indicate that a major stationary source that is significant for NO_x shall be considered significant for ozone;

2) Paragraph (A)(i) of the definition of regulated NSR pollutant in OAC 252:100-8-31 was changed to list NO_x as a precursor for ozone;

3) Paragraph (A)(v) of the definition of significant in OAC 252:100-8-31 was changed to list the significant level for ozone as 40 TPY of VOC or NO_x;

4) Subsection (c) of OAC 252:100-8-33 was changed to allow exemption from some air quality analysis requirements for ozone if the air quality impacts are less than 100 TPY of NO_x;

5) New paragraphs (C) and (D) were added to the definition of major modification in OAC 252:100-8-51. Paragraph (C), in conjunction with OAC 252:100-8-54.1(a), makes the VOC requirements in Part 9 of Subchapter 8 also apply to NO_x emissions and paragraph (D) provides that any physical change or change in operation of a major source of VOC that results in any increase in VOC emissions shall be considered a major modification for ozone if the source is located in an extreme ozone nonattainment area;

6) New subsection OAC 252:100-8-51.1(b) incorporates by reference the emission offset requirements in 40 CFR 51.165(a)(9); and

7) New subsection OAC 252:100-8-54.1(b) makes the PM-10 requirements in Part 9 of Subchapter 8 also apply to PM-10 precursors.

The revision finalized in the May 1, 2007, *Federal Register* made changes to the definitions of major stationary source in the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR), and to the definition of major source in Title V regulations. The definition of major stationary source in OAC 252:100-8-31 was revised to exclude certain ethanol production facilities from being considered chemical process plants and thus changing their PSD threshold emissions from 100 TPY to 250 TPY. The incorporation by reference of the definitions in OAC 252:100-8-51 was updated to include this revision to the definition of major stationary source for

nonattainment area NSR. The definition of major source in OAC 252:100-8-2 for Part 70 sources was revised to exclude certain ethanol production facilities from being considered chemical process plants and thus the fugitive emissions from these facilities will no longer be used to determine if a source is major for Part 70. In the revision finalized in the June 13, 2007, *Federal Register*, EPA amended its regulations to eliminate the pollution control project (PCP) and clean unit (CU) provisions included in its December 31, 2002, rulemaking. This was required by the U.S. Court of Appeals for the D.C. Circuit in its ruling of June 24, 2005, vacating the PCP and CU provisions. Remaining language due to PCP and/or CU provisions was deleted from OAC 252:100-8-30(b)(5), 252:100-8-50(b)(5), 252:100-8-51, and 252:100-8-51.1. The time period in OAC 252:100-8-4(d)(8) for a timely application for permit renewal is 6 months prior to the date of permit expiration and the time period in 252:100-8-7.1(d)(1) for a timely renewal application is 180 days before the date of expiration. Although used interchangeably, the two time periods are not necessarily the same. Since 180 days is the more precise term, the 6 months time period in OAC 252:100-8-7.1(d)(1) has been changed to 180 days. For consistency 18 months was changed to 540 days. Several scrivener's errors were corrected. These were generally not of a substantive nature. Language was added to OAC 252:100-8-38(c)(3) and 252:100-8-50.1(3) for clarity. Incorporation by reference dates in OAC 252:100-8-38(a); 252:100-8-51; 252:100-8-51.1(a) and (b); 252:100-8-52(a); 252:100-8-53(a); 252:100-8-55(b), (c)(1), (c)(2), and (d); and 252:100-8-56 were updated to include changes made by the revisions contained in the three *Federal Registers*.

CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218.

