J.D. STRONG
SECRETARY OF ENVIRONMENT

BRAD HENRY
GOVERNOR

STATE OF OKLAHOMA
OFFICE OF THE
SECRETARY OF ENVIRONMENT

July 16, 2010

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

RE: NSR Reform Revision to Oklahoma State Implementation Plan

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 CFR Part 51 a revision to the Oklahoma Air Quality Control Implementation Plan and the associated evidence as required by 40 CFR 51, Appendix V, 2.1.

This submittal covers amendments to Subchapters 1 and 8 in OAC 252:100 that became effective June 15, 2006. These amendments incorporate the requirements of EPA's NSR Reform into the SIP and revise a definition in the Part 70 program. All changes and additions to Oklahoma's plan were accomplished by adopting amended permanent rules of the Department of Environmental Quality. These rules were promulgated in substantial compliance with the *Oklahoma Administrative Procedures Act* and published in the *Oklahoma Register*, the official state publication for rule making actions. We have submitted five hard copies of the document as required by 40 CFR 51.103(a).

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

Sincerely,

J. D. Strong
Secretary of Environment

Enclosures

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

3800 North Classen Boulevard Oklahoma City, Oklahoma 73118
(405) 530-8995 fax (405) 530-8999

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

AIR QUALITY DIVISION

2010

State Implementation Plan

Oklahoma Administrative Code
252:100

New Source Review (NSR)

Submitted to EPA
July 2010

Hearing Certification

STEVEN A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

BRAD HENRY
Governor

July 12, 2010

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

Subject: New Source Review Reform Revision to the Oklahoma State Implementation Plan

Dear Dr. Armendariz:

We certify that these rules were adopted in substantial compliance with the requirements of the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250.1 through 323 and 40 CFR § 51.102 and submit this certification to satisfy the evidence requirements for state implementation plans in 40 CFR 51, Appendix V, 2.1(f). The rules to be added or amended in Oklahoma's plan and the dates of the public rulemaking hearings held by the Department of Environmental Quality's (DEQ) Air Quality Advisory Council and Environmental Quality Board are listed in the table below:

NOTICE	*PUBLIC HEARING*	*GOVERNING BOARD*
06/15/05	07/20/05	Air Quality Advisory Council
09/15/05	10/19/05	Air Quality Advisory Council
12/15/05	01/18/06	Air Quality Advisory Council
12/15/05	02/24/06	Environmental Quality Board

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 rulemaking actions and the associated documents must be published. 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 Bradley, Environmental Programs Manager, at (405) 702-4100.

Sincerely,

Eddie Terrill, Director
Air Quality Division

OAC 252:100
NSR-related Rules

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, 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 ~~reviewing authority~~ 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.

"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 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.

"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.

"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 with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured during a stack test of the source's emissions.

"PM-10 (particulate matter - 10 micrometers)" means particulate matter with an aerodynamic diameter 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.

"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.

"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 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, 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 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.

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

"Actual emissions" means, except for Parts 7 and 9 of this Subchapter, the total amount of 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).

~~**"Administrator"** means the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.~~

~~**"Allowable emissions"** means, for purposes of Parts 7 and 9 of this Subchapter, 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.~~

"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.

~~**"Begin actual construction"** means:~~

~~(A) for purposes of Parts 7 and 9 of this Subchapter, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. 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.~~

~~(B) for purposes of Part 5 of this Subchapter, 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.~~

~~**"Best available control technology"** or **"BACT"** means the control technology to be applied for a major source or modification is the best that is available as determined by the Director on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternate control systems.~~

~~**"Building, structure, facility, or installation"** means, for purposes of Parts 7 and 9 of this Subchapter, 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.~~

~~**"Commence"** for purposes of Parts 7 and 9 of this Subchapter 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, for purposes of Parts 7 and 9 of this Subchapter, any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.~~

"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.

~~**"Emissions unit"** means, for purposes of Parts 7 and 9 of this Subchapter, any part of a source which emits or would have the potential to emit any pollutant subject to regulation.~~

~~**"EPA"** means the United States Environmental Protection Agency.~~

~~**"Fugitive emissions"** means, for purposes of Parts 7 and 9 of this Subchapter, those emissions which could not reasonably pass~~

~~through a stack, chimney, vent or other functionally equivalent opening.~~

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

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

~~**"Necessary preconstruction approvals or permits"** means, for purposes of Parts 7 and 9 of this Subchapter, those permits or approvals required under all applicable air quality control laws and rules.~~

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

~~**"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 this Subchapter, as provided in OAC 252:100-8-3(a) and (b).~~

~~**"Potential to emit"** means, for purposes of Parts 7 and 9 of this Subchapter, 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.~~

"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.

~~"Stationary source" means, for purposes of Parts 7 and 9 of this Subchapter, any building, structure, facility or installation which emits or may emit any air pollutant subject to OAC 252:100.~~

"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.

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) ~~through (C)~~ 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.

~~(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 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.

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

252:100-8-30. Applicability

(a) General applicability.

(1) The ~~new source~~ requirements of this Part, ~~in addition to the requirements of Parts 1, 3, and 5 of this Subchapter,~~ shall apply to the construction of ~~all~~ any new major stationary ~~sources~~ source ~~and~~ or any project that is a major ~~modifications~~ modification ~~as specified in 252:100-8-31 through 252:100-8-33~~ 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. ~~Sources subject~~

~~to this Part are also subject to the operating permit provisions contained in Part 5 of 252:100-8.~~

(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 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 ~~emission~~ emissions**" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined

in accordance with ~~the following:~~ 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 ~~tons per year~~ TPY at which the unit actually emitted the pollutant during a ~~two-year~~ consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The ~~reviewing authority~~ Director ~~may~~ 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. ~~Actual emissions may also be determined by source tests, or by best engineering judgment in the absence of acceptable test data.~~

(B) The ~~reviewing authority~~ 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 ~~which~~ that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~**"Adverse impact on visibility"** means 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:~~

~~(A) times of visitor use of the Federal Class I area, and~~

~~(B) the frequency and timing of natural conditions that reduce visibility.~~

"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 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 $\mu g/m^3$ (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 ~~which~~ 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 ~~which~~ 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) ~~for major sources,~~ 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~~, and,~~.

(B) ~~for minor sources,~~ 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 ~~oxides~~ 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.

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

"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, O_2, or CO_2 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~~ Land Manager" means with respect to any lands in the United States, the Secretary of the department with authority over ~~the Federal Class I area or his representative~~ 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 any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant subject to regulation.~~

(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.

~~(A)~~(i) Any ~~net~~ significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for ~~volatile organic compounds~~ VOC shall be considered significant for ozone.

~~(B)~~(ii) A physical change or change in the method of operation shall not include:

~~(i)~~(I) routine maintenance, repair and replacement~~.~~;

~~(ii)~~(II) use of an ~~alternate~~ alternative fuel or raw material by reason of any order under ~~Sections~~ 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)~~(III) use of an ~~alternate~~ alternative fuel by reason of an order or rule under ~~Section~~ section 125 of the ~~Federal Clean Air~~ Act~~.~~;

~~(iv)~~(IV) use of an ~~alternate~~ alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste~~.~~;

~~(v)~~(V) ~~Use~~ use of an ~~alternate~~ alternative fuel or raw material by a stationary source which~~.~~ ~~(I)~~ the source was capable of accommodating before January 6, 1975, (unless such change would be prohibited under any enforceable permit ~~limitation~~ condition which was established after January 6, 1975)~~,~~ or~~,~~ ~~(II)~~ 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)~~(VI) ~~An~~ an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit ~~limitation~~ condition which was established after January 6, 1975~~.~~;

~~(vii)~~(VII) ~~Any~~ 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 any source which meets any of the following conditions:~~

(A) A major stationary source is:

~~(A)~~(i) ~~Any~~ any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 ~~tons per year~~ TPY or more of ~~any~~ a regulated NSR pollutant ~~subject to regulation~~:

~~(i)~~(I) carbon black plants (furnace process),

~~(ii)~~(II) charcoal production plants,

~~(iii)~~(III) chemical process plants,

~~(iv)~~(IV) coal cleaning plants (with thermal dryers),

~~(v)~~(V) coke oven batteries,

~~(vi)~~(VI) fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,

~~(vii)~~(VII) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,

~~(viii)~~(VIII) fuel conversion plants,

~~(ix)~~(IX) glass fiber processing plants,

~~(x)~~(X) hydrofluoric, sulfuric or nitric acid plants,

~~(xi)~~(XI) iron and steel mill plants,

~~(xii)~~(XII) kraft pulp mills,

~~(xiii)~~(XIII) lime plants,

~~(xiv)~~(XIV) municipal incinerators capable of charging more than 50 tons of refuse per day,

~~(xv)~~(XV) petroleum refineries,

~~(xvi)~~(XVI) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,

~~(xvii)~~(XVII) phosphate rock processing ~~plant~~ plants,

~~(xviii)~~(XVIII) portland cement plants,

~~(xix)~~(XIX) primary aluminum ore reduction plants,

~~(xx)~~(XX) primary copper smelters,

~~(xxi)~~(XXI) primary lead smelters,

~~(xxii)~~(XXII) primary zinc smelters,

~~(xxiii)~~(XXIII) secondary metal production plants,

~~(xxiv)~~(XXIV) sintering plants,

~~(xxv)~~(XXV) sulfur recovery plants, or

~~(xxvi)~~(XXVI) taconite ore processing plants~~.~~;

~~(B)~~(ii) ~~Any~~ any other stationary source not on the list in (A)(i) of this definition which emits, or has the potential

to emit, 250 ~~tons per year~~ TPY or more of ~~any~~ a regulated NSR pollutant ~~subject to regulation.~~;

~~(C)~~ (iii) ~~Any~~ any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under ~~(A) and (B) of~~ this definition if the change would constitute a major stationary source by itself.

~~(D)~~ (B) A major source that is major for ~~volatile organic compounds~~ VOC 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.

~~**"Natural conditions"** mean naturally occurring phenomena against which any changes in visibility are measured in terms of visual range, contrast or coloration.~~

"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) Net emissions increase means, with respect to any regulated NSR pollutant emitted by a major stationary source, ~~The~~ the amount by which the sum of the following exceeds zero:

(i) ~~any~~ the increase in ~~actual~~ 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: ~~the Executive Director has not relied on it in issuing a permit under OAC 252:100-8, Part 7, which permit is in effect when the increase in actual emissions from the~~

~~particular change occurs.~~

(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 ~~which~~ 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 ~~emission~~ 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, O_2, or CO_2 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"

(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"

(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 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"

(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: 100 ~~tons per year (tpy)~~ TPY,

(ii) nitrogen oxides: 40 ~~tpy~~ TPY,

(iii) sulfur dioxide: 40 ~~tpy~~ TPY,

(iv) particulate matter: 25 ~~tpy~~ TPY of particulate matter emissions or 15 ~~tpy~~ TPY of PM-10 emissions,

(v) ozone: 40 ~~tpy~~ TPY of ~~volatile organic compounds~~ VOC,

(vi) lead: 0.6 ~~tpy~~ TPY,

~~(vii) asbestos: 0.007 tpy,~~

~~(viii) beryllium: 0.0004 tpy,~~

~~(ix) mercury: 0.1 tpy,~~

~~(x) vinyl chloride: 1 tpy,~~

~~(xi)~~ (vii) fluorides: 3 ~~tpy~~ TPY,

~~(xii)~~ (viii) sulfuric acid mist: 7 ~~tpy~~ TPY,

~~(xiii)~~ (ix) hydrogen sulfide (H_2S): 10 ~~tpy~~ TPY,

(xiv) (x) total reduced sulfur (including H_2S): 10 ~~tpy~~ TPY,

~~and~~

~~(xv)~~ (xi) reduced sulfur compounds (including H_2S): ~~10 tpy~~ 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 $\mu g/m^3$ (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.

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

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

~~Proposed new sources and source modifications to which this Part is applicable are determined by size, geographical location and type of emitted pollutants.~~

~~(1) **Size.**~~

~~(A) Permit review will apply to sources and modifications that emit any regulated pollutant in major amounts. These quantities are specified in the definitions for major stationary source, major modification, potential to emit, net emissions increase, significant and other associated definitions in 252:100-8-31, 252:100-8-1.1, and 252:100-1.~~

~~(B) 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 252:100-8, Parts 1, 3, 5, and 7 shall apply to that source or modification as though construction had not yet commenced on it.~~

~~(2) **Location.**~~

~~(A) Sources and modifications which are major in size and proposed for construction in an area which has been designated as attainment or unclassified for any applicable ambient air standard are subject to the PSD requirements.~~

~~(B) Those sources and modifications locating in an attainment or unclassified area but impacting on a nonattainment area may also be subject to the requirements for major sources affecting nonattainment areas in 252:100-8, Part 9.~~

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 ~~PSD~~ the requirements of OAC 252:100-8-34 through 252:100-8-36.2.** ~~PSD requirements do not apply to a particular source or modification if:~~

(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:

~~(1)~~ (A) ~~It is~~ a nonprofit health or nonprofit educational institution~~.~~; or

~~(2)~~ (B) ~~The source is~~ major ~~by virtue of~~ only if fugitive emissions, to the extent quantifiable, are included in calculating the potential to emit and such source is not~~a source other than:~~ ~~(A) One~~ one of the categories listed in ~~(A)(i) through (xxvi) under~~ paragraph (C) of the definition of "Major stationary source" ~~in OAC 252:100-8-31,~~; or ~~(B) A stationary source category which, as of August 7, 1980, is being regulated by NSPS or NESHAP.~~

~~(3)~~ (C) ~~The source or modification is~~ a portable stationary source which has previously received a permit under the ~~PSD~~ 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 ~~evaluation~~ 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, ~~with respect to a particular pollutant,~~ 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 ~~are not applicable~~ not apply to ~~the emissions, with respect to a particular pollutant, 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 ~~tons per year~~ TPY.

(c) **Exemption from ~~monitoring~~ 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 ~~new~~ 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 ~~listed~~ amounts~~, or are pollutant concentrations that are not on the list.~~:

(A) Carbon monoxide - 575 $\mu g/m^3$, 8-hour average,

(B) Nitrogen dioxide - 14 $\mu g/m^3$, annual average,

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

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

(E) Ozone - ~~see (N) below~~ no de minimis air quality level is provided for ozone, however any net increase of 100 TPY or more of VOC subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data,

(F) Lead - 0.1 $\mu g/m^3$, 24-hour 3-month average,

~~(G) Mercury - 0.25 $\mu g/m$, 24-hour average,~~

~~(H) Beryllium - 0.001 $\mu g/m^3$, 24-hour average,~~

~~(I)~~ (G) Fluorides - 0.25 $\mu g/m^3$, 24-hour average,

~~(J) Vinyl chloride - 15 µg/m³, 24 hour average,~~

~~(K)~~ (H) Total reduced sulfur - 10 µg/m³, 1-hour average,

~~(L)~~ (I) Hydrogen sulfide - 0.2 µg/m³, 1-hour average, or

~~(M)~~ (J) Reduced sulfur compounds - 10 µg/m³, 1-hour average.

~~(N) No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.~~

(2) The pollutant is not listed in preceding OAC 252:100-8-33(c)(1).

~~(2) The requirements for air quality monitoring in OAC 252:100-8-35(b), (c) and (d)(2) shall not apply to a source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted before June 8, 1981 and the Director subsequently determined that the application was complete except for OAC 252:100-8-35(b), (c) and (d)(2). Instead, the requirements in 40 CFR 52.21(m)(2) as in effect on June 19, 1978, shall apply to such source or modification.~~

~~(3) The requirements for air quality monitoring in OAC 252:100-8-35(b), (c), and (d)(2) shall not apply to a 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 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(b), (c) and (d)(2).~~

~~(4) The Director shall determine if the requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(a) through (c) and OAC 252:100-8-35(d)(2) may be waived for a source or modification when an application for a 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(a) through (c) and OAC 252:100-8-35(d)(2), was complete before that date.~~

~~(5) The requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(b), (c), (d)(2) and (d)(6) shall apply to a 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 becomes otherwise complete in accordance with the provisions of OAC 252:100-8-33(b)(1), 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(b)(1) and OAC 252:100-8-35(c) shall have been gathered over~~

~~that shorter period.~~

(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.

~~(d)~~ (f) **Exemption from BACT requirements and ~~monitoring~~ 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 ~~monitoring~~ air quality analyses in ~~OAC 252:100-8-35(a) through (c)~~

~~and OAC 252:100-8-35(d)(2) through (4)~~ 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.

~~(e) **Exemption of modifications.** As specified in the applicable definitions of OAC 252:100-8-31, 252:100-8-1.1, and 252:100-1, the requirements of OAC 252:100-8, Part 7 for PSD and OAC 252:100-8, Part 9 for nonattainment areas are not applicable to a modification if the existing source was not major on August 7, 1980 unless the proposed addition to that existing minor source is major in its own right.~~

~~(f)~~(g) **Exemption from ~~impact analyses~~ OAC 252:100-8-35(a)(2).** The permitting requirements of OAC ~~252:100-8-35 and OAC 252:100-8-36~~ 252:100-8-35(a)(2) do not apply to a stationary source or modification with respect to any ~~maximum allowable increase~~ PSD increment for nitrogen oxides if the owner or operator of the source or modification submitted a ~~completed~~ complete application for a permit before February 8, 1988.

~~(g) **Exemption from increment consumption.** Excluded from increment consumption are the following cases:~~

~~(1) Concentrations from an increase in emissions from any 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. Such exclusion is limited to five years after the effective date of the order or plan.~~

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

~~(3) A temporary increase of sulfur dioxide, particulate matter, or nitrogen oxides by order or authorized variance from any source.~~

252:100-8-34. ~~Best available control technology~~ 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)**

~~(a)~~(1) A new major stationary source ~~must demonstrate that the control technology to be applied is the best that is available (i.e., BACT as defined herein~~ shall apply BACT for each regulated NSR pollutant that it would have the potential

to emit in significant amounts~~)~~.

~~(b)~~ (2) A major modification ~~must demonstrate that the control technology to be applied is the best that is available~~ 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.

~~(c) The determination of best available control technology shall be made on a case by case basis taking into account costs and energy, environmental and economic impacts.~~

~~(d)~~ (3) For phased construction projects the determination of ~~best available control technology~~ BACT shall be reviewed and modified at the discretion of the ~~Executive~~ 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 ~~best available control technology~~ 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)~~ (A) ~~**Application contents.**~~ **Ambient air quality analysis.** Any application for a permit under this Part shall contain, as the ~~Executive~~ Director determines appropriate, an ~~evaluation~~ analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

~~(1)~~ (i) for a new source, each regulated pollutant that it would have the potential to emit in a significant amount;

~~(2)~~ (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.

~~(b) **Continuous monitoring data.** For visibility and any pollutant, other than volatile organic compounds, for which an ambient air quality standard exists, the evaluation shall contain continuous air quality monitoring data gathered to determine whether emissions of that pollutant would cause or contribute to a violation of the applicable ambient air quality standard. For any such pollutant for which a standard does not exist, the monitoring data required shall be that which the Executive Director determines is necessary to assess the ambient air quality for that pollutant in that area. (Amended 7-9-87, effective 8-10-87)~~

~~(c) **Increment consumption.** The evaluation shall demonstrate that, as of the source's start-up date, the increase in emissions from that source, in conjunction with all other applicable emissions increases or reductions of that source, will not cause or contribute to any increase in ambient concentrations exceeding the remaining available PSD increment for the specified air contaminants as determined by the Executive Director.~~

~~(d) **Monitoring.** (1)~~

~~(1)~~ (C) **Monitoring method.** With respect to any requirements for air quality monitoring of PM-10 under ~~252.190-8-33(c)(4)~~

~~and 252:100-8-33(c)(5)~~ 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 ~~Executive~~ 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 ~~Executive~~ Director.

~~(2)~~ (D) **Monitoring period.** In general, ~~The~~ the required continuous air monitoring data shall have been gathered ~~for a time~~ over a period of up to one year and shall represent the year preceding submission of the application. Ambient monitoring data ~~collected for a time~~ 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 ~~Executive~~ 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 ~~ambient air quality standard~~ NAAQS or consume more than the remaining available PSD increment.

~~(3)~~ (E) **Monitoring period exceptions.**

~~(A)~~ (i) **Exceptions for applications that became effective between June 8, 1981, and February 9, 1982.** For any application which ~~becomes~~ became complete except ~~as to~~ for the monitoring requirements of ~~252:100-8-35(b) through 252:100-8-35(c) and 252:100-8-35(d)(2)~~ 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(b) and 252:100-8-35(c) require~~ 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 ~~becomes~~ became otherwise complete, except that:

~~(i)~~ (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)~~ (II) If the ~~Executive~~ 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 ~~252:100-8-35(b) and 252:100-8-35(c) require~~ OAC 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

~~(iii)~~ (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 ~~Executive~~ Director may waive the otherwise applicable requirements of ~~252:100-8-35(d)(3)(A)~~ 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.

~~(B)~~ (ii) **Monitoring period exception for PM-10.** For any application that ~~becomes~~ became complete, except ~~as to~~ for the requirements of ~~252:100-8-35(b), (c) and (d)(2)~~ 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(b) and (c) require~~ 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 ~~Executive~~ 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 that ~~252:100-8-35(b) and 252:100-8-35(c)~~ 252:100-8-35(c)(1)(B)(ii) ~~require~~ requires shall have been gathered over that shorter period.

~~(4)~~ (F) **Ozone post-approval monitoring.** The ~~application for~~ owner or operator of a proposed major stationary source or major modification of ~~volatile organic compounds~~ VOC ~~which~~ 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 ~~252:100-8-35~~ OAC 252:100-8-35(c)(1).

~~(5)~~ (2) **Post-construction monitoring.** The ~~applicant for a permit for~~ owner or operator of a new major stationary source or major modification shall conduct, after construction, such ambient monitoring and visibility monitoring as the ~~Executive~~ Director determines is necessary to determine the effect its emissions may have, or are having, on air quality in any area. ~~(Amended 7-9-87, effective 8-10-87)~~

~~(6)~~ (3) ~~**Monitoring system operation**~~ **Operation of monitoring stations.** The operation of monitoring stations for any air quality monitoring required under this Part ~~7 of this Subchapter~~ shall meet the requirements of 40 CFR 58 Appendix B as it existed January 2, 2006.

~~(c) Air quality models.~~

~~(1) Any air quality dispersion modeling that is required under Part 7 of this Subchapter for estimates of ambient concentrations shall be based on the applicable air quality models, data bases and other requirements specified in the~~

~~Guidelines on Air Quality Models, OAQPS 1.2-080, U.S. Environmental Protection Agency, April, 1978 and subsequent revisions.~~

~~(2) Where an air quality impact model specified in the Guidelines on Air Quality Models is inappropriate, the model may be modified or another model substituted, as approved by the Executive Director. Methods like those outlined in the Workbook for the Comparison of Air Quality Models, U.S. Environmental Protection Agency, April, 1977 and subsequent revisions, can be used to determine the comparability of air quality models.~~

~~(f) **Growth analysis.** Upon request of the Executive Director the permit application shall provide information on 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. The permit application shall also contain an analysis of the air quality impact projected for the area as a result of general commercial, residential and other growth associated with the source or modification.~~

~~(g) **Visibility and other impacts analysis.** The permit application shall provide an analysis of the impairment to visibility, soils and vegetation as a result of the source or modification. The Executive 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 Executive Director deems necessary and appropriate. (Amended 7-9-87, effective 8-10-87)~~

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) ~~**Permits issuance**~~ **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) ~~**Impact analysis required**~~ **Notice to Federal Land Managers.**

(1) ~~The permit application for a proposed new source or modification 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.~~ The ~~Executive~~ Director shall notify ~~the appropriate~~ any affected Federal Land Manager of the receipt of any ~~such analysis~~ 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 ~~and~~ 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. ~~Any analysis performed by the Land Manager shall be considered by the Executive Director provided that the analysis is filed with the DEQ within 30 days of receipt of the application by the Land Manager. Where the Executive Director finds that such an analysis does not demonstrate to the satisfaction of the Executive Director that an adverse impact on visibility will result in the Federal Class I area, the Executive Director~~

~~will, in any notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained. Further, upon presentation of good and sufficient information by a Federal Land Manager, the Executive Director may deny the issuance of a permit for a source, emissions from which will adversely impact areas heretofore or hereafter categorized as Class I areas even though the emissions would not cause the increment for such Class I areas to be exceeded.~~

(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 252:4-7 and O.S. §§ 27A-2-24-303 and 27A-2-14-304(B) & (C).

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 ~~Executive~~ Director in writing to approve a system of innovative control technology.

(b) The ~~Executive~~ 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 ~~best available control technology~~ BACT under

~~252:100-8-34~~ OAC 252:100-8-34(b)(1) by a date specified by the ~~Executive~~ 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 ~~Parts 1 and 5 of this Subchapter and 252:100-8-36~~ 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 ~~Executive~~ Director.

(4) The source or modification would not, before the date specified, cause or contribute to any violation of the applicable ~~ambient air standards~~ 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 ~~review~~ 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 ~~Executive~~ 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 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 ~~Executive~~ 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 ~~may be allowed~~ up to an additional 3 years to meet the requirement for application of ~~best available control technology~~ 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, 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).

(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 ~~new source~~ requirements of this Part~~, in addition to the applicable requirements of Parts 1, 3, and 5 of this Subchapter,~~ shall apply to the construction of ~~all~~ any new major ~~sources and~~ stationary source or major ~~modifications~~ modification which would locate in or ~~affecting~~ affect a nonattainment area located in Oklahoma, designated ~~nonattainment areas as specified in 252:100-8-51 through 252:100-8-53~~ 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.

252:100-50.1. 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).

(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, 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"; (v) "major modification"; (vi) "net emissions

increase"; (xxv) "pollution control project (PCP)"; (xxxviii) "reviewing authority"; (viii) "secondary emissions"; and (xix) "volatile organic compound (VOC)". With the exception of "pollution control project (PCP)", "Clean Unit", and "reviewing authority" 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.

~~**"Actual emissions"** means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:~~

~~(A) In general, actual emissions as of a particular date shall equal the average rate in tons per year at which the unit actually emitted the pollutant during a two-year period which precedes the operation. The reviewing authority may 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. Actual emissions may also be determined by source tests, or by best engineering judgment in the absence of acceptable test data.~~

~~(B) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.~~

~~(C) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.~~

~~**"Lowest achievable emissions rate"** means the control technology to be applied to a major source or modification which the Director, on a case by case basis, determines is achievable for a source based on the lowest achievable emission rate achieved in practice by such category of source (i.e., lowest achievable emission rate as defined in the Federal Clean Air Act).~~

"Major modification" ~~means any physical change in, or change in the method of operation of, a major source that would result in a significant net emissions increase of any pollutant subject to regulation.~~

(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.

~~(A)~~ (i) Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for ~~volatile organic compounds~~ VOC and/or oxides of nitrogen (NO_x) shall be considered significant for

ozone.

~~(B)~~ (ii) A physical change or change in the method of operation shall ~~not~~ include:

~~(i)~~ (I) routine maintenance, repair and replacement;

~~(ii)~~ (II) use of an ~~alternate~~ alternative fuel or raw material by reason of any order under ~~Sections~~ 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)~~ (III) use of an ~~alternate~~ alternative fuel by reason of an order or rule under ~~Section~~ section 125 of the ~~Federal Clean Air~~ Act;

~~(iv)~~ (IV) use of an ~~alternate~~ alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

~~(v)~~ (V) ~~Use~~ use of an ~~alternate~~ alternative fuel or raw material by a source which~~: (I)~~ the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit ~~limitation~~ condition which was established after December 21, 1976~~,~~ or~~, (II)~~ the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 8~~.~~;

~~(vi)~~ (VI) ~~An~~ an increase in the hours of operation or in the production rate unless such change would be prohibited under any federally enforceable permit ~~limitation~~ condition which was established after December 21, 1976~~, or~~;

~~(vii)~~ (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.

~~**"Major stationary source"** means:~~

~~(A) any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation; or,~~

~~(B) any physical change that would occur at a source not qualifying under (A) of this definition as a major source, if the change would constitute a major source by itself.~~

~~(C) for ozone, a source that is major for volatile organic compounds shall be considered major.~~

"Net emissions increase" ~~means:~~

(A) With respect to any regulated NSR pollutant emitted by a major stationary source, net emissions increase shall mean ~~The~~ the amount by which the sum of the following exceeds zero:

(i) ~~any~~ the increase in ~~actual~~ 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 ~~emission~~ 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: ~~the Director has not relied on it in issuing a permit under Part 9 of this Subchapter, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

(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 ~~reviewing authority~~ Director has not relied on it in issuing any permit under ~~State air quality rules~~ 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.

~~**"Significant"** means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:~~

~~(A) Carbon monoxide: 100 tons per year (tpy);~~

~~(B) Nitrogen oxides: 40 tpy;~~

~~(C) Sulfur dioxide: 40 tpy;~~

~~(D) Particulate matter: 15 tpy of PM-10 emissions;~~

~~(E) Ozone: 40 tpy of volatile organic compounds; or~~

~~(F) Lead: 0.6 tpy.~~

252:100-8-51.1. Emissions reductions and offsets.

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.

252:100-8-52. ~~Source applicability~~ Applicability determination for sources in attainment areas causing or contributing to NAAQS violation

~~Proposed new sources and source modifications to which Part 9 of this Subchapter is applicable are determined by size, geographical location and type of emitted pollutants:~~

~~(1) **Size.**~~

~~(A) Permit review will apply to sources and modifications that emit any regulated pollutant in major amounts. These quantities are specified in the definitions for major stationary source, major modification, potential to emit, net emissions increase, significant, and other associated definitions in OAC 252:100-8-51, 252:100-8-1.1, and 252:100-1-3.~~

~~(B) At such time that a particular source or modification becomes major solely by virtue of a relaxation in any enforceable permit limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Parts 1, 3, 5, and 9 of this Subchapter shall apply to that source or modification~~

~~as though construction had not yet commenced on it.~~

~~(2) Location.~~

~~(A) Sources and modifications that are major in size and proposed for construction in an area which has been designated as nonattainment for any applicable ambient air quality standard are subject to the requirements for the nonattainment area, if the source or modification is major for the nonattainment pollutant(s) of that area.~~

~~(B) In addition, the requirements of a PSD review (Part 7 of this Subchapter) would be applicable if any other regulated pollutant other than the nonattainment pollutant is emitted in significant amounts by that source or modification.~~

~~(3) Location in attainment or unclassifiable area but causing or contributing to NAAQS violation.~~

(1) 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.

~~(A) A proposed major source or major modification that would locate in an area designated attainment or unclassifiable is considered to cause or contribute to a violation of the national ambient air quality standards when such source or modification would, as a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard.~~

~~(i) SO_2:~~

~~(I) 1.0 $\mu g/m^3$ annual average;~~

~~(II) 5 $\mu g/m^3$ 24 hour average;~~

~~(III) 25 $\mu g/m^3$ 3 hour average;~~

~~(ii) PM-10:~~

~~(I) 1.0 $\mu g/m^3$ annual average;~~

~~(II) 5 $\mu g/m^3$ 24 hour average;~~

~~(iii) NO_2: 1.0 $\mu g/m^3$ annual average;~~

~~(iv) CO:~~

~~(I) 500 $\mu g/m^3$ 8 hour average;~~

~~(II) 2000 $\mu g/m^3$ one hour average.~~

~~(B) A proposed major source or major modification subject to OAC 252:100-8-52(3)(A) may reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact where the proposed source or modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, a permit for the proposed source or modification shall be denied.~~

~~(C) The requirements of OAC 252:100-8-52(3)(A) and (B) shall not apply to a major source or major modification with~~

~~respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated nonattainment.~~

~~(D)~~ (2) Sources of ~~volatile organic compounds~~ 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.

~~(E)~~ (3) Sources locating in an attainment area but impacting on a nonattainment area above the significant levels listed in OAC ~~252:100-8-52(3)~~ 252:100-8-52(1) are exempted from the condition of OAC 252:100-8-54(4)(A).

~~(F)~~ (4) 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~~ 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.

~~(G)~~ (5) 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~~ 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) Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if:~~

~~(1) The source is major by virtue of fugitive emissions, to the extent quantifiable, included in calculating the potential to emit and is a source other than one of the following categories:~~

~~(A) carbon black plants (furnace process),~~

~~(B) charcoal production plants,~~

~~(C) chemical process plants,~~

~~(D) coal cleaning plants (with thermal dryers),~~

~~(E) coke oven batteries,~~

~~(F) fossil-fuel boilers (or combination thereof) totaling~~

~~more than 250 million BTU per hour heat input,~~

~~(G) fossil fuel-fired steam electric plant of more than 250 million BTU per hour heat input,~~

~~(H) fuel conversion plants,~~

~~(I) glass fiber processing plants,~~

~~(J) hydrofluoric, sulfuric or nitric acid plants,~~

~~(K) iron and steel mills,~~

~~(L) kraft pulp mills,~~

~~(M) lime plants,~~

~~(N) municipal incinerators capable of charging more than 250 tons of refuse per day,~~

~~(O) petroleum refineries,~~

~~(P) petroleum storage and transfer units with a total storage exceeding 300,000 barrels,~~

~~(Q) phosphate rock processing plants,~~

~~(R) portland cement plants,~~

~~(S) primary aluminum ore reduction plants,~~

~~(T) primary copper smelters,~~

~~(U) primary lead smelters,~~

~~(V) primary zinc smelters,~~

~~(W) secondary metal production plants,~~

~~(X) sintering plants,~~

~~(Y) sulfur recovery plants,~~

~~(Z) taconite ore processing plants, or~~

~~(AA) any other stationary source category which, as of August 7, 1980, is being regulated by NSPS or NESHAP.~~

(a) The requirement 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.

