Notice: This Summary of Comments and Staff Responses replaces previous versions for this proposed rule revision. The Summary of Comments and Staff Responses is subject to change based on additional consideration, evaluation of public comments, and new information received.

SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO
OAC 252:100-1, GENERAL PROVISIONS AND
OAC 252:100-7, PERMITS FOR MINOR FACILITIES

COMMENTS RECEIVED PRIOR TO AND AT THE *OCTOBER 5, 2011*
AIR QUALITY ADVISORY COUNCIL MEETING

Written Comments

Oklahoma Independent Petroleum Association (OIPA) - Letter received by email on September 28, 2011 from Ms. Angie Burckhalter, V.P. of Regulatory Affairs:

1. **COMMENT:** DEQ proposes to define the term "commencement of operation" or "commencing operation" in OAC 252:100-1-3 to mean that "the owner or operator of a stationary source has begun, or caused to begin, any activity which has the potential to emit any regulated air pollutant." This would means the 60-day period provided by OAC 252:100-7-18(a)(1) for applying for an operating permit after start of operation would begin as soon as a single emitting source was installed at a minor facility even though the site was not completely constructed. This is very problematic at oil and gas production sites during the completion process when a single or a few emitting source(s) may be constructed; however, the site has not been fully constructed until the potential of a well has been determined. The 60-day period to submit a minor source operating permit would not be adequate for the oil and gas industry and it will unnecessarily increase the paperwork for both operators of the facility and DEQ staff in amending operating permits and/or applications. This would also be problematic at non-production sites where there is phased construction, which is very common in our industry. We request DEQ delay the approval of any amendments to Subchapter 1 until the DEQ staff can address the issues identified in Subchapter 7. This would allow the regulated community the opportunity to evaluate a complete rulemaking package that includes amendments to Subchapter 1 and Subchapter 7.

   RESPONSE: At their October 5, 2011 meeting, the Air Quality Advisory Council continued the hearing on the proposed revisions to Subchapter 1 to the January 18, 2012 meeting. For consideration at the January 2012 meeting, DEQ has proposed revisions to the definition of "commencement of operation" and an extension of the 60-day period for applying for an operating permit to 180 days after the commencement of operation. This is consistent with the time period allowed for Part 70 sources in Subchapter 8.

United States Environmental Protection Agency (EPA) - Letter received by email on September 28, 2011 from Mr. Jeff Robinson, Chief, Air Permits Section:

2. **COMMENT:** The DEQ needs to clarify the intent of the proposed definition of "commencement of operation" and whether it specifically refers to Title V permitting only.

RESPONSE: The definition of "commencement of operation" will be applicable throughout Chapter 100 in all Subchapters or sections where that term is not defined.

3. **COMMENT:** The proposed definition appears in Subchapters 1 and 8 that refer to both operating permits and construction permits which can be confusing to the reader.

   RESPONSE: DEQ is proposing to add a definition for the term "commencement of operation" or "commencing operation" to OAC 252:100-1-3 only and not to Subchapter 8. It is true that these two Subchapters apply to both operating and construction permit programs, but the proposed definition clearly applies to operation. Sections OAC 252:100-1-3, 252:100-7-1.1, 252:100-8-31, and 252:100-8-51 in the existing Air Pollution Control Rules all contain definitions for the term "commence", but in each definition it is clear that the term "commence" refers only to commence construction and not to commence operation. Oklahoma's SIP approved Air Pollution Control Rules 1.4.4(b)(9), 1.4.5(b)(10) and OAC 252:100-8-1.1 also contain definitions of "commence" but again it is clear in each definition that it applies only to construction.

4. **COMMENT:** DEQ should clarify that the proposed revisions will be limited to EPA's SIP review process and will not be submitted to EPA as separate Title V program revisions.