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, 2009:

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);
- (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

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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 HAP's 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-tons-per-year (~~"tpy"~~) TPY or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25-~~tpy~~ 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~~ TPY or more of any regulated air pollutant (~~except that fraction of particulate matter that exhibits an average aerodynamic particle diameter of more than 10 micrometers gross particulate matter~~) (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~~ TPY or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 ~~tpy~~ TPY or more in areas classified as "serious," 25 ~~tpy~~ TPY or more in areas classified as "severe," and 10 ~~tpy~~ TPY or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 ~~tpy~~ 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~~ 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~~ TPY or more of carbon monoxide; and
- (iv) For particulate matter (PM-10) non-attainment areas classified as "serious," sources with the potential to emit 70 ~~tpy~~ TPY or more of PM-10.

"**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;

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(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.

"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 operation of one or more manufacturing, 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 Subchapter, 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 in so far 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 Subchapter.~~

"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.

"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.

252:100-8-4. Requirements for construction and operating permits

(a) Construction permits.

(1) **Construction permit required.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit. A construction permit is also required prior to reconstruction of a major affected source under 40 CFR Part 63, reconstruction of a major source if it would then become a major affected source under 40 CFR 63, or for any physical change that would be a significant modification under OAC 252:100-8-7.2(b)(2). In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

(2) Requirement for case-by-case MACT determinations.

(A) **Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

(B) **Exclusions.** The following sources are not subject to this subsection.

- (i) Electric utility steam generating units unless and until these units are added to the source category list.
- (ii) Stationary sources that are within a source category that has been deleted from the source category list.
- (iii) Research and development activities as defined in 40 CFR § 63.41.

(C) **MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

(b) **Operating permits.**

(1) **Operating permits required.** Except as provided in subparagraphs (A) and (B) of this section, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

(A) If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

(B) If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

(C) Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.** Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in OAC 252:100-8-4(b)(4). A timely application is one that is postmarked on or before the relevant date listed below. In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.

(4) **Application submittal schedule.** The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule.

(A) No later than September 5, 1996:

(i) Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act, § 407.

(ii) Any owner or operator shall submit no less than one-third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):

- (I) Petroleum and Natural Gas, 1311;
- (II) Natural Gas Liquids, 1321;
- (III) Electric Services, 4911, 4961;
- (IV) Natural Gas Transmission, 4922;
- (V) Natural Gas Transmission and Distribution, 4923; and
- (VI) Petroleum Bulk Stations and Terminals, 5171.

(B) All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.

(C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

- (i) Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,
- (ii) Brick Plants, 3251, 3297,
- (iii) Commercial Printing, 2752, 2761.

(D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

- (i) Refineries, 2911;
- (ii) Cement Plants, 3241;
- (iii) Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;
- (iv) Petroleum Transportation/Terminals/Storage, 4612, 4613;
- (v) Food Products, 2013, 2074, 2095.

(E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.

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- (5) **Newly regulated sources.** A source that becomes subject to the operating permit program established by this Chapter at any time following the effective date shall file an administratively complete operating permit application within 180 days of commencement of operation.
- (6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.
- (7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.
- (8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least ~~six months~~ 180 days before the date of permit expiration, unless a longer period (not to exceed ~~18 months~~ 540 days) is specified in the permit. Renewal periods greater than ~~six months~~ 180 days are subject to negotiation on a case-by-case basis.
- (9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).
- (10) **Application completeness.** See Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.

PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

252:100-8-30. Applicability

(a) General applicability.

- (1) The requirements of this Part shall apply to the construction of any new major stationary source or any project that is a major modification at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.
- (2) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Part otherwise provides.
- (3) No new major stationary source or major modification to which the requirements of OAC 252:100-8-34 through 252:100-8-36.2(b) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

- (4) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of all new major stationary sources and major modifications.

(b) Major modification.