~~(2)~~(b) Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if the ~~A~~ source or modification was not subject to 40 CFR Part 51, Appendix S (emission offset interpretative ruling) as ~~in effect~~ it existed on January 16, 1979, and the source:

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

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

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

~~(b)~~(c) Secondary emissions are excluded in determining the potential to emit ~~(see definition of "potential to emit" in 252:100-8-1.1)~~. However, upon determination of the ~~Executive~~ 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 ~~252:100-8-52(3)(F)~~ OAC 252:100-8-52(4) and 252:100-8-54(1) through 252:100-8-54(3). Also, the indirect impacts of mobile sources are excluded.

~~(c)~~ (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 ~~Executive~~ Director, on a ~~case-by-case~~ 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 ~~Executive~~ 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.

252:100-8-55. 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.

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

(1) The specific provisions in 40 CFR 51.165(a)(6)(i) through (v) 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) (as they exist 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 exist on January 2, 2006.

(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 January 2, 2006.

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 January 2, 2006.

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 O.S. §§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 [27AO.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 following pages contain 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. Expeditiously issue, reissue, modify and reopen for cause, permits for new and existing sources for the emission of air contaminants, and to grant a reasonable measure of priority to the processing of applications for new construction or modifications. The Department may also revoke, suspend, deny, refuse to issue or to reissue a permit upon a determination that any permittee or applicant is in violation of any substantive provisions of the Oklahoma Clean Air Act, or any rule promulgated thereunder or any permit issued pursuant thereto;

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

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

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

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

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

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

6. Issue:

a. general permits covering similar sources, and

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

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

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

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

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

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

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

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

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

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

G. A change in ownership of any facility or source subject to permitting requirements under this section shall not necessitate any action by the Department not otherwise required by the Oklahoma Clean Air Act. Any permit applicable to such source at the time of transfer shall be enforceable in its entirety against the transferee in the same manner as it would have been against the transferor, as shall any requirement contained in any rule, or compliance schedule set forth in any variance or order regarding or applicable to such source. Provided, however, no transferee in good faith shall be held liable for penalties for violations of the transferor unless the

transferee assumes all assets and liabilities through contract or other means. For the purposes of this subsection, good faith shall be construed to mean neither having actual knowledge of a previous violation nor constructive knowledge which would lead a reasonable person to know of the violation. It shall be the responsibility of the transferor to notify the Department in writing within thirty (30) days of the change in ownership.

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

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

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

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

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

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

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

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

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

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

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

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

1. Such program shall consist of permanent rules establishing:

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

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

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

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

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

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

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

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

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

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

1. Whenever any person has violated or is in violation of any applicable provision of the Oklahoma Clean Air Act, or any rule promulgated thereunder;

2. Whenever any person has commenced construction, modification or operation of any source, or operates any source in violation of the requirement to have a permit, or violates or is in violation of any substantive provision or condition of any permit issued pursuant to the Oklahoma Clean Air Act; or

3. Whenever any person has violated any order of the Department or the Council or any requirement to pay any fee, fine or penalty owed to the state pursuant to the Oklahoma Clean Air Act.

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

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

OPEN RECORDS ACT

§51-24A.1. Short title.

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

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

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

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

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

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

§51-24A.3. Definitions.

As used in this act:

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

   a. computer software,

   b. nongovernment personal effects,

c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system,

d. personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body,

e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority,

f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department or the Board of Trustees of the Quartz Mountain Arts and Conference Center and Nature Park to obtain any service at the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department or the Quartz Mountain Arts and Conference Center and Nature Park,

g. a Department of Defense Form 214 (DD Form 214) filed with a county clerk, including any DD Form 214 filed before the effective date of this act, or

h. except as provided for in Section 2-110 of Title 47 of the Oklahoma Statutes,

(1) any record in connection with a Motor Vehicle Report issued by the Department of Public Safety, as prescribed in Section 6-117 of Title 47 of the Oklahoma Statutes,

(2) personal information within driver records, as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, which are stored and maintained by the Department of Public Safety, or

(3) audio or video recordings of the Department of Public Safety;

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

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

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

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

Added by Laws 1985, c. 355, § 3, eff. Nov. 1, 1985. Amended by Laws 1987, c. 222, § 117, operative July 1, 1987; Laws 1988, c. 187, § 3, emerg. eff. June 6, 1988; Laws 1993, c. 39, § 1, eff. Sept. 1, 1993; Laws 1996, c. 209, § 2, eff. Nov. 1, 1996; Laws 1998, c. 315, § 4, emerg. eff. May 28, 1998; Laws 1998, c. 368, § 11, eff. July 1, 1998; Laws 2001, c. 355, § 1, emerg. eff. June 1, 2001; Laws 2002, c. 478, § 2, eff. July 1, 2002; Laws 2003, c. 3, § 42, emerg. eff. March 19, 2003; Laws 2004, c. 328, § 1, eff. July 1, 2004; Laws 2005, c. 199, § 4, eff. Nov. 1, 2005.
NOTE: Laws 2002, c. 293, § 3 repealed by Laws 2003, c. 3, § 43, emerg. eff. March 19, 2003.

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

In addition to other records which are kept or maintained, every public body and public official has a specific duty to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto, except that such records may be disposed of as provided by law.
Added by Laws 1985, c. 355, § 4, eff. Nov. 1, 1985.

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

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

1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.28 of this title, does not apply to records specifically required by law to be kept confidential including:
    a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,
    b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes,
    c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or
    d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.
2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions; provided however, the Department of Public Safety shall not be required to assemble for the requesting person specific information, in any format, from driving records relating to any person whose name and date of birth or whose driver license number is not furnished by the requesting person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Designate the days of the week when records are available for inspection, copying or mechanical reproduction;

2. Set forth the name, mailing address, and telephone number of the individual in charge of the records; and

3. Describe in detail the procedures for obtaining access to the records at least two days of the week, excluding Sunday.

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

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

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

A. A public body may keep personnel records confidential:

1. Which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation; or

2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum on the transcripts of certified public school employees.

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

1. An employment application of a person who becomes a public official;

2. The gross receipts of public funds;

3. The dates of employment, title or position; and

4. Any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.

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

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

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

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

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

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;

2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;

3. A chronological list of all incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred;

4. Radio logs, including a chronological listing of the calls dispatched;

5. Conviction information, including the name of any person convicted of a criminal offense;

6. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;

7. A crime summary, including an agency summary of crimes reported and public calls for service by classification or nature and number; and

8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner.

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

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

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

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

1. To verify the current certification status of any peace officer;

2. As may be required to perform the duties imposed by Section 3311 of Title 70 of the Oklahoma Statutes;

3. To provide to any peace officer copies of the records of that peace officer upon submitting a written request;

4. To provide, upon written request, to any law enforcement agency conducting an official investigation, copies of the records of any peace officer who is the subject of such investigation;

5. To provide final orders of administrative proceedings where an adverse action was taken against a peace officer; and

6. Pursuant to an order of the district court of the State of Oklahoma.

F. The Department of Public Safety shall keep confidential:

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

a. training, lesson plans, teaching materials, tests, and test results,

b. policies, procedures, and operations, any of which are of a tactical nature, and

c. the following information from radio logs:

(1) telephone numbers,

(2) addresses other than the location of incidents to which officers are dispatched, and

(3) personal information which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725; and

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

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

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

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

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

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

§51-24A.10. Voluntarily supplied information - Records providing unfair competitive advantage - Department of Commerce, Department of Career and Technology Education, 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.

January 18, 2006
Public Hearing

2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 16, 2005.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #05-1436; filed 11-23-05]

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

[OAR Docket #05-1400]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
252:100-1-3. [AMENDED]
Subchapter 8. Permits for Part 70 Sources
Part 1. General Provisions
252:100-8-1.1. [AMENDED]
Part 5. Permits for Part 70 Sources
252:100-8-2. [AMENDED]
Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
252:100-8-30. [AMENDED]
252:100-8-31. [AMENDED]
252:100-8-32. [REVOKED]
252:100-8-32.1. [NEW]
252:100-8-32.2. [NEW]
252:100-8-32.3. [NEW]
252:100-8-33. [AMENDED]
252:100-8-34. [AMENDED]
252:100-8-35. [AMENDED]
252:100-8-35.1. [NEW]
252:100-8-35.2. [NEW]
252:100-8-36. [AMENDED]
252:100-8-36.1. [NEW]
252:100-8-36.2. [NEW]
252:100-8-37. [AMENDED]
252:100-8-38. [NEW]
252:100-8-39. [NEW]
Part 9. Major Sources Affecting Nonattainment Areas
252:100-8-50. [AMENDED]
252:100-8-50.1. [NEW]
252:100-8-51. [AMENDED]
252:100-8-51.1. [NEW]
252:100-8-52. [AMENDED]
252:100-8-53. [AMENDED]
252:100-8-54. [AMENDED]
252:100-8-55. [NEW]
252:100-8-56. [NEW]
252:100-8-57. [NEW]
Part 11. Visibility Protection Standards [NEW]
252:100-8-70. [NEW]
252:100-8-71. [NEW]
252:100-8-72. [NEW]
252:100-8-73. [NEW]
252:100-8-74. [NEW]
252:100-8-75. [NEW]
252:100-8-76. [NEW]
252:100-8-77. [NEW]

SUMMARY:

The Department is proposing amendments to Subchapter 8, Permits for Part 70 Sources. The Department proposes to revise Parts 7 and 9 to incorporate the Environmental Protection Agency's revisions to the New Source Review (NSR) permitting program under the Federal Clean Air Act. These proposed amendments include revisions to the method of determining if a modification to an NSR source is a major modification and includes Plantwide Applicability Limitations (PAL) Exclusions. The Department proposes to update and clarify Parts 7 and 9. This will include federal revisions not previously incorporated by the Department. The Department proposes to move a number of definitions from Section 8-1.1 of Subchapter 8 to Subchapter 1 since these terms are used in more than one Subchapter in Chapter 100. Updates to a few definitions in OAC 252:100-1-3 are also being proposed.

The Department proposes to revise the definition of "insignificant activities" in Section 8-2 of Subchapter 8 due to the recent revision to Subchapter 41 and the promulgation of new Subchapter 42 and to move paragraph (B) of the definition of "begin actual construction" from Section 8-1.1 to Section 8-2.

The Department is proposing a new Part 11 which incorporates the federal Best Available Retrofit Technology (BART) requirements into Chapter 100. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).

AUTHORITY:

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

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on January 19, 2006. 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 January 19, 2006, council meeting and at the February 24, 2006, Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, January 19, 2006, at the Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma. Before the Environmental Quality Board on February 24, 2006 in Oklahoma City.

DEQ proposes to submit Subchapter 8 to the EPA for inclusion in the Oklahoma SIP. This hearing shall also serve

as the public hearing to receive comments on the proposed revisions to the SIP under the requirements of 40 Code of Federal Regulations (CFR)§ 51.102 of the EPA regulations concerning the SIPs 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, 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 30 days prior to the hearing at the Air Quality Division of the Department and on the Department's website (www.deq.state.ok.us), Air Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Please send written comments to Joyce Sheedy (e-mail: joyce.sheedy@deq.state.ok.us), 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, 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 #05-1400; filed 11-22-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION

[OAR Docket #05-1401]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Laboratory Accreditation Process
252:300-5-1. [AMENDED]
Subchapter 7. General Operations
252:300-7-3. [AMENDED]
Subchapter 17. Quality Assurance/Quality Control
Part 1. Quality Assurance/Quality Control [NEW]
Part 2. Standard Operating Procedures and Methods Manual [NEW]
252:300-17-21. [NEW]
252:300-17-22. [NEW]
252:300-17-23. [NEW]
252:300-17-24. [NEW]
252:300-17-25. [NEW]
Subchapter 19. Classifications
252:300-19-2. [AMENDED]
252:300-19-3. [AMENDED]
Appendix D. Analytes for Petroleum Hydrocarbon Laboratory Category [REVOKED]
Appendix D. Analytes for Petroleum Hydrocarbon Laboratory Category [NEW]

SUMMARY:

The proposed change to Subchapter 5 is a reference to the need for compliance with other DEQ rules chapters. In Subchapter 7, the proposed change is from one edition of the federal rules to more current one. The proposed new rules in Subchapter 17 are designed to be consistent with NELAC provisions about standard operating procedures. Subchapter 19 and Appendices proposed changes were made at the request of the Oklahoma Corporation Commission. Classifications were expanded to include the Oklahoma GRO and DRO methodologies. Accordingly, Appendix D was revoked and rewritten to reflect that change

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Article IV., Laboratory Services and Certification, § 2-4-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from December 15, 2005 through January 17, 2006. Oral comments may be made at the Laboratory Certification Advisory Council meeting on January 19, 2006, or at the meeting of the Environmental Quality Board on February 24, 2006.

PUBLIC HEARINGS:

Before the Laboratory Certification Advisory Council at 1:30 p.m. on January 19, 2006, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

Before the Environmental Quality Board at 9:30 on February 24, 2006, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease 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.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person or may viewed on the DEQ web site at www.deq.state.ok.us or may be reviewed at the Department

REGULAR MEETING/ HEARING AGENDA
AIR QUALITY ADVISORY COUNCIL
January 18, 2006, 9:00 a.m.
DEQ Building @707 North Robinson
Oklahoma City, Oklahoma

Please turn off your cell phones.

1. **Call to Order – Sharon Myers, Chair**

2. **Roll Call – Myrna Bruce**

3. **Approval of Minutes – October 19, 2005 Regular Meeting**

4. **Election of Officers – Calendar Year 2006**

5. **Public Rulemaking Hearings**

   A. **OAC 252:100-1. General Provisions [AMENDED]**
   OAC 252:100-8. Permits for Part 70 Sources, Parts 1, 5, 7 and 9 [AMENDED]

   The Department proposes to amend Subchapter 8 to incorporate the Environmental Protection Agency's revisions to the NSR permitting program under the Federal Clean Air Act. The proposed amendments include revisions to the method of determining if a modification to an NSR source is a major modification and include Plantwide Applicability Limitations (PALs) Exclusions. The Department proposes to update and clarify Parts 7 and 9. This will include federal revisions not previously incorporated by the Department. The Department proposes to move a number of definitions from Section 8-1.1 of Subchapter 8 to Subchapter 1 since these terms are used in more than one subchapter in Chapter 100. The Department also proposes to revise the definition of "insignificant activities" in Section 8-2 of Subchapter 8 due to the recent revision to Subchapter 41 and the promulgation of new Subchapter 42 and to move paragraph (B) of the definition of "begin actual construction" from Section 8-1.1 to Section 8-2.

   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, Part 11 [NEW]**

   The Department proposes a new Part 11, which incorporates the federal Best Available Retrofit Technology (BART) requirements into Chapter 100. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).

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

6. **Division Director's Report** – Eddie Terrill

7. **New Business** – Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda.

8. **Adjournment** – The next regular meeting is proposed for 9 a.m., Wednesday, April 19, 2006, in Tulsa – exact location to be announced at a later date.

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.

Parts 1, 5, 7, 9

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 1. GENERAL PROVISIONS

PART 3. PERMIT APPLICATION FEES

PART 5. PERMITS FOR PART 70 SOURCES

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

PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS

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.

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

"Actual emissions" means, except for Parts 7 and 9 of this Subchapter, the total amount of 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).

~~**"Administrator"** means the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.~~

~~**"Allowable emissions"** means, for purposes of Parts 7 and 9 of this Subchapter, 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.~~

"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.

~~**"Begin actual construction"** means:~~

~~(A) for purposes of Parts 7 and 9 of this Subchapter, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of~~

underground pipework, and construction of permanent storage structures. 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.

(B) for purposes of Part 5 of this Subchapter, 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.

"Best available control technology" or **"BACT"** means the control technology to be applied for a major source or modification is the best that is available as determined by the Director on a case by case basis taking into account energy, environmental, and economic impacts and other costs of alternate control systems.

"Building, structure, facility, or installation" means, for purposes of Parts 7 and 9 of this Subchapter, 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.

"Commence" for purposes of Parts 7 and 9 of this Subchapter 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, for purposes of Parts 7 and 9 of this Subchapter, any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"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.

~~**"Emissions unit"** means, for purposes of Parts 7 and 9 of this Subchapter, any part of a source which emits or would have the potential to emit any pollutant subject to regulation.~~

~~**"EPA"** means the United States Environmental Protection Agency.~~

~~**"Fugitive emissions"** means, for purposes of Parts 7 and 9 of this Subchapter, those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.~~

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

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

~~**"Necessary preconstruction approvals or permits"** means, for purposes of Parts 7 and 9 of this Subchapter, those permits or approvals required under all applicable air quality control laws and rules.~~

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

~~**"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 this Subchapter, as provided in OAC 252:100-8-3(a) and (b).~~

~~**"Potential to emit"** means, for purposes of Parts 7 and 9 of this Subchapter, 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.~~

"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.

~~**"Stationary source"** means, for purposes of Parts 7 and 9 of this Subchapter, any building, structure, facility or installation which emits or may emit any air pollutant subject to OAC 252:100.~~

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

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) ~~through (C)~~ 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.

~~(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 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.

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

252:100-8-30. Applicability

(a) **General applicability.**

(1) The ~~new source~~ requirements of this Part~~, in addition to the requirements of Parts 1, 3, and 5 of this Subchapter,~~ shall apply to the construction of ~~all~~ any new major stationary ~~sources~~ source ~~and major modifications as specified in 252:100-8-31 through 252:100-8-33~~ 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. ~~Sources subject to this Part are also subject to the operating permit provisions contained in Part 5 of 252:100-8.~~

(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 252:10-8-34 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 potential-to-actual 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 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 ~~emission~~ emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with ~~the following:~~ 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 ~~tons per year~~ TPY at which the unit actually emitted the pollutant during a ~~two year~~ consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The ~~reviewing authority~~ Director ~~may~~ 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. ~~Actual emissions may also be determined by source tests, or by best engineering judgment in the absence of acceptable test data.~~

(B) The ~~reviewing authority~~ 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 ~~which~~ that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~**"Adverse impact on visibility"** means 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:~~

~~(A) times of visitor use of the Federal Class I area; and~~

~~(B) the frequency and timing of natural conditions that reduce visibility.~~

"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 (C) of this definition.

(A) For any existing emissions unit, 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 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 baseline actual emissions shall be based on current emissions data and the unit's utilization during the period chosen. The Director shall allow the use of a different time period, not to exceed 10 years immediately preceding the date that a complete application is received by the Division, upon a determination that it is more representative of normal source operation. The same 24-month period shall be used for all pollutants.

(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 an existing unit other than an EUSGU, 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 the DEQ has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the 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 shall be used to determine the baseline actual emissions for all pollutants and for all the emissions units affected by the project.

(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 (A)(ii) of this definition.

(B) 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.

(C) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in paragraph (A) of this definition and for a new emissions unit in accordance with the procedures contained in paragraph (B) 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 $\mu g/m^3$ (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 ~~which~~ 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 ~~which~~ 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) ~~for major sources,~~ 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~~; and~~.

(B) ~~for minor sources,~~ 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 ~~oxides~~ 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.

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

"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, O_2, or CO_2 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~~ Land Manager" means with respect to any lands in the United States, the Secretary of the department with authority over ~~the Federal Class I area or his representative~~ 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 any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant subject to regulation.~~

(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.

~~(A)~~ (i) Any ~~net~~ significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for ~~volatile organic compounds~~ VOC shall be considered significant for ozone.

~~(B)~~ (ii) A physical change or change in the method of operation shall not include:

~~(i)~~ (I) routine maintenance, repair and replacement~~.~~;

~~(ii)~~ (II) use of an ~~alternate~~ alternative fuel or raw material by reason of any order under ~~Sections~~ 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)~~ (III) use of an ~~alternate~~ alternative fuel by reason of an order or rule under ~~Section~~ section 125 of the ~~Federal Clean Air~~ Act~~.~~;

~~(iv)~~ (IV) use of an ~~alternate~~ alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste~~.~~;

~~(v)~~ (V) ~~Use~~ use of an ~~alternate~~ alternative fuel or raw material by a stationary source which~~:~~

~~(I)~~ the source was capable of accommodating before January 6, 1975, (unless such change would be prohibited under any enforceable permit ~~limitation~~ condition which was established after January 6, 1975)~~,~~ or~~,~~

~~(II)~~ 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)~~ (VI) ~~An~~ an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit ~~limitation~~ condition which was established after January 6, 1975~~.~~;

~~(vii)~~ (VII) ~~Any~~ 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 any source which meets any of the following conditions:~~

(A) A major stationary source is:

~~(A)~~ (i) ~~Any~~ any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 ~~tons per year~~ TPY or more of ~~any~~ a regulated NSR pollutant ~~subject to regulation~~:

~~(i)~~ (I) carbon black plants (furnace process),

~~(ii)~~ (II) charcoal production plants,

~~(iii)~~ (III) chemical process plants,

~~(iv)~~ (IV) coal cleaning plants (with thermal dryers),

~~(v)~~ (V) coke oven batteries,

~~(vi)~~ (VI) fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,

~~(vii)~~ (VII) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,

~~(viii)~~ (VIII) fuel conversion plants,

~~(ix)~~ (IX) glass fiber processing plants,

~~(x)~~ (X) hydrofluoric, sulfuric or nitric acid plants,

~~(xi)~~ (XI) iron and steel mill plants,

~~(xii)~~ (XII) kraft pulp mills,

~~(xiii)~~ (XIII) lime plants,

~~(xiv)~~ (XIV) municipal incinerators capable of charging more than 50 tons of refuse per day,

~~(xv)~~ (XV) petroleum refineries,

~~(xvi)~~ (XVI) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,

~~(xvii)~~ (XVII) phosphate rock processing ~~plant~~ plants,
~~(xviii)~~ (XVIII) portland cement plants,
~~(xix)~~ (XIX) primary aluminum ore reduction plants,
~~(xx)~~ (XX) primary copper smelters,
~~(xxi)~~ (XXI) primary lead smelters,
~~(xxii)~~ (XXII) primary zinc smelters,
~~(xxiii)~~ (XXIII) secondary metal production plants,
~~(xxiv)~~ (XXIV) sintering plants,
~~(xxv)~~ (XXV) sulfur recovery plants, or
~~(xxvi)~~ (XXVI) taconite ore processing plants~~.~~;

~~(B)~~ (ii) ~~Any~~ any other stationary source not on the list in (A) (i) of this definition which emits, or has the potential to emit, 250 ~~tons per year~~ TPY or more of ~~any~~ a regulated NSR pollutant ~~subject to regulation.~~;

~~(C)~~ (iii) ~~Any~~ any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under ~~(A) and (B) of~~ this definition if the change would constitute a major stationary source by itself.

~~(D)~~ (B) A major source that is major for ~~volatile organic compounds~~ VOC 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.

~~**"Natural conditions"** mean naturally occurring phenomena against which any changes in visibility are measured in terms of visual range, contrast or coloration.~~

"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) Net emissions increase means, with respect to any regulated NSR pollutant emitted by a major stationary source, ~~The~~ the amount by which the sum of the following exceeds zero:

(i) ~~any~~ the increase in ~~actual~~ 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".

(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: ~~the Executive Director has not relied on it in issuing a permit under OAC 252:100-8, Part 7, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

(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 ~~which~~ 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 ~~emission~~ 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, O_2, or CO_2 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"

(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"

(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 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 only under 112(r) of 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"

(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: 100 ~~tons per year (tpy)~~ TPY,

(ii) nitrogen oxides: 40 ~~tpy~~ TPY,

(iii) sulfur dioxide: 40 ~~tpy~~ TPY,

(iv) particulate matter: 25 ~~tpy~~ TPY of particulate matter emissions or 15 ~~tpy~~ TPY of PM-10 emissions,

(v) ozone: 40 ~~tpy~~ TPY of ~~volatile organic compounds~~ VOC,

(vi) lead: 0.6 ~~tpy~~ TPY,

~~(vii) asbestos: 0.007 tpy,~~

~~(viii) beryllium: 0.0004 tpy,~~

~~(ix) mercury: 0.1 tpy,~~

~~(x) vinyl chloride: 1 tpy,~~

~~(xi)~~ (vii) fluorides: 3 ~~tpy~~ TPY,

~~(xii)~~ (viii) sulfuric acid mist: 7 ~~tpy~~ TPY,

~~(xiii)~~ (ix) hydrogen sulfide (H_2S): 10 ~~tpy~~ TPY,

~~(xiv)~~ (x) total reduced sulfur (including H_2S): 10 ~~tpy~~ TPY, ~~and~~

~~(xv)~~ (xi) reduced sulfur compounds (including H_2S): 10 ~~tpy~~ 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 $\mu g/m^3$ (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.

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

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

~~Proposed new sources and source modifications to which this Part is applicable are determined by size, geographical location and type of emitted pollutants.~~

~~(1) **Size.**~~

~~(A) Permit review will apply to sources and modifications that emit any regulated pollutant in major amounts. These quantities are specified in the definitions for major stationary source, major modification, potential to emit, net emissions increase, significant and other associated definitions in 252:100 8 31, 252:100 8 1.1, and 252:100 1.~~

~~(B) 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 252:100-8, Parts 1, 3, 5, and 7 shall apply to that source or modification as though construction had not yet commenced on it.~~

~~(2) **Location.**~~

~~(A) Sources and modifications which are major in size and proposed for construction in an area which has been designated as attainment or unclassified for any applicable ambient air standard are subject to the PSD requirements.~~

~~(B) Those sources and modifications locating in an attainment or unclassified area but impacting on a nonattainment area may also be subject to the requirements for major sources affecting nonattainment areas in 252:100-8, Part 9.~~

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 ~~PSD~~ the requirements of OAC 252:100-8-34 through 252:100-8-36.2.** ~~PSD requirements do not apply to a particular source or modification if:~~

(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:

~~(1)~~ (A) ~~It is~~ a nonprofit health or nonprofit educational institution~~.~~; or

~~(2)~~ (B) ~~The source is~~ major ~~by virtue of~~ only if fugitive emissions, to the extent quantifiable, are included in calculating the potential to emit and such source is not~~a source other than:~~

~~(A) One~~ one of the categories listed in ~~(A)(i) through (xxvi) under~~ paragraph (C) of the definition of "Major stationary source" ~~in OAC 252:100-8-31~~,; or

~~(B) A stationary source category which, as of August 7, 1980, is being regulated by NSPS or NESHAP.~~

~~(3)~~(C) ~~The source or modification is~~ a portable stationary source which has previously received a permit under the ~~PSD~~ 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 ~~evaluation~~ 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, ~~with respect to a particular pollutant,~~ 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 ~~are not applicable~~ not apply to ~~the emissions, with respect to a particular pollutant, 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 ~~tons per year~~ TPY.

(c) **Exemption from ~~monitoring~~ 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 ~~new~~ 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 ~~listed~~ amounts~~, or are pollutant concentrations that are not on the list.~~:

(A) Carbon monoxide - 575 $\mu g/m^3$, 8-hour average,

(B) Nitrogen dioxide - 14 $\mu g/m^3$, annual average,

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

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

(E) Ozone -~~ see (N) below~~ no de minimis air quality level is provided for ozone, however any net increase of 100 TPY or more of VOC subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data,

(F) Lead - 0.1 $\mu g/m^3$, 24-hour 3-month average,

~~(G) Mercury - 0.25 $\mu g/m$, 24 hour average,~~

~~(H) Beryllium - 0.001 $\mu g/m^3$, 24 hour average,~~

~~(I)~~ (G) Fluorides - 0.25 $\mu g/m^3$, 24-hour average,

~~(J) Vinyl chloride - 15 $\mu g/m^3$, 24 hour average,~~

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

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

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

~~(N) No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.~~

(2) The pollutant is not listed in preceding OAC 252:100-8-33(c)(1).

~~(2) The requirements for air quality monitoring in OAC 252:100-8-35(b), (c) and (d)(2) shall not apply to a source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted before June 8, 1981 and the Director subsequently determined that the application was complete except for OAC 252:100-8-35(b), (c) and (d)(2). Instead, the requirements in 40 CFR 52.21(m)(2) as in effect on June 19, 1978, shall apply to such source or modification.~~

~~(3) The requirements for air quality monitoring in OAC 252:100-8-35(b), (c), and (d)(2) shall not apply to a 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 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(b), (c) and (d)(2).~~

~~(4) The Director shall determine if the requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(a) through (e) and OAC 252:100-8-35(d)(2) may be waived for a source or modification when an application for a 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(a) through (e) and OAC 252:100-8-35(d)(2), was complete before that date.~~

~~(5) The requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(b), (c), (d)(2) and (d)(6) shall apply to a 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 becomes otherwise complete in accordance with the provisions of OAC 252:100-8-33(b)(1), 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(b)(1) and OAC 252:100-8-35(c) shall have been gathered over that shorter period.~~

(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.

~~(d)~~ (f) **Exemption from BACT requirements and ~~monitoring~~ 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 ~~monitoring~~ air quality analyses in ~~OAC 252:100-8-35(a) through (c) and OAC 252:100-8-35(d)(2) through (4)~~ 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.

~~(e) **Exemption of modifications.** As specified in the applicable definitions of OAC 252:100-8-31, 252:100-8-1.1, and 252:100-1, the requirements of OAC 252:100-8, Part 7 for PSD and OAC 252:100-8, Part 9 for nonattainment areas are not applicable to a modification if the existing source was not major on August 7, 1980 unless the proposed addition to that existing minor source is major in its own right.~~

~~(f)~~ (g) **Exemption from ~~impact analyses~~ OAC 252:100-8-35(a)(2).** The permitting requirements of OAC ~~252:100-8-35 and OAC 252:100-8-36~~ 252:100-8-35(a)(2) do not apply to a stationary source or modification with respect to any ~~maximum allowable increase~~ PSD increment for nitrogen oxides if the owner or operator of the

source or modification submitted a ~~completed~~ complete application for a permit before February 8, 1988.

~~(g) **Exemption from increment consumption.** Excluded from increment consumption are the following cases:~~

~~(1) Concentrations from an increase in emissions from any 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. Such exclusion is limited to five years after the effective date of the order or plan.~~

~~(2) Emissions of particulate matter from construction or other temporary emission related activities of new or modified sources.~~

~~(3) A temporary increase of sulfur dioxide, particulate matter, or nitrogen oxides by order or authorized variance from any source.~~

252:100-8-34. ~~Best available control technology~~ 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)**

~~(a)~~ (1) A new major stationary source ~~must demonstrate that the control technology to be applied is the best that is available (i.e., BACT as defined herein~~ shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts~~)~~.

~~(b)~~ (2) A major modification ~~must demonstrate that the control technology to be applied is the best that is available~~ 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.

~~(c) The determination of best available control technology shall be made on a case by case basis taking into account costs and energy, environmental and economic impacts.~~

~~(d)~~ (3) For phased construction projects the determination of ~~best available control technology~~ BACT shall be reviewed and modified at the discretion of the ~~Executive~~ 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 ~~best available control technology~~ 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)~~ (A) ~~Application contents~~ **Ambient air quality analysis.** Any application for a permit under this Part shall contain, as the ~~Executive~~ Director determines

appropriate, an ~~evaluation~~ analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

~~(1)~~ (i) for a new source, each regulated pollutant that it would have the potential to emit in a significant amount;

~~(2)~~ (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.

~~(b) **Continuous monitoring data.** For visibility and any pollutant, other than volatile organic compounds, for which an ambient air quality standard exists, the evaluation shall contain continuous air quality monitoring data gathered to determine whether emissions of that pollutant would cause or contribute to a violation of the applicable ambient air quality standard. For any such pollutant for which a standard does not exist, the monitoring data required shall be that which the Executive Director determines is necessary to assess the ambient air quality for that pollutant in that area. (Amended 7-9-87, effective 8-10-87)~~

~~(c) **Increment consumption.** The evaluation shall demonstrate that, as of the source's start up date, the increase in emissions from that source, in conjunction with all other applicable emissions increases or reductions of that source, will not cause or contribute to any increase in ambient concentrations exceeding the remaining available PSD increment for the specified air contaminants as determined by the Executive Director.~~

~~(d) **Monitoring.**~~

~~(1)~~ (C) **Monitoring method.** With respect to any requirements for air quality monitoring of PM-10 under

~~252:100-8-33(e)(4) and 252:100-8-33(c)(5)~~ 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 ~~Executive~~ 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 ~~Executive~~ Director.

~~(2)~~ (D) **Monitoring period.** In general, ~~The~~ the required continuous air monitoring data shall have been gathered ~~for a time~~ over a period of up to one year and shall represent the year preceding submission of the application. Ambient monitoring data ~~collected for a time~~ 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 ~~Executive~~ 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 ~~ambient air quality standard~~ NAAQS or consume more than the remaining available PSD increment.

~~(3)~~ (E) **Monitoring period exceptions.**

~~(A)~~ (i) **Exceptions for applications that became effective between June 8, 1981, and February 9, 1982.** For any application which ~~becomes~~ became complete except ~~as to~~ for the monitoring requirements of ~~252:100-8-35(b) through 252:100-8-35(c) and 252:100-8-35(d)(2)~~ 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(b) and 252:100-8-35(c) require~~ 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 ~~becomes~~ became otherwise complete, except that:

~~(i)~~ (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)~~ (II) If the ~~Executive~~ 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 ~~252:100-8-35(b) and 252:100-8-35(c) require~~ OAC 252:100-8-

35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

~~(iii)~~ (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 ~~Executive~~ Director may waive the otherwise applicable requirements of ~~252:100-8-35(d)(3)(A)~~ 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.

~~(B)~~ (ii) **Monitoring period exception for PM-10.** For any application that ~~becomes~~ became complete, except ~~as to~~ for the requirements of ~~252:100-8-35(b), (c) and (d)(2)~~ 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(b) and (c) require~~ 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 ~~Executive~~ 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 that ~~252:100-8-35(b) and 252:100-8-35(c)~~ 252:100-8-35(c)(1)(B)(ii) ~~require~~ requires shall have been gathered over that shorter period.

