

**MINUTES  
AIR QUALITY COUNCIL  
July 20, 2005  
707 North Robinson  
Oklahoma City, Oklahoma**

EQB August 23, 2005  
AQC Approved October 19, 2005

**Notice of Public Meeting** The Air Quality Council convened for its regular meeting at 9:00 a.m. July 20, 2005 in DEQ Multipurpose Room, 707 North Robinson, Oklahoma City, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on December 10, 2004 and amended on January 27, 2005. Agendas were posted on the entrance doors at the meeting facility in Tulsa and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting.

Ms. Beverly Botchlet-Smith convened the hearings by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51, and Title 27A, Oklahoma Statutes, Sections 2-5-201 and 2-5-101 - 2-5-118. Ms. Smith entered the Agenda and the Oklahoma Register Notice into the record and announced that forms were available at the sign-in table for anyone wishing to comment on any of the rules. Ms. Sharon Myers, Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed.

Mr. Eddie Terrill recognized Mr. Joel Wilson for his 7 years serving the Council and welcomed Mr. Jerry Purkape to the Council.

<p><b>MEMBERS PRESENT</b> Sharon Myers David Branecky Bob Curtis Bob Lynch Gary Martin Jerry Purkape Rick Treeman Laura Worthen</p> <p><b>MEMBERS ABSENT</b> Don Smith</p> <p><b>OTHERS PRESENT</b></p>	<p><b>DEQ STAFF PRESENT</b> Eddie Terrill Beverly Botchlet-Smith Scott Thomas Joyce Sheedy Pat Sullivan Cheryl Bradley Lisa Donovan Max Price Leon Ashford Matt Paque Dawson Lasseter Rhonda Jeffries Myrna Bruce</p>
---	---

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

**Approval of Minutes** Ms. Myers called for approval of the April 20, 2005 Minutes. Hearing no discussion, she called for a motion to approve the Minutes as presented. Mr. Martin made the motion with Mr. Curtis making the second.

<b>Roll call</b>			
Rick Treeman	Abstain	Gary Martin	Yes
Bob Curtis	Abstain	Laura Worthen	Yes
David Branecky	Yes	Sharon Myers	Yes
Bob Lynch	Yes		
Jerry Purkape	Abstain	<b>Motion carried</b>	

**OAC 252:100 Appendix E Primary Ambient Air Quality Standards**  
**OAC 252:100 Appendix F Secondary Ambient Air Quality Standards**

Ms. Botchlet-Smith convened the hearing and called upon Mr. Leon Ashford who advised that proposal would update the standards to be consistent with the recent changes to the federal ozone standard. The one-hour standards ceased to exist for the State of Oklahoma on June 15<sup>th</sup>, 2005; therefore, revocation of the one-hour standards is desired. He added that staff recommended that the revised Appendices be forwarded to the Environmental Quality Board for adoption. Ms. Myers called for a motion. Mr. Branecky made motion as proposed and Mr. Curtis made the second.

*(See transcript pages 9 - 13)*

<b>Roll call</b>			
Rick Treeman	Yes	Gary Martin	Yes
Bob Curtis	Yes	Laura Worthen	Yes
David Branecky	Yes	Sharon Myers	Yes
Bob Lynch	Yes		
Jerry Purkapple	Yes	<b>Motion carried</b>	

**OAC 252:100-1 General Provisions**  
**OAC 252:100-37 Control of Emission of Volatile Organic Compounds**  
**OAC 252:100-39 Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas.**

Mr. Max Price provided staff position stating that the proposal would change the definition for VOC to be consistent with 40 CFR 51.100. The proposal would also modify Subchapter 1-3 to add existing definitions contained in Subchapter 8. Mr. Price entered into the record comments received from the EPA objecting to this request. Due to these comments, staff's recommendation was for Council to continue the hearing to the next meeting. Ms. Worthen made the motion to carry the rule forward. Mr. Lynch made the second.

*(See transcript pages 13-18)*

<b>Roll call</b>			
Rick Treeman	Yes	Gary Martin	Yes
Bob Curtis	Yes	Laura Worthen	Yes
David Branecky	Yes	Sharon Myers	Yes
Bob Lynch	Yes		
Jerry Purkapple	Yes	<b>Motion carried</b>	

**OAC 252:100-8 Permits for Part 70 Sources**

Dr. Joyce Sheedy advised that the proposal would incorporate EPA revisions to the New Source Review (NSR) permitting program under the Federal Clean Air Act. She set forth the amendments proposed due to the NSR reform. She added that the United States Court of Appeals for the District of Columbia Circuit handed down their decision on June 24, 2005, in response to law suits challenging the changes as inconsistent with the Federal Clean Air Act. She advised that proposed revisions for this hearing do not reflect the Court's decision. Dr. Sheedy entered into the record letters of comments from

Stanley Spruill and Tom Diggs, EPA Region 6, and from Trinity Consultants. She asked that Council withhold voting on the proposed revisions to Subchapter 8 until EPA advises states of the action the Agency will take in light of the court decision and the DEQ has the opportunity to incorporate the changes this will necessitate into the proposed revision.

Following discussion, Mr. Treeman made motion to carry the rule over to the Council's next regular meeting. Ms. Worthen made the second.

*(See transcript pages 19 -40)*

**Roll call**

Rick Treeman	Yes	Gary Martin	Yes
Bob Curtis	Yes	Laura Worthen	Yes
David Branecky	Yes	Sharon Myers	Yes
Bob Lynch	Yes		
Jerry Purkaple	Yes	<b>Motion carried</b>	

**Division Director's Report** Mr. Terrill provided an update on legislative funding, mentioned that Regional Haze continues to move forward. He introduced Mr. Kent Stafford for a presentation on the overview of the Air Pollutant Notification Systems, AIRNow, EnviroFlash, E-Alerts, and AQI.