- (1) **Major modification applicability determination.**
- (A) Except as otherwise provided in OAC 252:100-8-30(c), and consistent with the definition of "major modification", a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases:
- a significant emissions increase and
 - a significant net emissions increase.
- (B) The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
- (2) **Calculating significant emissions increase and significant net emissions increase before beginning actual construction.** The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, according to OAC 252:100-8-30(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase". This is the second step in the process of determining if a proposed modification is a major modification. Both steps occur prior to the beginning of actual construction. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
- (3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.
- (4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.
- (5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in OAC 252:100-8-30(b)(3) or (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant. ~~For example, if a project involves both an existing emissions unit and a~~

~~new emissions unit, the projected increase is determined by summing the values determined using the method specified in OAC 252:100-8-30(b)(3) for the existing unit and determined using the method specified in 252:100-8-30(b)(4) for the new emissions unit.~~

(6) **Actual-to-potential test for projects that only involve existing emissions units.** In lieu of using the actual-to-projected-actual test, owners or operators may choose to use the actual-to-potential test to determine if a significant emissions increase of a regulated NSR pollutant will result from a proposed project. A significant emissions increase of a regulated NSR pollutant will occur if the sum of the difference between the potential emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant. Owners or operators who use the actual to potential test will not be subject to the recordkeeping requirements in OAC 252:100-8-36.2(c).

(c) **Plantwide applicability limitation (PAL).** Major stationary sources seeking to obtain or maintain a PAL shall comply with the requirements under OAC 252:100-8-38.

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 ~~Subsection~~ 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

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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) 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 equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(A) Area redesignations under section 107(d)(1)(D) or (E) 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 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 and sulfur dioxide, January 6, 1975, and

(ii) in the case of nitrogen dioxide, February 8, 1988.

(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 and sulfur dioxide, August 7, 1977, and
- (ii) in the case of nitrogen dioxide, February 8, 1988.

(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) 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 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 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.

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"**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 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.

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"**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 constituents or precursors for such pollutants identified by the Administrator (e.g., VOC and NO_x are precursors for ozone);

(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.

(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 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 emissions,
- (v) ozone: 40 TPY of VOC or NO_x,
- (vi) lead: 0.6 TPY,
- (vii) fluorides: 3 TPY,
- (viii) sulfuric acid mist: 7 TPY,
- (ix) hydrogen sulfide (H₂S): 10 TPY,
- (x) total reduced sulfur (including H₂S): 10 TPY,
- (xi) reduced sulfur compounds (including H₂S): 10 TPY,
- (xii) municipal waste combustor organics (measured as total tetra-through octa-chlorinated

dibenzo-p-dioxins and dibenzofurans): 3.5 x 10⁻⁶ TPY,

(xiii) municipal waste combustor metals (measured as particulate matter): 15 TPY,

(xiv) municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 40 TPY,

(xv) municipal solid waste landfill emissions (measured as nonmethane organic compounds): 50 TPY.

(B) Notwithstanding (A) of this definition, "significant" means 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.

"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

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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:

- (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) Particulate matter - $10\mu\text{g}/\text{m}^3$, TSP or PM-10, 24-hour average,
- (D) Sulfur dioxide - $13\mu\text{g}/\text{m}^3$, 24-hour average,
- (E) 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) Lead - $0.1\mu\text{g}/\text{m}^3$, 24-hour 3-month average,
- (G) Fluorides - $0.25\mu\text{g}/\text{m}^3$, 24-hour average,
- (H) Total reduced sulfur - $10\mu\text{g}/\text{m}^3$, 1-hour average,
- (I) Hydrogen sulfide - $0.2\mu\text{g}/\text{m}^3$, 1-hour average, or
- (J) Reduced sulfur compounds - $10\mu\text{g}/\text{m}^3$, 1-hour average.

(2) 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 PM-10 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 PM-10 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). The permitting requirements of OAC 252:100-8-35(a)(2) 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.

252:100-8-37. Innovative control technology

(a) An applicant for a permit for a proposed major stationary source or major modification may request the Director in writing to approve a system of innovative control technology.