~~(4)~~ (F) **Ozone post-approval monitoring.** The ~~application for~~ owner or operator of a proposed major stationary source or major modification of ~~volatile organic compounds~~ VOC ~~which~~ who satisfies all conditions of OAC 252:100-8-54 and 40 CFR 51, Appendix S, Section IV as it existed January 16, 1979, may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under ~~252:100-8-35~~ OAC 252:100-8-35(c)(1).

~~(5)~~ (2) **Post-construction monitoring.** The ~~applicant for a permit for~~ owner or operator of a new major stationary source or major modification shall conduct, after construction, such ambient monitoring and visibility monitoring as the ~~Executive~~ Director determines is necessary to determine the effect its emissions may have, or are having, on air quality in any area. ~~(Amended 7-9-87, effective 8-10-87)~~

~~(6)~~ (3) ~~**Monitoring system operation**~~ **Operation of monitoring stations.** The operation of monitoring stations for any air quality monitoring required under this Part ~~7 of this~~

~~Subchapter~~ shall meet the requirements of 40 CFR 58 Appendix B as it existed January 2, 2006.

~~(e) **Air quality models.**~~

~~(1) Any air quality dispersion modeling that is required under Part 7 of this Subchapter for estimates of ambient concentrations shall be based on the applicable air quality models, data bases and other requirements specified in the Guidelines on Air Quality Models, OAQPS 1.2-080, U.S. Environmental Protection Agency, April, 1978 and subsequent revisions.~~

~~(2) Where an air quality impact model specified in the Guidelines on Air Quality Models is inappropriate, the model may be modified or another model substituted, as approved by the Executive Director. Methods like those outlined in the Workbook for the Comparison of Air Quality Models, U.S. Environmental Protection Agency, April, 1977 and subsequent revisions, can be used to determine the comparability of air quality models.~~

~~(f) **Growth analysis.** Upon request of the Executive Director the permit application shall provide information on 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. The permit application shall also contain an analysis of the air quality impact projected for the area as a result of general commercial, residential and other growth associated with the source or modification.~~

~~(g) **Visibility and other impacts analysis.** The permit application shall provide an analysis of the impairment to visibility, soils and vegetation as a result of the source or modification. The Executive 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 Executive Director deems necessary and appropriate. (Amended 7 9 87, effective 8 10 87)~~

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) ~~**Permits issuance**~~ **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) ~~**Impact analysis required**~~ **Notice to Federal Land Managers.**

(1) ~~The permit application for a proposed new source or modification 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.~~ The ~~Executive~~ Director shall notify ~~the appropriate~~ any affected Federal Land Manager of the receipt of any ~~such analysis~~ 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 ~~and~~ 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. ~~Any analysis performed by the Land Manager shall be considered by the Executive Director provided that the analysis is filed with the DEQ within 30 days of receipt of the application by the Land Manager. Where the Executive Director finds that such an analysis does not demonstrate to the satisfaction of the Executive Director that an adverse impact on visibility will result in the Federal Class I area, the Executive Director will, in any notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained. Further, upon presentation of good and sufficient information by a Federal Land Manager, the Executive Director may deny the issuance of a permit for a source, emissions from which will adversely impact areas heretofore or hereafter categorized as Class I areas even though the emissions would not cause the increment for such Class I areas to be exceeded.~~

(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 252:4-7 and O.S. §§ 27A-2-24-303 and 27A-2-14-304(B) & (C).

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 ~~Executive~~ Director in writing to approve a system of innovative control technology.

(b) The ~~Executive~~ 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 ~~best available control technology~~ BACT under ~~252:100-8-34~~ OAC 252:100-8-34(b)(1) by a date specified by the ~~Executive~~ 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 ~~Parts 1 and 5 of this Subchapter and 252:100-8-36~~ 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 ~~Executive~~ Director.

(4) The source or modification would not, before the date specified, cause or contribute to any violation of the applicable ~~ambient air standards~~ 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 ~~review~~ 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 ~~Executive~~ 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 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 ~~Executive~~ 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 ~~may be allowed~~ up to an additional 3 years to meet the requirement for application of ~~best available control technology~~ 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, 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).
(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 ~~new source~~ requirements of this Part~~, in addition to the applicable requirements of Parts 1, 3, and 5 of this Subchapter,~~ shall apply to the construction of ~~all~~ any new major ~~sources and~~ stationary source or major ~~modifications~~ modification which would locate in or ~~affecting~~ affect a nonattainment area located in Oklahoma, designated ~~nonattainment areas as specified in 252:100 8 51 through 252:100 8 53~~ 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.

252:100-50.1. 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).

(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, 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"; (v) "major modification"; (vi) "net emissions increase"; (xxv) "pollution control project (PCP)"; (xxxviii) "reviewing authority"; (viii) "secondary emissions"; and (xix) "volatile organic compound (VOC)". With the exception of "pollution control project (PCP)", "Clean Unit", and "reviewing authority" 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~~:~~.

~~"Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:~~

~~(A) In general, actual emissions as of a particular date shall equal the average rate in tons per year at which the unit actually emitted the pollutant during a two year period which precedes the operation. The reviewing authority may 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. Actual emissions may also be determined by source tests, or by best engineering judgment in the absence of acceptable test data.~~

~~(B) The reviewing authority may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.~~

~~(C) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.~~

~~"Lowest achievable emissions rate" means the control technology to be applied to a major source or modification which the Director, on a case by case basis, determines is achievable for a source based on the lowest achievable emission rate achieved in practice by such category of source (i.e., lowest achievable emission rate as defined in the Federal Clean Air Act).~~

"Major modification" ~~means any physical change in, or change in the method of operation of, a major source that would result in a significant net emissions increase of any pollutant subject to regulation.~~

(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.

~~(A)~~ (i) Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for ~~volatile organic compounds~~ VOC and/or oxides of nitrogen (NO_X) shall be considered significant for ozone.

~~(B)~~ (ii) A physical change or change in the method of operation shall not include:

~~(i)~~ (I) routine maintenance, repair and replacement;

~~(ii)~~ (II) use of an ~~alternate~~ alternative fuel or raw material by reason of any order under ~~Sections~~ 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)~~ (III) use of an ~~alternate~~ alternative fuel by reason of an order or rule under ~~Section~~ section 125 of the ~~Federal Clean Air~~ Act;

~~(iv)~~ (IV) use of an ~~alternate~~ alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

~~(v)~~ (V) ~~Use~~ use of an ~~alternate~~ alternative fuel or raw material by a source which~~:~~

~~(I)~~ the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit ~~limitation~~ condition which was established after December 21, 1976~~,~~ ~~or~~,

~~(II)~~ the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 8~~.~~;

~~(vi)~~ (VI) ~~An~~ an increase in the hours of operation or in the production rate unless such change would be prohibited under any federally enforceable permit ~~limitation~~ condition which was established after December 21, 1976~~, or~~;

~~(vii)~~ (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.

~~**"Major stationary source"** means:~~

~~(A) any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation; or,~~

~~(B) any physical change that would occur at a source not qualifying under (A) of this definition as a major source, if the change would constitute a major source by itself.~~

~~(C) for ozone, a source that is major for volatile organic compounds shall be considered major.~~

"Net emissions increase" ~~means:~~

(A) With respect to any regulated NSR pollutant emitted by a major stationary source, net emissions increase shall mean ~~The~~ the amount by which the sum of the following exceeds zero:

(i) ~~any~~ the increase in ~~actual~~ 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 ~~emission~~ 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".

(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: ~~the Director has not relied on it in issuing a permit under Part 9 of this Subchapter, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

(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 ~~reviewing authority~~ Director has not relied on it in issuing any permit under ~~State air quality rules~~ 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.

~~**"Significant"** means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:~~

~~(A) Carbon monoxide: 100 tons per year (tpy),~~

~~(B) Nitrogen oxides: 40 tpy,~~

~~(C) Sulfur dioxide: 40 tpy,~~

~~(D) Particulate matter: 15 tpy of PM-10 emissions,~~

~~(E) Ozone: 40 tpy of volatile organic compounds, or~~

~~(F) Lead: 0.6 tpy.~~

252:100-8-51.1. Emissions reductions and offsets.

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.

252:100-8-52. ~~Source applicability~~ Applicability determination for sources in attainment areas causing or contributing to NAAQS violation

~~Proposed new sources and source modifications to which Part 9 of this Subchapter is applicable are determined by size, geographical location and type of emitted pollutants:~~

~~(1) **Size.**~~

~~(A) Permit review will apply to sources and modifications that emit any regulated pollutant in major amounts. These quantities are specified in the definitions for major stationary source, major modification, potential to emit, net emissions increase, significant, and other associated definitions in OAC 252:100-8-51, 252:100-8-1.1, and 252:100-1-3.~~

~~(B) At such time that a particular source or modification becomes major solely by virtue of a relaxation in any enforceable permit limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Parts 1, 3, 5, and 9 of this Subchapter shall apply to that source or modification as though construction had not yet commenced on it.~~

~~(2) **Location.**~~

~~(A) Sources and modifications that are major in size and proposed for construction in an area which has been designated as nonattainment for any applicable ambient air quality standard are subject to the requirements for the nonattainment area, if the source or modification is major for the nonattainment pollutant(s) of that area.~~

~~(B) In addition, the requirements of a PSD review (Part 7 of this Subchapter) would be applicable if any other regulated pollutant other than the nonattainment pollutant is emitted in significant amounts by that source or modification.~~

~~(3) **Location in attainment or unclassifiable area but causing or contributing to NAAQS violation.**~~

(1) 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.

~~(A) A proposed major source or major modification that would locate in an area designated attainment or unclassifiable is considered to cause or contribute to a violation of the national ambient air quality standards when such source or modification would, as a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:~~

~~(i) SO_2:~~

~~(I) 1.0 $\mu g/m^3$ annual average;~~

~~(II) 5 $\mu g/m^3$ 24 hour average;~~

~~(III) 25 $\mu g/m^3$ 3 hour average;~~

~~(ii) PM-10:~~

~~(I) 1.0 $\mu g/m^3$ annual average;~~

~~(II) 5 $\mu g/m^3$ 24 hour average;~~

~~(iii) NO_2: 1.0 $\mu g/m^3$ annual average;~~

~~(iv) CO:~~

~~(I) 500 $\mu g/m^3$ 8 hour average;~~

~~(II) 2000 $\mu g/m^3$ one hour average.~~

~~(B) A proposed major source or major modification subject to OAC 252:100 8 52(3)(A) may reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact where the proposed source or modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, a permit for the proposed source or modification shall be denied.~~

~~(C) The requirements of OAC 252:100 8 52(3)(A) and (B) shall not apply to a major source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated nonattainment.~~

~~(D)~~ (2) Sources of ~~volatile organic compounds~~ 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.

~~(E)~~ (3) Sources locating in an attainment area but impacting on a nonattainment area above the significant levels listed in OAC ~~252:100-8-52(3)~~ 252:100-8-52(1) are exempted from the condition of OAC 252:100-8-54(4)(A).

~~(F)~~ (4) 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~~ 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.

~~(G)~~ (5) 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~~ 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) Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if:~~

~~(1) The source is major by virtue of fugitive emissions, to the extent quantifiable, included in calculating the potential to emit and is a source other than one of the following categories:~~

~~(A) carbon black plants (furnace process),~~
~~(B) charcoal production plants,~~
~~(C) chemical process plants,~~
~~(D) coal cleaning plants (with thermal dryers),~~
~~(E) coke oven batteries,~~
~~(F) fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,~~
~~(G) fossil fuel fired steam electric plant of more than 250 million BTU per hour heat input,~~
~~(H) fuel conversion plants,~~
~~(I) glass fiber processing plants,~~
~~(J) hydrofluoric, sulfuric or nitric acid plants,~~

~~(K) iron and steel mills,~~
~~(L) kraft pulp mills,~~
~~(M) lime plants,~~
~~(N) municipal incinerators capable of charging more than 250 tons of refuse per day,~~
~~(O) petroleum refineries,~~
~~(P) petroleum storage and transfer units with a total storage exceeding 300,000 barrels,~~
~~(Q) phosphate rock processing plants,~~
~~(R) portland cement plants,~~
~~(S) primary aluminum ore reduction plants,~~
~~(T) primary copper smelters,~~
~~(U) primary lead smelters,~~
~~(V) primary zinc smelters,~~
~~(W) secondary metal production plants,~~
~~(X) sintering plants,~~
~~(Y) sulfur recovery plants,~~
~~(Z) taconite ore processing plants, or~~
~~(AA) any other stationary source category which, as of August 7, 1980, is being regulated by NSPS or NESHAP.~~

(a) The requirement 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.

~~(2)~~(b) Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if the ~~A~~ source or modification was not subject to 40 CFR Part 51, Appendix S (emission offset interpretative ruling) as ~~in effect~~ it existed on January 16, 1979, and the source:

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

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

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

~~(b)~~(c) Secondary emissions are excluded in determining the potential to emit ~~(see definition of "potential to emit" in 252:100-8-1.1)~~. However, upon determination of the ~~Executive~~ 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 ~~252:100-8-52(3)(F)~~ OAC 252:100-8-52(4) and 252:100-8-54(1) through 252:100-8-54(3). Also, the indirect impacts of mobile sources are excluded.

~~(c)~~ (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 ~~Executive~~ Director, on a ~~case by case~~ 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 ~~Executive~~ 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.

252:100-8-55. 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.

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

(1) The specific provisions in 40 CFR 51.165(a)(6)(i) through (v) 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*) (as they exist 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 exist on January 2, 2006.

(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 January 2, 2006.

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 January 2, 2006.

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.

DRAFT MINUTES
AIR QUALITY COUNCIL
January 18, 2006
707 North Robinson
Oklahoma City, Oklahoma

FOR AQC Approval
April 19, 2006
For EQB 2-24-06

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. January 18, 2005 in DEQ Multipurpose Room, 707 North Robinson, Oklahoma City, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on December 5, 2005. Agendas were posted on the entrance doors 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. Ms. Sharon Myers, Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed.

MEMBERS PRESENT	DEQ STAFF PRESENT	DEQ STAFF PRESENT
Sharon Myers	Eddie Terrill	Kent Stafford
David Branecky	Beverly Botchlet-Smith	Rhonda Jeffries
Bob Curtis	Scott Thomas	Max Price
Gary Martin	Joyce Sheedy	Leon Ashford
Jerry Purkaple	Pat Sullivan	Lee Warden
Laura Worthen	Kendal Stegmann	Ray Bishop
	Matt Paque	Morris Moffett
MEMBERS ABSENT	Dawson Lasseter	Heather Bragg
Bob Lynch	Philip Fielder	Nancy Marshment
Don Smith	Myrna Bruce	Gail George
Rick Treeman		

OTHERS PRESENT
Christy Myers, Court Reporter
Steve Mason, EQB

Sign-in sheet is attached as an official part of these Minutes

Approval of Minutes Ms. Myers called for approval of the October 19, 2005 Minutes. Hearing no discussion, she called for a motion to approve the Minutes as presented. Mr. Curtis made the motion with Ms. Worthen making the second. Roll call as follows with motion passing.

Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

Election of Officers Ms. Myers called for nominees for Chair and Vice-Chair. Mr. Curtis nominated Sharon Myers to be retained as Chair and for David Branecky for Vice Chair. He made that a motion and Mr. Martin made the second. Roll call as follows with motion passing.

Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

OAC 252:100-1 General Provisions [AMENDED] Mr. Scott Thomas, Program Manager, Rules and Planning Unit, gave an update on proposed changes in Subchapter 1, Definitions. He noted that the changes were non-controversial in nature and staff had received no comments; therefore, asked Council for approval and to forward to the Environmental Quality Board for adoption. Ms. Myers called for a motion. Mr. Curtis moved to approve as presented and Mr. Purkaple made the second. Roll call as follows with motion passing.

See transcript pages 7-13

Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

OAC 252:100-8 Permits for Part 70 Sources, Parts 1, 5, 7 and 9 [AMENDED]
Mr. Scott Thomas stated that the proposed amendments had been presented on July 20, 2005 and again on October 9, 2005. He outlined the changes then fielded questions and comments. After considerable discussion, Council decided to pass the rulemaking as proposed with a stipulation that Council would have additional time to review public comments received. Mr. Terrill agreed that if he received nothing further from the Council by February 3, the rulemaking, as presented, would be forwarded to the Environmental Quality Board for permanent adoption. Dr. Sheedy pointed out an error in the proposed rule where a term 'actual to potential' was swapped around. She advised that it would be corrected before forwarding to the Board. Ms. Worthen made motion to pass the rulemaking with the comment noted by Dr. Sheedy. Mr. Curtis made the second. Mr. Branecky wanted the motion with the stipulation; therefore, Ms. Worthen withdrew her motion and Mr. Curtis withdrew his second. Mr. Branecky then moved for adoption of the rule as presented with the DEQ allowing comments and concerns from the Council until February 3. Mr. Curtis made the second. Roll call as follows with motion passing.

See transcript pages 13 – 76

Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

OAC 252:100-8 Permits for Part 70 Sources, Part 11 [AMENDED]
Mr. Matt Paque, DEQ Attorney, provided staff's recommendation to incorporate Best Available Retrofit Technology (BART) into Chapter 100. He indicated that states are required to submit Regional Haze State Implementation Plans outlining methods for improving visibility to EPA by December, 2007. He detailed the process of establishing BART emission limitations and advised of comments received to date. Staff's recommendation was for Council's approval of proposal as presented and to forward to the Environmental Quality Board for permanent adoption. After comments from Council and public, Ms. Myers called for a motion. Mr. Branecky moved for approval and Mr. Purkaple made the second. Roll call as follows with motion passing.

See transcript pages 77 - 92

Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

Division Director's Report Mr. Terrill mentioned that it is again time for receipt of Turnaround Documents providing reporting information. He added that staff would be bringing forth to the Council's April meeting rulemaking clarifying the definition of regulated pollutant. He related that he is the current president of STAPPA-ALAPCO, the national air directors association.

New Business - None

Adjournment – The meeting adjourned at 11:10 a.m. The next regular meeting is scheduled for April 19 at the OSU/Tulsa.

A copy of the hearing transcript and the sign in sheet are attached and made an official part of these Minutes.

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS

OF THE AIR QUALITY COUNCIL

OF THE REGULAR MEETING

HELD ON JANUARY 18, 2006, AT 9:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

* * * * *

MYERS REPORTING SERVICE
Christy Myers, CSR
(405) 721-2882

ORIGINAL

MEMBERS OF THE COUNCIL

DAVID BRANECKY - MEMBER

BOB CURTIS - MEMBER

BOB LYNCH - VICE-CHAIR

GARY MARTIN - MEMBER

SHARON MYERS - CHAIR

JERRY PURKABLE - MEMBER

DON SMITH - MEMBER

RICK TREEMAN - MEMBER
LAURA WORTHEN - MEMBER

STAFF MEMBERS

MYRNA BRUCE - SECRETARY
EDDIE TERRILL - DIVISION DIRECTOR
JOYCE SHEEDY - AQD
MATT PAQUE - LEGAL
BEVERLY BOTCHLET-SMITH - AQD
PHILLIP FIELDER - AQD

PROCEEDINGS

MS. MYERS: At this point, I would like to call the meeting to order, please.

MS. BRUCE: For roll call, Gary Martin.

MR. MARTIN: Yes, here.

MS. BRUCE: Jerry Purkable.

MR. PURKABLE: Here.

MS. BRUCE: Laura Worthen.

MS. WORTHEN: Here.

MS. BRUCE: David Branecky.

MR. BRANECKY: Here.

MS. BRUCE: Bob Lynch is absent for now, but we do expect him. Bob Curtis.

MR. CURTIS: Here.

MS. BRUCE: Sharon Myers.

MS. MYERS: Here.

MS. BRUCE: And absent, for the record, is Don Smith and Rick Treeman. We do have a quorum.

MS. MYERS: At this time, I would like to have discussion for Approval of the Minutes.

MR. CURTIS: I move that the

Minutes be approved.

MS. WORTHEN: Second.

MS. MYERS: Okay. Myrna, we have a motion and a second. Would you call the roll, please.

MS. BRUCE: Gary Martin.

MR. MARTIN: Yes.

MS. BRUCE: Jerry Purkable.

MR. PURKABLE: Yes.

MS. BRUCE: Laura Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Bob Curtis.

MR. CURTIS: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.

MS. MYERS: The next item on the Agenda is the Election of Officers for Calendar Year 2006. Any discussions, suggestions or whatever from Council?

MR. CURTIS: Yes. I would like to make a move that Sharon Myers be considered for Chair and for David Branecky

for Vice-Chair.

MS. MYERS: Is that a motion?

MR. CURTIS: That's a motion -- make a motion.

MR. MARTIN: Second.

MR. BRANECKY: Can you do that?

MS. MYERS: You can do that, if that's what the Council wants to do. We have a motion and a second. Myrna.

MS. BRUCE: Gary Martin.

MR. MARTIN: Yes.

MS. BRUCE: Jerry Purkable.

MR. PURKABLE: Yes.

MS. BRUCE: Laura Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Bob Curtis.

MR. CURTIS: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.

MS. MYERS: At this point, we're ready to enter into the public hearing portion of the meeting and I will turn that

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over to Beverly.

MS. BOTCHLET-SMITH: Good morning. I am Beverly Botchlet-Smith, Assistant Director of the Air Quality Division. And as such, I will be serving as the Protocol Officer for today's hearing.

These hearings will be convened by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 of the Code of Federal Regulations, Part 51, as well as the authority of Title 27A of the Oklahoma Statutes, Section 2-2-201, Sections 2-5-101 through 2-5-118.

These hearings were advertised in the Oklahoma Register for the purpose of receiving comments pertaining to the proposed OAC Title 252 Chapter 100 Rules as listed on the Agenda and will be entered into each record along with the Oklahoma Register filing. Notice of meeting was filed with the Secretary of State on December 5, 2005. The Agenda was duly posted 24 hours prior to the meeting on the

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doors at the DEQ.

If you wish to make a statement, it's very important you complete the form at the registration table and you'll be called upon at the appropriate time. Audience members, please come to the podium for your comments and please state your name.

At this time, we will proceed with what's marked as Agenda Item Number 5 on the Hearing Agenda.

OAC 252:100-1 General Provision and OAC 252:100-8 Permits for Part 70 Sources, Parts 1, 5, 7 and 9. Dr. Joyce Sheedy will be doing the staff presentation, and I believe she'll be assisted by Mr. Scott Thomas.

MR. THOMAS: I'm Scott Thomas, I'm the Program Manager for the Rules and Planning Section. Today I'll be sort of standing in and being Joyce's voice in reading our presentation, but Joyce and Matt and Phillip are much more expert in the Rule, I think than I am, and they'll be here to answer any questions.

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Madame Chairman, Members of the Council, ladies and gentlemen, in conjunction with the revision proposed to Part 7 and 9 of Subchapter 8, regarding New Source Review Sources, the Department is proposing amendments to Section 3 of Subchapter 1.

This is being done as a general cleanup of definitions in Parts 1, 7 and 9 of Subchapter 8 and to reduce redundancy. The definitions the Department proposes to move from Subchapter 8 to Subchapter 1 are used in more than one subchapter in Chapter 100.

Several years ago, the Department undertook a project to correct and simplify its Rules and to remove redundant language. The proposed changes to Subchapter 1 are a continuation of that project. We propose to make the following changes to Subchapter 1.

One: We propose to move eight definitions from OAC 252:100-8-1.1 to Section 3 of Subchapter 1 without substantive changes. These definitions

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are:

a. "act" - moved without modification.

b. The "Administrator" - modified to include "unless specifically defined otherwise" which is not a substantive change.

c. "EPA" - moved without modification.

d. "National Emission Standards for Hazardous Air Pollutants" or "NESHAP" - moved without modification.

e. "New Source Performance Standards" or "NSPS" - moved without modifications.

f. "Part 70 Permit" - moved without modification.

g. "Part 70 program" - moved without modification.

h. "Part 70 source" - modified by replacing "of this chapter" by "Subchapter 8" which is not a substantive change.

We propose to move the definition of "Lowest Achievable Emissions Rate" or "LAER" from OAC 252:100-8-51 to Section 3

Page 10

of Subchapter 1 and update it for consistency with the federal definition of 40 CFR 51.165(a)(xiii).

We propose to add the definition of "federally enforceable" as found in 40 CFR 51.166(b)(17). This term is currently used several times in Chapter 100, but it's not defined.

We propose to add the definition of "Reasonable Available Control Technology" or "RACT" to Section 3 of Subchapter 1. This definition is currently defined at OAC 252:100-39-47(c), however, it has been updated for consistency with the federal definition found in 40 CFR 52.21(b)(54).

We also propose to replace the term "reviewing authority" in the definition of "complete" with "Director" for consistency of terms throughout the Rule.

We propose to modify the definition of "stack" to make it clear that a pipe can be a stack, but a flare cannot.

Finally, we propose to modify the definition of "stationary source" by adding "subject to OAC 252:100" at the end of the

Page 11

definition. This is for clarity.

Many of these changes were proposed at the October 19, 2005 Air Quality Council meeting, but were withdrawn because the revision also included a change to the definition of VOC that has concerns that have not yet been resolved.

Although these changes are being proposed in conjunction with the changes to NSR proposed in Subchapter 8, they can be made in advance of the proposed Subchapter 8 revision.

We have received no written comments regarding the proposed changes to Subchapter 1.

Based on what we hope is the non-controversial nature of the proposed changes, we ask the Council to recommend these changes to the Environmental Board for adoption as a permanent Rule. Thank you.

Does the Council have any questions?

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

MR. BRANECKY: I have a comment

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from OG&E I guess was on our places when we came in, with a comment on subchapter -- or the definitions section. Has that been addressed?

MR. THOMAS: Joyce.

DR. SHEEDY: I'm not sure I know what part.

MR. BRANECKY: To Part 1, a letter dated January 4th.

MS. BOTCHLET-SMITH: Joyce, you might turn your microphone on.

MR. BRANECKY: This is -- okay. maybe I'm wrong. This is under a different section. Okay. All right.

DR. SHEEDY: David, I think that comment maybe is for 8-1.1.

MR. BRANECKY: Okay. Under NSR, right?

DR. SHEEDY: Yes.

MR. BRANECKY: Yes.

MS. BOTCHLET-SMITH: Any other comments on Subchapter 1 from the Council? We haven't received any notice of oral comment from the public.

MS. MYERS: If there's no

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additional discussion on comments, then I'll entertain a motion.

MR. CURTIS: I move that we adopt the staff's recommendations.

MS. MYERS: I have a motion. Do we have a second?

MR. PURKABLE: Second.

MS. MYERS: Myrna, would you call roll, please.

MS. BRUCE: Gary Martin.

MR. MARTIN: Yes.

MS. BRUCE: Jerry Purkable.

MR. PURKABLE: Yes.

MS. BRUCE: Laura Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Bob Curtis.

MR. CURTIS: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.

MR. THOMAS: I guess we will go on to the other portions of the hearing now on Subchapter 8, Part 70 Sources.

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Madame Chair, Members of the Council, ladies and gentlemen -- are we going to do BART? Okay. We were planning to do BART first, but we can go ahead and go with NSR. I think we're -- from the discussions I've heard today on NSR, I think we may be trying to take some action on that, so we can go forward with NSR now.

Madame Chair, Members of the Council, ladies and gentlemen, the Department is proposing revisions to Parts 1, 5, 7 and 9 of Subchapter 8, Part 70 Sources. They were first proposed at the July 20, 2005 Air Quality Council meeting. The hearing was continued to the October 19, 2005 Air Quality Council meeting to allow changes to the proposed Rule required by the Decision of the U.S. Court of Appeals for the DC Circuit handed down on June 24, 2005.

The October 19, 2005 Air Quality Council meeting was continued to give the Department additional time to consider the comments received regarding the definition of "actual baseline emissions" and to allow

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additional time for consideration of the recordkeeping requirement.

We propose to incorporate the NSR reform update and clarify other portions of the Rules regarding the PSD program and the NSR nonattainment program. Part 5 concerns Permits for Part 70 Sources.

The Department proposes to revise the definition of "insignificant activities" in Sections 8-2 of Part 5 to reflect the changes to Subchapter 41 and the new Subchapter 42 regarding toxics air contaminants.

We also propose to move Paragraph (B) of this definition of "begin actual construction" from Section 8-1.1 to Section 8-2, since this definition applies only to Part 70 Permitting.

Definitions. We are proposing to revise Section 8-1.1 of Part 1 of Subchapter 8. As discussed previously today in the presentation on proposed changes to Subchapter 1, in conjunction with the NSR reform revision, the Department proposes to move eight

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definitions from Section 8-1.1 and one definition from Section 8-51 to Subchapter 1 to reduce redundancy in the Rules.

We also propose to delete two definitions from Section 8-1.1 because they are essentially the same as the definitions already in Subchapter 1. These terms are: "Building, structure, facility, or installation" and "fugitive emissions".

We propose to move eight definitions from Section 8-1.1 to Section 8-31 in Part 7 because they will apply only to Part 7 (PSD) in the revised Rule. These are definitions of:

a. "allowable emissions"
b. "begin actual construction" from Paragraph (A)
c. "Best Available Control Technology" or "BACT"
d. "commence"
e. "construction"
f. "emission unit"
g. "necessary preconstruction approval of Permits"
h. "potential to emit"; and

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i. "stationary source"

The definitions of "BACT", "emissions unit" and "stationary source" have substantive changes required by NSR reform.

We propose to move three definitions from Section 8-31 to Section 8-1.1 because these terms will be also used in the new Part 11 or BART. These are: "adverse impact on visibility", "natural conditions" and "visibility impairment".

The NSR reform finalized on December 31, 2002 changes the method of calculation of the emissions baseline for the purposes of determining whether or not a modification of a facility triggers NSR. Under the new Rule, far fewer modifications will be classified as major modifications that require a PSD Permit and installation of up-to-date pollution control equipment determined by BACT.

Court decision and EPA appeal. After the promulgation of the NSR reform, a suit was filed challenging the changes as inconsistent with the federal Clean Air

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Act. The U.S. Court of Appeals for the District of Columbia Circuit on June 24, 2005 vacated the parts of the Rule dealing with cleaning units and PCPs or Pollution Control Projects and remanded the parts concerning recordkeeping.

On August 8, 2005 EPA requested the Court reconsider its ruling on the clean unit provision and clarify the ruling regarding PCPs. On December 9, 2006 the D.C. Circuit Court refused EPA's petition. At this time, we do not know whether -- know what further actions, if any, EPA will take on these issues.

We did a comparison demonstration. Phillip Fielder of the Air Quality Division has done a study of the effect of using a 5-year look back period for determining baseline actual emissions compared to the effect of using a 10-year look back. A copy of the results of the study were included in the Council packet.

Due to time constraints and available resources, only three major NSR sources were chosen for this study. These

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were nonelectric generating sources. The initial results of this study using emission inventory data, emission factors, the baseline actual emissions for case study one calculated using a 10-year look back period were significantly higher than that, using a 5-year look back for PM10, NOx and SOx. There was no significant differences in case study two or case study three.

However, using current emissions factors in the hours of operation and production rates for annual emission inventory, the differences in the baseline actual emissions between the 5-year look back and the 10-year look back practically disappear. These results have caused us to review our position on the use of the 10-year look back period for calculating baseline actual emissions, if current emission factors are used.

Unfortunately, these results were not available before the proposed Rule was placed on the website and the Council packets were mailed.

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Since the October 19, 2005 Air Quality meeting, we have received comments from Julia Bevers of OG&E, on letters dated December 15, 2005 and January 4, 2006; Environmental Protection Agency Region 6, in a letter of comments signed by David Neleigh, received via email on January 10, 2006 from Stanley M. Spruill; and comments from the Oklahoma Independent Petroleum Association by letter dated January 13, 2006, received via email on January 13, 2006 from Angie Burkhalter.

These comments and a summary of the comments and our responses will be made as part of the hearing record. Copies of the summary comments and responses have been given to the Council and are available for the public today. Some responses to comments may be supplemented at a later date, because they were received just a few days before the meeting.

Based on the comments received and the results of the comparison study Phillip performed, we propose to make the following changes to the proposed Rule contained in

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the Council packet and available at this meeting.

One: In the definition of "visibility impairment" in Section 8-1.1 on Page 7, we propose to add "light extinction" prior to "visual range".

Two: We propose to revise the definition of "baseline actual emissions" in Sections 8-31 on Pages 20 and 21 by adding a new Paragraph (A) which requires that baseline actual emissions be based on current emissions data and defines that term.

We propose to separate the requirements for electric utility steam generating units now in Paragraph (B) for nonelectric utility steam generating units now in Paragraph (C), for electric steam generating units (B)(iii) allows the use of a different 24 month period for each pollutant.

In Paragraph (C) we propose to replace the 5-year look back with a 10-year look back for nonelectric steam generating units.

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And in (C)(iv), allow the use of a different consecutive 24 month period for each pollutant.

We propose to revise Paragraph (A) of the definition of "net emissions increase" in Section 8-31 on Pages 28 and 29, by adding at end of the paragraph, except that (B)(iii) and (C)(iv) of that definition shall not apply.

MR. BRANECKY: Scott.

MR. THOMAS: Yes.

MR. BRANECKY: Where was that again? Where are you now?

MR. THOMAS: In Section 8-31 on Pages 28 and 29.

MR. BRANECKY: Are we still in the definitions section?

DR. SHEEDY: Yes. This one seems to be on Page 29.

MR. BRANECKY: Okay. On 29? Okay.

DR. SHEEDY: On Page 30.

MR. BRANECKY: Page 30, okay. Thank you.

MR. THOMAS: And 30. We propose

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-- on number four, we propose to revise (B)(ii) of the definition of "regulated NSR pollutant" in Section 8-31 on Page 32 by adding section prior to 112(r) and provided that such pollutant is not otherwise regulated under the Act. This is in response to an EPA comment.