**New Business** - None

**Adjournment** – The meeting adjourned at 10:10 a.m. The next regular meeting is scheduled for October 19, 2005 at the DEQ Multipurpose Room, Oklahoma City.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF OKLAHOMA

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY COUNCIL  
OF THE REGULAR MEETING  
HELD ON JULY 20, 2005, AT 9:00 A.M.  
IN OKLAHOMA CITY, OKLAHOMA

\* \* \* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MEMBERS OF THE COUNCIL

- RICK TREEMAN, MEMBER
- BOB CURTIS, MEMBER
- SHARON MYERS, CHAIR
- DAVID BRANECKY, MEMBER
- ROBERT LYNCH, VICE-CHAIR
- JERRY PURKAPLE, MEMBER
- GARY MARTIN, MEMBER
- LAURA WORTHEN, MEMBER
- DON SMITH, MEMBER, ABSENT

STAFF

- EDDIE TERRILL, DIRECTOR
- MYRNA BRUCE, SECRETARY
- BEVERLY BOTCHLET-SMITH, AQD

Christy A. Myers

Certified Shorthand Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PROCEEDINGS

MS. MYERS: Let s call this meeting to order, please.

Myrna, would you call roll, please?

MS. BRUCE: Mr. Treeman.

MR. TREEMAN: Here.

MS. BRUCE: Mr. Curtis.

MR. CURTIS: Here.

MS. BRUCE: Mr. Branecky.

MR. BRANECKY: Here.

MS. BRUCE: Mr. Lynch.

MR. LYNCH: Here.

MS. BRUCE: Mr. Purkaple.

MR. PURKAPLE: Here.

MS. BRUCE: Mr. Martin.

MR. MARTIN: Here.

MS. BRUCE: Ms. Worthen.

MS. WORTHEN: Here.

MS. BRUCE: Ms. Myers.

MS. MYERS: Here.

MS. BRUCE: And for the record, absent is Mr. Smith.

We do have a quorum.

MS. MYERS: Okay. The next item on the agenda is the Approval of Minutes

Christy A. Myers

Certified Shorthand Reporter

1 from the April 20th meeting.

2 Are there any comments from the  
3 Council?

4 MR. MARTIN: I move approval.

5 MR. CURTIS: Second.

6 MS. MYERS: We have a motion to  
7 approve and a second.

8 Myrna, would you call roll, please.

9 MS. BRUCE: Mr. Treeman.

10 MR. TREEMAN: Abstain.

11 MS. BRUCE: Mr. Curtis.

12 MR. CURTIS: Abstain.

13 MS. BRUCE: Mr. Branecky.

14 MR. BRANECKY: Yes.

15 MS. BRUCE: Mr. Lynch.

16 MR. LYNCH: Yes.

17 MS. BRUCE: Mr. Purkaple.

18 MR. PURKAPLE: Abstain.

19 MS. BRUCE: Mr. Martin.

20 MR. MARTIN: Yes.

21 MS. BRUCE: Ms. Worthen.

22 MS. WORTHEN: Yes.

23 MS. BRUCE: Ms. Myers.

24 MS. MYERS: Yes.

25 MS. BRUCE: Motion passed.

Christy A. Myers

Certified Shorthand Reporter

1 MS. MYERS: Okay. Next item on  
2 the agenda is the Resolution and  
3 Appreciation for Joel Wilson.

4 Do you want me to read it into the  
5 record?

6 MR. TERRIL: You can.

7 MS. MYERS: Okay. I ll just go a  
8 head and read it into the record.

9 The Resolution reads:

10 Whereas, Mr. Joel F. Wilson was  
11 appointed to the Oklahoma Air Quality  
12 Council in 1998.

13 And whereas, Mr. Joel F. Wilson was  
14 a dedicated member of the Air Quality  
15 Council.

16 And whereas, Mr. Joel F. Wilson  
17 played an active part in the development of  
18 the rules and regulations that were passed  
19 by the Air Quality Council to promote clean  
20 air in Oklahoma.

21 And whereas, during his tenure as a  
22 Member of the Council, this Body has met  
23 the legislative charter to attain and  
24 preserve clean air in Oklahoma.

25 Now therefore, be it resolved that

Christy A. Myers

Certified Shorthand Reporter

1 the Members of the Oklahoma Air Quality  
2 Council recognize and thank Mr. Joel Wilson  
3 for his years of service toward making  
4 Oklahoma a better place to live.

5 Signed today, July 20th, 2005.

6 MR. TERRIL: Joel couldn't be  
7 here today. He had other obligations and  
8 he's trying to get some things done in his  
9 other job. He's not working in the  
10 environmental area anymore, but he's trying  
11 to get, where he works, the refinery, fixed  
12 up to make a low sulfur diesel and  
13 gasoline. So in a way he still is working  
14 for the environment.

15 We'll miss Joel. He did an  
16 excellent job, I thought, representing not  
17 only his industry but his constituents as  
18 well. He always asked good questions and  
19 made us think about what we were doing and  
20 that's part of the roll I think the Council  
21 plays.

22 But when we lose one, we gain  
23 another. And today we've got Mr. Jerry  
24 Purkapple who is representing the refining  
25 industry. He also works for Conoco-

Christy A. Myers

Certified Shorthand Reporter

1 Phillips, in Ponca City. He s a graduate  
2 of Texas Tech University, with a BA in  
3 microbiology. He s got 20 years of up-  
4 stream and down-stream experience in the  
5 refinery, and in the last eight years he s  
6 been working in the environmental group.  
7 He s got permitting experience and  
8 compliance experience.

9 So, I don t think we ll miss a beat.  
10 I think Jerry will do an excellent job  
11 representing his industry and his  
12 constituents and we welcome him and look  
13 forward to working with him.

