

**MINUTES**  
**AIR QUALITY COUNCIL**  
**October 19, 2005**  
**707 North Robinson**  
**Oklahoma City, Oklahoma**

APPROVED AQC  
January 18, 2006

**Notice of Public Meeting** The Air Quality Council convened for its regular meeting at 9:00 a.m. October 19, 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. Agendas were posted on the entrance doors at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting.

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

<b>MEMBERS PRESENT</b>	<b>DEQ STAFF PRESENT</b>
Sharon Myers	Eddie Terrill
David Branecky	Beverly Botchlet-Smith
Bob Curtis	Joyce Sheedy
Gary Martin	Pat Sullivan
Jerry Purkaple	Max Price
Laura Worthen	Leon Ashford
	Kendal Stegmann
<b>MEMBERS ABSENT</b>	Matt Paque
Bob Lynch	Dawson Lasseter
Don Smith	Kent Stafford
Rick Treeman	Rhonda Jeffries
	Cheryl Bradley
<b>OTHERS PRESENT</b>	Nancy Marshment
	Gail George
	Myrna Bruce

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

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

*(See transcript pages 3 - 4)*

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

**Meeting Schedule for Calendar Year 2006** Dates proposed and discussed were: January 18 in Oklahoma City; April 19 in Tulsa, July 19 in Oklahoma City, and October 18 in Broken Bow. The meetings would begin at 9:00 a.m. The Oklahoma City meetings would be at the DEQ Multipurpose Room and the other locations would be

determined. Mr. Gary Martin made the motion to approve the dates discussed and Mr. Curtis made the second.

*(See transcript pages 4 - 6)*

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

**OAC 252:100-4 New Source Performance Standards [AMENDED]** Mr. Max Price advised that the rulemaking would incorporate by reference any changes in Part 60 New Source Performance Standards. Since it was annual and housekeeping in nature, staff asked that Council approve the proposal and forward to the Environmental Quality Board to be adopted as a permanent rule. Hearing no discussion, Ms. Myers called for a motion. Mr. Purkaple moved to approve as presented and Mr. Curtis made the second.

*(See transcript pages 8-10)*

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

**OAC 252:100-41 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants [AMENDED]** Mr. Max Price advised that rulemaking incorporates by reference any changes in Part 61 and Part 63 National Emission Standards for Hazardous Air Pollution. He advised that this year there was one significant change in that staff proposed to delete Subpart J National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymer Production because EPA notified our legal staff that Oklahoma would not be given delegation over this MACT because of litigation with EPA. Mr. Price added that this is routine annual rulemaking and asked that Council approve the proposal and forward to the Environmental Quality Board as a permanent rule. Following discussion, Ms. Myers called for a motion. Mr. Curtis made motion for approval and Ms. Worthen made the second.

*(See transcript pages 10 - 15)*

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

**OAC 252:100-1 General Provision [AMENDED]**

**OAC 252:100-37 Control of Emission of Volatile Organic Compounds (VOCs) [AMENDED]**

**OAC 252:100-39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas [AMENDED]**

Mr. Max Price advised that at Council's July 20, 2005 meeting, staff presented a proposal to exempt tert-Butyl Acetate (TBAC) as a VOC for all regulatory purposes. At that time, staff requested that Council hold the proposal over to the next meeting as EPA had objections to the proposal. Mr. Price added that since that time, staff and EPA still has not reached an agreement. The Department withdrew the proposal for Council's consideration until a later time. No action was taken.

(See transcript pages 15 - 16)

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

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

Dr. Joyce Sheedy advised that the Department proposal would incorporate the NSR Reform update and would clarify other portions of the rules regarding the PSD program and the NSR nonattainment program. She conveyed several other proposed changes and entered letters of comment into the record. Comments and questions were fielded by Dr. Sheedy and Mr. Terrill before Ms. Myers called for a motion to carry the rulemaking forward to the Council's next meeting. Mr. Curtis made the motion and Mr. Martin made the second.

(See transcript pages 16 - 57)

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

**OAC 252:100-8 Permits for Part 70 Sources Part 11 [NEW]**

Mr. Matt Paque advised that the Department's proposal was for a new Part 11 which would incorporate the federal Best Available Retrofit Technology (BART) requirements into Chapter 100 as a part of the Regional Haze State Implementation Plan. Mr. Paque pointed out that the EPA announced an effort to improve the air quality in national parks which resulted in the development of the Regional Haze rule. He explained the process for establishing BART emission limitations and then he and Mr. Terrill fielded questions. Staff recommendation was to carry the rule forward to allow for further consideration and comments from both the public and regulated community. Ms. Myers called for that motion which was made by Mr. Curtis and the second by Mr. Purkape.

