

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]
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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.

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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

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

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.

**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.

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 Affairs 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 is 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 require 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 in compliance 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 SO₂ 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.

OGE Energy Corp

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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 NO_x 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:

Joyce Sheedy, ODEQ
OGE Energy Corp Comments on Proposed Rules OAC 252:100-8
December 15, 2005

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;

Joyce Sheedy, ODEQ
OGE Energy Corp Comments on Proposed Rules OAC 252:100-8
December 15, 2005

- 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



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 ODBQ 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

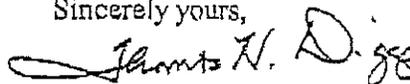
This action revokes the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone in Oklahoma, as was promulgated nationally under the Final Rule to Implement the 8-Hour Ozone Ambient Air Quality Standard Standard - Phase I (69 FR 23951). We support this action.

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
Engincer (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 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. 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 from 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 than 180 days after initial operation. For emissions units, other than replacement units, a physical change occurs when the unit becomes 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.



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

December 2, 2005

Mr. Scott Thomas
Air Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

Dear Mr. Thomas:

Thank you for providing us the opportunity to comment on the proposed Best Available Retrofit Technology (BART) Rule, Part 11 Visibility Protection Standards. We view this as an important step forward in the Oklahoma's Regional Haze State Implementation Plan. Enclosed are our comments.

If you have any questions or concerns, please call me at (214) 665-3102 or Joe Kordzi of my staff at (214) 665-7186.

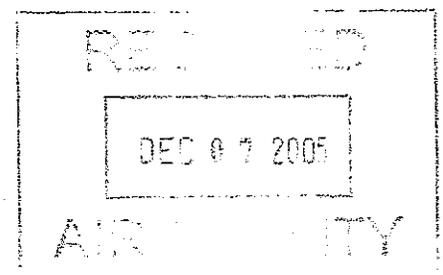
Sincerely yours,

Carrie Paige for

Thomas H. Diggs
Chief
Air Planning Section

Enclosure

cc: Ms. Joyce Sheedy (ODEQ)



U. S. Environmental Protection Agency (EPA)
Comments on the Proposed BART Rule, Part 11 Visibility Protection Standards
December 1, 2005

1. The Oklahoma Department of Environmental Quality (ODEQ) should clarify whether all 35 of the 51.301 definitions are intended to be adopted, as several definitions (i.e., fugitive emissions, potential to emit, reconstructed, stationary source, etc.) are referenced in the proposed rule, but are not defined in the rule. Also, other definitions are not referenced or listed in the rule. ODEQ should clarify if these general definitions have been adopted elsewhere and, if so, it should make reference to that cite.
2. In Section 252:100-8-70, ODEQ should clarify that "BART-eligible source" means an existing stationary source *as defined in Section 8-71*.
3. Section 252:100-8-76, states the BART requirements will be included as a permit modification in a facility's Part 70 permit. It is our understanding that ODEQ's BART Rule will be submitted to EPA for federal approval, making that rule an applicable requirement. As such, the requirements under that rule will then be folded into each source's operating permit. Please clarify that ODEQ will use its significant modification or reopen procedures per 252:100-8-7.1, et al. Also, please provide those specific references in the BART rule.
4. ODEQ should define "potential to emit" using the language from 51.301:

"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 federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.
5. ODEQ may wish to change the term "BART applicability" in Section 252:100-8-73(b), to "Whether a source is subject to BART," or similar language, in order to highlight the difference between the terms "BART eligibility" and "subject to BART" and to provide a smoother transition between the Section 252 rule and the BART guidelines.
6. Section 252:100-8-73(c)(3) provides that a source can request a waiver to a BART determination if the source demonstrates by modeling that it does not emit any air

The owner or operator of each source subject to BART shall maintain the control equipment required by this Part and establish procedures to ensure such equipment is properly and continuously operated and maintained.

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

SUBCHAPTER 1
SUBCHAPTER 8

EXECUTIVE SUMMARY:

The Department is proposing amendments to Subchapter 8, Part 70 Sources. The Department 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 the Department and some changes in location of some definitions to reduce redundancy. As part of the revision the Department 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, the Department proposes to revise the definition of "insignificant activities" to reflect the changes made to Subchapter 41 and the new Subchapter 42.

In conjunction with the revision proposed to Parts 7 and 9 of Subchapter 8 regarding NSR sources, the Department is proposing amendments to Section 3 of Subchapter 1. This is being done as a general "clean up" of definitions in Parts 1, 7, and 9 of Subchapter 8 and to reduce redundancy. The definitions DEQ proposes to move from Subchapter 8 to Subchapter 1 are used in more than one Subchapter in OAC 252:100. If these definitions are not defined in Subchapter 1, they will have to be defined in each Subchapter in which they are used. The Department proposes to: (1) move 8 definitions from OAC 252:100-8-1.1 to 252:100-1-3 without substantive changes; (2) move the definition of "lowest achievable emissions rate" or "LAER" from OAC 252:100-8-51 to 252:100-8-1-3 and update it for consistency with the federal definition at 40 CFR 51.165(a)(xiii); (3) add the definition of "federally enforceable" as found at 40 CFR 51.166(b)(17); (4) add the definition of "reasonably available control technology" or "RACT" for consistency with the federal definition found at 40 CFR 52.21(b)(54); (5) replace "reviewing authority" with "Director" in the definition of "complete" for consistency; (6) modify the definition of "stack" to make clear that a pipe can be a stack, but a flare cannot; and (7) modify the definition of "stationary source" by adding "subject to OAC 252:100" to the end of the definition, for clarity.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

There are no substantive differences.

ENVIRONMENTAL BENEFIT STATEMENT:

Not required because these rules are not more stringent than corresponding federal rules.

SUMMARY OF COMMENTS AND RESPONSES:

Attached.