14 MR. PURKAPLE: Thank you.

15 MS. MYERS: Good to have you,  
16 Jerry.

17 MR. PURKAPLE: Thank you.

18 MS. MYERS: And now we are moving  
19 into the Rulemaking Hearing.

20 And Beverly.

21 MS. BOTCHLET-SMITH: Good  
22 Morning. I am Beverly Botchlet-Smith,  
23 Assistant Director of the Air Quality  
24 Division. As such, I will be serving as  
25 the Protocol Officer for today s hearings.

Christy A. Myers

Certified Shorthand Reporter

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

9                   These hearings were advertised in  
10 the Oklahoma Register for the purpose of  
11 receiving comments pertaining to the  
12 proposed OAC Title 252, Chapter 100 rule as  
13 listed on the Agenda and will be entered  
14 into each record along with the Oklahoma  
15 Register filing. Notice of Meeting was  
16 filed with the Secretary of State on  
17 December 10, 2004 and amended on January  
18 27, 2005. The Agenda was duly posted 24  
19 hours prior to the meeting on the doors of  
20 the DEQ.

21                   If you wish to make a statement, it  
22 is very important that you complete the  
23 form at the registration table, and then  
24 you will be called upon at the appropriate  
25 time. Audience members, please come to the

Christy A. Myers

Certified Shorthand Reporter

1 podium to make your comments and state your

2 name prior to making them.

3           At this time, we will proceed with  
4 what s marked as Agenda Item Number 5 on  
5 the Hearing Agenda, OAC 252:100 Appendix E,  
6 Primary Ambient Air Quality Standards; and  
7 OAC 252:100 Appendix F, Secondary Ambient  
8 Air Quality Standards.

9           We call upon Leon Ashford who will  
10 give the staff position on the proposed  
11 rule.

12                   MR. ASHFORD: Council Members,  
13 members of the audience, the staff proposes  
14 to update Appendices E, Primary Ambient Air  
15 Quality Standards and Appendix F, Secondary  
16 Ambient Air Quality Standards to be  
17 consistent with recent changes to the  
18 Federal Ozone Standard.

19           Appendices E and F, or the term  
20 Ambient Air Quality Standards, are  
21 referenced in three locations within the  
22 air pollution rules. In Subchapter 3 at  
23 Sections 1, 2, and 3, the rules state that  
24 these Appendices innumerate the primary and  
25 secondary Ambient Air Quality Standards.

Christy A. Myers

Certified Shorthand Reporter

1                   Subchapter 7, Section 15 (D)  
2     contains a requirement that minor source  
3     construction permits shall prohibit the  
4     exceedence of the Ambient Air Quality  
5     Standards.     Subchpater 8 at Sections 35(B),  
6     3(B) and 52 (2) and (3) contain  
7     requirements that construction permits not  
8     issue if emissions of a criteria pollutant  
9     would cause or contribute to a violation of  
10    the applicable Ambient Air Quality  
11    Standard.

12                   The Subchapter 8 requirement applies  
13    to both PSD and nonattainment area  
14    construction permits.

15                   The National Ambient Air Quality  
16    Standards, or NAAQS, specify the maximum  
17    acceptable level of pollutants for outdoor  
18    air.

19                   The Clean Air Act requires EPA to  
20    set National Ambient Air Quality Standards  
21    for pollutants considered to be harmful to  
22    public health and to the environment.

23                   NAAQS have been established for 6  
24    primary or criteria pollutants.     Carbon  
25    Monoxide, Nitrogen Oxides, Lead, Sulfur

Christy A. Myers

Certified Shorthand Reporter

1     Dioxide, Ozone and particulates, which are

2 divided into PM-10 and PM-2.5.

3           The DEQ, as the Oklahoma Agency  
4 designated to administer the Federal Clean  
5 Air Act requirements in Oklahoma, is  
6 required to draw up a State Implementation  
7 Plan that includes measures to achieve  
8 acceptable air quality. That is air  
9 quality that meets the NAAQS.

10           The Clean Air Act further requires  
11 that the EPA periodically review and revise  
12 the NAAQS. On April 15th, 2004, EPA  
13 designated Oklahoma as attainment for the  
14 eight-hour ozone standard and set an  
15 effective date of June 15th, 2004. The  
16 one-hour ozone standard ceases to exist for  
17 areas one year after their eight-hour ozone  
18 designation. The one hour standards cease  
19 to exist for the State of Oklahoma on June  
20 15th, 2005. To be consistent with Federal  
21 Standards, revocation of the one-hour ozone  
22 standard is desired.

23           Staff recommends that the revised  
24 appendices E and F be forwarded to the  
25 Environmental Quality Board for adoption.

Christy A. Myers

Certified Shorthand Reporter

12

1           MS. BOTCHLET-SMITH: Do we have

2 questions from the Council regarding the  
3 proposed rule?

4 Any questions from the public?

5 Sharon.

6 MS. MYERS: Well, if there are no  
7 further comments or questions then we'll  
8 entertain a motion.

9 MR. BRANECKY: I move we adopt  
10 Appendix E and F as proposed by the  
11 Department as a permanent rule.

12 MR. CURTIS: Second.

13 MS. MYERS: We have a motion and  
14 a second. Okay.

15 Myrna, could you call roll please.

16 MS. BRUCE: Mr. Treeman.

17 MR. TREEMAN: Yes.

18 MS. BRUCE: Mr. Curtis.

19 MR. CURTIS: Yes.

20 MS. BRUCE: Mr. Branecky.

21 MR. BRANECKY: Yes.

22 MS. BRUCE: Mr. Lynch.

23 MR. LYNCH: Yes.

24 MS. BRUCE: Mr. Purkaple.

25 MR. PURKAPLE: Yes.

Christy A. Myers

Certified Shorthand Reporter

13

1 MS. BRUCE: Mr. Martin.

2 MR. MARTIN: Yes.  
3 MS. BRUCE: Ms. Worthen.  
4 MS. WORTHEN: Yes.  
5 MS. BRUCE: Ms. Myers.  
6 MS. MYERS: Yes.  
7 MS. BRUCE: Motion passed.