In (b)(2) of Section 8-35 on Page 42, we propose to add a comma after "2006" and in (c)(1)(F) on Page 45, we propose to add "on" prior to January.

We propose to revise (A)(ii) in the definition of "net emissions increase" in Sections 8-51 on Page 58, by adding "except that (B)(iii) and (C)(iv) of that definition shall not apply".

DR. SHEEDY: Excuse me, Scott.

MR. BRANECKY: Page 59, I'm trying to catch up.

DR. SHEEDY: I'm sorry, I based those numbers on what was in the book because I didn't have this, and so they are maybe about a page or so of what this copy has. They were based on the copy that's not here, so I know that's confusing.

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MR. BRANECKY: You might slow down a little bit, Scott, I'm trying to -- I'm getting old and slow, so --

DR. SHEEDY: If you didn't -- if you didn't find any of them, just say so and we can tell you which page they are on in this handout.

MR. THOMAS: I'll go back over those quickly. We have, in my notes it says Page 7 of the definition of "visibility impairment", we propose to add "light extinction" prior to visual range. That's on 7.

We propose to revise the definition of "baseline actual emissions" in Section 8-31 on Pages 20 and 21.

DR. SHEEDY: Okay. (Inaudible).

MR. THOMAS: We propose to revise the Paragraph (A) in the definition of "net emissions increase" in Section 8-31 on Pages 28 and 29 and I guess that would probably be 30, too?

DR. SHEEDY: Yes, it's on 30, I believe. 30.

MR. THOMAS: 30. Okay. We

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propose to revise (B)(ii) of the definition of "regulated NSR pollutant" in Sections 8-31 on Page 33 in (B)(ii) of Section 8-35 on Page 42, we propose to add a comma after 2006.

MR. BRANECKY: That's Page 43.

MR. THOMAS: 43, correction. We propose to revise the definition of "net emissions increase" in Section 8-51 on Page 59, I'm guessing, (A)(ii) in Section 8-51, Page 59. Sorry for the confusion.

Since we are proposing a number of substantive changes that were not in the Rule published on the website on December 15, 2005, that were contained in the Council packet, staff requests that the Council continue this hearing on the proposed revisions to Part 1, 5, 7 and 9 and Subchapter 8 to the next Air Quality Council meeting, to give interested parties time to evaluate these changes.

This, however, will mean that these proposed revisions to our Rule will not be effective until the summer of 2007. So as a contingency measure, we have made

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available to the Council and we will make available copies to people in the audience of our new proposal on these Rules. And these were, again, made in the last -- since the 30 day comment period -- comments received and based on work that Phillip has done.

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

MR. BRANECKY: I guess I would like to ask the staff, I know you get these things at various times, but is there any way to get this available to the Council and maybe even to the public by posting these comments on the website so that we can see these comments prior than just seeing them for the first time today.

That may help -- I don't feel comfortable, not having read through some of these comments, making a decision at this point. And I just -- is there any way to get these to us earlier? I think it's been a problem.

MR. THOMAS: This is a problem we've always had and we go one way or the

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other, we've been criticized in the past, you know, for having two Rules out and it's confusing to the public.

MR. BRANECKY: Well, maybe not necessarily the Rule, but at least the comments, so I can see what's being discussed.

MR. THOMAS: And a lot of times -- - not as an excuse, but a lot of times the comments are received very -- like yesterday.

MR. BRANECKY: Well, I would have been happy to get a fax yesterday, at least have some time rather than just seeing these for the first time this morning. I'm talking for myself, not for the rest of the Council.

MS. WORTHEN: I'm with David. I would appreciate if we could have it at least faxed, even if it's like the day before, I mean, that way we can at least look over them the night before and be familiar.

I do actually have a question on the proposed Rule, because I did read through

Page

the changes that you have here. Do we want to go ahead and do questions on it?

MR. THOMAS: I do have a statement here I could read that goes over the main changes --

MS. WORTHEN: Okay.

MR. THOMAS: -- but we can answer questions now, too.

MS. WORTHEN: One, thank you for changing to the 10-year look back and the different two years for each pollutant, that is one good point.

On the baseline actual emissions, and I understand why you want the current emissions data for emission factors, I can see that's important with AP 42 because AP 42 does change.

The only thing I'm curious about is using the most recent SIM data and stack test data. Many facilities stack test on a semi-regular basis, maybe every five, six years, it just depends on the facility and on the SIM data. Why not allow, if they have eight year old stack test data when that's when they're establishing their

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baseline data, to use that stack test for that time period. And if they've got new stack test data, use that for the future. Because I can see where facilities, you may get different stack test results because there may have been some change that caused it and SIM data would be the same thing. That would be my question there, is not limiting that.

MR. THOMAS: Joyce, Phillip.

DR. SHEEDY: One of the things that we were concerned with was the accuracy of some of the older emission data in our emission inventory. That's not necessarily those that had stack tests done but a lot of the -- I believe a lot of the data is not really based on stack tests or SIMs or anything like that.

MS. WORTHEN: Well, and I can understand, it's not based -- old emissions inventory data, if it's not based on stack test data or SIMs data, yes, I can see updating it. If a facility at that time when they submitted the emissions inventory was doing it off of the SIM data from that

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year or stack test data from that year or the year before, I don't understand not being able to use that in a baseline calculation.

MR. FIELDER: Yes. What our point was there, was we are not trying to make you use that data after a change. If it's the appropriate data before a particular change occurred that was representative of the emissions at that time, that would be the most current data at that time. That's all we were trying to say there.

If you had a project that changed it, then certainly a change to an emission factor would not be applicable or an emission rate would not be applicable to the emission rate at that time.

MS. WORTHEN: Maybe we need to rework that paragraph a little bit so that it's -- so that some -- so that a Permit writer five years from now doesn't come back and say, well, this says you have to use the most current data, you can't use the SIM data from that year.

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DR. SHEEDY: It says most current and accurate. So might you have an argument that SIMs data from that period is more accurate?

MR. FIELDER: And it's really --

MS. WORTHEN: I would think so.

MR. FIELDER: Really, it's not much different than what we do today. If you were to do a project today and you were doing your baseline actuals, we wouldn't come 10 years later and go back and say, well, this factor has changed, your baseline actuals prior to a project has changed, we don't do that currently and really, that position is not changing.

MR. PURKABLE: Scott, you said you had some prepared comments to make as a follow-up to your presentation. I would be interested in hearing the rest of what you have to say.

MR. THOMAS: This is the differences between the Rule in the packet and the Rule that we now are throwing out before the Council as a possible proposal.

1. The definition of -- I think this

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might be -- I think this one might be part of that earlier on, but the definition of "visibility impairment" in parenthesis added "light extinctions," prior to "visual range". That's part of the changes that we've made to the BART Rule that we will discuss later.

The other ones are in 252:100-8-31, the definition of "baseline actual emissions". We propose to revise this definition to match the federal definition. We have added a new Paragraph (A) which requires a baseline actual emissions be based on current emissions and defines current emissions. We have separated the requirements for the EUSGU, now in Paragraph (B), from those non-EUSGU's, now in Paragraph (C). (B)(iii) allows the use of a different 24 month period for each pollutant. In Paragraph (C), we propose to replace the 5-year look back with the 10-year look back and allow the use of different consecutive 24 month period for each pollutant.

"Net emission increase" is in

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Paragraph (A), added at the end of the paragraph, ", except that (B)(iii) and (C)(iv) of that definition shall not apply."

3. Regulated NSR (B)(ii), added "section" prior to 112(r) and ", provided that such pollutant is not otherwise regulated under the Act."

This is in response to an EPA comment. Joyce may be able to clarify on these a little bit, but they don't read well.

252:100-8-35, in (b)(2) we added after "2006", a comma after it, and in (c)(1)(F) we added an "on" in front of January.

In 252:100-8-51, "net emissions increase", (A)(ii), we added ", except that (B)(iii) and (C)(iv) of that definition shall not apply".

Basically, I think it comes down to the issue of the current emissions data in the determination of a baseline.

MS. MYERS: Based on my experience on working with the Agency on

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various Permits, the burden is still on industry to provide the information to be used. The burden is still on industry to validate their baselines and the projected changes that they have with the project. I don't see that it would be any different. Am I right or wrong, Phillip?

MR. FIELDER: No, I would agree that it's the burden to try to determine the best factors that's available or the best emission rates that you can and --

MR. TERRILL: Let me just add something right quick so we can kind of clarify this. I know the Council is very sensitive about getting changes to Rules that have been sent out 30 days previously, the day before, the day of. We don't like to do that, either.

What we have thought coming into today was, we have not been given any pushback or any indication from industry or anyone else that there was a big hurry to get this Rule passed today. So we felt like that probably the best thing to do was provide a clean copy to get close to what

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we think to be the agreements that we had all reached that we felt like were appropriate, and give you all a chance to look at it with the idea that we would get any comments to that, come in with a clean copy in April and pass the Rule at that time, because we knew that we had this issue relative to how we were going to define the most appropriate emission factor and that sort of thing. We weren't sure we were going to get that worked out today.

The reality is, if we pass this thing as a regular Rule today, it's got to go to the Board, it's got to go to the Legislature and the Governor, it won't become effective until the end of June, anyway, or thereabout.

If we were to pass this thing in April as emergency, if there are sources out there that are -- facilities out there that are waiting on us to get this done, we could pass it as an emergency and it would become effective then and it's essentially a wash as far as timeframe. So that would give you all time to take a look at the

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Rule between now and April and make sure that we've got a clean copy, dotted all the i's, crossed all the t's, if there's any question about clarifying the emission factor language, we can do that and then come back as an emergency in April.

Is that a fair statement, Matt?

MR. PAQUE: Yes. It would have to go through the Governor's approval, so it wouldn't exactly go into effect in April, it would take us a little bit longer, but --

MR. TERRILL: The timing will be about the same.

MR. PAQUE: The timing will be about the same.

MR. TERRILL: Yes. And that way it would keep you all from having to --

MR. PAQUE: The Department would have to justify an emergency, so we would have to show that there are some facilities that the Rule needs to take effect sooner rather than later.

MR. BRANECKY: Can you do that? I know the Governor doesn't like Emergency

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Rules.

MR. PAQUE: Well, they do -- they do inquire with the Department on any Emergency Rule, they give us a call and they like to know some examples.

MR. BRANECKY: Can we justify it?

MR. PAQUE: Well, if we have sources that are looking at maybe performing some projects that these Rules are, you know, can streamline.

MR. TERRILL: If not, it may not make any difference. And that's -- my concern has always been -- because theoretically, according to the Rule or statute, we were supposed to have this in place by January. But the feds have said that as long as you're making reasonable progress, which we are, they're not going to complain one way or the other, whether or not we do a SIP call.

So it's really just a matter of within Oklahoma, do we have sources that want to take advantage of this sooner rather than later. And if we do, then we need to know that and we'll propose it as

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an emergency in April and come back with a cleaned up Rule, have all this language worked out relative to the emission factor and it should be a fairly easy process to pass it in April. That's what we thought we were going to do this time, otherwise we probably would have recommended to hold it over and not supplied you with a last second copy, because I know that puts you all in a tough spot because this is a fairly complicated Rule. And it wasn't our intention to do that, because we wanted to make sure and we wanted to give Phillip and his folks the time to take a look at these different look back periods to make sure that we were satisfied that it really didn't make any difference, then it just took longer than we thought.

So that's our fault and I apologize for that, but we felt like we wanted to give you something to look at today and we really never had intended to pass that until April and we think if we do it by emergency, it will all come out at about the same time, anyway.

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MS. MYERS: If it does not pass by emergency in April, is the timeframe still the same?

MR. TERRILL: No. It would be the end of the session 2007 at that point.

MS. MYERS: We can't afford to do that. We're hurting ourselves. I personally do not want to see this Rule carried over into 2007 from a perspective of working for a company that has facilities in multi-states and having to compete for capital money to do any kind of projects. If we're competing against a facility in Texas and they're able to go ahead and do a project based on actual to actual projections, we lose.

And I know that there are other industries within the state that are in the same position and we cannot afford to carry this over into 2007. So if you think we can get it passed in April and through as an Emergency Rule to be effective this year, then I'm probably okay with carrying it over. If not, then I want to pass it today and get it through.

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MR. TERRILL: Well, I'm not going to promise you that we'll get it through as an emergency. I mean, we never have had a problem in the past, but I wouldn't want to be on the record as saying that absolutely nothing can go wrong, because you never know. It would be -- I can almost virtually assure you that if we have industry that comes forward saying we've got projects that we're wanting to get done and we can't wait until 2007, that's likely to go a long way in satisfying the Governor, because nobody is against economic development and I don't personally think it's going to be that big a hurdle to overcome. But I'm not going to go on the record and say that absolutely nothing can go wrong, because that wouldn't be true. I mean, because we can have any number of things go wrong, but it's not likely in this case, I wouldn't think.

MR. BRANECKY: I guess I would like to ask you, we could come to April and be in the same situation with last minute changes we don't know of, can we have DEQ

get us this information or even post it as on the web as a PDF file, the comments of any last minute changes or comments or is that not --

MR. TERRILL: You mean, if we hold it over?

MR. BRANECKY: Yes, in April. I don't want to get into the same situation in April where we have last-minute changes.

MR. TERRILL: I don't know that we're going to have any changes other than --

MR. BRANECKY: Well, you never know.

MR. TERRILL: Well, I know, but I don't know what that would be. I mean, we don't plan to do any more work on this Rule once we make the changes that we've all agreed to today, other than possibly tweak the language relative to the emission factors. I mean, what you see, we can probably have that posted by end of the week,
middle of next week, sometime next week at the latest. And we don't plan on doing

anything more with it. That's what you'll see come to the Council in April.

Because I don't think there's any other issues to resolve. I think we've got everything resolved, it's just a matter of making sure that we've got all the things done and proofing it and those kinds of things that -- and those are minor. The substantive changes, there's not going to be any more. This is it. So it's just a question of whether or not we can justify the emergency.

MR. THOMAS: We would be glad to fax you copies of comments that we receive after the ones that we've had time to work on.

MR. BRANECKY: Well, anything that's not included in the Council packet that comes in after that, I would like to have before the Council Meeting, if possible, either through email or fax, just so I don't -- I'm ready to --

MR. THOMAS: You are aware that sometimes we receive --

MR. BRANECKY: I understand.

MR. THOMAS: -- well, maybe not so substantial comments but from EPA and others on the morning of the Council Meeting.

MR. BRANECKY: I understand.

MR. TERRILL: But in this case, since we're basically adopting the federal Rule as is, I don't anticipate anything but support from them.

MR. BRANECKY: We have that on record.

MR. TERRILL: That's one thing I can virtually be certain about, is I don't think there will be -- it won't be of a substantive nature, anyway.

MR. PURKABLE: Eddie, are there any changes -- this baseline actual emissions, is there anything here that's a little bit different than the federal Rule, any nuances, any word changes, or is this pretty much the federal language? I didn't -- I haven't compared that.

DR. SHEEDY: There are some differences, the main one being that new Paragraph A that we put in about current

emission data. The rest of it, there may be some word differences, but the meaning is basically the same. You know, a 10-year look back for everything except for like the utilities. 32 -- a different 24 consecutive month for each pollutant, if you choose. So the rest of it is pretty much the same, although, as I say, word for word there may be a different word used, but it's --

MR. PURKABLE: So this still represents maybe a little bit of a difference from surrounding states in terms of what they've adopted, if they've adopted the federal Rule as it is?

DR. SHEEDY: Well, you know, it -- it would put this in our Rule, I don't know if it really is an actual difference in what other states might be doing. We just stated it. We think EPA, quite often uses current emission data when they go back and look at things like for compliance enforcement and that sort of thing, so it's not, you know, a brand-new thing to do. So I'm not sure other states aren't doing it,

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they may not have put it in their Rule. We just wanted to get it clear so we wouldn't have to argue it over each case or each Permit.

MR. TERRILL: This really just clarifies what we're doing, anyway, and it's what we've always done. And I think there was so much rhetoric about the NSR changes, that there probably wasn't a lot of work actually done to see just exactly what it does and means in the real world.

And that was why we wanted to take a look at this, because we felt like that we owed it to the citizens, from a public health standpoint, to look at what we've done in the state and see if it really made a difference and it turns out it doesn't make that much difference. So to us, it's not worth fighting about.

You can argue whether or not, philosophically, it's a right or wrong thing to do, but at the end of the day if it's not going to make any difference from a public health or emissions standpoint, then it's not worth fighting over. To me,

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it's not worth it.

So we really don't think that we're doing anything differently than what we've done in our Rule, we've done forever, it's just a matter of clarifying it.

MR. PURKABLE: The inaccuracies in using emissions data 10 years old in arriving at this baseline, isn't that more or less of a temporary concern? Because this 10-year period is a sliding window and pretty soon the 10th year is 2005. So are we just really concerned about just a -- something that's going to disappear eventually, as emissions data become more accurate just by consequence?

MR. FIELDER: Yes, I think that's correct because right now you go back and look to 1995, you're going to find some very rough emissions data. And so using -- that's why I think part the reason why updating and using current factors on a 10-year look back which is, you know, people haven't done and I'm not so sure they thought about -- EPA thought about putting it in their Rule, really levels it out. I

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mean, I think that's what we found by using the new data.

DR. SHEEDY: And in the future, the data is getting better all the time, so the current data and the emission data should be more the same.

MR. PURKABLE: Sharon, I have a question just in terms of meetings. Is it possible to have a meeting before April, if we want to move this forward, or are we left with four times a year? I mean, is that an option for consideration, to move it forward a little bit faster?

MS. MYERS: I would say, yes. Matt, is there time to do that or not?

MR. PAQUE: No. The last Board Meeting that we could pass the Rule and have it go through this Legislative Session, it's too late for us to get the Notices out and do the appropriate procedures to get the Rule effective permanently by June, because the Board Meeting is coming up in February.

MS. MYERS: So basically, we really need -- if we're going to get it

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effective as a permanent Rule, do we need to pass it today to go to the Board Meeting in February?

MR. PAQUE: Yes.

MS. MYERS: Correct?

MR. PAQUE: Yes.

MS. MYERS: Let's work out the differences on the current emissions.

MS. WORTHEN: I can be fine with the current emissions data the way it is. I mean, we still -- it's industry's burden of proof, but the rest of it, what I want is in there.

MS. BOTCHLET-SMITH: Before we go to motion, we need to give opportunity for oral comment from the public and I have received one notice of oral comment. I'm not sure if that person wishes to speak.

Julia, did we cover your issues, yet?

MS. BEVERS: I'd like to say something.

MS. BOTCHLET-SMITH: Okay. If you would step to the podium, Julia Bevers from OGE.

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MS. BEVERS: This may be the same thing, but I just want to clarify. We've been talking about from the baseline actual emission definition, correct? The current emissions? Okay. We submitted a comment that I think you all have, I saw it on the table, but because it wasn't in the packet, I just wanted to point it out.

And it's in the Section 36.2 about source obligation. And it's the same issue, but it's just a different slant on it. Determining the baseline actual emission before a project is one thing. Then we have this 5 year period we have to monitor or keep records for after a project. So what if after the project, testing done, even maybe for this reason or some other reason, reveals that that emission factor that was used before the project has changed? So the most recent data is going to be a different number.

Our concern in the comment was to address -- we just wanted to make sure the same factor was used, looking retrospectively to compare whether there's

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a change or not. And I don't know that we've really resolved that. We made a suggestion and I think there's some concerns with the DEQ on that. We suggested just to -- you know, future calculations would use the same factor.

MS. MYERS: You're saying the same factor that you use for the project, for the project baseline?

MS. BEVERS: Either the same one we used before the project happened to compare baseline to future or use the new one, but apply it retrospectively to the baseline, so the change will be based on the same factors at each end. That's our concern.

DR. SHEEDY: I think our concern with making the language change that you suggested was that there may be a time when the project itself causes an increase in the emission factor. So we wouldn't want to put language in that -- if that were the case, that would say, then go back and recalculate your baseline emission based on these emission factors that were indeed

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part of the project and a change and should show up.

MS. BEVERS: But there could be monitoring, say for particulates, that the project did not affect particulates.

DR. SHEEDY: Yes.

MS. BEVERS: But then we find out, oh, that factor has changed. So if you applied the previous factor to baseline, it would look like you made the change in particulates when really your baseline was based on the wrong number.

DR. SHEEDY: And I think that's, hopefully, addressed when we say to use the most current and accurate, so that in this case your project didn't include something that was going to actually increase the emission factor, but the emission factor changed. For some reason that didn't have anything to do with your project exactly, maybe better tests, new emission factor or whatever, then I think it would be appropriate, in that case, to recalculate your baseline actual emissions on that current data.

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Do you think so, Phillip?

MR. FIELDER: No, I agree. I mean, it's -- if you have new and better data that's not affected, then you can go back and use or you would recalculate, based on that new data.

DR. SHEEDY: Because you would assume that's what you were emitting back in that day, as well, because this is a better emission factor.

MR. FIELDER: That's correct.

MS. BEVERS: The comment then that we submitted, we were suggesting it be added to (C)(3). But in (C)(7) on my Page 51, does that cause us a problem, because it says, the requirements shall apply as if construction has not yet commenced at any time that a project is determined to be a major modification, including but not limited to emissions data produced after the project is completed.

Like you've got it calculated as though it hasn't happened, but then you've got to use current data if something changes and that -- I'm kind of getting

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lost in that.

MR. FIELDER: It could -- that situation, if it were to arise, could cause a problem and it currently causes a problem under the current PSD process. That would be similar as a project occurs and you estimate future potential emissions in that factor, at some later date you find, for stack test purposes or whatever, you find is incorrect, we would typically require that project to be reviewed under the new most current data that's available.

DR. SHEEDY: I believe this is the NSR language. And as Phillip said, that has been a requirement in the past where if you did something that -- well, something similar, if you made a change and a new project became major -- if you had it wrong and it really was major, then you have to go back and look at it as though you never received a Permit. I believe that's current, as well.

MS. BEVERS: So at that point, you would use the same factor to apply it to the baseline and to the emissions after

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it changed.

MR. FIELDER: Well, you've got two situations, whether you're talking about an affected pollutant or a nonaffected pollutant. If the project affected a pollutant, the factors would be different. You would have a set baseline factor that you already -- that we already agreed upon and then you would have a future actual factor that would apply.

But if it's an unaffected pollutant, it could possibly be the same factor -- well, it would be the same factor. And if you later determined that that factor was wrong, yes, you would use, again, the same factor for baseline and future actual, because we had assumed since it was unaffected, that would be the appropriate factor during that time span.

MS. BEVERS: So the key there is whether it's really an affected pollutant. If it's not, just because we found out something later, to change like, an AP 42 factor.

MR. FIELDER: But in that case,

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you would use the same factor for both.

MS. BEVERS: Okay. So at this point, you're proposing just to leave it like it is and not make any change on the Rule? All right. Thank you.

MR. TERRILL: Okay. After talking to Matt, I think we've got two routes we can go. If you all want to try to pass this today as a permanent Rule, we can make the changes, any additional changes we need to make to what was in the handout that you all had today and post that within the next week, because that would be the Rule that's going to go to the Board. That way, that will give you a little bit of time to take a look at it and if there's something that's been missed inadvertently or whatever that we wouldn't want to pass, then we could either pull it and not take it to the Board or take it to the Board and ask that it be remanded back to the Council to bring back as an Emergency Rule in April, or we could hold it over and bring it back as an Emergency Rule in April.

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Matt is fairly confident that this is not going to be that big of a deal. We have to satisfy the Governor's lawyer, the Governor's attorney, that this is indeed an emergency and I tend to agree with him, if we tell him that there are likely to be facilities within the state that want to do expansions between now and June of 2007 that would want to take advantage of that and for them it is an emergency, that's probably going to be enough.

So we don't think that there's going to be an issue if you want to hold it over. But you've got either one of those two, that gives you some time to look at it before it goes to the Board. What we can't do is take a different version to the Board than what comes out of the meeting today.

MR. PAQUE: Also, I think that if the Council wanted to, I was incorrect before, they could hold a Special Meeting, reconvene and hold a Special Meeting and take an action on the Rule, because the Rule almost as proposed has been noticed for the Board Meeting at the end of

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February. It was noticed along with the notice for this meeting, so a Special Meeting is a possibility. It is something that could happen, as well.

MR. TERRILL: Timing-wise, when would that have to take place?

MR. PAQUE: Well, and that's what I was incorrect -- the Board has been noticed -- the Board Meeting has been noticed for this NSR package that it would be on the Agenda at that meeting, so timing-wise, it could take place anytime before now and, I believe, the end of February.

DR. SHEEDY: Do we have to be able to get the Board packet ready?

MR. PAQUE: There's some other things that go along with preparations for Board Meetings, that's what I'm unsure of. It couldn't -- it would have to be soon.

MR. BRANECKY: Do you have to give 30 days notice of the Emergency Meeting?

MR. PAQUE: Of an Emergency Council Meeting?

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MR. BRANECKY: Yes.

MR. PAQUE: No. A Special Meeting?

MR. BRANECKY: Yes, a Special Meeting.

MR. PAQUE: No, it's just a 48-hour notice.

MR. BRANECKY: 48 hours, okay.

MR. TERRILL: So theoretically, we could meet next week, then, if the Council chose to do that and just take up this issue and then take that, whatever comes out of that to the Board on the 24th of February.

MR. PAQUE: Yes, that's correct. I just -- the only thing I'm unsure of and I apologize, is there are preparations for materials that have to be gathered for the Board, such as comments that we've received and Rule Impact Statements and those types of things and I'm not sure of the deadlines that we have for those items. But next week would probably be appropriate, yes.

MR. TERRILL: Generally, it's a couple of weeks ahead of time, just like

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you all, it needs to be in the Board packet. So if you all wanted to have a Special Meeting and can get a quorum next week as opposed to -- but I think any of these will work. I really don't think it will be that big of a deal to get an emergency through, either. We've done it in the past with other Rules.

MR. BRANECKY: I guess I would be concerned about being able to get a quorum on such short notice.

MR. TERRILL: Next week.

MR. BRANECKY: Next week.

MS. MYERS: I think my inclination at this point is to pass it today, post it, have an opportunity to review it. If anybody has any major heartburn, ask the Board to remand it back to us for the April Meeting and then pass it as an emergency then.

MR. BRANECKY: So how would that work again? Who would make the decision to pull it? Does that have to come from the Council or is that something that you guys would --

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MR. TERRILL: Well, we could elect not to take it to the Board. But probably what we would do, and I would need to talk to Jimmy and find out what the protocol has been in the past and what the Board would expect, but it would be our decision, the Agency's decision, the Division's decision not to take it. But I would suspect what he would recommend, I'm just guessing, he would recommend we take it, put it on the Agenda, and ask the Board to send it back to the Council, that we weren't ready to pass it..

MR. BRANECKY: Would you get input from the Council in making that decision to pull it? If we pass it today, we're saying, send it --

MS. MYERS: We could pass it with a stipulation. Can we do that?

MR. BRANECKY: -- with a stipulation -- I mean, who makes -- I guess, who makes the final decision not to take it to the Board?

MR. TERRILL: That would be me.

MR. BRANECKY: Okay.

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MR. TERRILL: But I'm going to be reluctant -- if the Board expects to see -- it would kind of be on precedent of what's happened in the past. If the Board expects to see the things that come out of the Council, then we'll probably take it to the Council, explain to them what happened, and ask them to remand it back.

If there really is no precedent, probably what we'll do is not take it at all and just bring it back in April with a revised Final Rule, if you will, and then -- as an emergency and then take it to the Board in June, which is their next meeting.

MS. BOTCHLET-SMITH: I haven't received any other notice for oral comment, but I keep seeing a hand out here in the audience. Don, did you wish to make a comment?

MR. WHITNEY: Yes.

MS. BOTCHLET-SMITH: Don Whitney. Could you please step to the podium?

MR. WHITNEY: Don Whitney from Trinity Consultants. Yes, I would like to comment on the urgency of getting the Rule

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passed. And speaking on behalf of several of our clients, we find that a lot of the -- what would appear to be rather minor changes, that facilities do get wrapped up in the current PSD NSR Rule, the old traditional way of looking at past-actual to future-potential, brings in for scrutiny a whole lot of projects that seem absolutely trivial to a normal observer, and yet they are wrapped into the PSD issue because of the old current Rule that we have on the books.

And therefore, I would suggest that there is some urgency to get this on the books this summer, either by whatever method it takes, just because of not so much new, truly new PSD projects, but the concern of the current Permit review issue under the old Rule does bring in a lot of Rules -- a lot of issues that make passing minor changes very difficult.

The second comment I would like to make is on the appropriate baseline emission factors. And what we have found with a lot of proposals for Permit

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applications is that the best way to clarify what the baseline emissions are going to be from past-actual and future-actual emissions is to specify that in the Permit rather than -- hoping to resolve all issues in the exact Rule that's being addressed today is to rely on the Permit writers, frankly, and to suggest that the proper baseline going forward it would be established in the Permit rather than trying to cover all different possibilities of the most appropriate emission factor in the Rule is to rely on that being established in the Permit, what's used in the past and what will be used in the future to determine the compliance. Thank you.

MR. PURKABLE: We have had a number of comments that were made and, of course, I'm just thumbing through these. OGE's, you've addressed yours. Are there any others of these comments that ought to be responded to or addressed before we decide to take action?

For example, I mean, there's one

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here, a lot of minor sources in the state, the question is, "This Rule has nothing to do with basically minor sources; is that correct?" And I assume that is correct, there is nothing here anywhere that would affect minor sources.

DR. SHEEDY: That's correct.

MR. PURKABLE: Okay. Are there any other questions here that ought to be responded to before we --

DR. SHEEDY: I think that -- I think that we have made a good number of the changes that were suggested and we have written in our written comments where we didn't do it, we've explained why. But there are 50-something comments, I think, and I don't remember them all.

MR. PURKABLE: I was just referring to the ones that were in our packets that we haven't had a chance to -- these newer ones.

DR. SHEEDY: I think we --

MR. PAQUE: What you're looking at today, those highlights, those are addressing many of those comments. That's

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what started these comments, a lot of them.
DR. SHEEDY: Yes.
MR. PURKABLE: Okay. Thank you.
MR. TERRILL: Yes. We did get some comments that came in after your Council packet went out and it's real difficult to make sure we hit all those. We think we did, but I wouldn't want to -- it goes back to not making a guarantee that we get an Emergency Rule passed, I wouldn't want to guarantee that we didn't miss something, because when you get something in a week or so before the Council meeting, you don't always get it. But we believe the concerns that were in those comments are okay. We've addressed them.
MR. BRANECKY: So let me understand. If we pass this today, we will hold it open for a period of time for comment or how is that going to work?
MR. TERRILL: If you pass it today, what we will do is we will post the version as quickly as we can that we intend to take to the Council or to the Board, rather, that has the changes in it that we

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think we all believe were made today. And if there's not any -- if someone -- if you all don't look at it and give us comments back and say, wait a minute, you didn't catch something or we didn't mean to do this or whatever, that's what is going to the Board.
MR. BRANECKY: Well, I think you need to set a time frame. If we don't hear any comments within a week or two weeks --
MR. TERRILL: Well, it's -- if we don't have any comments by the time the Board packet goes out --
MR. BRANECKY: And when is that?
MR. TERRILL: Generally, two weeks before the Board, give or take, that would mean the --
MR. BRANECKY: I think we need to have a cutoff date.
MR. TERRILL: That would mean the 10th. That would mean the 10th of February, would be --
MR. BRANECKY: Okay.
MR. TERRILL: But it's generally roughly two weeks before the --

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MR. PAQUE: If you give me about ten minutes, fifteen or ten minutes, I can find the date.
MR. BRANECKY: Well, I just think --
MR. PAQUE: We sent someone off to get that date.
MR. BRANECKY: I just think if we're going to do that, we need to set a cutoff date for comments or concerns, otherwise, it will be forever. So we'll all know the Rules of the game.
MR. TERRILL: Well, I would be less than honest with the Council and that is, if we get comments that -- before the Board passes on this that indicates to us that there is an issue, we will ask the Board to send it back to you and we'll have to do it in April as an emergency. Because normally we don't accept any comments. Once it leaves here, that's what goes to the Board and we can't make any changes to it anyway. So if we find that we've done something that's a problem, then there is no way we can fix that without coming back

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in April as an emergency.
MR. PAQUE: By state law, the Rule cannot change from what the Council recommends -- for the Air Quality Council, what they recommend, that Rule text cannot change what was presented to the Board.
Also, the Board packets are being mailed on the 10th. So I would say that a fair deadline would probably be Friday, February 3rd.
MR. TERRILL: And I don't think there will be much change to what you all had in your handout today. We just didn't have enough time to get it to you ahead of time, so there shouldn't be any changes, much to speak of from that, if any.
MR. CURTIS: So to help in my confusion, we're really considering the changes that were presented today and not the one that was sent out with the Council packet?
MR. TERRILL: That would be correct. Because it -- what's in your packet today reflects our taking a look at the work Phillip did, satisfying ourselves

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that there wasn't any difference in the 10 and 5-year look back and that's the changes we've made to satisfy the concerns that were raised.

And it also includes the language about emission factors, which we didn't have. That's what we found out was a big issue. So it is a fairly substantive change, but we think it reflects what the concerns of the Council originally were and addresses those.

MS. BOTCHLET-SMITH: I don't have any other oral comments. Is there anything else from the Council?

MR. PURKABLE: Have there been any litigation issues in other states that have essentially adopted the Federal Rule? Has it been pretty clear sailing once it's been adopted?

MR. PAQUE: What it would take for that to happen would be EPA to take action on a SIP, an actual submittal, and EPA has yet to take action on any NSR Rules. Some states had to go back and change their Rules because they went ahead

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and adopted it with the clean unit provision and some of those things, but as for litigation, EPA has not approved an NSR SIP yet.