   RESPONSE: Upon promulgation, staff intends to forward this proposed revision to Subchapter 1 to EPA as a SIP revision. However, if EPA requires that the Title V Implementation Plan be updated, this revision may also be forwarded to EPA at a later date as a revision to the Title V Implementation Plan. The SIP revision is not intended to serve as a Title V Implementation Plan revision.

Chesapeake Energy - Letter received by email on October 3, 2011 from Jimmie Hammontree, Manager, Regulatory Affairs:

5. **COMMENT:** The proposed definition of "commencement of operation" or "commencing operation" in combination with existing paragraph OAC 252:100-7-18(a)(1) would require the operator to apply for the operating permit within 60 days of initial production even through the the site might not be fully constructed for several more weeks or months as the well is tested and its operational capacity determined. Once the operational capacity is determined, the operator will complete construction of the facility and apply for an operating permit. Chesapeake requests that DEQ delay the approval of the proposed changes to Subchapter 1 until the timing issue in Subchapter 7 can be addressed simultaneously.

   RESPONSE: At its October 5, 2011 meeting, the Air Quality Advisory Council continued the hearing on the proposed revisions to Subchapter 1 to the January 18, 2012 meeting. For consideration at the January 2012 meeting, DEQ proposed revisions to the definition of "commencement of operation" and an extension of the 60-day period for applying for an operating permit to 180 days after the commencement of operation. This is consistent with the time period allowed for Part 70 sources in Subchapter 8.

Oral Comments

There were no oral comments from the public on the proposed revisions at the October 5, 2011 Air Quality Advisory Council meeting.

COMMENTS RECEIVED PRIOR TO AND AT THE *JANUARY 18, 2012*
AIR QUALITY ADVISORY COUNCIL MEETING

Written Comments

Oklahoma Independent Petroleum Association (OIPA) - email received on January 17, 2012 from Ms. Angie Burckhalter, V.P. of Regulatory Affairs:

6. **COMMENT:** Ms. Burckhalter found the definition of "commencement of operation" confusing and suggested that it be changed to read as follows: Commencement of operation or commencing operation means the owner or operator of the stationary source has begun, or caused to begin emitting a regulated air pollution from any activity for which the stationary source is designed and permitted.

   RESPONSE: Staff proposed Ms. Burckhalter's definition to the Council with one change. Staff replaced "designed and permitted" with "designed and/or permitted".

United States Environmental Protection Agency (EPA) - Letter received by email at 9:18 a.m. on January 18, 2012 from Mr. Jeff Robinson, Chief, Air Permits Section. This was after the public hearing on the proposed revisions to Subchapters 1 and 7 had begun, so these comments were not considered by the Council.

7. **COMMENT:** "We note that the new definition of "fossil fuel" proposed at 252:100-1-3 is not used elsewhere in the OAC, accordingly, it is unclear to us why the definition of "fossil fuel" is necessary. We believe that the definition as drafted could create confusion and ambiguity based on the differing definitions attributed to "fossil fuel" in other EPA programs. See, e.g., 40 CFR 60.41 and 40 CFR 97.502. As such, we request that ODEQ clarifies the purpose behind the proposed definition, as well as any intended implementations. We welcome the opportunity to work with ODEQ on a definition of "fossil fuels" to ensure that it is applied according to the intent of the GHG Tailoring Rule CO_2 deferral."

   RESPONSE: At a council member's request, Staff proposed a definition for "non-fossil fuel" be added to Chapter 100. Staff was unable to identify a satisfactory definition of non-fossil fuel and proposed a definition for fossil fuel relying on the assumption that any fuel that is not a fossil fuel would be a non-fossil fuel. The proposed definition is modeled on the definitions for fossil rule in the federal regulations in 40 CFR 60 Subparts D and Da and will apply Chapter 100 rules and the deferral of PSD and Title V permitting requirements for biogenic CO_2 emissions. The proposed definition is not intended to apply to any other EPA regulations such as NSPS, NESHAP, etc. When a rule or regulation includes a definition for fossil fuel, then that definition would, of course, have precedence over the definition in Subchapter 1.