(b) The Director may determine that the innovative control technology is permissible if:

- (1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function.
 - (2) The applicant agrees to achieve a level of continuous emissions reductions equivalent to that which would have been required for BACT under OAC 252:100-8-34(b)(1) by a date specified by the Director. Such date shall not be later than 4 years from the time of start-up or 7 years from permit issuance.
 - (3) The source or modification would meet the requirements equivalent to those in OAC 252:100-8-34 and 252:100-8-35(a) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Director.
 - (4) The source or modification would not, before the date specified, cause or contribute to any violation of the applicable NAAQS, or impact any Class I area or area where an applicable increment is known to be violated.
 - (5) All other applicable requirements including those for public participation have been met.
 - (6) The provisions of OAC 252:100-8-36 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.
- (c) The Director shall withdraw approval to employ a system of innovative control technology made under OAC 252:100-8-37, if:
- (1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or,
 - (2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or,
 - (3) The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.
- (d) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with OAC 252:100-8-37(c), the Director may allow the source or modification up to an additional 3 years to meet the requirement for application of BACT through the use of a demonstrated system of control.

252:100-8-38. Actuals PAL

- (a) **Incorporation by reference.** With the exception of the definitions in OAC 252:100-8-38(c), 40 CFR 51.166(w), Actuals PALs, is hereby incorporated by reference, as it exists on ~~January 2, 2006~~ July 2, 2007, and does not include any subsequent amendments or editions to the referenced material.
- (b) **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.
- (c) **Terminology related to 40 CFR 51.166(w).** For purposes of interfacing with 40 CFR, the following terms 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 252:100-8-31.
- (5) "Net emissions increase" is synonymous with the definition of "net emissions increase" in OAC 252:100-8-31.
- (6) "Reviewing authority" is synonymous with "Director".
- (7) "State implementation plan" is synonymous with OAC 252:100.
- (8) "Volatile organic compound (VOC)" is synonymous with the definition of "volatile organic compound" or "VOC" in OAC 252:100-1-3.

PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS

252:100-8-50. Applicability

- (a) **General applicability.**
 - (1) The requirements of this Part shall apply to the construction of any new major stationary source or major modification which would locate in or affect a nonattainment area located in Oklahoma, designated under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification is major for the pollutant for which the area is designated nonattainment.
 - (2) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of any new major stationary source or major modification.
 - (3) In addition, the requirements of a PSD review (OAC 252:100-8, Part 7) would be applicable if any regulated NSR pollutant other than the nonattainment pollutant is emitted in significant amounts by that source or modification.
- (b) **Major modification.**
 - (1) **Major modification applicability determination.**
 - (A) Except as otherwise provided in OAC 252:100-8-50(c), and consistent with the definition of "major modification" contained in OAC 252:100-8-51, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases:
 - (i) a significant emissions increase, and
 - (ii) a significant net emissions increase.
 - (B) The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

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- (2) **Calculating significant emissions increase and significant net emissions increase.** The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions unit(s) being modified, according to OAC 252:100-8-50(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase" in OAC 252:100-8-50.1 and 252:100-8-51. This is the second step in the process of determining if a proposed modification is a major modification. Both steps occur prior to the beginning of actual construction. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
- (3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, as applicable, for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.
- (4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.
- (5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in OAC 252:100-8-50(b)(3) and (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant. ~~For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in OAC 252:100-8-50(b)(3) for the existing unit and determined using the method specified in 252:100-8-50(b)(4) for the new emissions unit.~~
- (c) **Plantwide applicability limitation (PAL).** Major stationary sources seeking to obtain or maintain a PAL shall comply with requirements under OAC 252:100-8-56.

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) "Reviewing authority" is synonymous with "Director".
- (7) "Secondary emissions" is synonymous with the definition of "secondary emissions" in OAC 252:100-8-1.1.
- (8) "State implementation plan" is synonymous with OAC 252:100.
- (9) "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 ~~January 2, 2006~~ July 2, 2007, except for the definitions found at 40 CFR 51.165(a)(1)(xxxv) "baseline actual emissions"; (ii) "building, structure, facility, or installation"; ~~(xxix) "Clean Unit"; (xlv) "fixed capital cost"; (xlv) "functionally equivalent component";~~ (v) "major modification"; (vi) "net emissions increase"; ~~(xxv) "pollution control project (PCP)"; (xliii) "process unit";~~ (xxxviii) "reviewing authority"; (viii) "secondary emissions"; (xlv) "total capital investment"; and (xix) "volatile organic compound (VOC)". With the exception of ~~"pollution control project (PCP)", "Clean Unit", and "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

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determining creditable increases and decreases or after a change.