MR. TERRILL: There has been some concerns raised. When the Rules go to the Legislature, there have been some groups that have raised issues at the Legislature in other states because they felt like that the NSR Rules were not -- and these were ones generally where the state passed the Rule, as is, and they raised the issue at the Legislature saying it wasn't appropriate, it's not protecting public health. But I don't think we'll have that, and even if we did, we'll go back to the analysis that we did that shows that there's not any difference to speak of.

MS. MYERS: Are there any other comments or questions from the public? Julia.

MS. BEVERS: This will reveal more about me than I probably want anybody to know, but is there -- are the terms potential to actual, and actual to

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potential, synonymous? Because I did submit a comment on the applicability section about major modification, Number 6 on Page 18, actual to potential and then down in the paragraph it refers to the potential to actual test. And if those are the same, then I don't have a problem. But if they aren't the same, I think they should be consistent. Thank you.

DR. SHEEDY: We added this -- Number Six? Actual to potential for projects that -- I think that's the one that we added, isn't it, Matt, that says that if you don't want to use a projected actual test, then you can go ahead and use the test that we have now, which is actual to potential, and then you don't have to do that recordkeeping. I mean, if you were going -- if actual to potential would get you out of PSD, then you don't have to do actual to actual and then get involved with the extra recordkeeping. That's all that Six is doing. It kind of took it out -- I believe it was included in the definition of projected actual emissions, they put it

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down in a paragraph in there that you can go ahead and use the old system if you wanted to.

So we just thought we would put it out front so you would be aware that if you didn't need to use projected actual, you could be Non-PSD without it, then you didn't have to use it. If that's confusing, then we might need to think about putting it there again. But it is the Rule, regardless of whether it's there.

MS. BEVERS: My question was just the terminology. It says actual to potential and then down below, it says potential to actual. I'm just wondering if those are the same?

DR. SHEEDY: They're not. I don't think so. Wait a minute.

MS. BOTCHLET-SMITH: Joyce, if you need a minute to look over that, our Court Reporter has requested a short break.

DR. SHEEDY: Okay.

MS. BOTCHLET-SMITH: So if we could take about five, no more than 10 minutes to give her a little bit of a

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break, and then we'll come back to this.

(Off the record)

(Back on the record)

MS. BOTCHLET-SMITH: Joyce, did you want to go ahead and answer that question that you were asked prior to the break?

DR. SHEEDY: Julia pointed out an error in Paragraph (6) on Page 18. Down in about the third line from the bottom of that paragraph where we say owners or operators who use the potential to actual test, that should be "actual to potential test". Just swap those terms around and Julia pointed that out and that needs to be -- that will be changed. So in the Rule that -- if the Council decides to forward this Rule, then that Rule will say -- use the actual to potential in that place, which is correct.

MS. MYERS: Are there any other comments? If not, I'll entertain a motion.

MS. WORTHEN: I make a motion to pass with the comment noted by Joyce.

MR. CURTIS: Second.

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MR. BRANECKY: I would like to add to that, with the stipulation that until February 3rd, that if there's any other concerns from the Council, that those be directed to DEQ and they would consider that in whether to take this to the Board or not.

(Inaudible Conversation)

MS. MYERS: Matt, can we just back up and clarify the Motion?

MR. PAQUE: It's been seconded.

(Inaudible Conversation)

MS. WORTHEN: I'll withdraw the Motion.

MR. PAQUE: Then you withdraw your second.

MR. CURTIS: So be it.

MR. BRANECKY: I would move that we adopt the Rule as presented to us, given to us this morning by DEQ as a permanent Rule with the changes proposed by Ms. Bevers, with the actual to potential language, and also with the understanding that DEQ will accept comments from the Council until February 3rd. And based on

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any of those comments made, opt to withdraw the Rule or opt not to bring the Rule to the Board in the February Meeting.

MR. TERRILL: We will bring the Rule to the Board. I talked to Steve Mason, who is the Board Chair, and he believes and I agree with him, that proper protocol is whatever comes out of the Council needs to go to the Board and then we can explain the circumstances and the Board can send it back. And that's probably -- for transparency in the Rulemaking process, that's probably the right -- that is the right way to do it, so --

MR. BRANECKY: So I need to change that motion, then?

MR. TERRILL: Yes. Because you --

MR. BRANECKY: The whole thing?

MR. TERRILL: You can come to the Council Meeting or the Board Meeting and make any -- raise any concerns there and the Board can decide to send it back.

MR. BRANECKY: Okay. I'll try

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again. I move that the Council adopt the Rules as given to the Council this morning by DEQ with the additional change recommended by Ms. Bevers of OG&E regarding the potential to actual language and that DEQ accept comments from the Council until February 3rd with any concerns -- further concerns of the Rule.

MR. CURTIS: Second, again.

MS. MYERS: Myrna, we have a motion and a second. Would you call roll, please?

MS. BRUCE: Gary Martin.

MR. MARTIN: Yes.

MS. BRUCE: Jerry Purkable.

MR. PURKABLE: Yes.

MS. BRUCE: Laura Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Bob Curtis.

MR. CURTIS: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.

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MS. BOTCHLET-SMITH: Okay. The next item on the Agenda is OAC 252:100-8 Permits for Part 70 Sources Part 11. And the presentation will be given by Mr. Matt Paque.

MR. PAQUE: Madame Chair, Members of the Council, ladies and gentlemen, my name is Matt Paque, I'm an attorney for the Department and the Air Quality Division.

For this item of the Agenda, I'll discuss the Department's proposed revision to OAC Title 252, Chapter 100, Subchapter 8, Part 11.

In 1999, the U.S. Environmental Protection Agency announced a major effort to improve air quality in national parks. This effort resulted in the development of the Regional Haze Rule. This Rule calls for State and Federal Agencies to work together to improve visibility in Class I areas which include 156 national parks and wilderness areas. The Wichita Mountains, southeast of Lawton, Oklahoma, is one of these areas.

States are required to submit

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Regional Haze State Implementation Plans outlining methods for improving visibility to EPA by December of 2007. One mandatory method states are required to utilize improving visibility is the application of final Best Available Retrofit Technology known by the acronym BART.

The EPA published amendments to the Regional Haze Rule and BART guidelines in the Federal Register on July 6, 2005.

The process of establishing BART emission limitations can logically be broken down into three steps:

First. States identify those sources which meet the definition of a BART-eligible source set forth in the proposed OAC 252:100-8-71.

Second. States determine whether such sources emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in a Class I area. A source which fits this description is subject to BART.

Third. For each source subject to BART, States then identify the appropriate

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type and the level of control for reducing emissions. The level of control is to be established on a case by case basis taking into account the criteria listed in the BART definition, which is in the proposed OAC 252:100-8-71.

The identification of a BART eligible emission unit at a facility involves a 3-step process:

The emission unit must have been in existence prior to August 7, 1977 and begun operation after August 7, 1962.

The emission unit must be located at a facility which falls into one of 26 categories.

The aggregate potential emissions of all emission units identified in Steps 1 and 2 must be greater than or equal to 250 tons per year of any visibility impairing pollutant. The pollutants that reduce visibility include particulate matter, PM10 and PM2.5, and compounds which contribute to PM2.5, such as nitrogen oxides, NOx, and sulfur dioxides, SO2.

DEQ has currently identified 25 BART

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eligible sources and most all of these identified sources have been in contact with the Division regarding their BART status.

Under the proposed Rule, owners or operators of such sources must submit the proposed BART or proposed exemption from BART requirements for these sources to the Department no later than December 1 of 2006.

Notice of the proposed Rule changes was published in the Oklahoma Register on December 15, 2005 and comments were requested from members of the public.

Since the last Air Quality Council Meeting, the Department has received comments from the following:

The EPA Region 6 Air Planning Section submitted comments on December 2, 2005. Based on their comments, some minor changes were made to the Rule and those changes are reflected in the published proposed Rule and the comments are available in your Council packet.

OGE Energy Corporation submitted

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comments on December 15, 2005 and again on January 4, 2006 and those comments are available in your Council packet. Based upon those comments, the Department proposes amendments to the published Rule as follows. These amendments were made available to you this morning and we do apologize for the short notice.

Today, the Department would like to amend Sections 252:100-8-70, 8-73 and 8-75 to include a threshold value for visibility impairment. This change will incorporate into the Rule the federal 1.0 and .5 deciview thresholds for determining if a source causes or contributes to visibility impairment in a Class I Area. The Department also proposes to amend the proposed OAC 252:100-8-71 to include the definition of Deciview. Other related amendments for consistency with these changes should be made to the proposed OAC 252:100-8-70, 8-73 and 8-75.

Also, today the Department proposes to amend the proposed OAC 252:100-8-73(b). The Department would like to limit the

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pollutants considered for BART to only NOx, SO2, PM-10 and PM-2.5.

Also, today the Department proposes to amend the proposed OAC 252:100-8-72 to reflect the title of "Appendix Y, also be included so that the section would read, Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule."

And finally, today the Department proposes to amend the proposed OAC 252:100-8-75 to reflect that BART must be installed at BART eligible sources that cause or contribute to visibility impairment no later than five years after EPA approves the Oklahoma Regional Haze SIP.

Again, the Department apologizes for bringing these amendments to you before today, but it is the Department's opinion that all of these proposed amendments are nonsubstantive because they are all reflections of the federal Regional Haze Guidelines Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule, as previously proposed to be

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incorporated into the Rule.

At this time, staff asks the Council to recommend the proposal with the proposed amendments to the Environmental Quality Board for permanent adoption.

MS. BOTCHLET-SMITH: Questions from the Council.

MR. CURTIS: Yes. Do we have any estimate as to the economic impact of this Rule?

MR. PAQUE: The Rule will require some of those BART eligible sources to install BART, and so there would be an economic impact on some facilities for that reason, that is if they do cause or contribute to visibility impairment.

MR. CURTIS: So any of the comments that you received thus far, have they indicated any sort of economic impact?

MR. PAQUE: We haven't received any comments that indicated economic impact. But it should be noted that, as I mentioned before, when you are looking at BART and what's the appropriate BART for your facility, economic feasibility is part

Page [illegible]

of that determination -- economic feasibility of those controls is part of that criteria.

DR. SHEEDY: And there will be some costs for modeling.

MR. PAQUE: Yes, I'm sorry. Costs --

MR. BRANECKY: Right.

MR. PAQUE: Costs for modeling.

MR. BRANECKY: I can address that a little bit, Bob. We have some BART-eligible sources and we are preparing to do modeling. If that modeling shows an impact on visibility in a Class I Area, SO2 and NOx reductions are substantial. You're talking scrubber on a coal unit, we're talking 75 million in capital costs and several million operating costs per year.

MR. CURTIS: So it's a substantial impact. I had a --

MR. PURKABLE: Has the modeling protocol been established, since I think the Rule says established by the Director. Is that well established?

MR. FIELDER: The modeling

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protocol is close to being finalized. I think the last I heard, within a week. They've been working on it for quite some time now and it's -- the CENRAP group, if you're more interested in that, you can get some information from them, but within the next week or so, I think they're supposed to be finalizing that.

MR. BRANECKY: Is trading being considered as far as BART?

MR. TERRILL: We don't have any plans to propose a trading Rule at this time. We left an option in here in case at some later date we can do that. But that's just mainly a placeholder in case -- we never could -- we had a lot of discussion and we never could figure out how to do it and do it where it made economic and practical sense. So we don't have any plans to do any trading program relative to BART right now, but we do have the ability to do that if someone proposes an idea that we think can work. And then, as with all this, we would have to come back to the Council with Rules and all that.

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MS. BOTCHLET-SMITH: Do we have any more comments or questions from the Council? I have received one notice of oral comment from Mr. Bud Ground with PSO.

MR. GROUND: Thank you, very much, for this opportunity. And really, I had the same question that Dave brought up about the (inaudible) trade or the trading program.

And so Eddie, you said that you don't have any plans at this time to come up with any type of a trading program. And I guess just to add onto that, if you don't have any plans to do it, are you waiting on CENRAP to develop something or are you waiting on another, you know, private industry to develop a trading program, or are you just not planning on ever trying to implement a trading program?

MR. TERRILL: Well, we've had discussions internally and also with some of the stakeholders. In fact, we've had two presentations as part of our policy oversight group meetings that we have, from a group that's pushing a trading program.

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But it's a group that's pushing -- it's not within the CENRAP region and we think they may have other reasons for wanting a trading program, because there's money to be made off one.

We just never could put together a plan that we felt like was workable for us, because there's associated cost with it. You would have to figure out who could trade, would it be intrastate, would it be interstate, we're not part of the CARE -- we're not a CARE state, so we don't have that option to trade there. So we just felt like it was just too complicated to figure out at this point. We just didn't feel like there was anything to be gained from it at this point. But if at some later date as this process progresses and we feel like there's a need that arises that we need to do a trading program, then we would entertain that at that point.

We also didn't feel like we could get anything through in time to include it as part of our 2007 SIP. That really drove it more than anything else because every

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time we thought we had answered one question, we'd have three more that would come up and we just abandoned it because we're really concentrating now on trying to get the work done so we can submit a SIP in 2007. And if it turns out after we do that that we need to do a trading program, if a stakeholder comes in and says we want to discuss it, we think here's why we need that, then we'll look at it at that point.

MR. GROUND: Okay. Well, I do appreciate you keeping it in there. But I do also think that it would be very beneficial to the state of Oklahoma and I hate it that we don't have one just because we're not a CARE state, because it can be a lot less costly to comply with the trading program.

And just as a follow-up question, is there any time limit that you would say that it's too late to put a trading program in? I know for us we have to do a lot of preplanning and there's going to be a time when we either have to install or rely on our trading program, but I didn't know if

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there was a time limit where you would say --

MR. TERRILL: I think you've answered your own question. It really becomes, can you get one in place before decisions have to be made by those that are going to install BART that allows them to take advantage of it. You know, I don't think we care one way or the other whether we have a trading program as long as we don't get stuck with having to administer it with no way to fund it. We don't have any experience with this. We would have to figure out how to do it and I don't know that having a third party do this is a good way to do it, because inevitably your costs are higher. So we would have to figure out how to do it.

But if the stakeholders, the folks that are involved in this want to sit down with us and try to put together a trading program, we may miss our 2007 deadline, but I don't know that we couldn't put something in place that would work for you to make your plans before you have to make a

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commitment as far as what you re going to have to install.

MR. BRANECKY: Don't we have to have those -- those facilities have to have those plans in to you by December of this year?

MR. TERRILL: I believe that's right.

MR. BRANECKY: So --

MR. TERRILL: It would be tough. Again, I don't want to preclude it, that's the reason we left the language in here and -- yes, we had some discussions early on and we really never got a lot of positive feedback from the folks that we had in that it was worth pursuing and we had other things that were keeping us busy, so we didn't pursue it, either. But we're not closing the door on it. I mean, if you all -- Bud, if you think there's a groundswell out there of enough folks that are interested in doing it that make it worth our while, we would sit down and try to develop the resources to do it.

MR. GROUND: Okay. So you're not

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opposed to us getting together a group,

because you did submit a list today of BART-eligible sources, if we were to get together and come to you and talk about this?

MR. TERRILL: Absolutely not.

MR. GROUND: Okay. We really appreciate it. Thank you.

MS. BOTCHLET-SMITH: I didn't receive any other comment -- Notice of Comment from the public. I'm not seeing any hands up. But do we have any questions? It doesn't look like it, Sharon.

Any other comments from the Council?

MS. MYERS: If there's no further comments from the public or from the Council, we'll entertain a motion for this Rule.

MR. BRANECKY: I'll make a motion we move -- we approve as given to us this morning by DEQ.

MR. PURKABLE: I'll second.

MS. MYERS: We have a motion and

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a second to approve this Rule.

Myrna, would you call roll, please?

MR. BRANECKY: Do I need to specify a permanent Rule? Is that necessary? Can I amend my motion or do I need to specify that?

MR. PAQUE: The Rule is only noticed as a permanent Rule.

MR. BRANECKY: All right. Thank you.

MS. MYERS: Myrna.

MS. BRUCE: Gary Martin.

MR. MARTIN: Yes.

MS. BRUCE: Jerry Purkable.

MR. PURKABLE: Yes.

MS. BRUCE: Laura Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Bob Curtis.

MR. CURTIS: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.

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MS. BOTCHLET-SMITH: That concludes the hearing portion of today's meeting. Sharon.

MS. MYERS: At this time I ll turn it over to Eddie.

MR. TERRILL: I'll be short. I've only got a couple of things.

As most of you who have emissions inventory turnaround documents to submit, that time has arrived to start doing that again. And a question has come up about Permits that contain pollutants that aren't defined as regulated pollutants in our Rule, but they're contained in the old toxics Rule and whether or not those have to be submitted as part of the emissions inventory.

Well, theoretically, yes, they do. But what we're proposing is and we'll put this up on our website and we'll be taking this to the workgroups that we're conducting, but what we're going to propose is that if it's a -- if it's not a regulated pollutant but it's a VOC, then lump that in as a VOC when you do your

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reporting and not as an individual pollutant that's found in Subchapter 41. I hope that makes sense.

But we're going to be coming back to the Council in April clarifying our definition of regulated pollutant and so you guys will have an opportunity to take a look at that and we'll be cleaning up some stuff. But as it is right now, if you've got Permit language that includes toxics under the old Rule that can be considered as VOCs, lump that into your VOC when you do your emissions inventory reporting. If it's not a VOC, there's going to be a few of those, Kendall probably doesn't want me saying this, don't report it because we don't have a way to make it fit and that is contrary to our Rule, but we're going to fix it in April and we don't think it's going to be that much of a big issue anyway. So it will confuse our Redbud system if you try to report it and we don't have time to modify the system so --

UNIDENTIFIED: Eddie, we just wanted to mention that we also wanted to

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include that under the PM situation.

MR. TERRILL: I'm sorry. Right. If it can be included as a PM, report it as PM, as well. So if you've broken it out and it could be reported as a PM or a toxic or VOC, please do so. Otherwise, we'll clarify the definition of regulated pollutant in April and do the -- we knew there would be some cleanup relative to the Subchapter 41 at some point and we're in the process of starting that.

MS. BEVERS: Eddie.

MR. TERRILL: Yes.

MS. BEVERS: A question to clarify that. Since I'm probably the one who asked the question -- actually, I did ask the question on the last one, if -- you're saying if it's -- if it would be classified as a VOC but it's a non-hap, then we're just going to lump it into non-hap VOC option and then just lump into the straight nonHap PM?

MR. TERRILL: Isn't that where you want it, Ray? Yes. You are correct.

The other thing I mentioned, I've

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gotten two or three calls from -- well, actually, I've gotten several calls over the last -- and emails over the last two or three months about comments that I have made that show up in various publications. For those of you that don't know, I am the current President of STAPPA/ALAPCO and that's our national air directors association. And as part of that, there is going to be times where I'm going to comment on things that are going on nationally because that's what we do, that are going to show up and the question has become, if I make a comment on something, does that mean that's what we're going to do here in Oklahoma. Well, it may or may not mean that's what we're going to do here in Oklahoma because everything we do comes through the Council as a Rule change. So hopefully the concerns that have come up, you won't have them but there are going to be times because we represent all 50 states and we come to our conclusions or consensus based on a consensus that may or may not be a majority, there may be some things that

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we comment on, as far as federal Rules are concerned, that may not be applicable to what we'll do here in Oklahoma. An example of that was, I got a call yesterday and there will probably be an article that will appear in one of the papers about the federal Rule that came out yesterday with course -- relative to course PM and the fact that EPA decided to exempt two large sectors from regulation if you have an area that is nonattainment under the new course PM standard, whatever that happens to be.

And my comment was that it was probably inappropriate for EPA to do that, because what that does is, if we do analysis, we do have areas that are in nonattainment with a new course PM standard, which we don't anticipate that to happen, but if we were to and we're already hamstrung by the fact that we can't look at two large emission sectors that more than likely are contributing to the problem, then that means everybody else has got to figure out what we're going to do to get us back into attainment and we don't think

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that's EPA's role. EPA's role is to provide a standards, national federal standards that have a margin of safety that are protective of public health and it's up to us to figure out how to get there and all that comes through the Council and that's the opportunity for us to show whether or not the decisions we made relative to what we should control to get to where we need to get for attainment is correct or not.

So I'm not going to say what sectors were out there that got exempted, but I'm sure there's going to be some folks that are concerned about my comment and my comment, I think, is a fair one. I don't think that was appropriate for EPA to do that and we will make those comments later.

But I mainly want to let you know that you may very well, if you get trade publications, that we will have comments that quote me. And just because I made a statement, that doesn't necessarily mean that's exactly what we're going to do here in Oklahoma. We may propose that, but it

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will go through the process and it will be vetted just like all of our other Rules, so.

MS: (Inaudible).

MR. TERRILL: Yes, that's right. Anyway, that's all we've got. I appreciate everyone's attendance. Do we have any new business? Yes, Bud.

MR. GROUND: (Inaudible)

MR. TERRILL: We've seen a few blips, but nothing that we really could tie to the fires. What we think have been an issue is blowing dust, but we haven't seen anything yet that are high enough of a concern to us that would indicate that we would have some attainment issues.

Now, you know, EPA has proposed new PM fine standards that came out a few weeks ago and I guess yesterday they produced -- proposed their PM course and there's going to be an urban standard and right now there's not going to be a rural standard relative to PM course, but that could change, too, depending on comments.

So if you have a source that's a PM,

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a large PM source, you might want to keep an eye on what's going on relative to the PM fine standard, because I suspect that EPA is going to lower it to some degree. But the proposed levels that they've suggested, we don't have any problems with the annual or the 24 hour standard at this point.

We have copies of the Annual Report that were available. If anyone wanted one and didn't get one, let us know and we'll get you one before you leave today. I forgot that we were handing these out and I apologize.

So I guess our next meeting will be at Tulsa, at the OSU-Tulsa facility on Greenwood, the same place we've met for the last two or three years. So by that time, we'll be ready to talk about ozone season and we'll have a few additional Rule changes that we're going to propose. Any questions from anybody? Thank you for attending today.

MS. MYERS: We are adjoured.

(END OF PROCEEDINGS)

OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY COUNCIL
Attendance Record
January 18, 2006
Oklahoma City, Oklahoma

NAME and/or AFFILIATION		Address and/or Phone and/or E-Mail
Myra Bruce	DEQ	x7170
Nancy Marshment	DEQ - AQD	x4178
Heather Bragg	DEQ - 4176	
William Clark	MCAAP	918-420-6552
Matt Paque	DEQ	405-702-7189
John Shriver	VLO	580-221-3110
Don Whitney	Trinity	405-228-3292
Jim Haught	ONEOK	Jim.Haught@oneok.com
~~Teresa~~ Wheeler	Tinker	
Ada Johnson	TAFB	ada.johnson@tinker.af.mil
~~Wi~~ Wilma Turner	TAFB	wilma.turner@tinker.af.mil
Julia Bevers	OGE	beversjo@oge.com
Bud Ground	PSO	405 841-1322
Kendal Stegmann	~~DEQ~~	
John Downs	OG&E	Downsjf@oge.com
Angie Burckhalter	OIPA	ABURCKHALTER@OIPA.COM
Pat Sullivan	DEQ	405 702 4212

OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY COUNCIL
Attendance Record
January 18, 2006
Oklahoma City, Oklahoma

NAME and/or AFFILIATION		Address and/or Phone and/or E-Mail
Rhonda Jeffries	ODEQ	(918) 293-1626
Dave Cummings	Chickasaw	405-734-4567
Melody Martin	OGE	(405) 553-3297
Gerald Butcher	WFEC	405-247-4341
Gary Keele	Hall Estill	(918) 594-0553
Bob Kellogg	OIEC	
Mark Lawson	Spirit Aerosystems	Mark.Lawson.CP@Boeing.com
Tom Tarr	Cooper Cameron	(405) 616-2598
Craig Hall	Cooper Cameron	405-629-04436
Jeff Fairbanks	MOGA/BP	918 465 4167
Laura Herron	OGE	405.553.3057
Andrew Wimmers	Atlas Pipeline	918 629-6172
Beata Barnes	Arkla T/L	918-398-2124
Andrew Hood	Sunoco	918 594 6284
Glenn Travis	Sunoco	918-594-6572
Lee Warden	ODEQ	405 702 4201
Tracy Rudisill	ODEQ	405-702-4167
Steve Moyer	Sinclair	918 488 1197
Kathryn Crenshaw	Weyerhaeuser	580-933-1449
Steve Mason	Odeq board	

REGULAR MEETING AGENDA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OKLAHOMA ENVIRONMENTAL QUALITY BOARD

A Public Meeting: 9:30 a.m., Friday, February 24, 2006
DEQ Multipurpose Room
707 North Robinson
Oklahoma City, Oklahoma

Please silence cell phones.

1. **Call to Order** – Steve Mason, Chair

2. **Roll Call** – Myrna Bruce, Secretary, Board & Councils

3. **Approval of Minutes** of the November 15, 2005 Regular Meeting

4. **Election of Officers** – Election of Chair and Vice-Chair for calendar year 2006

5. **Rulemaking – OAC 252:20 Emergency Planning and Community Right to Know**
   The proposed amendments generally require Tier II forms to be submitted to the DEQ electronically via the DEQ website and require inclusion of latitude/longitude information on the forms. Additional amendments clarify that submitting a paper Tier II report to the appropriate Local Emergency Planning Committee and the local Fire Department is no longer necessary since the DEQ will make the information available to those entities. Fee rules have been restructured to more closely reflect potential risk to the community, to fund DEQ costs for providing one-stop filing as requested by the regulated community and to provide funds to assist LEPCs in using Tier II data.
   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 possible action by the Board, which may include roll call vote on permanent adoption

6. **Rulemaking – OAC 252:100 Air Pollution Control**
   - The proposed amendments to Subchapter 4 incorporate by reference federal New Source Performance Standards (NSPS) in 40 CFR Part 60.
   - The proposed amendments to Subchapter 41 incorporate by reference National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Part 61 and Part 63.
   - Proposed amendments to Subchapter 8 incorporate EPA's revisions to the NSR permitting program under the federal Clean Air Act. The amendments include revisions to the method of determining if a modification to an NSR source is a major modification. Other amendments update and clarify language and move definitions to more appropriate locations within Chapter 100.
   - Proposed new Part 11 of Subchapter 8 incorporates the federal Best Available Retrofit Technology (BART) requirements. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).

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 possible action by the Board, which may include roll call vote(s) on permanent adoption

7. **Rulemaking – OAC 252:300 Laboratory Accreditation**
The proposed changes relate to clarification of the accreditation exception for certified laboratory operators; update of method references for drinking water laboratories; addition of new detailed requirements for standard operating procedures and methods manuals; and addition of methods for the petroleum hydrocarbon laboratory category.
A. Presentation – Brian Duzan, Chair, Laboratory Services Advisory Council
B. Questions and discussion by the Board
C. Questions, comments and discussion by the public
D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

8. **Rulemaking – OAC 252:305 Laboratory Services**
The proposed changes relate to the fees for laboratory analysis which are charged by the DEQ's State Environmental Laboratory. DEQ has proposed changes based upon a review of actual costs, comparison of similar fees in other states and in the private sector and projections of equipment needs for the future.
A. Presentation – Brian Duzan, Chair, Laboratory Services Advisory Council
B. Questions and discussion by the Board
C. Questions, comments and discussion by the public
D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

9. **Rulemaking – OAC 252:410 Radiation Management**
The proposed rulemaking changes the fee schedule for radiation machines. Some of the fees would be reduced while others would be increased. The new fees are designed to vary based on risk posed by the machine.
A. Presentation – David Gooden, Chair, Radiation Management Advisory Council
B. Questions and discussion by the Board
C. Questions, comments and discussion by the public
D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

10. **Rulemaking – OAC 252:515 Solid Waste Management**
Proposed amendments include:
- minor language clarifications, corrections of legal citations and typographical errors;
- proposed waste tire rule changes; and
- a five-year update, as required by rule, of the unit costs and worksheets in Appendices H and I related to annual estimated financial assurance costs for closure and post-closure of solid waste facilities.

A. Presentation – Bill Torneten, Chair, Solid Waste Management Advisory Council
B. Questions and discussion by the Board
C. Questions, comments and discussion by the public
D. Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

11. Rulemaking – OAC 252:606 Oklahoma Pollutant Discharge Elimination System

The Department proposes to update the incorporation by reference of certain federal regulations to July 1, 2005. The update includes the adoption of the Phase II Cooling Water Intake Rules.

A. Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
B. Questions and discussion by the Board
C. Questions, comments and discussion by the public
D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

12. Rulemaking – OAC 252:611 General Water Quality

The Department proposes to update the incorporation by reference of certain federal regulations to July 1, 2005.

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

13. Rulemaking – OAC 252:616 Industrial Wastewater Systems

A change is proposed to the requirements for sand and gravel mining operations to obtain a permit.

A. Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
B. Questions and discussion by the Board
C. Questions, comments and discussion by the public
D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

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

The Department proposes to update the incorporation by reference of certain federal regulations to July 1, 2005.

A. Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
B. Questions and discussion by the Board
C. Questions, comments and discussion by the public
D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

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

The Department proposes to update the incorporation by reference of certain federal regulations to July 1, 2005. The update includes the adoption of the Phase II Cooling Water Intake Rules.

A. Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
B. Questions and discussion by the Board
C. Questions, comments and discussion by the public
D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

16. **Rulemaking – OAC 252:710 Waterworks & Wastewater Works Operator Certification**
The proposed amendments reflect language clarifications and corrections of typographical errors. Included is clarification of the certification requirement for plumbing contractors.
    A. Presentation – Allen McDonald, Chair, Waterworks & Wastewater Works Advisory Council
    B. Questions and discussion by the Board
    C. Questions, comments and discussion by the public
    D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

17. **Briefing on and discussion of current Board vacancy and factors affecting candidate field**
    A. Background – Steve Mason, Chair, and Steve Thompson, Executive Director
    B. Discussion by the Board
    C. Questions, comments and discussion by the public
    D. Discussion and possible resolution or other action by the Board

18. **Discussion of need for four regularly scheduled Board meetings per year**
    A. Background – Steve Mason, Chair, and Steve Thompson, Executive Director
    B. Discussion by the Board
    C. Questions, comments and discussion by the public
    D. Discussion and possible action by the Board, which may include roll call vote to direct DEQ staff to initiate rulemaking action

19. **New Business** (any matter not known about and which could not have been reasonably foreseen prior to the time of posting of agenda)

20. **Executive Director's Report** – Steve Thompson

21. **Adjournment**

Next Meetings: June 20 in Weatherford; August 22 in Ardmore; November 14 in Stillwater.

Public Forum (after adjournment): The Board meets 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.

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

Some members of the Board and senior staff members from DEQ will meet for dinner in Oklahoma City the evening of February 23. 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.

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Oklahoma
Secretary of State
Office of Administrative Rules

(b) **Incorporation.** The following Parts of 40 CFR are, unless otherwise specified, incorporated by reference in their entirety:

(1) Part 355 (Emergency Planning and Notification);

(2) Part 370 (Hazardous Chemical Reporting: Community Right-to-Know);

(3) Part 372 (Toxic Chemical Release Reporting: Community Right-to-Know).

(c) **Interface with CFR.** In the Parts of 40 CFR incorporated by reference, the term "Commission" shall mean the Department.

(d) **References incorporated.** Incorporation by reference of a provision of the Code of Federal Regulations also incorporates all citations and definitions contained therein.

(e) **Penalties.** Penalties cited in 40 CFR are subject to limitations under Oklahoma law.

252:20-1-4. Submission of plans and reports

(a) **Emergency planning and notification, Part 355.** The owner or operator of a facility subject to emergency planning or emergency release notification as described in 40 CFR Part 355 shall comply with the requirements of such Part.

(b) **Hazardous Chemical Reporting: Community Right-to-Know, Part 370.** The owner or operator of a facility subject to Material Safety Data Sheets (MSDS) or chemical lists, and inventory reporting (Tier I or Tier II), as described in 40 CFR Part 370 shall comply with the requirements of such Part. Tier II forms shall be submitted to the Department (DEQ) electronically via the DEQ internet website utilizing DEQ approved software. Only submissions via the website shall be accepted. A two-year grace period from the requirement to submit via the website for facilities with less than 5 full time employees and companies operating under SIC code 1311 with fewer than 20 locations will be granted from the time of the effective date of these rules. The owner or operator of a facility subject to Tier II reporting also shall report the latitude/longitude for each location reported.

(c) **Toxic Chemical Release Reporting: Community Right-to-Know, Part 372.** The owner or operator of a facility subject to toxic chemical release record-keeping and reporting as described in 40 CFR Part 372 shall comply with the requirements of such Part.

(d) **Requests for information.** Any person who owns or operates any facility that may be subject to regulation under 40 CFR shall accurately respond to requests from the Department for information on the type of facility and the nature and quantity of chemical substances present.

252:20-1-6. ~~Address~~ Procedure for submitting reporting forms

(a) **Non-confidential.** All non-confidential forms, sanitized versions of materials submitted under a Claim of confidentiality, and separate Tier Two Confidential Location Information Sheets (see 40 CFR 370.41), shall be submitted to the ~~Oklahoma Department of Environmental Quality, P.O. Box 1677, Oklahoma City, Oklahoma, 73101-1677~~ Department via the DEQ internet website.

(b) **Confidential.** All materials submitted under a Claim of confidentiality, except separate Tier Two Confidential Location Information Sheets, shall be submitted as described in 40 CFR 350.16 to EPCRA Substantiation Packets, P.O. Box 1515, Lanham-Seabrook, MD 20703-1515 or FedEx and courier packages to EPCRA Substantiation Packets, c/o Computer Sciences Corp., Suite 300, 8400 Corporate Dr., New Carrollton, MD 20785.