(See transcript pages 57 - 66)

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

**Division Director's Report** Mr. Terrill advised that the ozone season is over with typical values being below .085. At the next Council meeting a presentation is planned on the new public notification health advisory based on NAAQS. He also noted that Peoplesoft has been bought by Oracle which should make it easier to obtain financials for the Finance Committee. He added that the 2006 Environmental Quality Board dates are scheduled for February 24 at the DEQ, June 20 in Weatherford, August 22 in Ardmore, and November 14 in Tulsa.

**New Business** - None

**Adjournment** – The meeting adjourned at 10:15 a.m. The next regular meeting is scheduled for January 18, 2006 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. NOTE – All references to Mr. Purkape should be spelled P U R K A P L E, not Purkable.

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DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS

OF THE AIR QUALITY COUNCIL

OF THE REGULAR MEETING

HELD ON OCTOBER 19, 2005, AT 9:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

\* \* \* \* \*

REPORTED BY: Christy A. Myers, CSR

MYERS REPORTING SERVICE  
(405) 721-2882

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MEMBERS OF THE COUNCIL

DAVID BRANECKY - MEMBER

BOB CURTIS - MEMBER

BOB LYNCH - VICE-CHAIR

GARY MARTIN - MEMBER

SHARON MYERS - CHAIR

JERRY PURKAPLE - MEMBER

DON SMITH - MEMBER

RICK TREEMAN - MEMBER

LAURA WORTHEN - MEMBER

STAFF MEMBERS

MYRNA BRUCE - SECRETARY

EDDIE TERRILL - DIVISION DIRECTOR

JOYCE SHEEDY - AQD

MATT PAQUE - LEGAL

BEVERLY BOTCHLET-SMITH - AQD

MAX PRICE - AQD

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## PROCEEDINGS

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MS. MYERS: Okay. Let's go ahead  
and get started, please. Myrna, would you  
call the roll, please.

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MS. BRUCE: Gary Martin.

8

MR. MARTIN: Here.

9

MS. BRUCE: Jerry Purkaple.

10

MR. PURKAPLE: Here.

11

MS. BRUCE: Laura Worthen.

12

MS. WORTHEN: Here.

13

MS. BRUCE: David Branecky.

14

MR. BRANECKY: Here.

15

MS. BRUCE: Bob Curtis.

16

MR. CURTIS: Here.

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MS. BRUCE: Absent is Don Smith,  
Bob Lynch, Rick Treeman.

19

Sharon Myers.

20

MS. MYERS: Here.

21

MS. BRUCE: We do have a quorum.

22

23

MS. MYERS: Okay. Next on the  
agenda is the Minutes from the July

24

meeting. Is there any comments from

25

Council?

1 MR. CURTIS: Move for approval.

2 MS. MYERS: We have a motion to  
3 approve the Minutes.

4 MR. MARTIN: Second.

5 MS. MYERS: And a second. Myrna.

6 MS. BRUCE: Gary Martin.

7 MR. MARTIN: Yes.

8 MS. BRUCE: Jerry Purkaple.

9 MR. PURKAPLE: Yes.

10 MS. BRUCE: Laura Worthen.

11 MS. WORTHEN: Yes.

12 MS. BRUCE: David Branecky.

13 MR. BRANECKY: Yes.

14 MS. BRUCE: Bob Curtis.

15 MR. CURTIS: Yes.

16 MS. BRUCE: Sharon Myers.

17 MS. MYERS: Yes.

18 MS. BRUCE: Motion passed.

19 MS. MYERS: Next on the agenda is

20 the meeting schedule for calendar year

21 2006. The proposed dates are Wednesday,

22 January 18th in Oklahoma City; Wednesday,

23 April 19th in Tulsa; Wednesday, July 19th

24 in Oklahoma City; Wednesday, October 18th

25 in Oklahoma City. Any discussion by

1 Council Members?

2 MR. CURTIS: You don't want to go  
3 back to Broken Bow?

4 MS. MYERS: I would love to.

5 MR. TERRILL: Well, that's  
6 certainly your all's prerogative, if you  
7 all want to -- and you don't have to decide  
8 that today. The main thing we need to get  
9 in are the dates and if we decide after the  
10 first of the year or something that you  
11 want to change those, you can, or if you  
12 want to change it now, you can, it's up to  
13 you all. But we would like to leave the  
14 dates the same.

15 MS. MYERS: We can do that.  
16 Broken Bow in October?

17 MR. PURKAPLE: Sounds good to me.

18 MR. CURTIS: Good for me.

19 MS. MYERS: Okay. Let's propose  
20 Broken Bow in October. So we have the  
21 dates set and the places set. Any other  
22 discussion by Council?