8 MS. BOTCHLET-SMITH: The next  
9 item on the Agenda is OAC 252:100-1 General  
10 Provisions; OAC 252:100-37 Control of  
11 Emission of Volatile Organic Compounds; and  
12 OAC 252:100-39, Emission of Volatile  
13 Organic Compounds in Nonattainment Areas  
14 and Former Nonattainment Areas.

15 And we call upon Max Price to give  
16 the staff position.

17 MR. PRICE: Madam Chairman,  
18 Members of the Council, ladies and  
19 gentlemen, before 1994, EPA evaluated ozone  
20 producing potential of compounds on a molar  
21 basis. In 1994, however, EPA began to  
22 evaluate ozone producing of compounds on a  
23 mass basis. Acetone was the first compound  
24 to be exempted as a VOC on a mass basis,  
25 and that s the Federal Register on June 16,

Christy A. Myers

Certified Shorthand Reporter

2                   On a mass basis, Acetone was found  
3 to have less ozone producing potential than  
4 EPA s benchmark, ethane, and was exempted  
5 as a VOC under 40 CFR 51.100 (s)(1). On a  
6 molar basis, Acetone has about twice the  
7 ozone producing potential as ethane.  
8 Sections 252:100-1-3, 252:100-37-2 and  
9 252:100-39-2 incorporate by reference the  
10 40 CFR exemptions for VOC in our state  
11 definitions.

12                   In 2004, EPA determined that it  
13 would discontinue evaluating compounds on a  
14 mass basis and evaluate all future  
15 compounds on a molar basis with the  
16 exception of 17 compounds for which they  
17 had already received VOC exemption  
18 petitions.

19                   On November 29th, 2004, EPA exempted  
20 Tert-Butyl-Acetate (TBAC) as a Volatile  
21 Organic Compound (VOC) from all federal  
22 emission limitations and content  
23 regulations. TBAC is .4 times as reactive  
24 as ethane on a mass basis, but 1.5 times as  
25 reactive as ethane on a molar basis. In

Christy A. Myers

Certified Shorthand Reporter

15

1 doing so, EPA changed the structure of 40

2 CFR 51.100 (S) by adding an additional  
3 paragraph, Paragraph (5). Since Paragraph  
4 (5) is new, it is not referenced in the  
5 definitions for VOC in Sections 252:100-1-  
6 3, 252:100-37-2 and 252:100-39-2, TBAC is  
7 still a VOC in our rules.

8 We are proposing to change the  
9 definition for VOC to exempt TBAC s  
10 specifically. Unlike 40 CFR 51.100 (s)(5)  
11 the proposed amendments will exempt TBAC as  
12 a VOC for all purposes including  
13 inventories and reports. We believe this  
14 approach is more rational than EPA s  
15 approach of creating a special class of VOC  
16 which has an insignificant ozone creation  
17 potential, one-half that of Acetone, yet  
18 must be inventoried and reported.

19 We also note at this time that  
20 Section 252:100-1-3 is also being modified  
21 by the addition of existing definitions  
22 contained in subchapter 8. This is a non-  
23 substantive housekeeping change due to the  
24 New Source Review rulemaking that  
25 Dr. Sheedy will address after this

Christy A. Myers

Certified Shorthand Reporter

16

1 presentation.

2                   This week we received written  
3    comments from EPA concerning this proposal.  
4    These comments will be made part of the  
5    record.    EPA objects to our proposal to  
6    exempt TBAC as a VOC for all purposes.  
7    Because of their objection, we request that  
8    the Council carry these proposals over to  
9    the next Air Quality Council Meeting so  
10   that staff may have time to consult with  
11   EPA on this matter and review any other  
12   comments that may be forthcoming on this  
13   subject.    Thank you.

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

16                   Do we have any questions from the  
17    public regarding this rule?

18                   Sharon.

19                   MS. MYERS:   If we have no further  
20    comments or questions, we ll entertain a  
21    motion.

22                   MS. WORTHEN:   I move that we  
23    carry the rule forward.

24                   MS. MYERS:   We have a motion to  
25    carry it forward.

Christy A. Myers

Certified Shorthand Reporter

17

1                   Do we have a second?

2 MR. LYNCH: I ll second it.  
3 MS. MYERS: Myrna, would you call  
4 roll, please.  
5 MS. BRUCE: Mr. Treeman.  
6 MR. TREEMAN: Yes.  
7 MS. BRUCE: Mr. Curtis.  
8 MR. CURTIS: Yes.  
9 MS. BRUCE: Mr. Branecky.  
10 MR. BRANECKY: Yes.  
11 MS. BRUCE: Mr. Lynch.  
12 MR. LYNCH: Yes.  
13 MS. BRUCE: Mr. Purkapple.  
14 MR. PURKAPLE: Yes.  
15 MS. BRUCE: Mr. Martin.  
16 MR. MARTIN: Yes.  
17 MS. BRUCE: Ms. Worthen.  
18 MS. WORTHEN: Yes.  
19 MS. BRUCE: Ms. Myers.  
20 MS. MYERS: Yes.  
21 MS. BRUCE: Motion passed.  
22 MR. TERRILL: I wanted to say  
23 something to the Board.  
24 MS. MYERS: Okay.  
25 MR. TERRILL: Before we move on,

Christy A. Myers

Certified Shorthand Reporter

18

1 if there is anyone here that came today for

2 this particular rule, we d be interested in  
3 knowing whether or not you have any  
4 objection to the notion EPA had about  
5 creating a special class and tracking this,  
6 even though it s not considered a VOC. We  
7 didn t write a rule that way because it  
8 didn t make a lot of sense to us to do that  
9 and we are going to need some clarification  
10 from EPA as to why that is. It could be  
11 that we won t have any choice in the  
12 matter. If it s a federal requirement, we  
13 may be creating problems for folks who are  
14 using this as part of their process that we  
15 don t intend to do, but if it s an  
16 interpretation, we may decide to push it  
17 back.