8. **COMMENT:** DEQ should provide clarification that the proposed revisions are limited to EPA's SIP review process and will not be submitted to EPA as separate Title V program revisions.

   RESPONSE: As stated in the response to comment 4, upon promulgation, staff intends to forward the proposed revisions to Subchapter 1 and Subchapter 7 to EPA as a SIP revision. However, if EPA requires that the Title V Implementation Plan be updated, the revision to

Subchapter 1 may also be forwarded to EPA at a later date as a revision to the Title V Implementation Plan. Since Subchapter 7 does not apply to Part 70 sources, it is doubtful that revisions to that Subchapter will be submitted as a revision to the Title V Implementation Plan. It is not staff's intention that the SIP revision serve as a Title V Implementation Plan revision.

9. **COMMENT:** "EPA approved into the Oklahoma SIP rules for Minor NSR and Operating Permits for Minor Sources on August 25, 1983. At that time these regulations were codified under State Permit Regulation 1.4. See 48 FR 38636. ODEQ recodified and revised its rules for Minor NSR and Operating Permits for Minor Sources and submitted them as a SIP revision to EPA on February 14, 2002. We note that we have not taken action on all elements of the February 14, 2002 SIP submittal, including but not limited to the proposal recodification. For this reason revisions to OAC 252:100-7-18(a)(1) and (2) would actually change EPA SIP-approved Regulation 1.4.3(a)(1) and 2."

   RESPONSE: DEQ is well aware that EPA has not acted on SIP revisions submitted in 2002 for the minor source permitting program. Only EPA action on the 2002 submittal can remedy this situation.

10. **COMMENT:** "The proposed revisions to OAC 252:100-7-18(a)(1) and (2) extend from 60 to 180 the number of days a person can operate before being required to apply for a minor source operating permit. This is an increase in the current SIP-approved time period at Regulation 1.4.3(a)(1), which allows a 60-day period. Under Section 110(l) of the Clean Air Act (CAA), EPA "shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress...or any other applicable requirement." Because ODEQ is proposing a longer period of time before which a source must apply for a minor source operating permit, ODEQ must submit a demonstration that these revisions are consistent with the requirement of Section 110(l)."

    RESPONSE: A construction permit as described in OAC 252:100-7-15 requires the permittees to comply with all applicable air pollution rules and establishes permit conditions and limitations as necessary to assure compliance with all air pollution control rules. The construction permit will continue in effect even after the minor facility has commenced operating.A violation of the limitations or conditions contained in the construction permit shall subject the owner or operator of a facility to any or all available enforcement measures, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules (OAC 252:100-7-15(e)). The operating permit will incorporate the emission limitations established and made part of the construction permit (OAC 252:100-7-18(f)). Thus a minor facility may operate under its construction permit until an operating permit is issued and be subject to essentially the same limits and conditions as those contained in its operating permit when it is subsequently issued. The proposed extension of the time allowed to submit an operating permit application would not directly result in increased emissions or a relaxation of air emission standards and limits.

Oral Comments

Ms. Angie Burckhalter, V.P. of Regulatory Affairs, Oklahoma Independent Petroleum Association (OIPA):

11. **COMMENT:** Ms. Burckhalter recommended that the definition of "commencement of

construction" that she had forwarded to DEQ by e-mail on January 17, 2012, with the addition made by DEQ staff, replace the definition that was proposed.

RESPONSE: Staff agreed and Ms. Burckhalter's revised definition was recommended to and approved by the Council.

Mr. Bud Ground, PSO:

12. **COMMENT:** Mr. Ground was concerned that the definition might result in the test firing a boiler at an electric utility being considered as the start of operation.

    RESPONSE: It is unlikely that the test firing of a boiler at an electric utility would be considered the commencement of operation since that activity is not what the facility was designed and/or permitted to do. The activity must also result in emissions of a regulated air pollutant.