252:100-8-51.1. Emissions reductions and offsets

(a) The requirements in 40 CFR 51.165(a)(3) regarding emissions reductions and offsets, ~~except for 40 CFR 51.165(a)(3)(ii)(H) and (I)~~, are hereby incorporated by reference as they exist on ~~January 2, 2006~~ 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.

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 ~~January 2, 2006~~ July 2, 2007.

(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(1)~~ 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.

252:100-8-53. Exemptions

(a) ~~The requirement requirements~~ in 40 CFR 51.165(a)(4) regarding exemption of fugitive emissions in determining if a source or modification is major are hereby incorporated by reference as they exist on ~~January 2, 2006~~ July 2, 2007.

(b) Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if the source or modification was not subject to 40 CFR Part 51, Appendix S (emission offset interpretative ruling) as it existed on January 16, 1979, and the source:

(1) obtained all final federal and state construction permits before August 7, 1980;

(2) commenced construction within 18 months from August 7, 1980, or any earlier time required by the State Implementation Plan; and,

(3) did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

(c) Secondary emissions are excluded in determining the potential to emit. However, upon determination of the Director, if a source is subject to the requirements on the basis of its direct emissions, the applicable requirements must also be met for secondary emissions but the source would be exempt from the conditions of ~~OAC 252:100-8-52(4)~~ 252:100-8-52(d) and 252:100-8-54(1) through 252:100-8-54(3). Also, the indirect impacts of mobile sources are excluded.

(d) As specified in the applicable definitions, the requirements of Part 7 for PSD and Part 9 for nonattainment areas of this Subchapter are not applicable to a modification if the existing source was not major on August 7, 1980, unless the proposed addition to the existing minor source is major in its own right.

252:100-8-54.1. Ozone and PM-10 precursors

(a) Ozone. The requirements of Part 9 of OAC 252:100-8 applicable to major stationary sources and major modifications of VOCs shall apply to NO_x emissions from major stationary sources and major modifications of NO_x in an ozone transport region (as defined in 42 U.S.C. § 7511c) or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a NO_x waiver applying the standards set forth under section 182(f) of the Act and the waiver continues to apply.

(b) PM-10 precursors. The requirements of Part 9 of OAC 252:100-8 applicable to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

252:100-8-55. Source obligation

(a) **Construction permits required.** An owner or operator shall obtain a construction permit prior to commencing construction of a new major stationary source or major modification.

(b) **Responsibility to comply and the consequences of relaxation of permit conditions.** The requirements in 40 CFR 51.165(a)(5) regarding the responsibility to comply with applicable local State or Federal law and the consequences of becoming a major source by virtue of a relaxation in any

enforcement limitation are hereby incorporated by reference as they exist on ~~January 2, 2006~~ July 2, 2007.

(c) **Requirements when using projected actual emissions.**

(1) The specific provisions in 40 CFR 51.165(a)(6)(i) through (v) ~~(as they exist on July 2, 2007)~~ shall apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) when the owner or operator elects to use the methods specified in the definition of "projected actual emissions" at ~~40 CFR 51.165(a)(xxviii)(B)(1) through (3)~~ 40 CFR 51.165(a)(1)(xxviii)(B)(1) through (3) ~~(as they existed on January 2, 2006)~~ for calculating projected actual emissions.

(2) The requirements in 40 CFR 51.165(a)(6)(i) through (v) are hereby incorporated by reference as they ~~existed~~ exist on ~~January 2, 2006~~ July 2, 2007.