18 So, if anyone s here that came  
19 because of this particular rule, we d be  
20 interested in knowing whether or not you  
21 feel like this is an unwarranted burden,  
22 having to track this even though it is not  
23 a VOC. And we would appreciate it if you  
24 would give us those comments before our  
25 next Council meeting or preferably in the

Christy A. Myers

Certified Shorthand Reporter

19

1 next couple of weeks because we are

2 probably going to have conversations with  
3 EPA sometime in August.

4 MS. BOTCHLET-SMITH: The next  
5 item on the agenda is OAC 252:100-8,  
6 Permits for Part 70 Sources. And Dr. Joyce  
7 Sheedy will present the staff's position.

8 DR. SHEEDY: Madam Chair, Members  
9 of the Council, ladies and gentlemen, the  
10 Department is proposing revisions to Parts  
11 7 and 9 of Subchapter 8, Part 70 sources,  
12 to incorporate the NSR Reform. However, we  
13 are also taking the opportunity to update  
14 and clarify these rules regarding the PSD  
15 program and the NSR nonattainment program.  
16 Therefore, the proposed amendments also  
17 include some other NSR revisions not  
18 previously incorporated by the Department  
19 and we are proposing to move some  
20 definitions from Section 8-1.1 of  
21 Subchapter 8 to Subchapter 1.

22 We propose to move the definitions  
23 of Act, Actual Emissions,  
24 Administrator, EPA, NESHAP, NSPS,  
25 Part 70 Permit, Part 70 Program, and

Christy A. Myers

Certified Shorthand Reporter

20

1 "Part 70 Source from Section 1.1 of

2 Subchapter 8 to Section 3 of subchapter 1  
3 without making any substantive changes. We  
4 also propose to move the definition of  
5 Secondary Emissions from Section 8-1.1 to  
6 Subchapter 1, however, we are proposing a  
7 substantive change. Emissions from trains  
8 will no longer be included in the secondary  
9 emissions. We are doing this so that our  
10 definition will match the Federal  
11 definition.

12 We propose to move the definition of  
13 LAER from Section 8-51 to Subchapter 1.  
14 We are proposing changes in the language,  
15 but we don't think these are substantive  
16 changes, it's just updating the language.

17 We propose to add the definition of  
18 RACT to Subchapter 1. This term is  
19 currently defined in OAC 252:100-39-  
20 47(c)(4). The language has been updated,  
21 but we don't believe there is a substantive  
22 change to that definition. We propose to  
23 add the definition of Federally  
24 Enforceable to Subchapter 1. This  
25 definition is not new, but it has not

Christy A. Myers

Certified Shorthand Reporter

21

1 previously been defined in our rules. We  
2 propose adding these definitions to

3 Subchapter 1 because they are general in  
4 nature and are used in more than one  
5 Subchapter.

6 We also propose some clean up type  
7 changes to terms already defined in  
8 Subchapter 1. We propose to change the  
9 term reviewing authority in the  
10 definition of Complete to Director ;  
11 revise the definition of Stack to make  
12 clear that a pipe may be a stack, but  
13 flares are not; and make clear in the term  
14 stationary source that the air pollutants  
15 of concern are those subject to OAC  
16 252:100.

17 We are also proposing to move from  
18 Section 1.1 of Subchapter 8 to Section 31  
19 of Subchapter 8, the definitions that are  
20 used only in Parts 7 and 9 of Subchapter 8.  
21 That includes the definition of Allowable  
22 Emissions , paragraph (A) of the definition  
23 of Begin actual construction , the  
24 definition of Commence , the definition of  
25 Construction , the definition of

Christy A. Myers

Certified Shorthand Reporter

22

1 Emissions unit , the definition of  
2 Necessary preconstruction approvals or

3 permits , the definition of Potential to  
4 emit , and the definition of Stationary  
5 source .

6           Only the definitions of Emissions  
7 unit and Stationary source have  
8 substantive changes. These changes are due  
9 to the NSR reform.

10           The primary change brought about by  
11 the NSR reform is the revision to the  
12 method of determining what should be  
13 classified as a modification subject to  
14 major NSR review.

15           EPA promulgated this revision in  
16 2002. New York and other states, as well  
17 as environmental organizations, filed suit  
18 challenging the changes as inconsistent  
19 with the Federal Clean Air Act. A group of  
20 electric utilities and other industry  
21 representatives challenged EPA s method of  
22 calculating emissions increases at a  
23 facility. The United States Court of  
24 Appeals for the District of Columbia  
25 Circuit handed down their decision on June

Christy A. Myers

Certified Shorthand Reporter

23

1 24, 2005.

2           The Court rejected challenges to

3 substantial portions of the 2002 rule.  
4 They found the following elements as  
5 permissible interpretations of the Federal  
6 Clean Air Act; the use of past emissions  
7 and projected future actual emissions,  
8 rather than potential emissions, in  
9 measuring increases; the use of a 10-year  
10 lookback period in selecting the 2-years  
11 baseline period for measuring past actual  
12 emissions; the use of a 5-year lookback  
13 period in certain circumstances; the  
14 abandonment of a provision authorizing  
15 states to use source-specific allowable  
16 emissions in measuring baseline emissions;  
17 the exclusion of increases due to unrelated  
18 demand growth from the measurement of  
19 projected future actual emissions; and the  
20 Plantwide Applicability Limitations on the  
21 PAL Program.