(c) **Information dissemination.** Any requirement for an owner or operator of a facility subject to Tier II reporting under 40 CFR 370 to submit a paper Tier II report to the appropriate Local Emergency Planning Committee (LEPC) and to the local Fire Department is met by reporting to DEQ via electronic on-line internet reporting as the Department will make the information available, in a timely fashion, to the LEPCs and Fire Departments.

252:20-1-7. Fees

Fees for environmental services to validate reports from facilities required to report (but not merely to notify) under the Oklahoma Hazardous Materials Planning and Notification Act (27A O.S.Supp. ~~2000~~ 2005, § 4-2-101 *et seq.*) are:

(1) For owner/operators of ~~ten (10) or less facilities: $10.00 per facility; facilities~~ other than oil and gas production facilities (SIC code 1311)and agriculture chemical dealership facilities:

(A) $15.00 per hazardous substance per 40 CFR 370 subject to Tier II reporting;

(B) $30.00 per extremely hazardous substance per 40 CFR 355 subject to Tier II reporting;

(C) With a $1,000 maximum fee per company.

(2) For owner/operators of ~~eleven (11) to twenty-four (24) facilities: $20.00 per facility; and~~

~~(3) For owners/operators of 25 or more facilities: $500.00 per company.~~ oil and natural gas production facilities (SIC code 1311):

(A) $12.00 per reported facility

(B) With a $1,000 maximum fee per company.

(3) For agriculture chemical dealerships:

(A) $12.00 per facility

(B) With a $1,000 maximum fee per company.

[OAR Docket #06-854; filed 5-9-06]

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

[OAR Docket #06-855]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:100-1-3. [AMENDED]
Subchapter 8. Permits for Part 70 Sources
Part 1. General Provisions [AMENDED]
252:100-8-1.1. [AMENDED]
Part 5. Permits for Part 70 Sources [AMENDED]

252:100-8-2. [AMENDED]
Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas [AMENDED]
252:100-8-30. [AMENDED]
252:100-8-31. [AMENDED]
252:100-8-32. [REVOKED]
252:100-8-32.1. [NEW]
252:100-8-32.2. [NEW]
252:100-8-32.3. [NEW]
252:100-8-33. [AMENDED]
252:100-8-34. [AMENDED]
252:100-8-35. [AMENDED]
252:100-8-35.1. [NEW]
252:100-8-35.2. [NEW]
252:100-8-36. [AMENDED]
252:100-8-36.1. [NEW]
252:100-8-36.2. [NEW]
252:100-8-37. [AMENDED]
252:100-8-38. [NEW]
252:100-8-39. [NEW]
Part 9. Major Sources Affecting Nonattainment Areas [AMENDED]
252:100-8-50. [AMENDED]
252:100-8-50.1. [NEW]
252:100-8-51. [AMENDED]
252:100-8-51.1. [NEW]
252:100-8-52. [AMENDED]
252:100-8-53. [AMENDED]
252:100-8-54. [AMENDED]
252:100-8-55. [NEW]
252:100-8-56. [NEW]
252:100-8-57. [NEW]

AUTHORITY:
Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and 2-5-101, *et seq.*

DATES:
Comment period:
June 15, 2005 through July 20, 2005
September 15, 2005 through October 19, 2005
December 15, 2005 through January 18, 2006
February 24, 2006
Public hearing:
July 20, 2005
October 19, 2005
January 18, 2006
February 24, 2006
Adoption:
February 24, 2006
Submitted to Governor:
March 3, 2006
Submitted to House:
March 3, 2006
Submitted to Senate:
March 3, 2006
Gubernatorial approval:
April 17, 2006
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006
Final adoption:
April 28, 2006
Effective:
June 15, 2006
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
40 CFR 51.166(w) with some exceptions
40 CFR 51.165(a)(1) with some exceptions
40 CFR 51.165(a)(3) except (a)(3)(ii)(H) and (I)
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) with exceptions
Incorporating rules:
252:100-8-38
252:100-8-50.1
252:100-8-51
252:100-8-51.1
252:100-8-52(1)
252:100-8-53(a)
252:100-8-55(b)
252:100-8-55(c)
252:100-8-55(d)
252:100-8-56
Availability:
The rules 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 Department of Environmental Quality (DEQ) is proposing amendments to Subchapter 8, Part 70 Sources. DEQ proposes to revise Parts 7 and 9 of Subchapter 8 to incorporate the Environmental Protection Agency's (EPA) revisions to the New Source Review (NSR) permitting program under the Federal Clean Air Act. These proposed amendments contain revisions to the method of determining what should be classified as a modification subject to major NSR and includes Plantwide Applicability Limitations (PAL) Exclusions. These proposed amendments should result in fewer modifications to major NSR sources being considered major and therefore requiring a Prevention of Significant Deterioration (PSD) permit and the use of Best Available Control Technology (BACT). The proposed amendments also include other NSR revisions not previously incorporated by DEQ and some changes in location of some definitions to reduce redundancy. As part of the revision DEQ proposes to make the following changes to Section 8-1.1 in Part 1: 1) move 8 definitions to Subchapter 1; delete 2 definitions from Section 8-1.1 because they are the same as those in Subchapter 1; move paragraph (B) of the definition of "begin actual construction" to Section 8-2 in Part 5; move 8 definitions to 8-31 in Part 7; and move 3 definitions that were previously located in Section 8-31 to Section 8-1.1. In 8-2 of Part 5, DEQ proposes to revise the definition of "insignificant activities" to reflect the changes made to Subchapter 41 and the new Subchapter 42.
CONTACT PERSON:
Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:

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, 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 ~~reviewing authority~~ 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.

"**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 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.

"**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.

"**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 with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured during a stack test of the source's emissions.

"**PM-10 (particulate matter - 10 micrometers)**" means particulate matter with an aerodynamic diameter 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.

"**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.

"**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 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, 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 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.

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

"Actual emissions" means, except for Parts 7 and 9 of this Subchapter, the total amount of 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).

~~**"Administrator"** means the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.~~

~~**"Allowable emissions"** means, for purposes of Parts 7 and 9 of this Subchapter, 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.~~

"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.

~~**"Begin actual construction"** means:~~

~~(A) for purposes of Parts 7 and 9 of this Subchapter, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. 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.~~

~~(B) for purposes of Part 5 of this Subchapter, 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.~~

~~**"Best available control technology"** or **"BACT"** means the control technology to be applied for a major source or modification is the best that is available as determined by the Director on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternate control systems.~~

~~**"Building, structure, facility, or installation"** means, for purposes of Parts 7 and 9 of this Subchapter, 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.~~

~~**"Commence"** for purposes of Parts 7 and 9 of this Subchapter 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, for purposes of Parts 7 and 9 of this Subchapter, any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.~~

"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.

~~**"Emissions unit"** means, for purposes of Parts 7 and 9 of this Subchapter, any part of a source which emits or would have the potential to emit any pollutant subject to regulation.~~

~~**"EPA"** means the United States Environmental Protection Agency.~~

~~**"Fugitive emissions"** means, for purposes of Parts 7 and 9 of this Subchapter, those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.~~

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

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

~~**"Necessary preconstruction approvals or permits"** means, for purposes of Parts 7 and 9 of this Subchapter, those permits or approvals required under all applicable air quality control laws and rules.~~

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

~~**"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 this Subchapter, as provided in OAC 252:100-8-3(a) and (b).~~

~~"Potential to emit" means, for purposes of Parts 7 and 9 of this Subchapter, 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.~~

"**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.

~~"Stationary source" means, for purposes of Parts 7 and 9 of this Subchapter, any building, structure, facility or installation which emits or may emit any air pollutant subject to OAC 252:100.~~

"**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.

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) ~~through (C)~~ 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.

~~(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 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.

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

252:100-8-30. Applicability

~~The new source requirements of this Part, in addition to the requirements of Parts 1, 3, and 5 of this Subchapter, shall apply to the construction of all major stationary sources and major modifications as specified in 252:100-8-31 through 252:100-8-33. Sources subject to this Part are also subject to the operating permit provisions contained in Part 5 of 252:100-8.~~

(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 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 ~~emission~~ emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with ~~the following: 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 ~~tons per year~~ TPY at which the unit actually emitted the pollutant during a ~~two year~~ consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The ~~reviewing authority may~~ 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. ~~Actual emissions may also be determined by source tests, or by best engineering judgment in the absence of acceptable test data.~~

(B) The ~~reviewing authority~~ 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 ~~which~~ that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~**"Adverse impact on visibility"** means 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:~~

~~(A) times of visitor use of the Federal Class I area; and~~

~~(B) the frequency and timing of natural conditions that reduce visibility.~~

"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 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 $\mu g/m^3$ (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 ~~which~~ 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 ~~which~~ 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) ~~for major sources,~~ 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~~; and,~~.

(B) ~~for minor sources,~~ 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 ~~oxides~~ 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.

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

"**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, O_2, or CO_2 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~~ Land Manager**" means with respect to any lands in the United States, the Secretary of the department with authority over ~~the Federal Class I area or his representative~~ 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 ~~any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant subject to regulation.~~:

(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.

(~~A~~i) Any ~~net~~ significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for ~~volatile organic compounds~~ VOC shall be considered significant for ozone.

(~~B~~ii) A physical change or change in the method of operation shall not include:

(~~i~~I) routine maintenance, repair and replacement~~.~~;

(~~ii~~II) use of an ~~alternate~~ alternative fuel or raw material by reason of any order under ~~Sections~~ 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~~III) use of an ~~alternate~~ alternative fuel by reason of an order or rule under ~~Section~~ section 125 of the ~~Federal Clean Air~~ Act~~.~~;

(~~iv~~IV) use of an ~~alternate~~ alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste~~.~~;

(~~v~~V) ~~Use~~ use of an ~~alternate~~ alternative fuel or raw material by a stationary source which~~:~~

~~(I)~~ the source was capable of accommodating before January 6, 1975, (unless such change would be prohibited under any enforceable permit ~~limitation~~ condition which was established after January 6, 1975)~~; or,~~

~~(II)~~ 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~~VI) ~~An~~ an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit ~~limitation~~ condition which was established after January 6, 1975~~.~~;

(~~vii~~VII) ~~Any~~ 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 ~~any source which meets any of the following conditions:~~

(A) A major stationary source is:

(~~A~~i) ~~Any~~ any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 ~~tons per year~~ TPY or more of ~~any~~ a regulated NSR pollutant ~~subject to regulation~~:

(~~i~~I) carbon black plants (furnace process),

(~~ii~~II) charcoal production plants,

(~~iii~~III) chemical process plants,

(~~iv~~IV) coal cleaning plants (with thermal dryers),

(~~v~~V) coke oven batteries,

(~~vi~~VI) fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,

(~~vii~~VII) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,

(~~viii~~VIII) fuel conversion plants,

(~~ix~~IX) glass fiber processing plants,

(~~x~~X) hydrofluoric, sulfuric or nitric acid plants,

(~~xi~~XI) iron and steel mill plants,

(~~xii~~XII) kraft pulp mills,

(~~xiii~~XIII) lime plants,

(~~xiv~~XIV) municipal incinerators capable of charging more than 50 tons of refuse per day,

(~~xv~~XV) petroleum refineries,

(~~xvi~~XVI) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,

(~~xvii~~XVII) phosphate rock processing ~~plant~~ plants,

(~~xviii~~XVIII) portland cement plants,

(~~xix~~XIX) primary aluminum ore reduction plants,

(~~xx~~XX) primary copper smelters,

(~~xxi~~XXI) primary lead smelters,
(~~xxii~~XXII) primary zinc smelters,
(~~xxiii~~XXIII) secondary metal production plants,
(~~xxiv~~XXIV) sintering plants,
(~~xxv~~XXV) sulfur recovery plants, or
(~~xxvi~~XXVI) taconite ore processing plants~~.~~;

(~~B~~ii) ~~Any~~ any other stationary source not on the list in (A)(i) of this definition which emits, or has the potential to emit, 250 ~~tons per year~~ TPY or more of ~~any~~ a regulated NSR pollutant ~~subject to regulation.~~;

(~~C~~iii) ~~Any~~ any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under ~~(A) and (B) of~~ this definition if the change would constitute a major stationary source by itself.

(~~D~~B) A major source that is major for ~~volatile organic compounds~~ VOC 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.

~~**"Natural conditions"** mean naturally occurring phenomena against which any changes in visibility are measured in terms of visual range, contrast or coloration.~~

"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) ~~The~~ 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) ~~any~~ the increase in ~~actual~~ 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: ~~the Executive Director has not relied on it in issuing a permit under OAC 252:100-8, Part 7, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

(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 ~~which~~ 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 ~~emission~~ 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, O_2, or CO_2 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 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: 100 ~~tons per year (tpy)~~ TPY,

(ii) nitrogen oxides: 40 ~~tpy~~ TPY,

(iii) sulfur dioxide: 40 ~~tpy~~ TPY,

(iv) particulate matter: 25 ~~tpy~~ TPY of particulate matter emissions or 15 ~~tpy~~ TPY of PM-10 emissions,

(v) ozone: 40 ~~tpy~~ TPY of ~~volatile organic compounds~~ VOC,

(vi) lead: 0.6 ~~tpy~~ TPY,

~~(vii) asbestos: 0.007 tpy,~~

~~(viii) beryllium: 0.0004 tpy,~~

~~(ix) mercury: 0.1 tpy,~~

~~(x) vinyl chloride: 1 tpy,~~

(~~xi~~ vii) fluorides: 3 ~~tpy~~ TPY,

(~~xii~~ viii) sulfuric acid mist: 7 ~~tpy~~ TPY,

(~~xiii~~ ix) hydrogen sulfide (H_2S): 10 ~~tpy~~ TPY,

(~~xiv~~ x) total reduced sulfur (including H_2S): 10 ~~tpy, and~~ TPY,

(~~xv~~ xi) reduced sulfur compounds (including H_2S): 10 ~~tpy~~ 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 $\mu g/m^3$ (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.

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

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

~~Proposed new sources and source modifications to which this Part is applicable are determined by size, geographical location and type of emitted pollutants.~~

~~(1) **Size.**~~

~~(A) Permit review will apply to sources and modifications that emit any regulated pollutant in major amounts. These quantities are specified in the definitions for major stationary source, major modification, potential to emit, net emissions increase, significant and other associated definitions in 252:100-8-31, 252:100-8-1.1, and 252:100-1.~~

~~(B) 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 252:100-8, Parts 1, 3, 5, and 7 shall apply to that source or modification as though construction had not yet commenced on it.~~

~~(2) **Location.**~~

~~(A) Sources and modifications which are major in size and proposed for construction in an area which has been designated as attainment or unclassified for~~

~~any applicable ambient air standard are subject to the PSD requirements.~~

~~(B) Those sources and modifications locating in an attainment or unclassified area but impacting on a nonattainment area may also be subject to the requirements for major sources affecting nonattainment areas in 252:100-8, Part 9.~~

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 ~~PSD~~ the requirements of OAC 252:100-8-34 through 252:100-8-36. 2.** ~~PSD requirements do not apply to a particular source or modification if:~~

(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:

(~~1~~A) ~~It is~~ a nonprofit health or nonprofit educational institution~~.~~; or

(~~2~~B) ~~The source is~~ major ~~by virtue of~~ only if fugitive emissions, to the extent quantifiable, are included in calculating the potential to emit and such source is a ~~source other than:~~ not

~~(A)~~ ~~One~~ one of the categories listed in ~~(A)(i) through (xxvi) under~~ paragraph (C) of the definition of "Major stationary source" ~~in OAC 252:100-8-31,~~; or

~~(B) A stationary source category which, as of August 7, 1980, is being regulated by NSPS or NESHAP.~~

(~~3~~C) ~~The source or modification is~~ a portable stationary source which has previously received a permit under the ~~PSD~~ 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 ~~evaluation~~ 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~~ 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~~, with respect to a particular pollutant,~~ 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 are not applicable to the emissions, with respect to a particular pollutant, to~~ 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 ~~tons per year~~ TPY.

(c) **Exemption from ~~monitoring~~ air quality analysis requirements in OAC 252:100-8-35(c).**

(1) The monitoring requirements of OAC ~~252:100-8-35~~ 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 ~~new~~ 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 ~~listed~~ amounts~~, or are pollutant concentrations that are not on the list.~~:

(A) Carbon monoxide - 575 µg/m^3, 8-hour average,

(B) Nitrogen dioxide - 14 µg/m^3, annual average,

(C) Particulate matter - 10 µg/m^3, TSP or PM-10, 24-hour average, ~~or 10 µg/m^3 PM-10, 24 hour average,~~

(D) Sulfur dioxide -13 µg/m^3, 24-hour average,

(E) Ozone - ~~see (N) below~~ no de minimis air quality level is provided for ozone, however any net increase of 100 TPY or more of VOC subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data,

(F) Lead - 0.1 µg/m^3, 24-hour 3-month average,

~~(G) Mercury - 0.25 µg/m, 24-hour average,~~

~~(H) Beryllium - 0.001 µg/m^3, 24-hour average,~~

(~~H~~G) Fluorides - 0.25 µg/m^3, 24-hour average,

~~(I) Vinyl chloride - 15 µg/m^3, 24-hour average,~~

(~~K~~H) Total reduced sulfur - 10 µg/m^3, 1-hour average,

(~~L~~I) Hydrogen sulfide - 0.2 µg/m^3, 1-hour average, or

(~~M~~J) Reduced sulfur compounds - 10 µg/m^3, 1-hour average.

~~(N) No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.~~

~~(2) The requirements for air quality monitoring in OAC 252:100-8-35(b),(c) and (d)(2) shall not apply to a source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted before June 8, 1981 and the Director subsequently determined that the application was complete except for the requirements in OAC 252:100-8-35(b), (c) and (d)(2). Instead, the requirements in 40 CFR 52.21(m)(2) as in effect on June 19, 1978, shall apply to such source or modification.~~

~~(3) The requirements for air quality monitoring in OAC 252:100-8-35(b), (c), and (d)(2) shall not apply to a 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 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(b), (c) and (d)(2).~~

~~(4) The Director shall determine if the requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(a) through (c) and OAC 252:100-8-35(d)(2) may be waived for a source or modification when an application for a 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(a) through (c) and OAC 252:100-8-35(d)(2), was complete before that date.~~

~~(5) The requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(b), (c), (d)(2) and (d)(6) shall apply to a 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 becomes otherwise complete in accordance with the provisions of OAC 252:100-8-33(b)(1), 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(b)(1) and OAC 252:100-8-35(c) shall have been gathered over that shorter period.~~

(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.

(~~d~~ f) **Exemption from BACT requirements and ~~monitoring~~ 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 ~~for monitoring in OAC 252:100-8-35(a) through (c) and OAC 252:100-8-35(d)(2) through (4)~~ 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.

~~(e) Exemption of modifications. As specified in the applicable definitions of OAC 252:100-8-31, 252:100-8-1.1, and 252:100-1, the requirements of OAC 252:100-8, Part 7 for PSD and OAC 252:100-8, Part 9 for nonattainment areas are not applicable to a modification if the existing source was not major on August 7, 1980 unless the proposed addition to that existing minor source is major in its own right.~~

(~~f~~ g) **Exemption from ~~impact analyses~~ OAC 252:100-8-35(a)(2).** The permitting requirements of OAC ~~252:100-8-35 and OAC 252:100-8-36~~ 252:100-8-35(a)(2) do not apply to a stationary source or modification with respect to any ~~maximum allowable increase~~ PSD increment for nitrogen oxides if the owner or operator of the source or modification submitted a ~~completed~~ complete application for a permit before February 8, 1988.

~~(g) Exemption from increment consumption. Excluded from increment consumption are the following cases:~~

~~(1) Concentrations from an increase in emissions from any 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. Such exclusion is limited to five years after the effective date of the order or plan.~~

~~(2) Emissions of particulate matter from construction or other temporary emission related activities of new or modified sources.~~

~~(3) A temporary increase of sulfur dioxide, particulate matter, or nitrogen oxides by order or authorized variance from any source.~~

252:100-8-34. ~~Best available control technology~~ 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).**

(~~a~~ 1) A new major stationary source ~~must demonstrate that the control technology to be applied is the best that is available (i.e., BACT as defined herein~~ shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts~~)~~.

(~~b~~ 2) A major modification ~~must demonstrate that the control technology to be applied is the best that is available~~ 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.

~~(c) The determination of best available control technology shall be made on a case by case basis taking into account costs and energy, environmental and economic impacts.~~

(~~d~~ 3) For phased construction projects the determination of ~~best available control technology~~ BACT shall be reviewed and modified at the discretion of the ~~Executive~~ 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 ~~best available control technology~~ 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.**

(aA) **~~Application contents~~ Ambient air quality analysis.** Any application for a permit under this Part shall contain, as the ~~Executive~~ Director determines appropriate, an ~~evaluation~~ analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(~~1~~i) for a new source, each regulated pollutant that it would have the potential to emit in a significant amount;

(~~2~~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.

~~(b) **Continuous monitoring data.** For visibility and any pollutant, other than volatile organic compounds, for which an ambient air quality standard exists, the evaluation shall contain continuous air quality monitoring data gathered to determine whether emissions of that pollutant would cause or contribute to a violation of the applicable ambient air quality standard. For any such pollutant for which a standard does not exist, the monitoring data required shall be that which the Executive Director determines is necessary to assess the ambient air quality for that pollutant in that area. (Amended 7-9-87, effective 8-10-87)~~

~~(c) **Increment consumption.** The evaluation shall demonstrate that, as of the source's start-up date, the increase in emissions from that source, in conjunction with all other applicable emissions increases or reductions of that source, will not cause or contribute to any increase in ambient concentrations exceeding the remaining available PSD increment for the specified air contaminants as determined by the Executive Director.~~

~~(d) **Monitoring.**~~

(~~1~~C) **Monitoring method.** With respect to any requirements for air quality monitoring of PM-10 under ~~252:100-8-33(c)(4) and 252:100-8-33(c)(5)~~ 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 ~~Executive~~ 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 ~~Executive~~ Director.

(~~2~~D) **Monitoring period.** ~~The~~ In general, the required continuous air monitoring data shall have been gathered ~~for a time~~ over a period of up to one year and shall represent the year preceding submission of the application. Ambient monitoring data ~~collected for a time~~ 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 ~~Executive~~ 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 ~~ambient air quality standard~~ NAAQS or consume more than the remaining available PSD increment.

(~~3~~E) **Monitoring period exceptions.**

(~~A~~i) **Exceptions for applications that became effective between June 8, 1981, and February 9, 1982.** For any application which ~~becomes~~ became complete except ~~as to~~ for the monitoring requirements of ~~252:100-8-35(b) through 252:100-8-35(c) and 252:100-8-35(d)(2)~~ 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(b) and 252:100-8-35(c) require~~ 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 ~~becomes~~ became otherwise complete, except that:

(~~i~~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~~II) If the ~~Executive~~ 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 ~~252:100-8-35(b) and 252:100-8-35(c) require~~ OAC 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(~~iii~~ 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 ~~Executive~~ Director may waive the otherwise applicable requirements of ~~252:100-8-35(d)(3)(A)~~ 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.

(~~B~~ ii) **Monitoring period exception for PM-10.** For any application that ~~becomes~~ became complete, except ~~as to~~ for the requirements of ~~252:100-8-35(b), (c) and (d)(2)~~ 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(b) and (c) require~~ 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 ~~Executive~~ 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 that ~~252:100-8-35(b) and 252:100-8-35(c) require~~ 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(~~4~~ F) **Ozone post-approval monitoring.** The ~~application for a~~ owner or operator of a proposed major stationary source or major modification of ~~volatile organic compounds which~~ 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 ~~252:100-8-35~~ OAC 252:100-8-35(c)(1).

(~~5~~ 2) **Post-construction monitoring.** The ~~applicant for a permit for~~ owner or operator of a new major stationary source or major modification shall conduct, after construction, such ambient monitoring and visibility monitoring as the ~~Executive~~ Director determines is necessary to determine the effect its emissions may have, or are having, on air quality in any area. ~~(Amended 7-9-87, effective 8-10-87)~~

(~~6~~ 3) ~~**Monitoring system operation**~~ **Operation of monitoring stations.** The operation of monitoring stations for any air quality monitoring required under this Part ~~7 of this Subchapter~~ shall meet the requirements of 40 CFR 58 Appendix B as it existed January 2, 2006.

~~(e) **Air quality models.**~~

~~(1) Any air quality dispersion modeling that is required under Part 7 of this Subchapter for estimates of ambient concentrations shall be based on the applicable air quality models, data bases and other requirements specified in the Guidelines on Air Quality Models, OAQPS 1.2-080, U.S. Environmental Protection Agency, April, 1978 and subsequent revisions.~~

~~(2) Where an air quality impact model specified in the Guidelines on Air Quality Models is inappropriate, the model may be modified or another model substituted, as approved by the Executive Director. Methods like those outlined in the Workbook for the Comparison of Air Quality Models, U.S. Environmental Protection Agency, April, 1977 and subsequent revisions, can be used to determine the comparability of air quality models.~~

~~(f) **Growth analysis.** Upon request of the Executive Director the permit application shall provide information on 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. The permit application shall also contain an analysis of the air quality impact projected for the area as a result of general commercial, residential and other growth associated with the source or modification.~~

~~(g) **Visibility and other impacts analysis.** The permit application shall provide an analysis of the impairment to visibility, soils and vegetation as a result of the source or modification. The Executive 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 Executive Director deems necessary and appropriate. (Amended 7-9-87, effective 8-10-87)~~

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) ~~**Permits issuance-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) **Impact analysis required.** The permit application for a proposed new source or modification 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. The Executive Director shall notify the appropriate Federal Land Manager of the receipt of any such analysis and include a complete copy of the permit application. Any analysis performed by the Land Manager shall be considered by the Executive Director provided that the analysis is filed with the DEQ within 30 days of receipt of the application by the Land Manager. Where the Executive Director finds that such an analysis does not demonstrate to the satisfaction of the Executive Director that an adverse impact on visibility will result in the Federal Class I area, the Executive Director will, in any notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained. Further, upon presentation of good and sufficient information by a Federal Land Manager, the Executive Director may deny the issuance of a permit for a source, emissions from which will adversely impact areas heretofore or hereafter categorized as Class I areas even though the emissions would not cause the increment for such Class I areas to be exceeded.~~

(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 ~~Executive~~ Director in writing to approve a system of innovative control technology.

(b) The ~~Executive~~ 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 ~~best available control technology~~ BACT under ~~252:100-8-34~~ OAC 252:100-8-34(b)(1) by a date specified by the ~~Executive~~ 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 ~~Parts 1 and 5 of this Subchapter and 252:100-8-36~~ 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 ~~Executive~~ Director.

(4) The source or modification would not, before the date specified, cause or contribute to any violation of the applicable ~~ambient air standards~~ 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 ~~review~~ 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 ~~Executive~~ 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 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 ~~Executive~~ 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 ~~may be allowed~~ up to an additional 3 years to meet the requirement for application of ~~best available control technology~~ 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, 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).

(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

~~The new source requirements of this Part, in addition to the applicable requirements of Parts 1, 3, and 5 of this Subchapter, shall apply to the construction of all major sources and major modifications affecting designated nonattainment areas as specified in 252:100-8-51 through 252:100-8-53.~~

(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).

(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, 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"; (v) "major modification"; (vi) "net emissions increase"; (xxv) "pollution control project (PCP)"; (xxxviii) "reviewing authority"; (viii) "secondary emissions"; and (xix) "volatile organic compound (VOC)". With the exception of "pollution control project (PCP)", "Clean Unit", and "reviewing authority" 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: ~~:~~

~~"Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:~~

~~(A) In general, actual emissions as of a particular date shall equal the average rate in tons per year at which the unit actually emitted the pollutant during a two year period which precedes the operation. The reviewing authority may 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. Actual emissions may also be determined by source tests, or by best engineering judgment in the absence of acceptable test data.~~

~~(B) The reviewing authority may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.~~

~~(C) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.~~

~~"Lowest achievable emissions rate" means the control technology to be applied to a major source or modification which the Director, on a case by case basis, determines is achievable for a source based on the lowest achievable emission rate achieved in practice by such category of source (i.e., lowest achievable emission rate as defined in the Federal Clean Air Act).~~

"Major modification" means: ~~any physical change in, or change in the method of operation of, a major source that would result in a significant net emissions increase of any pollutant subject to regulation.~~

(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.

~~(A)~~ i) Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for ~~volatile organic compounds~~ VOC and/or oxides of nitrogen (NO_X) shall be considered significant for ozone.

~~(B)~~ ii) A physical change or change in the method of operation shall not include:

~~(i)~~ I) routine maintenance, repair and replacement;

~~(ii)~~ II) use of an ~~alternate~~ alternative fuel or raw material by reason of any order under ~~Sections~~ 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)~~ III) use of an ~~alternate~~ alternative fuel by reason of an order or rule under ~~Section~~ section 125 of the ~~Federal Clean Air~~ Act;

~~(iv)~~ IV) use of an ~~alternate~~ alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

~~(v)~~ V) ~~Use~~ use of an ~~alternate~~ alternative fuel or raw material by a source which~~:~~

~~(I)~~ the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit ~~limitation~~ condition which was established after December 21, 1976~~;~~, or~~,~~

~~(II)~~ the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 8~~.~~;

~~(vi)~~ VI) ~~An~~ an increase in the hours of operation or in the production rate unless such change would be prohibited under any federally enforceable permit ~~limitation~~ condition which was established after December 21, 1976~~, or~~;

~~(vii)~~ 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.

~~"Major stationary source" means:~~

~~(A) any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation; or,~~

~~(B) any physical change that would occur at a source not qualifying under (A) of this definition as a major source, if the change would constitute a major source by itself.~~

~~(C) for ozone, a source that is major for volatile organic compounds shall be considered major.~~

"Net emissions increase" means:

(A) ~~The~~ 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) ~~any~~ the increase in ~~actual~~ 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 ~~emission~~ 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~~:~~ ~~the Director has not relied on it in issuing a permit under Part 9 of this Subchapter, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

(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 ~~reviewing authority~~ Director has not relied on it in issuing any permit under ~~State air quality rules~~ 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.

~~"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:~~

~~(A) Carbon monoxide: 100 tons per year (tpy);~~

~~(B) Nitrogen oxides: 40 tpy;~~

~~(C) Sulfur dioxide: 40 tpy;~~

~~(D) Particulate matter: 15 tpy of PM-10 emissions;~~

~~(E) Ozone: 40 tpy of volatile organic compounds; or~~

~~(F) Lead: 0.6 tpy.~~

252:100-8-51.1. Emissions reductions and offsets

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.

252:100-8-52. ~~Source applicability determination~~ Applicability determination for sources in attainment areas causing or contributing to NAAQS violation

~~Proposed new sources and source modifications to which Part 9 of this Subchapter is applicable are determined by size, geographical location and type of emitted pollutants:~~

~~(1) Size.~~

~~(A) Permit review will apply to sources and modifications that emit any regulated pollutant in major amounts. These quantities are specified in the definitions for major stationary source, major modification, potential to emit, net emissions increase, significant, and other associated definitions in OAC 252:100-8-51, 252:100-8-1.1, and 252:100-1-3.~~

~~(B) At such time that a particular source or modification becomes major solely by virtue of a relaxation in any enforceable permit limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Parts 1, 3, 5, and 9 of this Subchapter shall apply to that source or modification as though construction had not yet commenced on it.~~

~~(2) Location.~~

~~(A) Sources and modifications that are major in size and proposed for construction in an area which has been designated as nonattainment for any applicable ambient air quality standard are subject to the requirements for the nonattainment area, if the source or modification is major for the nonattainment pollutant(s) of that area.~~

~~(B) In addition, the requirements of a PSD review (Part 7 of this Subchapter) would be applicable if any other regulated pollutant other than the nonattainment pollutant is emitted in significant amounts by that source or modification.~~

~~(3) Location in attainment or unclassifiable area but 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.

~~(A) A proposed major source or major modification that would locate in an area designated attainment or unclassifiable is considered to cause or contribute to a violation of the national ambient air quality standards when such source or modification would, as a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:~~

~~(i) SO_2:~~

~~(I) 1.0 µg/m³ annual average;~~

~~(II) 5 µg/m³ 24-hour average;~~

~~(III) 25 µg/m³ 3-hour average;~~

~~(ii) PM-10:~~

~~(I) 1.0 µg/m³ annual average;~~

~~(II) 5 µg/m³ 24-hour average;~~

~~(iii) NO_2: 1.0 µg/m³ annual average;~~

~~(iv) CO:~~

~~(I) 500 µg/m³ 8-hour average;~~

~~(II) 2000 µg/m³ one-hour average.~~

~~(B) A proposed major source or major modification subject to OAC 252:100-8-52(3)(A) may reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact where the proposed source or modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, a permit for the proposed source or modification shall be denied.~~

~~(C) The requirements of OAC 252:100-8-52(3)(A) and (B) shall not apply to a major source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated nonattainment.~~

(~~D~~b) Sources of ~~volatile organic compounds~~ 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.

(E c) Sources locating in an attainment area but impacting on a nonattainment area above the significant levels listed in OAC 252:100-8-52(3) 252:100-8-52(1) are exempted from the condition of OAC 252:100-8-54(4)(A).

(F 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 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.

(G 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 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) Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if:

(1) The source is major by virtue of fugitive emissions, to the extent quantifiable, included in calculating the potential to emit and is a source other than one of the following categories:

(A) carbon black plants (furnace process),
(B) charcoal production plants,
(C) chemical process plants,
(D) coal cleaning plants (with thermal dryers),
(E) coke oven batteries,
(F) fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,
(G) fossil fuel-fired steam electric plant of more than 250 million BTU per hour heat input,
(H) fuel conversion plants,
(I) glass fiber processing plants,
(J) hydrofluoric, sulfuric or nitric acid plants,
(K) iron and steel mills,
(L) kraft pulp mills,
(M) lime plants,
(N) municipal incinerators capable of charging more than 250 tons of refuse per day,
(O) petroleum refineries,
(P) petroleum storage and transfer units with a total storage exceeding 300,000 barrels,
(Q) phosphate rock processing plants,
(R) portland cement plants,
(S) primary aluminum ore reduction plants,
(T) primary copper smelters,
(U) primary lead smelters,
(V) primary zinc smelters,
(W) secondary metal production plants,
(X) sintering plants,
(Y) sulfur recovery plants,
(Z) taconite ore processing plants, or
(AA) any other stationary source category which, as of August 7, 1980, is being regulated by NSPS or NESHAP.