(d) **Availability of information.** The requirements in 40 CFR 51.165(a)(7) regarding availability of information required to document the use of projected actual emissions for determining if a project is a major modification are hereby incorporated by reference as they ~~existed~~ exist on ~~January 2, 2006~~ July 2, 2007.

252:100-8-56. Actuals PAL

The requirements in 40 CFR 51.165(f) regarding actuals PAL except for the terminology contained in OAC 252:100-8-50.1(b), are hereby incorporated by reference as they ~~existed~~ exist on ~~January 2, 2006~~ July 2, 2007.

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

[OAR Docket #09-740]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 17. Incinerators
- Part 5. Municipal Waste Combustors
- 252:100-17-14.1. Definitions [AMENDED]
- 252:100-17-14.2. Terminology related to 40 CFR [AMENDED]
- 252:100-17-15. Exemptions [AMENDED]
- 252:100-17-16. Standards for particulate matter and opacity [AMENDED]
- 252:100-17-17. Standards for municipal waste combustor metals [AMENDED]
- 252:100-17-19. Standards for municipal waste combustor organics expressed as total mass dioxins/furans [AMENDED]
- 252:100-17-20. Standards for nitrogen oxides [AMENDED]
- 252:100-17-21. Standards for municipal waste combustor operating practices [AMENDED]
- 252:100-17-24. Standards for municipal waste combustor operator training and certification [AMENDED]
- 252:100-17-25. Compliance and performance testing [AMENDED]
- 252:100-17-26. Reporting and recordkeeping requirements [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.*

DATES:

Comment period:

March 17, 2008, through April 16, 2008, and August 19, 2008

Public hearing:

April 16, 2008, and August 19, 2008

Adoption:

August 19, 2008

Submitted to Governor:

August 29, 2008

Submitted to House:

August 29, 2008

Submitted to Senate:

August 29, 2008

Gubernatorial approval:

September 24, 2008

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 24, 2009.

Final adoption:

March 24, 2009

Effective:

July 1, 2009

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated Standards:

- 40 CFR 60.51b
- 40 CFR 60.53b (b) and (c)
- 40 CFR 60.58b
- 40 CFR 60.59b

Incorporating rules:

- 252:100-17-14.1
- 252:100-17-21
- 252:100-17-25
- 252:100-17-26

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:

The Department proposes to amend OAC 252:100-17, Part 5, Municipal Waste Combustors (MWC), to reflect new federal standards for existing and new MWC units with a combustion capacity greater than 250 tons per day. Standards for MWC units were promulgated in 1995 and implemented in 2000. The Clean Air Act (CAA) requires review of these standards every 5 years. The review was conducted in accordance with CAA section 129 and section 111. For existing MWC units, the goal of this action is to amend the standards to reflect the actual performance levels being achieved by existing MWC units. For new MWC units, the goal of this action is to amend the standards to reflect the performance level achievable by MWC units constructed in the future. Other technical improvements are also being made to the standards for MWC units. These proposed rule changes provide the means for implementing and enforcing the federal emission guidelines (40 CFR 60, Subpart Cb) and will be the enforcement mechanism in Oklahoma's State 111(d)/129 Plan. Amendments to Part 5 tighten the emission limits for existing MWC units for dioxin, cadmium, lead, mercury and particulate matter as well as nitrogen oxides emitted by mass burn rotary waterwall type MWC units. Emission limits for new MWC units are revised for cadmium, lead, mercury and particulate matter. Compliance testing provisions have been revised for both new and existing MWC units to require increased data availability from continuous emissions monitoring systems (CEMS). The revisions require CEMS to generate at least 95 percent data availability on a calendar year basis and at least 90 percent data availability on a calendar quarter basis. The emission guidelines and NSPS have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. In addition to establishing new emission standards for certain regulated pollutants, the new rule will modify requirements for operator training and qualifications. Proposed changes have been implemented by both modifying the rule text and updating incorporations by reference.

CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218.