22           The Court concluded that two aspects  
23 of the 2002 rule rest on impermissible  
24 interpretations of the Federal Clean Air  
25 Act and a third is arbitrary and

Christy A. Myers

Certified Shorthand Reporter

24

1 capricious. The Court determined that EPA  
2 erred in promulgating the Clean Unit

3 applicability test, which measures  
4 emissions increases by looking to whether  
5 emissions limitations have changed.  
6 Because the plain language of the Clean Air  
7 Act indicates that Congress intended to  
8 apply NSR to changes that increase actual  
9 emissions instead of potential or allowable  
10 emissions, the Court held that EPA lacked  
11 authority to promulgate the Clean Unit  
12 provisions and vacated that portion of the  
13 2002 rule.

14           The Court ruled that EPA also erred  
15 in exempting from NSR, certain Pollution  
16 Control Projects (PCP) that decrease  
17 emission of some pollutants that cause  
18 collateral increases in other pollutants.  
19 The statute authorizes no such exception.  
20 The Court held that EPA lacks authority to  
21 create Pollution Control Project exemptions  
22 from NSR and vacated those parts of both  
23 the 1992 rule and 2002 rule.

24           Then the Court ruled that EPA acted  
25 arbitrarily and capriciously in determining

Christy A. Myers

Certified Shorthand Reporter

25

1 that sources making changes need not keep  
2 records of their emissions if they see no

3 reasonable possibility that these changes  
4 constitute modifications for NSR purposes.  
5 The Agency failed to provide a reasoned  
6 explanation for how, absent such records,  
7 it can ensure compliance with NSR. The  
8 Court remanded the record-keeping  
9 provisions to EPA either to provide an  
10 acceptable explanation of its reasonable  
11 possibility standard or to devise an  
12 appropriately supported alternative.

13           Since the Court decision occurred  
14 after our proposed revisions to Subchapter  
15 8 were put on the website and made  
16 available to the public, the proposed  
17 revisions do not reflect the Courts  
18 decision. The Department will amend the  
19 proposed revisions to Subchapter 8 to  
20 incorporate the Courts ruling.

21           We ve received a letter of comments  
22 from Donald C. Whitney of Trinity  
23 Consultants dated July 1st, 2005. We also  
24 received comments by email on July 13th,  
25 2005, from Stanley Spruiell of EPA Region

Christy A. Myers

Certified Shorthand Reporter

26

1 6, and a letter dated July 13th, 2005 from  
2 Tom Diggs of EPA Region 6. These comments

3 and staff s responses will be part of the  
4 Hearing Record. A copy of these comments  
5 and staff responses have been provided to  
6 the Council and are available on the sign-  
7 in table for the public. Unless requested  
8 to do so, I won t go over these comments in  
9 detail.

10 Staff request that the Council  
11 withhold voting on the proposed revisions  
12 to Subchapter 8 until EPA advises states of  
13 the action the Agency will take in light of  
14 the Court decision and the DEQ has the  
15 opportunity to incorporate the changes this  
16 will necessitate into the proposed  
17 revision. At this time we are required to  
18 adopt and submit the revision to the NSR  
19 program, to EPA, by January 2nd, 2006. We  
20 suspect this date will probably be changed  
21 but we don t know that at this point.

22 That concludes my presentation.

23 MS. BOTCHLET-SMITH: Do we have  
24 questions from the Council or Dr. Sheedy?

25 Do we have any questions from the

Christy A. Myers

Certified Shorthand Reporter

27

1 public regarding the proposed rule?

2 Are we sure we do not have any

3 questions for the Council at this time?

4 MR. BRANECKY: I have a question.

5 MR. TERRILL: Don t ask a hard  
6 question.

7 MR. BRANECKY: Under the  
8 definition of baseline actual emissions,  
9 there seems to be a change from the Federal  
10 definition. I was curious why? In your  
11 proposal, you propose using the same 24  
12 month period shall be used for all  
13 pollutants. I think that is different from  
14 the Federal proposal.

15 DR. SHEEDY: It is different.

16 MR. BRANECKY: Why is that?

17 DR. SHEEDY: I believe I thought  
18 that it would just be easier.

19 MR. TERRILL: It s a matter of  
20 record-keeping.

21 DR. SHEEDY: Record keeping.

22 MR. TERRILL: That s a lot of  
23 it. And we realize that would probably  
24 generate some comment and discussion as we  
25 move forward on this. But we felt like

Christy A. Myers

Certified Shorthand Reporter

28

1 that way this rule is setup, it already  
2 puts us in a kind of adversarial position

3 with the company because of the lack of  
4 ability to determine exactly what s  
5 happened and records that you have to  
6 maintain and all that and what may or may  
7 not be available going back 10 years. And  
8 it s hard enough when you ve got a two year  
9 period looking at all the pollutants, let  
10 alone a two year period looking at each  
11 different pollutant.

12           So, we attempted to clarify and make  
13 it a little bit simpler for us and  
14 hopefully for the facility. But we figured  
15 as part of the discussion, that would be a  
16 major area that we would have to hash out.  
17 It could be we will have to go back to what  
18 was originally proposed, but we feel like  
19 this is a better starting point for  
20 discussion. And we would like to be  
21 convinced why it s better to have the  
22 Federal proposal as opposed to what we ve  
23 got here.

24           Let me go ahead and propose this.  
25 Let me just mention this. The Court --

Christy A. Myers

Certified Shorthand Reporter

29

1 well, the parties, the Plaintiff s and  
2 Defendant s to this decision, have, I

3 believe, until the 15th of August to make  
4 some kind of decision as to whether or not  
5 they are going to appeal the parts that  
6 they lost on or not. And so I figured EPA  
7 will take every bit of that time. I  
8 suspect that the Plaintiffs will, too. So,  
9 we won't really know anything until  
10 sometime the middle of August, as to where  
11 this is going to go.