(a) The requirement 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.

(2 b) A 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 in effect it existed on January 16, 1979, and the source:

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

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

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

(b c) Secondary emissions are excluded in determining the potential to emit (see definition of "potential to emit" in 252:100-8-1.1). However, upon determination of the Executive 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 252:100-8-52(3)(F) OAC 252:100-8-52(4) and 252:100-8-54(1) through 252:100-8-54(3). Also, the indirect impacts of mobile sources are excluded.

(c 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 Executive Director, on a case-by-case 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 ~~Executive~~ 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.

252:100-8-55. 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.

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

(1) The specific provisions in 40 CFR 51.165(a)(6)(i) through (v) 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) (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.

(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.

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.

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.

[OAR Docket #06-855; filed 5-9-06]

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

[OAR Docket #06-856]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 4. New Source Performance Standards
252:100-4-5. [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, *et seq.*
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
The 40 CFR Part 60 is incorporated by reference in its entirety as it existed on September 1, 2005 with the exceptions of:
(1) Sections 60.4, 60.9, 60.10 and 60.16 of Subpart A
(2) Subpart B
(3) Subpart C
(4) Subpart Cb
(5) Subpart Cc

Comments

SUMMARY OF COMMENTS AND STAFF RESPONSES FOR PROPOSED REVISION TO SUBCHAPTER 1 AND SUBCHAPTER 8, PARTS 1, 5, 7 AND 9

COMMENTS RECEIVED PRIOR TO OR AT THE JULY 20, 2005, AIR QUALITY COUNCIL MEETING

Written Comments

Trinity Consultants – Letter dated July 1, 2005, signed by Donald C. Whitney, P.E. Consulting Manager

1. **COMMENT:** The terms "Part 70 permit", "Part 70 program", and "Part 70 source" have been moved from Section 8-1.1 of Subchapter 8 to Subchapter 1 as general terms which could affect other Subchapters within OAC 252:100. These terms should be replaced with the commonly used terms "Title V permit", "Title V program", and "Title V source".

   RESPONSE: "Part 70" is the appropriate term. Title V refers to the enabling Act (the Federal Clean Air Act) requiring EPA to promulgate a major source permitting program (the Part 70 permitting program). EPA has delegated the Part 70 program for Oklahoma to DEQ.

2. **COMMENT:** The title of Subchapter 8 should be changed to "Permits for Major Sources."

   RESPONSE: After due consideration, the DEQ has determined that "Permits for Part 70 Sources" is the more appropriate title since some Part 70 sources are not major sources.

3. **COMMENT:** The definitions for "affected source" and "affected unit" should be removed from OAC 252:100-8-2. This is an obsolete usage that needs to be purged from the rules. There is no reason to exclusively apply the term "affected source" or "affected unit" to the Acid Rain Program. The term is widely used in other regulations including the NSPS and NESHAP Programs. The title of paragraph 252:100-8-5.3 should be changed from "Special provision for affected (acid rain) sources " to "Special provisions for acid rain sources."

   RESPONSE: OAC 252:100-8-2 specifically limits the definitions contained therein to use in Part 5 of 252:100-8. That being the case the definitions of "affected source" and "affected unit" in OAC 252:100-8-2 have no bearing on the use of these terms in other rules, regulations, or programs. While these terms may be widely used in other regulations including the NSPS and NESHAP programs, they are usually defined in those programs. For example, NSPS uses and defines the term "affected facility". The terms "affected unit" and "affected source" are still defined in 40 CFR 70.2 and used in Part 70. The terms are also defined in 40 CFR 72.2 and used in Part 72. Therefore, the terms are not obsolete and do not need to be purged from the rule. Neither OAC 252:100-8-2 or

252:100-8-5.3 is part of the NSR reform revisions and was not included in the Notice for the July 20, 2005, Air Quality Council meeting.

4. **COMMENT:** On June 24, 2005, the DC Circuit Court of Appeals rejected the "Clean Unit" and "Pollution Control Project" exemptions under the EPA proposed NSR Reforms. Both of these terms are used extensively in the proposed version of the AQD draft and thus will likely need to be revised.

   RESPONSE: The proposed modifications to Parts 7 and 9 of Subchapter 8 have been revised to reflect the Court decision.

5. **COMMENT:** Several sections of the proposed rule contain references to exemption procedures that apply to sources with applications submitted around 20 years ago and seem to have no relevance in current rules. These should be eliminated unless there is some way in which these provisions could apply to new construction or modifications. For historical references these exemptions will still be available in previous versions of the rules, but there is no reason to burden the current rules. The following subsections fall in this category: OAC 252:100-8-33(d) through (g); and 252:100-8-35(c)(1)(E)(i); and (ii).

   RESPONSE: The requirements in OAC 252:100-8-33(d) through (g) and 252:100-8-35(c)(1)(E)(i) and (ii) are still contained in 40 CFR 51.166 and/or 52.21(i)(7). Since there may be facilities in existence that relied on these exemptions, the exemptions shouldn't be deleted from the rule.

6. **COMMENT:** OAC 252:100-8-34(a) contains general requirement to comply with rules and regulations under 40 CFR Parts 60 and 61. Why only mention these two parts? What about Parts 63, 64, 68, 72, 75, 82 etc.? It seems that this paragraph is unnecessary since it is widely understood that compliance is expected with all applicable regulations.

   RESPONSE: This language is exactly the same as that in 40 CFR 51.166(j)(1). OAC 252:100-8-30(a)(4) states that the requirements of 252:100-8, Parts 1, 3, and 5 also apply to the construction of all new major stationary sources and major modifications. This means that Part 70 requirements apply to the PSD construction permit and therefore the permit will require compliance with all applicable state and federal rules.

Environmental Protection Agency, Region 6 – e-mail received July 13, 2005, from Stanley M. Spruill

7. **COMMENT:** On June 24, 2005, the D.C. Circuit Court of Appeals released its decision on NSR Reform. The court vacated the provisions for Clean Units and Pollution Control Projects and remanded the recordkeeping provisions to EPA to provide an acceptable explanation for its "reasonable possibility" standard or to devise an appropriate alternative. The DEQ should not adopt the vacated provisions into its program. EPA is currently evaluating the court decision and their next step regarding the remanded recordkeeping provisions.

   RESPONSE: DEQ is aware of the Court's decision and has revised the proposed

rule accordingly.

8. **COMMENT:** ODEQ proposes to remove the definitions of "Act," "Administrator," "EPA," "NESHAP," "NSPS," "Part 70 permit," "Part 70 program," "Part 70 source," and "secondary emissions" from OAC 252:100-8-1.1. ODEQ should provide clarification of its reasons for removing these definitions. If the terms are defined elsewhere in the ODEQ program they should specify where.

   RESPONSE: DEQ proposes to move the definitions in question to OAC 252:100-1-3. These definitions are general in nature and the terms are used in more than one subchapter in Chapter 100, therefore, they should be in Subchapter 1.

9. **COMMENT:** The State should correct a typographical error in OAC 252:100-8-30(a)(1) as follows: "The requirements of this Part shall apply to the construction of any new major stationary source or major modification of any project..."

   RESPONSE: The proposed revision states "The requirements of this Part shall apply to the construction of any new major stationary source or major modifications or any project at an existing major stationary source in an area designated as attainment or unclassifiable under...". In the December 31, 2002, Federal Register (67 FR 80260), 40 CFR 51.166(a)(7)(i) states "The requirements of this section apply to the construction of any new major stationary source (as defined in paragraph (b)(1) of this section) or any project 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." "Major modification" was added to that statement because it is not clear that "project" and "major modification" are the same. DEQ's proposed rule is referring to the "major modification" of the facility not the major modification of a project (project is defined as "...a physical change in, or change in method of operation of, an existing major stationary source."). OAC 252:100-8, Part 7 is applicable to major stationary sources, major modifications to major stationary sources, and to projects at major stationary sources. This being the case, there is no typographical error in OAC 252:100-8-30(a)(1).

10. **COMMENT:** The definition of "baseline actual emissions" in OAC 252:100-8-31 differs from the Federal definition as follows:
    (a) The proposed definition does not distinguish between the baseline actual emissions of an electric utility steam generating unit (EUSGU) and an emissions unit that is not an EUSGU.
    (b) Paragraph (A) of the proposed definition requires use of a 24-month period within the last five years to determine the baseline actual emissions for non-EUSGU emissions units while the Federal definition allows the use of a 24-month period within the last ten years for this purpose.
    (c) Paragraph (A) of the proposed definition also allows use of a different time period within the last 10 years for non-EUSGU emissions units if it is demonstrated to be more representative of baseline actual emissions.
    (d) Paragraph (A)(i) of the proposed definition requires a source to include

authorized emissions associated with start-ups and shutdowns in the baseline actual emissions, and to exclude excess emissions or emissions associated with upsets or malfunctions from the baseline actual emissions. The Federal rule requires inclusion of emissions from startups, shutdowns, and malfunctions in the determination of baseline actual emissions.

(e) The proposed definition has no provision corresponding to 40 CFR 51.166(b)(47)(ii)(c) which requires that the baseline actual emissions for a non-EUSGU be adjusted downward to exclude emissions that exceed any currently applicable emissions limitation.

(f) Paragraph (C) of the proposed definition requires that the baseline actual emissions for a PAL be determined as described in paragraph (A) of the definition. In order for paragraph (C) to meet Federal requirements, the DEQ must address the items of concern identified for paragraphs (A)(i) and the lack of provision corresponding to 40 CFR 51.166(b)(47)(ii)(c).

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

11. **COMMENT:** The definition of "baseline area" in OAC 252:100-8-31 refers to "interstate areas" whereas the Federal rule refers to "intrastate areas".

RESPONSE: The term should be "intrastate areas". This typographical error has been corrected.

12. **COMMENT:** The definition of "low terrain" refers to "high terrain", but there is no definition of "high terrain" in OAC 252:100-8-31.

RESPONSE: The term "high terrain" is defined in OAC 252:100-8-31.

13. **COMMENT:** The proposed definition of "net emissions increase" in OAC 252:100-8-31 differs from the Federal definition. The DEQ proposes to remove the word "replacement" from paragraph (G). This change would make the 180-day shakedown period provided in 40 CFR 51.166(b)(3)(vii) available to all emissions units. DEQ needs to show that the rule with this revised definition is at least as stringent as the Federal requirement.

RESPONSE: The word "replacement" has been replaced in paragraph (G) of the definition of "net emissions increase".

14. **COMMENT:** The proposed definition of "projected actual emissions" in OAC 252:100-8-31 differs from the Federal definition. DEQ omitted in paragraph (A) the provision that projected actual emissions are based upon full utilization of the unit if full utilization would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

RESPONSE: The suggested language has been added to the definition of "projected actual emissions".

15. **COMMENT:** The proposed definition of "regulated NSR pollutant" states that any pollutant regulated under § 112(r) of the Act is not a regulated NSR pollutant. This is not in the Federal definition.

RESPONSE: The preamble to the NSR Reform states on Page 80340 that pollutants listed under section 112(r) of the Act are not included in the definition of regulated NSR pollutant (67 FR 80240). These pollutants may still be subject to PSD provisions if the pollutant is otherwise regulated under the Act. The contents of the preambles to EPA rules are often given equal weight with the actual rules. That being the case, it is appropriate to add this exclusion to the definition of regulated NSR pollutant.

16. **COMMENT:** The proposed definition of replacement unit has no language corresponding to 40 CFR 51.166(b)(32)(iii), possibly because the Federal rule refers to paragraph (v)(2) which is part of the routine maintenance repair and replacement provisions which are currently stayed. DEQ could address this concern by omitting the reference to paragraph (v)(2) and proposing the following language: "The replacement unit does not alter the design parameters of the process unit."

RESPONSE: The suggested language has been added to the definition of "replacement unit" as paragraph (C).

17. **COMMENT:** DEQ did not propose definitions of the following terms which are in 40 CFR 51.166(b): "building, structure, facility, or installation"; "federally enforceable;" "secondary emissions": "volatile organic compounds"; "reviewing authority"; or "lowest achievable emission rate (LAER)". If these terms are defined elsewhere in the regulations DEQ must identify where.

RESPONSE: The definitions of "building, structure, facility, or installation" and "volatile organic compounds" or "VOC" are currently located in OAC 252:100-1-3. The DEQ proposes to move the definition of "secondary emissions" from OAC 252:100-8-1.1 to 252:100-1-3 and the definition of "lowest achievable emission rate" or "LAER" from 252:100-8-51 to 252:100-8-1-3 and to add the definition of "federally enforceable" to 252:100-1-3. These definitions are general in nature and the terms appear in more than one subchapter in Chapter 252:100, therefore, they should be in Subchapter 1. The term reviewing authority is not used in OAC 252:100-8, Parts 7 and 9.

18. **COMMENT:** OAC 252:100-8-35(b)(2) differs from 40 CFR 51.166(l)(1). The proposed rule does not provide that when an air quality model as specified under (b)(1) is inappropriate, the use of a modified or substituted model must have written approval from the EPA Administrator and that such modified or substituted model must be subject to notice and opportunity for public comment under § 51.102.

RESPONSE: OAC 252:100-8-35(b)(2), which is currently 252:100-8-35(e)(2), is not Part of the NSR Reform. The requirement that when an air quality model as specified under (b)(1) is inappropriate, the use of a modified or substituted

model must have written approval from the EPA Administrator and that such modified or substituted model must be subject to notice and opportunity for public comment under § 51.102, is not in our existing rule. DEQ proposes to add these requirements in 252:100-8-35(b)(2).

19. **COMMENT:** OAC 252:100-8-35.2 regarding additional impact analysis has no provisions which correspond to 40 CFR 51.166(o)(2) which requires an analysis of the air quality impact projected for the area as the result of general commercial, residential, industrial, and other growth associated with the source or modification.

    RESPONSE: OAC 252:100-8-35.2(a) requires permit applications to contain 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.

20. **COMMENT:** The proposed revision does not contain provisions that correspond to 51.166(r)(7) that provide that the "owner or operator of a source shall make information required to be documented and maintained pursuant to paragraph (r)(6) of § 51.166 available for review upon request for inspection by the reviewing authority or the general public pursuant to the requirements contained in § 70.4(b)(3)(viii) of this Chapter."

    RESPONSE: OAC 252:100-8-36.2(c)(6) requires the owner or operator of the source to make the information required to be documented and maintained by 252:100-8-36.2(c) available for review upon request for inspection by the Director or the general public. OAC 252:100-8-36.2(c) contains the requirements that are in 40 CFR 51.166(r)(6).

21. **COMMENT:** In OAC 252:d100-8-40(a) ODEQ proposes to incorporate by reference the requirements of § 51.166(w), as promulgated 12/31/2002. EPA revised § 51.166(w) on November 7, 2003, and this should be included in the rule.

    RESPONSE: The incorporation by reference date has been changed to January 2, 2006.

22. **COMMENT:** In OAC 252:100-8-40(d) it is not clear what DEQ means by stating that the definitions of "major modification", "pollution control project", and "projected actual emission" are synonymous with the definitions of these terms in OAC 252:100-8-31.

    RESPONSE: This means that for the DEQ NSR program, when these terms are used in 40 CFR 51.166(w), which is incorporated by reference in OAC 252:100-8-38(a), the meaning of said terms will be that in OAC 252:100-8-31 or 51 and not that in 40 CFR 51.166(b).

23. **COMMENT:** DEQ should provide its reasons for deleting the term "lowest

achievable emissions rate" from OAC 252:100-8-51. If this term is defined elsewhere in DEQ's program, they should specify where.

RESPONSE: DEQ proposes to move the term "lowest achievable emissions rate" or "LAER" to OAC 252:100-1-3 since this term is used in more than one subchapter of Chapter 252:100.

24. **COMMENT:** Paragraph (A)(i) of The definition of "major modification" in OAC 252:100-51 identifies VOC as the only precursor to ozone. Section § 182(f)(1) of the Federal Clean Air Act provides that plan provisions for nonattainment areas required for VOC "shall also apply to major sources... of nitrogen oxides." DEQ should revise this provision to identify both VOC and NO_X as ozone precursors.

    RESPONSE: (A)(i) of the definition of "major modification" in OAC 252:100-8-52 has been revised to include oxides of nitrogen.

25. **COMMENT:** The proposed definition of "net emissions increase" in OAC 252:100-8-51 differs from the Federal definition. DEQ proposes to remove the word "replacement" from paragraph (F). This change would make the 180-day shakedown period provided in 40 CFR 51.165(a)(1)(vi)(F) available to all emissions units. DEQ needs to show that the rule with this revised definition is at least as stringent as the Federal requirement.

    RESPONSE: The word "replacement" has been replaced in the definition of the definition of "net emissions increase".

COMMENTS RECEIVED AT THE SEPTEMBER 9, 2005 PUBLIC WORKGROUP MEETING

Oral Comments

A workgroup meeting was held on September 9, 2005, at the DEQ building to hear comments from the public regarding the proposed revisions to Parts 7 and 9 of Subchapter 8 to incorporate the NSR Reform requirements. The majority of the comments received concerned the differences between the proposed State rule and the Federal rule in 40 CFR 51 Parts 165 and 166 regarding the definition of "actual baseline emissions". The attendees made the following comments.

26. **COMMENT:** Regarding the 10-year look back period in the definition of "actual baseline emissions":
    (a) Several commenters proposed that the 10-year look back provided by the Federal rule for all sources except EUSGU be added to the DEQ's definition. This would allow the owners or operators of a source to use any consecutive 24-month period within the 10 years immediately preceding the beginning of actual construction as the actual baseline emissions.
    (b) Commenters stated that many companies already had adequate records for this 10-year look back, and in a few years most companies could have adequate records.

(c) Because of turn-arounds and scheduled shutdowns, a five-year look back might not allow a company to use the most representative data. Also economic downturns could necessitate a look-back period longer than 5 years in order to use representative data.

(d) Although the DEQ rule allows the use of a different time period, not to exceed 10 years immediately preceding the date that a complete application is received by the Division, commenters were concerned that this was not automatic and therefore subject to bias of the Division.

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

27. **COMMENT:** Regarding the definition of "actual baseline emissions" commenters noted that the Federal definition allows the owner or operator to use a different consecutive 24-month period for each pollutant. The DEQ rule requires the owner or operator to use the same consecutive 24-month period for each pollutant. Several commenters proposed that the definition in OAC 252:100-8-31 be changed to allow the use of a different consecutive 24-month period for each pollutant stating that among other things, this would be useful for the development of a PAL at a facility.

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

COMMENTS RECEIVED PRIOR TO OR AT THE OCTOBER 19, 2005, AIR QUALITY COUNCIL MEETING

Written Comments

Trinity Consultants – Letter dated October 6, 2005, signed by Donald C. Whitney, P.E. Consulting Manager

28. **COMMENT:** OAC 252:100-1-3 contains the definitions of "Part 70 Permit/Program/Source." In actual practice among EPA, industry, other states, and even within DEQ, the term "Title V; is used in preference to "Part 70". If the DEQ staff feels that it is necessary to continue with the Part 70 rule terminology, perhaps a clarification could be added to the effect that "Part 70" is synonymous with "Title V." Similar wording is used elsewhere in DEQ rules such as OAC 252:100-8-38(c).

RESPONSE: As stated before (see the Response to Comment #1 of this document), the DEQ feels that "Part 70" is the proper term. "Part 70" refers to the permitting and regulatory scheme as set forth in 40 CFR Part 70. "Title V" refers to Title V of the Federal Clean Air Act which authorizes the development of the Part 70 program.

29. **COMMENT:** OAC 252:100-8-30(b)(4) describes the actual-to-potential test for

new emissions units. Potential emissions are to be compared to "...baseline actual emissions of these units before the project..." How can previous emissions be other than zero for a new unit? If this is what is meant, perhaps a parenthetical note could be added for clarification.

RESPONSE: The Paragraph (B) of the definition of "baseline actual emissions" states that, "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."

30. **COMMENT:** OAC 252:100-8-38(a) incorporates by reference 40 CFR 51.166(w) as it exists on January 6, 2006. Previous and current DEQ rules incorporating Federal regulations by reference have always used past dates. Is there a reason to use a future date rather than a past date?

RESPONSE: Since staff does not anticipate forwarding the proposed revision to the Environmental Quality Board until after the January 2006 Air Quality Council Meeting, the January 6, 2006, date will be a past date.

31. **COMMENT:** Since the current Oklahoma DEQ rules do not specifically mention the past-actual to future-potential test for PSD/NSR, it should be possible to immediately implement the new past-actual to future-actual test for existing units (modification).

RESPONSE: The "past actual to future actual" test is a significant change from DEQ's current PSD/NSR permitting process. Such a substantive change requires a rulemaking action with public notice and the opportunity for comment.

32. **COMMENT:** OAC 252:100-8-8 contains the rules governing review of Tier II permits by EPA and affected states. This section allows EPA Region 6 to review and comment on draft/proposed permits for up to 45 days. In practice or by policy EPA has maintained that their 45-day period begins after the 30-day public comment period. On a case-by-case basis, EPA has allowed permit applicants to request (through DEQ) concurrent review by EPA. This extended process of sequential EPA review is unnecessary and should be terminated for the following reasons:
    (a) There seems to be no basis in State or Federal rules for sequential EPA review of permits after the public review.
    (b) EPA has very rarely provided objections or any comments on permits from Oklahoma.
    (c) EPA has maintained that they want to be able to consider any comments from public review and how DEQ addressed those comments when they make their review. As a practical matter, very few permits submitted to public review receive any written comments at all and even fewer substantive comments. Any public comments must be received within 30 days of the public notice. DEQ can in most cases rapidly respond to those and still leave EPA with about 15 days for further review of the comments.

    An extra 45 days of the review process for EPA has been shown by experience to have no beneficial environmental or public review effect while significantly

delaying the start of all Tier II and Tier III projects. DEQ could eliminate needless permit processing delays by informing EPA Region 6 that henceforth all permits with public review will be concurrent with EPA review. In the case of the few permits which receive comments. EPA could be given extra review time if necessary.

RESPONSE: At this time OAC 252:100-8-8 is not undergoing revision. The DEQ does not agree with the comments. It is the DEQ's position that both State and Federal rules require the sequential EPA review of the permits after the public review.

Environmental Protection Agency, Region 6 – e-mail received October 11, 2005, from Stanley M. Spruill

33. **COMMENT:** OAC 252:100-8-55(c) requires compliance with the requirements of 40 CFR 51.165(a)(6) as they exist on January 2, 2006. As it currently exists, 40 CFR 51.165(a)(6) provides that its requirement apply to "projects at existing emissions units at a major stationary source (other than projects at a Clean Unit or at a source with a PAL) ...." DEQ needs to revise OAC 252:100-8-55(c) to remove the reference to "Clean Unit."

    RESPONSE: The DEQ intends to ask that the hearing on the proposed revisions to Parts 7 and 9 of Subchapter 8 be continued to the January 2006 Air Quality Council meeting so that staff can address this problem.

34. **COMMENT:** The Court remanded the recordkeeping provisions, but ODEQ proposes to retain the "reasonable possibility" provisions in OAC 252:100-8-36.2(c) and 252:100-8-55(c). OAC 252:100-8-55(c) requires a major stationary source to comply with 40 CFR 51.165(a)(6) in existence on January 2, 2005. 40 CFR 51.165(a)(6) currently contains the "reasonable possibility" program. To date, EPA has not responded to the court's remand on the recordkeeping issue. In promulgating its final rule, EPA urges Oklahoma to consider the issues discussed in the Court's opinion. If DEQ is aware of provision in its rules that address concerns of the Court, it should identify these provisions and explain how they address the issues identified by the Court.

    RESPONSE: The DEQ is preparing a revision that will resolve the recordkeeping problem and intends to ask that the hearing be continued to the January 2006 Air Quality Council meeting to allow time for this revision to be completed and to allow for public comments.

35. **COMMENT:** States may adopt regulations that are different from but equivalent to, the Federal rule. In such cases, the State must demonstrate that such provision is at least as stringent as the revised base Federal program. The DEQ rule proposed on September 15, 2005 contains two definitions that differ from the Federal rule: the definition of "baseline actual emissions" and the definition of "regulated NSR pollutant".
    (a) The definition of "baseline actual emissions" differs from the Federal rule in the following manner.

(i) The draft rule does not distinguish between the baseline actual emissions of an electric utility steam generating unit (EUSGU) and an emissions unit that is not an EUSGU. The draft State rule requires use of a 24-month period within the last five years to determine the baseline actual emissions for non-EUSGU. The Federal rule provides for use of a 24-month period within the last ten years to determine the baseline actual emissions for non-EUSGU.

(ii) The draft State rule allows use of a different time period (within last 10 years) for non-EUSGU if it is demonstrated to be more representative of baseline actual emissions. The Federal rule does not provide use of a "more representative" time period to establish baseline actual emissions at non-EUSGU.

(iii) The draft State rule includes "authorized emissions associated with start-ups and shutdowns" in the baseline actual emissions and excludes emissions from malfunctions from the baseline actual emissions. The Federal rule requires the baseline actual emissions to include emissions associated with malfunctions, startups and shutdowns. How does DEQ define these "authorized emissions"? How do "authorized emissions" compare with the requirements of 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)?

(iv) The draft State rule has no provision corresponding to 40 CFR 51.166(b)(47)(ii)(c) that provides that the baseline actual emissions for a non-EUSGU must be adjusted downward to exclude emissions that exceed any currently applicable emissions limitation

(v) Paragraph (C) of the ODEQ definition requires that the baseline actual emissions for a PAL be determined as described in paragraph (A) of the definition of baseline actual emissions. In order for paragraph (C) to meet the Federal requirements, the ODEQ must address the items of concern identified above in items (a)(i) through (iv).

(b) In the definition of "regulated NSR pollutant" the draft State rule provides that any pollutant regulated under §112(r) of the Act is not a regulated NSR pollutant. This is not in the Federal definition of "regulated NSR pollutant" in 40 CFR 51.166(b)(49).

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

36. **COMMENT:** DEQ should provide clarification of its reasons for removing the following definitions from 252:100-8-1.1. If these terms are defined elsewhere, DEQ should specify where they are defined. The terms are: act, administrator, EPA, National Emissions Standards for Hazardous Air Pollutants or NESHAP, New Source Performance Standards or NSPS, Part 70 permit, part 70 program, part 70 source, and secondary emissions.

RESPONSE: See the Response to Comment # 8.

37. **COMMENT:** DEQ does not propose definition of the following terms which are in 40 CFR 51.166(b): building, structure, facility, or installation; federally

enforceable; secondary emissions; volatile organic compounds; reviewing authority; and lowest achievable emission rate (LAER). DEQ must identify where these terms are defined in its regulations or demonstrate that its program is at least as stringent as the Federal requirements.

RESPONSE: See the Response to Comment # 17.

38. **COMMENT:** DEQ must explain why it is removing the definition of lowest achievable emissions rate from 252:100-8-51 or specify where it is located.

RESPONSE: See the Response to Comment # 23.

39. **COMMENT:** DEQ should correct a typographical error in OAC 252:100-8-30(a)(1) as follows: "The requirements of this Part shall apply to the construction of any new major stationary source or major modification of any project ..."

RESPONSE: This is not a typographical error. See Response to Comment # 9.

40. **COMMENT:** It is not clear what the provision in OAC 252:100-8-40(d) means. This provision cites several terms and states that their use is synonymous with the term in another section. DEQ needs to make clear how these terms relate to PAL. For example: use of "major modification" in OAC 252:100-8-31 is different from how "modification" is used under the PAL provisions.

RESPONSE: OAC 252:100-8-40(d) has been renumbered 252:100-8-38(c). The DEQ understands that the term "PAL major modification" is defined and used in 40 CFR 51.166(w). It is not our intention in 252:100-8-38(c) to replace the use of "PAL major modification" with the definition of "major modification" contained in 252:100-8-31.

Terra Nitrogen, Limited Partnership – Letter dated October 14, 2005, received via e-mail on October 17, 2005, signed by Jim Schellhorn. Director Environmental, Health & Safety
Holcim (US) Inc. – Letter dated October 14, 2005, received via e-mail, dated October 17, 2005, signed by Meg Garakani, PhD, P.E., Environmental Affair Department

Since the concerns expressed by Terra Nitrogen, Limited Partnership and by Holcim (US) Inc., were similar, they have been combined in the following comments.

41. **COMMENT:** As currently proposed, the revisions to the NSR requirements in Part 7 of Subchapter 8 are significantly more stringent than corresponding provisions in the revised NSR regulations promulgated by the U.S. EPA. As a result, industry located in Oklahoma could be placed in a competitive and economic disadvantage with industry located in neighboring states depending on how those states revise their NSR regulations. Further this disadvantage could likewise negatively impact future industrial development and employment in the State as a result of industry electing to locate or move outside of Oklahoma.

RESPONSE: The original proposal was given further analysis and

consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

42. **COMMENT:** The definition of "baseline actual emissions" is more stringent than the corresponding EPA definition and removes needed flexibility to account for cyclical operations, market fluctuations, economic factors, etc, and potentially subjects industry in Oklahoma to an undefined determination of what emissions are or are not "more representative of normal source operation" further confusing (rather than clarifying) the permit process. There are three distinct and significant differences between the definition proposed by the DEQ as the EPA definition.
    (a) Reduction of the "look back" period from ten to five years. The DEQ definition allows the use of a 10-year period preceding the submittal of a complete permit application if the Director determines the 10-year period if more representative of normal operation.
    (b) Requirement that the same 24-month period be utilized for all pollutants. The NSR Reform specifically authorizes the use of a different consecutive 24-month period for each regulated pollutant. The DEQ definition will required the same 24-month period be used for all pollutants, regardless of whether multiple emissions units are involved with the project. This change is believed to result in the DEQ's regulations being more stringent than the NSR Reform counterpart with no specific reason or basis being identified.
    (c) Removal of upset/malfunction emissions from the "average rate". The language in the DEQ definition is somewhat confusing and differs from the language used by EPA. Specifically, emissions from start-ups and shutdowns are included if they are "authorized", however excess emissions or emissions associated with upsets or malfunctions are not included, regardless of whether or not they result in noncompliant emissions. Pursuant to EPA's definition of "baseline actual emissions" in 40 CFR 51.166(b)(47)(i)(*a*) and (ii)(*a*), emissions associated with startups, shutdowns, and malfunctions are to be included in the determination of the "average rate" of past emissions so long as the average rate of emissions is adjusted downward to exclude any non-compliant emissions. As written, it appears the DEQ is seeking to prevent the use of "unauthorized" and/or excess emissions (i.e., those which are not specifically authorized by permit or applicable requirements). However, the proposed language goes further and excluded "emissions associated with upsets or malfunctions". An emissions unit can experience an upset or "malfunction" but remain incompliance with the permit and/or applicable requirements. As emissions from upsets and malfunctions represent actual emissions which are potentially quantifiable, there does not appear to be any reason to exclude them from the determination of the "average rate" of emissions. Further, to the extent an upset or malfunction results in excess emissions, paragraph (A)(ii) of the definition of "baseline actual emissions" specifically excludes such noncompliant emissions from the "average rate" of emissions. Based on the above, the definition of "baseline actual emissions" should be revised.

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

43. **COMMENT:** The definition of "adverse impact on visibility" specified in OAC 252:100-8-1.1 does not indicate that the relevant determination must be made by the DEQ as is specified in the current definition in OAC 252:100-8-31.

RESPONSE: This was a typographical error. It was not DEQ's intention to make a substantive change to the definition of "adverse impact on visibility" when moving it to OAC 252:100-8-1.1. The definition will be corrected to indicate that the determination must be made by the DEQ.

44. **COMMENT:** Regarding the applicability of the NSR requirements under OAC 252:100-8-30(a)(1), the proposed rule lists the following three categories of activities that are indicated as triggering NSR applicability: (1) any new major stationary source, (2) any major modification, and (3) any project at an existing major stationary source. This language is inconsistent with 40 CFR 52.166(a)(7)(i) which lists (1) any new major stationary source or (2) any project at an existing major stationary source. What is DEQ's rationale/reasoning for inclusion of "any major modification" in the DEQ's proposed rule?

RESPONSE: See the Response to Comment # 9.

45. **COMMENT:** The proposed definition of "best available control technology" specified in OAC 252:100-8-31 references emissions limitations and specifically identifies "visible emissions standards". Notwithstanding such reference, please confirm that a BACT determination for visible emissions standards will not be required for a new "major stationary source" or a "major modification". Visible emissions are not defined as a regulated NSR pollutant and no significance level has been set for them. Therefore, "visible emissions and/or opacity" should not be considered to be a "regulated NSR pollutant" for purposes of BACT requirements and the proposed definition of "best available control technology in OAC 252:100-31 should be modified to delete this requirement. The definition of "Regulated NSR pollutant" should be amended to specifically exclude any reference to opacity and/or visible emissions.

RESPONSE: The definition of "best available control technology" contained in 40 CFR 51.166(b)(12) also references emissions limitations and specifically identifies "a visible emissions standard". The reference to "visible emissions standards" specified in 40 CFR 51.166(b)(12) has been a part of EPA's definition of "best available control technology" since 1977.

46. **COMMENT:** Throughout the proposed revision to Parts 7 and 9 of Subchapter 8, whenever there is an incorporation by reference of federal rules, the date used is January 2, 2006. Since this date is in the future and no one can be sure of what, if any, changes may be forthcoming from EPA or result from ongoing litigation over the NSR Reform, how can the Air Quality Council make an informed decision to approve the incorporation of certain federal regulations while not knowing what those regulations will provide.