12           If you've got projects, pollution  
13 control projects, that you've done in the  
14 last eight or nine years that relied on the  
15 guidance that EPA has out, you probably  
16 want to follow that part of it real  
17 closely. Because not only did EPA have  
18 remanded the portion that they proposed in  
19 this rule, but they also had the original  
20 pollution control guidance remanded, as  
21 well.

22           So, right now there is no pollution  
23 control project guidance out there that EPA  
24 can follow and I guess it does put it in  
25 some jeopardy, anyone who relied on that

Christy A. Myers

Certified Shorthand Reporter

30

1 and went a head and did the projects. Not  
2 that you will get hooked on that, you'll

3 get hooked on not following PSD.

4 I figure EPA will probably try to  
5 fix that because too many folks across the  
6 country relied on that guidance and did  
7 good projects and it doesn't make sense not  
8 to try to fix that part of it. But you  
9 need to be aware of it anyway just in case  
10 that they don't or it doesn't come out --  
11 they don't fix it in the manner that is  
12 acceptable to your situation.

13 So, what I would like to do is  
14 propose to the Council and the group, that  
15 we post on the website and make available  
16 for comment by August 5th, our revised rule  
17 based on what EPA has done relative to  
18 having to pull the "clean units" part of it  
19 and also the "pollution control project"  
20 part of it.

21 And then we will take comments for  
22 three weeks, until August 26th. Then  
23 either September 8th or 9th, depending on  
24 when we can get a room available, we will  
25 have a conference with anyone who would

Christy A. Myers

Certified Shorthand Reporter

31

1 like to come in and talk about the rule,  
2 similar to what we have done in the past.

3 And if anyone wants to form a workgroup,  
4 they re welcome to do that. However you  
5 all want to do that is up to you all. But  
6 we figured it s -- since they kicked out  
7 two parts of this -- the rest of it are  
8 kind of all related anyway, so there  
9 probably wouldn t be a need to have a  
10 workgroup looking at the other three areas.

11 So we ll just do -- take comments  
12 and do it similar to what we did with our  
13 toxics rule. We figured that would be  
14 easier on everyone but, again, if any of  
15 EFO or any of the other trade associations  
16 want to form a workgroup and submit  
17 comments as a group, that s fine, too. It  
18 really doesn t make any difference to us,  
19 but we just figured it would be easier to  
20 do that. And if, in the event, the EPA  
21 pushes the time frame back, we may go a  
22 head and have the initial workgroup meeting  
23 to see what people are thinking because I  
24 think we will eventually have to pass these  
25 three portions of the rule anyway in some

Christy A. Myers

Certified Shorthand Reporter

32

1 form, that s pretty close to the way it is  
2 now, depending on what they do with the

3 record-keeping part of it that was  
4 remanded.

5           So, there s really no sense in not  
6 doing that work. I really don t think that  
7 we will be held to that January time frame  
8 to get this passed. I think it will be  
9 more like the summer of 2006 or possibly  
10 even January of 2007, depending on what  
11 happens with the Courts. But I do think we  
12 need to go a head and start this just in  
13 case we re wrong about that and EPA says  
14 don t move a head with the parts that the  
15 Court said were okay. If we don t get it  
16 done by January, I don t think it s that  
17 big of a deal. We may want to have a  
18 special meeting in December or so, if it  
19 looks like we are close, just to get it  
20 done, before we start moving on to other  
21 things. But if we don t and the holidays  
22 come up, and we want to have a meeting in  
23 January or February and take it to the  
24 Board after that, as long as we are making  
25 reasonable progress, I think EPA will be

Christy A. Myers

Certified Shorthand Reporter

33

1 fine with that because I don t think they  
2 want to come get the program.

3                   So, that s what we are proposing.  
4   I ll run through it again.   August 5th,  
5   we ll have our revised version up on the  
6   website for comment, we ll take comment  
7   through the 26th, have a public meeting  
8   either the 8th or the 9th of September to  
9   -- interested parties can come in and we ll  
10  go over the rule, and hopefully by then  
11  have some kind of idea of where we are  
12  going to go in the future.

13                   MS. MYERS:  When you post that  
14  Eddie, can you also post specifics that are  
15  different from the Federal Rule?  A list of  
16  where the changes have occurred and what s  
17  different about it so that we have a better  
18  opportunity to look at it.

19                   MR. TERRILL:  Yeah.  There s not  
20  very many of those so it shouldn t be a  
21  problem.

22                   MR. BRANECKY:  Because it won t  
23  do us any good to comment on what s in the  
24  Federal Rule.

25                   MR. TERRILL:  No.  It won t do

Christy A. Myers

Certified Shorthand Reporter

34

1   you any good to comment on what s in the  
2   Federal Rule because there is nothing we

3 can do about that. That s just the way it  
4 is.

5           Although, we can make -- be more  
6 stringent. If we re as stringent as the  
7 Fed s or more, then we can do that. We ll  
8 just have to go through an equivalency-type  
9 determination from Region 6. So, it s  
10 possible that we could. If you see things  
11 in that that you want to clarify, you can t  
12 comment on them, it just means that we will  
13 have to go through the equivalency process.  
14 So, I wouldn t say that you couldn t but  
15 what we ll do is we ll highlight the parts  
16 that we ve changed and the rest of it we ll  
17 just have to comment, but I won t promise  
18 you that we will make those changes.

19           MS. MYERS: Are the State Air  
20 Directors going to file any comments on the  
21 portions of the rules that were vacated?  
22 For instance, on the PCP projects, the US  
23 and Air Director that has had some of those  
24 projects occur within your boundaries have  
25 any right to comment to EPA on that, or is

Christy A. Myers

Certified Shorthand Reporter

35

1 there a move of their Director s  
2 Association to do that?

3 MR. TERRILL: We ve got a Board  
4 meeting of -- our National Association is  
5 in -- starts a week from Saturday. And I  
6 am sure this will come up. I haven t -- I  
7 think it s been so soon after that, I think  
8 the EPA -- we had a conference call with  
9 EPA last week and they are still trying to  
10 digest exactly what the Court said and what  
11 their response is going to be. And so I  
12 don t know. There s a pretty good chance  
13 we will, especially with a need for EPA to  
14 resolve this Pollution Control Project  
15 issue because, like I said, there s been  
16 too many companies that have relied on that  
17 over the last 10 years have done some good  
18 projects, to be hung out because EPA failed  
19 to do what they should have done to start  
20 with and codify those rules so that they  
21 wouldn t have this problem.

22 So, there is a pretty good chance  
23 we ll make some kind of comments, but I  
24 don t know exactly what format they ll  
25 take.

Christy A. Myers

Certified Shorthand Reporter

36

1 MR. PURKAPLE: I have a question.  
2 For companies that may be assessing

3 projects on into the future, is this close  
4 enough to be able to evaluate, to begin in  
5 looking at those projects in the context of  
6 the reform or should we still be looking at  
7 those with the rules as they exist now?

8 (Multiple conversations)

9 MR. TERRILL: Yeah.

10 MR. PURKAPLE: I m new, is this a  
11 fair question?

12 MR. TERRILL: It s a fair  
13 question, it s just a hard one. You  
14 stepped right into Joel s shoes really  
15 well. I would say that the likelihood that  
16 we will not -- we ll have some sort of rule  
17 passed, I would imagine, no later than  
18 probably a year from right now, would be my  
19 guess. And I think that it ll  
20 substantially look like what the Feds have  
21 proposed with the exception of the baseline  
22 that we ll have the discussion with and you  
23 all and see where we ll end up going there.  
24 So, if you are looking at projects that are  
25 a year out, I don t know why you couldn t

Christy A. Myers

Certified Shorthand Reporter

37

1 look at doing them under the new rules.

2 Let me talk to the lawyers and give you a

3 better answer. We may post that -- that s  
4 a good question and it s probably one we  
5 probably ought to post on our website and  
6 it will probably be in the vague terms that  
7 you re still going to be on your own,  
8 basically, but we will try to give you some  
9 guidance. You never want us to give any  
10 definitive answer in this business because  
11 you never know what s going to happen.

12 I think a lot of it will be  
13 determined based on what happens by the  
14 15th and what s appealed and what s not.  
15 And that will give a better indication of  
16 where we think we can go. So, let me talk  
17 to our lawyers and our technical folks and  
18 get you an answer posted probably sometime  
19 after the 15th of August; is that okay?

20 MR. PURKAPLE: Okay. Yeah.

21 MR. TERRILL: That s a good  
22 question.

23 MR. PURKAPLE: Is this the seat  
24 Joel sat in?

25 MR. TERRILL: He did ask really

Christy A. Myers

Certified Shorthand Reporter

38

1 good questions and that is one that I am  
2 sure other folks have had and one we

3 probably need to address so that you can  
4 have a little bit of certainty, or as much  
5 as can be given, as you move forward.

6 MR. PURKAPLE: Thank you.

7 DR. SHEEDY: I just want to say  
8 about the comments that we received that  
9 the comments from Stanley Spruiell of EPA,  
10 Region 6, I think he identified in there,  
11 pretty much every place where we were  
12 different from the Federal Rule. So if you  
13 want to get an advance look at it before we  
14 have our stuff on the web, his comments  
15 were pretty good at identifying those  
16 areas.

17 MS. BOTCHLET-SMITH: Do we have  
18 any further questions?

19 MR. TERRILL: Does anyone have  
20 any objections to that schedule or the  
21 format that we re going to use to collect  
22 comments?

23 We ll post something on our website  
24 late this week or early next, that puts  
25 those dates out there so you can have

Christy A. Myers

Certified Shorthand Reporter

39

1 something to refer to. And again,  
2 depending on what the Court does, it s

3 possible that we can push that September  
4 meeting, if it looks like that doesn't give  
5 folks enough time. But don't count on that  
6 happening. I think we will probably go a  
7 head and do the original meeting on the 8th  
8 and then the group can decide how quickly -  
9 - if there is a need to meet again and how  
10 quickly that needs to be based on what we  
11 think the time frame that we've got to work  
12 with EPA.

13 MS. MYERS: Are there any other  
14 questions or comments? I guess at this  
15 point we need to vote to carry it over. We  
16 need to entertain a motion to carry the  
17 rule over to the next Council meeting.

18 MR. TREEMAN: So moved.

19 MS. MYERS: We have a motion. Do  
20 we have a second?

21 MS. WORTHEN: I'll second it.

22 MS. MYERS: Did you get that?

23 Myrna, would you call roll please.

24 MS. BRUCE: Mr. Treeman.

25 MR. TREEMAN: Yes.

Christy A. Myers

Certified Shorthand Reporter

40

1 MS. BRUCE: Mr. Curtis.

2 MR. CURTIS: Yes.

3 MS. BRUCE: Mr. Branecky.  
4 MR. BRANECKY: Yes.  
5 MS. BRUCE: Mr. Lynch.  
6 MR. LYNCH: Yes.  
7 MS. BRUCE: Mr. Purkapple.  
8 MR. PURKAPLE: Yes.  
9 MS. BRUCE: Mr. Martin.  
10 MR. MARTIN: Yes.  
11 MS. BRUCE: Ms. Worthen.  
12 MS. WORTHEN: Yes.  
13 MS. BRUCE: Ms. Myers.  
14 MS. MYERS: Yes.  
15 MS. BOTCHLET-SMITH: That  
16 concludes the hearing portion of today s  
17 meeting. Thank you.

18 (End of Proceedings)

19  
20  
21  
22  
23  
24  
25

Christy A. Myers

Certified Shorthand Reporter

41

1

C E R T I F I C A T E