RESPONSE: See the Responses to Comments #21 and # 30.

47. **COMMENT:** The State of Oklahoma is currently classified as "attainment" or "unclassified" regarding the National Ambient Air Quality Standards; therefore, a thorough review of the proposed revisions to Part 9 (nonattainment provisions) of Subchapter 8 was not made. To the extent the proceeding comments are equally applicable to Part 9, DEQ is requested to amend the proposed Part 9 provisions as well.

RESPONSE: Any changes to the proposed revision to Part 7 of Subchapter 8 that also apply to Part 9 of Subchapter 8 will be made.

Oklahoma Independent Petroleum Association (OIPA) – e-mail received on October 17, 2005, from Angie Burchalter, VP of Regulatory Affairs

48. **COMMENT:** Overall, the proposed NSR rules appear to be very onerous and complex. It would be very helpful to the regulated community if DEQ could simply this rule as much as possible and include information in the rule instead of requiring the regulated community to go to the Clean Air Act or other sources to obtain information or determine how to comply with the rule.

RESPONSE: Because of EPA's strict adherence to the requirement that State NSR regulations closely resemble the Federal regulations DEQ is unable to extensively simplify to proposed rule. Staff agrees that the NSR rule is onerous and complex and regrets being unable to simplify them to any great extent.

49. **COMMENT:** If portions of Oklahoma were to become non-attainment for a specific pollutant in the future, how would minor sources such as oil and gas production sites be impacted by the proposed NSR rules? Would an additional rulemaking be required to address those types of sources?

RESPONSE: This will depend on many factors including the severity of the nonattainment. In some instances the definition of minor source may change. The impact on oil and gas production sites would depend on among other things, the nonattainment pollutant, the severity of the noncompliance with the NAAQS, and the quantity of the nonattainment pollutant emitted. Since nonattainment indicates that existing rules are not sufficient to prevent exceeding the NAAQS, it is likely that additional rulemaking will be required to address the issue.

50. **COMMENT:** 252:100-8-2, definition of "begin actual construction": It is not clear what construction means, for example, does this include moving dirt or moving equipment on site? In other parts of DEQ's rule it appears this definition is clearer. In DEQ's proposed rules, why are there so many varying definitions for the same term?

RESPONSE: The definition of "begin actual construction" in Section 8-2 has not been changed, it has only been moved from Section 8-1.1 to Section 2 because it only applies to Part 70 permitting. Section 8-31 contains definitions of "begin actual construction" and "construction" that apply to PSD (NSR). In general when DEQ's rules contain varying definitions for the same term, it is

because the Federal programs the rules are based on contain different definitions for the same term.

51. **COMMENT:** 252:100-8-31, baseline actual emissions, (A) & (B): What happens if previous baseline information for an existing source is not known for one reason or another? How will this be addressed? Is it a federal requirement for new emissions unit's baseline actual emissions to be equal to the PTE? Why not use actual emissions after an established testing period?

    RESPONSE: (A)(iv) of the definition of "baseline actual emissions" states that "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 (A)(ii) of this definition." Paragraph (B) of the definition of "baseline actual emissions" states that 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. A new emissions unit is defined in Section 8-31 in the definition of "emissions unit" in as 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. Until an emissions unit has been operating for two years or more there is no continuous 24-month record of emissions on which to calculate "actual baseline emissions".

52. **COMMENT:** 252:100-8-31, Baseline area (A): Please clarify Part A. Also, is the citation to section 107(d)(1)(D) or (E) correct? Area re-designations are located under Section 107(d)(3) of the CAA.

    RESPONSE: These citations are the same as those contained in the Federal definition of "Baseline area" at 40 CFR 51.166(b)(15)(ii).

53. **COMMENT:** 252:100-8-31, Baseline area (B): It doesn't appear that TSP been defined prior to it use in this section.

    RESPONSE: TSP is defined in Subchapter 1.

Oral Comments Made at The Council Meeting

54. **COMMENT:** Bud Ground, representing EFO stated that he didn't feel that studies such as the Integrity Project should be used as a basis for not allowing a 10-year look back. He also expressed his hope that if a 10-year look back versus a 5-year look back or using a different two year period for each pollutant would benefit the economy of the State, the rule would be written to allow the latitude and flexibility that is now in EPA rule.

    RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

COMMENTS RECEIVED PRIOR TO THE JANUARY 18, 2006, AIR QUALITY COUNCIL MEETING

OG&E Energy Corp – letter received via e-mail received on December 15, 2005, dated December 15, 2005, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst [These comments were based on the September 15, 2005, revision of the proposed rule, rather than the December 15, 2005, revision]

55. **COMMENT:** The definition of "baseline actual emissions" in 252:100-8-31 should be revised to mirror the Federal requirements which allow the use of a 24-month period within the last ten years for non electric utility steam generating units (EUSGU) and a different 24-month period for each NSR regulated pollutant. To require the same time period for all pollutants may have unintended consequences. Individual pollutants in the stack exhaust do not necessarily change proportionately when operating parameters change. For example, NO_X and CO emissions from a coal-fired boiler are produced by combustion, a major factor being the Btu rating of the fuel and generated load requirements while SO_2 emissions are also influenced by the sulfur content of the fuel. To enable the selection of representative time periods that allow accurate comparisons between baseline actual and future actual emissions, we request that the reference to a single time period be replaced in both the definition of baseline actual emissions contained in 252:100-8-31(A) and in (A)(iii) with language that allows a different consecutive 24-month period to be used for each regulated NSR pollutant.

    RESPONSE: The Department has undertaken a study to determine the effects on air pollutant emissions of the use of a 10-year look back period versus a 5-year look back period in determining baseline actual emissions. Based on the results of the study, the Department considered the use of a 10-year look back period in conjunction with the use of current emissions data as required in paragraph (A) of the definition of "baseline actual emissions". The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

56. **COMMENT:** The term "very clean" as it applies to coal-fired ESGU used in (A)(ii)(X) of the definition of "major modification" is not defined in the proposed rule. It is described in 40 CFR 52.21(b)(38) and the reference or definition should be included in the proposed Subchapter 8.

    RESPONSE: The definition of "reactivation of a very clean coal-fired electric steam generating unit" found at 40 CFR 52.21(b)(38) is identical to the definition of "reactivation of a very clean coal-fired electric steam generating unit" in 252:100-8-31.

57. **COMMENT:** The 3 year contemporaneous period in paragraph (B) of the definition of "net emission increase" should be change to 5 years to reflect the federal requirement, or the basis for a more restrictive time period should be explained to the regulated community.

RESPONSE: The 3-year contemporaneous period has been in the DEQ's PSD rule from its adoption. The shorter time period is not necessarily more restrictive. The Department will give this comment further consideration at a later date since this is not part of the NSR Reform.

58. **COMMENT:** The last 3 words of 252:100-8-32.2(1) ("shall be excluded") should be deleted because they are redundant.

    RESPONSE: These last three words were added to make 252:100-8-32.2(1) a complete sentence.

OG&E Energy Corp – letter dated January 4, 2006, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst

59. **COMMENT:** In the second sentence in the definition of "adverse impact on visibility" in 252:100-8-1.1, "DEQ" should be replaced by "the Director". The term "DEQ" is too ambiguous.

    RESPONSE: Staff agrees and will propose this change.

60. **COMMENT:** In OAC 252:100-8-30(b) to provide clarity subsection (b) regarding major modifications should be reorganized to place the information that applies to the determination of "significant emissions increase" under one heading and group according to the type of emissions units, *i.e.* whether they are existing or new units.

    RESPONSE: Staff will give this suggestion further consideration.

61. **COMMENT:** Paragraph (A) of the definition of "baseline actual emissions" in 252:100-8-31 needs clarification. There are two sentences that seem to contradict each other by referring to two different time periods for determining emissions. The first sentence refers to "any consecutive 24-month period" while the second sentence states "shall be based on current emissions data". It is unclear what is meant by "current emission data". For example, does current mean the most recent available emissions data obtained from either a stack test or other means; and if so, over what time period is the data considered current?

    RESPONSE: Staff agrees that use of the term "current emissions data" was unclear and proposed a revision of paragraph (A) to eliminate this confusion. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

Environmental Protection Agency, Region 6 – letter of comments signed by David Neleigh, Chief, Air Permits Section, received via e-mail on January 10, 2006 from Stanley M. Spruill

62. COMMENT: Overall most of the provisions of the Federal NSR Regulations have been incorporated in the proposed revisions provided in the DEQ letter dated December 14, 2005. However, there the definitions of "baseline actual

emissions" and "regulated NSR pollutant" in 252:100-8-31 differ from those in 40 CFR 51.166(b)(47) and (49) respectively. If EPA's comments regarding these two definitions are not incorporated in DEQ's rule, DEQ must demonstrate that the final regulation is at least as stringent as the Federal program.

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

63. **COMMENT:** The definition of "baseline actual emissions" in 252:100-8-31 differs from the definition in 40 CFR 51.166(b)(47). Paragraph (A) of the definition provides the same procedure for determining baseline actual emissions for electric utility steam generating units (EUSGU) and non-EUSGU. Although the proposed definition appears to be more stringent than the Federal definition, it may lack the flexibility that is provided in the Federal definition. The DEQ must demonstrate that its proposed definition is at least as stringent as the definition in 40 CFR 51.166(b)(47).

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

64. **COMMENT:** Paragraph (B)(ii) of the definition of "regulated NSR pollutant" in 252:100-8-31 provides that any pollutant regulated under section 112(r) of the Clean Air Act is not a regulated NSR pollutant. Although it is not in the Federal definition of regulated NSR pollution in 40 CFR 51.166(b)(49), the preamble of our final NSR Reform regulation at 67 Federal Register 80240 (December 31, 2002) states that pollutants listed under section 112(r) of the Clean Air Act are not included in the definition of regulated NSR pollutant. The preamble further states that substances that are regulated under 112(r) of the Clean Air Act may still be subject to PSD if they are regulated under other provisions of the Act. As proposed, the definition would exclude all pollutants regulated under section 112(r), including such pollutants that are regulated under other provisions of the Clean Air Act. The DEQ must clarify that PSD applies if such pollutants are otherwise regulated under the Clean Air Act. One way to do this would be to revise paragraph (B)(ii) to read as follows: "any pollutant that is regulated under section 112(r) of the Clean Air Act, provided that such pollutant is not otherwise regulated under the Clean Air Act."

RESPONSE: Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

Oklahoma Independent Petroleum Associates – letter dated January 13, 2006, received via e-mail on January 13, 2006, from Angie Burckhalter, V.P. of Regulatory Affairs

65. **COMMENT:** It appears that the proposed revision to Parts 7 and 9 of Subchapter 8 as currently written would not apply to minor sources. We assume that before these rules could apply to minor sources, ODEQ would have to conduct another rulemaking. Is this correct?

RESPONSE: That is correct.

OG&E Energy Corp – e-mail dated January 16, 2006, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst

66. **COMMENT:** If stack testing conducted during the five year period following a project that is not subject to PSD based on the actual to projected actual test results in a different emission factor, we want to make sure the baseline actual emissions and the annual emission will be based on the same factor or data. The following sentence should be added at the end of 252:100-8-36(c)(3): "For calculating annual emissions as required by this section, the methodology and/or emission factor shall be the same for calculating both the baseline actual emissions and the annual emissions."

    RESPONSE: The Department doesn't feel it would be appropriate to add this language to the rule. There may be a time when the project itself causes an increase in the emission factor. However, if the project does not affect the emission factor, but better emission factors are available at the end of five years, the new emission factors would be used to calculate both the baseline actual emissions and the annual emissions.

Oral Comments Made at The Council Meeting

67. **COMMENT:** Julia Bevers, OG&E. Regarding 252:100-8-36(c)(3), determining the baseline actual emissions before a project is one thing. Then we have a five year period we have to monitor or keep records for after a project. So what if after the project, testing is done that reveals that the emission factor has changed. So the most recent data is going to be a different number. Our concern is to make sure the same factor is used.

    RESPONSE: See response to Comment # 66.

68. **COMMENT:** Julia Bevers, OG&E. There is an error in 252:100-8-30(b)(6) on Page 18. The rule states that owners or operators can use the potential to actual test. Should this be actual to potential test instead?

    RESPONSE: Yes, it should be "actual to potential test". This will be corrected.

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

July 13, 2005

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 5	Registration, Emission Inventory and Annual Operating Fees
Subchapter 8	Permits for Part 70 Sources
Subchapter 37	Control of Emission of Volatile Organic Compounds (VOCs)
Subchapter 39	Control of Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Appendix E	Primary Ambient Air Quality Standards
Appendix F	Secondary Ambient Air Quality Standards

Subchapter 1. General Provisions

Our comment on VOCs is the same as provided for Subchapter 37 below. The Air Permits Section will provide comments on permit-related issues, as necessary, in a separate communication.

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

The Air Permits Section previously reviewed this Subchapter and had no comments, per our letter dated April 12, 2005. Should Air Permits have additional comments, they will be provided in a separate communication.

Subchapter 8. Permits for Part 70 Sources

The Air Permits Section will provide comments as necessary in a separate communication.

Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)

EPA supports the ODEQ revision to exempt tert-butyl acetate (tBAc) from VOC emissions limitations. We, however, 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, as you know, 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 be glad to 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.

Subchapter 38. Control of Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas

Our comment on VOCs is the same as provided for Subchapter 37 above.

Appendix E Primary Ambient Air Quality Standards

This action revokes the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone in Oklahoma, as was promulgated nationally under the Final Rule to Implement the 8-Hour Ozone Ambient Air Quality Standard Standard - Phase I (69 FR 23951). We support this action.

Appendix F Secondary Ambient Air Quality Standards

Our comment is the same as provided for Appendix E above.

We appreciate the opportunity to review and comment on the proposed rules prior to the public hearing on July 20, 2005. 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: Mr. Leon Ashford
Environmental Program Specialist (ODEQ)

Mr. Max Price
Environmental Program Specialist (ODEQ)

Ms. Joyce Sheedy
Engineer (ODEQ)

Sullivan, Pat

From: Thomas, Scott
Sent: Friday, July 15, 2005 8:54 AM
To: Sullivan, Pat; George, Gail
Subject: FW: Comments on Proposed Regulations


ODEQcmnts.12jul05 .doc ODEQcmnts.12jul05 .wpd

for council mtg
got a fax from Tom Diggs group also
-----Original Message-----
From: Spruiell.Stanley@epamail.epa.gov
[mailto:Spruiell.Stanley@epamail.epa.gov]
Sent: Wednesday, July 13, 2005 4:45 PM
To: Thomas, Scott
Cc: Barrett.Richard@epamail.epa.gov; Jones.Lynde@epamail.epa.gov;
Neleigh.David@epamail.epa.gov; Paige.Carrie@epamail.epa.gov
Subject: Comments on Proposed Regulations

Below are comments from EPA Region 6 Air Permits Sections concerning:
- NSR Reform Revisions, and
- Revisions to Definition of Volatile Organic Compounds (VOC)

NSR Reform. Prepared by Stanley Spruiell, Air Permits Section:

Attached below the EPA Air Permit Section's comments on your draft regulations for New Source Review Reform. These draft regulations incorporate the Federal requirements for New Source Review Reform. Overall, you have incorporated most of the provisions of the Federal NSR Regulations. We have made the attached comments to ensure that your program meets all the requirements of the Federal program.

If you prefer to adopt regulations which differ from the Federal regulations, we encourage you to discuss your proposed program with us. We believe that such discussions will be beneficial in facilitating communications between ODEQ and EPA and help to ensure that ODEQ adopts regulations the EPA can approve.

EPA Comments on NSR Reform
Microsoft Word WordPerfect
(See attached file: ODEQcmnts.12jul05.doc) (See attached file: ODEQcmnts.12jul05.wpd)

If you have questions, please call Stanley M. Spruiell at (214) 665-7212.

Definition of VOC. Prepared by Richard Barrett, Air Permits Section.

ODEQ proposes to change their rule regarding the VOC known as t-butyl acetate (TBAC).
EPA published a final rule modifying the definition of VOC regarding TBAC on November 29, 2004.
TBAC is still considered a VOC, but will not be considered a VOC for purposes of emissions limitations or content requirements, due to its egligible contribution to tropospheric ozone formation.
However, it will still continue to be a VOC for all recordkeeping, emissions reporting, dispersion modeling and inventory requirements. Industry will now be required to track and report TBAC emissions as a distinct class of emissions, separate from non-exempt VOC.

ODEQ proposes to exempt TBAC specifically as a VOC for all purposes, including inventories and reports.

EPA published a final rule on November 29, 2004, which revised the definition of VOC regarding the VOC known as t-butyl acetate (TBAC). In this action, TBAC is still considered a VOC, but will not be considered a VOC for purposes of emissions limitations or content requirements, due to its negligible contribution to tropospheric ozone formation. However, it will still continue to be a VOC for all recordkeeping, emissions reporting, dispersion modeling and inventory requirements. One effect is that industry will now be required to track and report TBAC emissions as a distinct class of emissions, separate from non-exempt VOC. (See 69 FR 69298-69304). This rule is reflected in the amended 40 CFR Part 51, section 51.100 (s)(5).

ODEQ proposes to now adopt this revision; however, the ODEQ proposal will exempt TBAC as a VOC for all purposes, including inventories and reports. As this proposal is incompatible with the final rule which became effective on December 29, 2004, the ODEQ must justify and document how its proposal is equivalent to the final rule, prior to its approval into the State rules.

If you have questions, please call Richard Barrett at (214) 665-7227.

Thank you,

Stanley M. Spruiell
Air Permits Section (6PD-R)
Telephone: (214) 665-7212
Fax: (214) 665-7263
E-mail: spruiell.stanley@epa.gov

Comments on Oklahoma's Draft Regulations for NSR Reform.
Subchapter 8. Permits for Part 70 Sources

I. General Comments.

1. On June 24, 2005 the D.C. Circuit Court of Appeals, *New York v. EPA*, No. 02-1387, released its decision on NSR Reform. In the decision, the court

   - vacated the provisions of the 2002 rule regarding Clean Unit applicability test and Pollution Control Projects Clean Unit applicability test and Pollution Control Projects; and
   - remanded the recordkeeping provisions to EPA to provide an acceptable explanation for its "reasonable possibility" standard or to devise an appropriately alternative.

   Concerning the court's decision to vacate the Clean Unit applicability test and the Pollution Control Project exclusion, the Oklahoma Department of Environmental Quality (ODEQ) should not adopt these provisions into its program. The provisions identified below either implement or refer to the Clean Units or Pollution Control Projects, that the court vacated. These provisions include, but are not limited to the following:

   - OAC 252:100-8-30(b)(5) and (d);
   - OAC 252:100-8-30(b)(6);
   - OAC 252:100-8-31 – the following definitions:
     - Clean Unit
     - major modification – paragraph (A)(ii)(VIII)
     - net emissions increase – paragraphs (C)(iii) and (F)(iv); and
     - pollution control project or PCP;
   - OAC 252:100-8-36.2(c);
   - OAC 252:100-8-38;
   - OAC 252:100-8-39;
   - OAC 252:100-8-51 – the definition of major modification – paragraph (A)(ii)(VIII);
   - OAC 252.100-8-56; and
   - OAC 252:100-8-57.

   Concerning the court's remand of recordkeeping provisions to EPA, we ask that ODEQ consider this in its final decision when it adopts its final regulations.

   We are currently evaluating the court decision and possible next steps, and we will inform you of any guidance that we receive concerning how the court's decision will affect your program.

2. General Comment relating to equivalency when the State's rule is different from the Federal requirement. The ODEQ has generally proposed to adopt the nonattainment new source review (NNSR) requirements and the prevention of significant deterioration (PSD) requirements from the Federal rules located in 40 CFR 51.165 and 51.166. In many cases, the ODEQ proposed provisions which differ form the Federal requirements. The State may adopt regulations that are different from, but equivalent to, the Federal rule. In the following comments, we have identified areas in which the State's draft regulation is not the same as the corresponding Federal requirement. In such cases, the State must demonstrate that such provision is at least as stringent as the revised base Federal program. See 67 FR 80241 (December 31, 2002). If you desire to adopt provisions that differ from the base Federal program, we encourage you to discuss your proposed program with us. We believe that such discussions will be beneficial in facilitating communications between ODEQ and EPA and help to ensure that ODEQ adopts regulations that EPA can approve.

II. Part 1. General Provisions

OAC 252:100-8-1.1. Definitions. ODEQ proposes to remove the following definitions:

- Act;
- Administrator;
- EPA,
- National Emissions Standards for Hazardous Air Pollutants or NESHAP;
- New Source Performance Standards or NSPS;
- Part 70 permit;
- Part 70 program;
- Part 70 source; and
- Secondary emissions.

ODEQ should provide clarification of its reasons for removing these definitions from 252:100-8-1.1. If these terms are defined elsewhere in ODEQ's program, ODEQ should specify where these terms are defined.

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

1. **OAC 252:100-8-30. Applicability.** The State should correct a typographical error in Paragraph (a)(1) as follows" "The requirements of this Part shall apply to the construction of any new major stationary source or major modification of any project ..."

2. **OAC 252:100-8-31. Definitions.**

A. Definition of "baseline actual emissions." The draft regulation differs from the Federal definitions as follows:

i. Paragraph (a) of the definition differs from 40 CFR 51.166(b)(47)(i) and (ii) as described below:

a. The draft rule does not distinguish between the baseline actual emissions of an electric utility steam generating unit (EUSGU) and an emissions unit that is not an EUSGU.

b. The draft State rule requires use of a 24-month period within the last five years to determine the baseline actual emissions for non-EUSGU. The Federal rule provides for use of a 24-month period within the last ten years to determine the baseline actual emissions for non-EUSGU.

c. The draft State rule allows use of a different time period (within last 10 years) for non-EUSGU if it is demonstrated to be more representative of baseline actual emissions.

Note that we think it is appropriate to limit use of the full 10-year look back period when you do not have adequate data for the time period you select. However, this limitation should be alleviated over time as sources begin to maintain records for longer periods to accommodate the 10-year look back opportunity.

ii. Paragraph (a)(1) of the definition differs from 40 CFR 51.166(b)(47)(i)(a) and (ii)(a) as described below:

a. Under the draft State rule a source would include "authorized emissions associated with start-ups and shutdowns" from the determination of baseline actual emissions.

b. Under the draft State rule a source would exclude excess emissions or emissions associated with upsets or malfunctions from the determination of baseline actual emissions.

c. The Federal rule requires inclusion of emissions from startups, shutdowns, and malfunctions in the determination of baseline actual emissions.

iii. The draft State rule has no provision corresponding to 40 CFR 51.166(b)(47)(ii)(c). This Federal rule provides that for a non-EUSGU, the baseline actual emissions must be adjusted downward to exclude emissions that exceed any currently applicable emissions limitation.

iv. Paragraph (c) requires that the baseline actual emissions for a PAL be determined as described in paragraph (A) of the definition of

baseline actual emissions. In order for paragraph (c) to meet the Federal requirements, the ODEQ must address the items of concern identified above for paragraphs (A), (A)(1), and the lack of provision corresponding to 40 CFR 51.166(b)(47)(ii)(c) as described above.

B. Definition of "baseline area." The draft State definition refers to "interstate areas" whereas the Federal rule refers to "intrastate areas."

C. Definition of "low terrain." The draft definition defines low terrain as any area other than "high terrain." However, there is no definition of "high terrain" in OAR 252:100-8-31. Is this term defined elsewhere in the State regulations?

D. Definition of "net emissions increase." The State's proposed definitions differs from the Federal definitions in 40 CFR 51.166(b)(3)(vii). The current approved SIP meets the requirements of §51.166(b)(3)(vii), which provides that any replacement unit that requires shakedown becomes operational no later than 180 days after initial operation. For emissions units, other than replacement units, a physical change occurs when the unit become operational and begins to emit a particular pollutant. In this action the ODEQ proposes to remove the word "replacement" This change would make the 180-day shakedown period available to all emissions units, and not limited to replacement units as provided in §51.166(b)(3)(vii). ODEQ needs to show that its proposed rule is at least as stringent as the Federal requirement.

E. Definition of "projected actual emissions." The draft State rule differs from Federal requirement. The draft State rule omits a provision the projected actual emissions are based upon full utilization of the unit will result in a significant net emissions increase at the source.

F. Definition of "regulated NSR pollutant." The draft State rule provides that any pollutant regulated under §112(r) of the Act is not a regulated NSR pollutant. This is not in the Federal definition.

G. Definition of "replacement unit." The draft State definition has no provisions corresponding to 40 CFR 51.166(b)(32)(iii). The Federal rule provides that "[t]he replacement does not change the basic design parameter(s) (as discussed in paragraph (v)(2) of [§51.166]) of the process unit." Apparently ODEQ did not propose language corresponding to §51.166(b)(32)(iii) because the Federal rule refers to paragraph (v)(2) which is part of the routine maintenance repair and replacement provisions which are currently stayed. To address this concern, ODEQ may wish to

consider omitting the reference to paragraph (v)(2). Thus it could propose the following:

> The replacement unit does not alter the design parameters of the process unit.

This is consistent with the corresponding provision proposed by Louisiana under its draft NSR Reform regulations.

H. The ODEQ does not propose definitions of the following terms which are in 40 CFR 51.166(b):

- building, structure, facility, or installation; ..... §51.166(b)(6)
- federally enforceable; ..... §51.166(b)(17)
- secondary emissions; ..... §51.166(b)(18)
- volatile organic compounds; ..... §51.166(b)(29)
- reviewing authority; and ..... §51.166(b)(50)
- lowest achievable emission rate (LAER) ..... §51.166(b)(52)

ODEQ must identify where these terms are defined in its regulations or demonstrate that its program is at least as stringent as the Federal requirements.

3. **OAC 252:100-8-35. Air quality impacts evaluation.** Paragraph (b)(2) differs from 40 CFR 51.166(l)(1). The draft State rule does not provide that when an air quality model as specified under ¶(b)(1) is inappropriate, the use of a modified or substituted model must have written approval from the EPA Administrator and that such modified or substituted model must be subject to notice and opportunity for public comment under §51.102.

4. **OAC 252:100-8-35.2. Additional impact analysis.** The draft State rule has no provisions which correspond to 40 CFR 51.166(o)(2). The Federal rule requires an analysis of the air quality impact projected for the area as the result of general commercial, residential, industrial, and other growth associated with the source or modification.

5. The State did not propose a provisions that corresponds to §51.166(r)(7). This Federal rule provides that the "owner or operator of a source shall make information required to be documented and maintained pursuant to paragraph (r)(6) of [§51.166] available for review upon request for inspection by the reviewing authority or the general public pursuant to the requirements contained in §70.4(b)(3)(viii) of this Chapter."

6. **OAC 252:100-8-40. Actuals PAL.**

A. 252:100-8-40(a). ODEQ proposes to incorporate by reference the requirements of §51.166(w), as promulgated 12/31/2002. EPA also revised §51.166(w)(1)-(2) on November 7, 2003. ODEQ should also include the 11/7/2003 revisions.

B. 252:100-8-40(d). Terminology related to 40 CFR 51.166(w). It is not clear what this provision means. This provision cites several terms and states that their used is synonymous with the term in another section. ODEQ needs to make clear how these terms relate to PAL. For example: use of "major modification" in OAC 252:100-8-31 is different from how "modification" is used under the PAL provisions. ODEQ needs to clarify the use of this and other definitions as identified below.

- 252:100-8-40(d)(3) "major modification." It is not clear how this term in OAC 252:100-8-31 relates to modifications at a PAL.
- 252:100-8-40(d)(5) "pollution control project." It is not clear how this term in OAC 252:100-8-31 relates to pollution control project at a PAL. Furthermore, the court vacated the provisions for PCP.
- 252:100-8-40(d)(6) "projected actual emissions." It is not clear how this term in OAC 252:100-8-31 relates to projected actual emissions at a PAL.

IV. Part 9. Major Sources Affecting Nonattainment Areas

1. **252:100-8-51. Definitions.**

A. Definition of "lowest achievable emissions rate." ODEQ proposes to remove this definition. ODEQ should provide clarification of its reasons for removing these definitions from 252:100-8-51. If these terms are defined elsewhere in ODEQ's program, ODEQ should specify where these terms are defined.

B. Definition of "major modification." Paragraph (A)(i) identifies volatile organic compounds (VOC) as the only precursor to ozone. Section § 182(f)(1) of the Clean Air Act provides that plan provisions for nonattainment areas required for (VOC) "shall also apply to major sources ... of nitrogen oxides." You should revise this provision to identify both VOC and oxides of nitrogen (NO_x) as ozone precursors.

C. Definition of "net emissions increase." The State's proposed definitions differs from the Federal definitions in 40 CFR 51.165(a)(1)(vi)(F). The current approved SIP meets the requirements of 51.165(a)(1)(vi)(F)., which provides that any replacement unit that requires shakedown

becomes operational no later that 180 days after initial operation. For emissions units, other than replacement units, a physical change occurs when the unit become operational and begins to emit a particular pollutant. In this action the ODEQ proposes to remove the word "replacement" This change would make the 180-day shakedown period available to all emissions units, and not limited to replacement units as provided in §51.165(a)(1)(vi)(F).. ODEQ needs to show that its proposed rule is at least as stringent as the Federal requirement.

OGE Energy Corp
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OGE

December 15, 2005

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

Re: OGE Energy Corp. Comments on Proposed Rules OAC 252:100-8, Parts 7 and 11

Dear Ms. Sheedy:

OGE Energy Corp along with its subsidiaries OG&E Electric Services and Enogex Inc. offers the following comments with respect to the September 15, 2005 revision of the proposed rules cited above.

Part 7

252:100-8-31. Definitions.

... "Baseline actual emissions" (A) and (A)(iii)

The draft rule does not distinguish between the baseline actual emissions of an electric utility steam generating unit (EUSGU) and an emissions unit that is not an EUSGU. The Federal rule provides for use of a 24-month period within the last ten years to determine the baseline actual emissions for non-EUSGU. When State and Federal rules are not consistent it places an extra burden on the regulated community. We request that the language in the State definition for baseline actual emissions mirror the Federal requirements.

The last sentence of paragraph (A) proposes that the same 24-month period must be used to determine baseline actual emissions "for all pollutants", and the concept is repeated in (A)(iii). This language differs substantially from Federal requirements described in 40 CFR 51.166 (47)(c):

"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."

pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in a Class I area. ODEQ should clarify this exemption, as discussed on page 39117 of the 7/6/05 rule, is limited to sources at levels between de minimis and 250 tons. In addition, ODEQ may wish to clarify the term "BART determination." The following language is suggested:

> (c) The owner or operator of a BART-eligible source may request and obtain a waiver from the Department that a BART determination **under Section III of Appendix Y of 40 CFR 51** is not required:
>
> (1) for SO2 or for NOX if the BART-eligible source has the potential to emit less than 40 TPY of such pollutant(s),
>
> (2) for PM-10 if the BART-eligible source emits less than 15 TPY of such pollutant, or
>
> (3) if the owner or operator of the BART–eligible source **that emits less than 250 tons of a visibility-impairing air pollutant,** demonstrates by modeling, in accordance with a protocol approved by the Director, that a source does not emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area.

ODEQ may wish to separate out Section 252:100-8-73(c) into new a Section 252:100-8-74 entitled "De Minimis BART Exemption" (and renumber successive paragraphs), in order to emphasize the de minimis aspect of the exemption. In addition, ODEQ is encouraged to submit the modeling protocol contemplated above to EPA Region 6 for concurrence, prior to submission of the regional haze SIP.

7. The term "Administrator," which appears in 252:100-8-74(a), should be defined using the definition in 40 CFR 51.100(b):

> "Administrator" means the Administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

8. ODEQ may wish to define the term "subject to BART" as a "BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area." That term can then be substituted for the language in Section 252:100-8-73(a), and woven into Section 252:100-8-74, 252:100-8-75(f), and the first part of 252:100-8-75(a).

9. As discussed on page 39172 of the 7/6/05 rule, it is important that sources employ techniques that ensure compliance on a continuous basis. Therefore the following clarification to 252:100-8-75(e) is suggested:

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

The last three words at the end of the sentence in 252:100-8-32.2(1) should be deleted because they are redundant:

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~~.

Part 11

252:100-8-71 Definitions.

..."Secondary emissions"

The last sentence of the definition of "Secondary emissions" should be made consistent with the definition provided in OAC 252:100-1-3:

252:100-8-71 ..."Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the BART-eligible source.

252:100-1-3 ... "Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel."

252:100-8-75(a).

There appears to be a typographical error. There are two subparagraphs identified as number (3); both seem to reflect the same requirements and one of them should be deleted.

252:100-8-75(d).

The proposed language states that BART installation and operation must occur "no later than five years after the Department has approved the proposed BART". It is unclear how the date of "five years after the Department has approved..." will be determined. It is our understanding that a source will first submit a proposed BART to the Director by December 1, 2006 [252:100-8-75(c)] following which the Director will submit the SIP to EPA for their approval. There appears to be at least four options that could determine the date BART is approved by the Department:

1) the date the source submits a proposed BART to the Director;
2) the date the SIP is submitted to the EPA;

3) the date the EPA approves the SIP; or,
4) some other date that has not been defined.

The date BART installation and operation must occur should be clarified in the rule and be consistent with Federal requirements that allow five years after EPA approves the SIP before installation and operation are required [*40 CFR 51 Appendix Y Section V.]*:

...(d) The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after the ~~Department has approved the proposed BART~~ EPA approval date of the proposed SIP.

OGE Energy Corp appreciates this opportunity to comment on the proposed rule. If you have any questions you may contact me at 553-3439 or by email at beversjo@oge.com.

Sincerely,

Julia Bevers, CIH
Sr. Regulatory Environmental Analyst