23 I'll entertain a motion.

24 MR. MARTIN: So moved.

25 MR. CURTIS: Second.

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

3 MS. BRUCE: Gary Martin.

4 MR. MARTIN: Yes.

5 MS. BRUCE: Jerry Purkaple.

6 MR. PURKAPLE: Yes.

7 MS. BRUCE: Laura Worthen.

8 MS. WORTHEN: Yes.

9 MS. BRUCE: David Branecky.

10 MR. BRANECKY: Yes.

11 MS. BRUCE: Bob Curtis.

12 MR. CURTIS: Yes.

13 MS. BRUCE: Sharon Myers.

14 MS. MYERS: Yes.

15 MS. BRUCE: Motion passed.

16 MS. MYERS: Now we go into the  
17 public rulemaking hearings and I will turn  
18 it over to Beverly.

19 MS. BOTCHLETT-SMITH: Good  
20 morning. I'm Beverly Botchlett-Smith,  
21 Assistant Director of the Air Quality  
22 Division and as such, I'll serve as  
23 Protocol Officer for today's hearings.

24 These hearings will be convened by  
25 the Air Quality Council in compliance with

1 the Oklahoma Administrative Procedures Act  
2 and Title 40 of the Code of Federal  
3 Regulations, Part 51, as well as the  
4 authority of Title 27A of the Oklahoma  
5 Statutes, Section 2-2-201 and Sections 2-5-  
6 101 through 2-5-118.

7           These hearings were advertised in  
8 the Oklahoma Register for the purpose of  
9 receiving comments pertaining to the  
10 proposed OAC Title 252 Chapter 100 Rules as  
11 listed on the agenda and will be entered  
12 into each record along with the Oklahoma  
13 Register filing.

14           Notice of meeting was filed with the  
15 Secretary of State on December 10, 2004.  
16 The agenda was duly posted 24 hours prior  
17 to the meeting on the doors of the DEQ.

18           If you wish to make a statement,  
19 it's very important that you complete the  
20 form at the registration table and then you  
21 will be called upon at the appropriate  
22 time.

23           Audience members, please come to the  
24 podium when you make a statement and before  
25 you make a statement, please state your

1 name.

2           At this time, we will proceed with  
3 what's marked as Agenda Item Number 5 on  
4 the hearing agenda, OAC 252:100-4, New  
5 Source Performance Standards, and we call  
6 upon Mr. Max Price for the staff  
7 presentation.

8           MR. PRICE: Madam Chairman,  
9 Members of the Council, ladies and  
10 gentlemen, each year at this time staff  
11 Incorporates by Reference any changes in  
12 Part 60, New Source Performance Standards.  
13 The U.S. Environmental Protection Agency  
14 delegated DEQ the authority to implement  
15 and enforce the federal NSPS standards  
16 found in 40 CFR Part 60. Staff updates  
17 references to NSPS in agency rules annually  
18 to keep them current.

19           Since this is a routine housekeeping  
20 matter, staff ask that the Council vote to  
21 approve this proposal and send it to the  
22 Environmental Quality Board with the  
23 recommendation that it be adopted as a  
24 permanent rule.

25           MS. BOTCHLETT-SMITH: Comments

1 from the Council? Do we have any comments  
2 or questions from the public? I didn't  
3 receive any of these that if anyone had a  
4 question. Any questions for Mr. Price?  
5 Sharon.

6 MS. MYERS: If there's no further  
7 discussion, Myrna, would you call the roll  
8 please?

9 Motion, I'm sorry. I'm just trying  
10 to get through it.

11 I would entertain a motion at this  
12 point for this rule.

13 MR. PURKAPLE: So moved.

14 MR. CURTIS: Second.

15 MS. MYERS: Okay. We have a  
16 motion and a second. Jerry made the  
17 motion, Bob made the second. We have a  
18 motion and a second. Myrna, would you call  
19 roll, please.

20 MS. BRUCE: Gary Martin.

21 MR. MARTIN: Yes.

22 MS. BRUCE: Jerry Purkapple.

23 MR. PURKAPLE: Yes.

24 MS. BRUCE: Laura Worthen.

25 MS. WORTHEN: Yes.

1 MS. BRUCE: David Branecky.

2 MR. BRANECKY: Yes.

3 MS. BRUCE: Bob Curtis.

4 MR. CURTIS: Yes.

5 MS. BRUCE: Sharon Myers.

6 MS. MYERS: Yes.

7 MS. BRUCE: Motion passed.

8 MS. BOTCHLETT-SMITH: The next

9 item on the agenda is OAC 252:100-41,  
10 Control of Emission of Hazardous Air  
11 Pollutants and Toxic Air Contaminants. And  
12 again, Mr. Max Price will give the staff's  
13 presentation.

14 MR. PRICE: Thank you. Madame  
15 Chair, Members of the Council, ladies and  
16 gentlemen, each year at this time staff  
17 Incorporates by Reference any changes in  
18 Part 61 and Part 63 National Emission  
19 Standards for Hazardous Air Pollutants,  
20 NESHAP. The U.S. Environmental Protection  
21 Agency delegated DEQ the authority to  
22 implement and enforce the federal NESHAP  
23 standards found in 40 CFR Parts 61 and 63.  
24 Staff updates references to NESHAP in  
25 agency rules annually to keep them current.

1  
2           This year there is but one significant  
3 change. Staff is proposing to delete  
4 Subpart J, National Emission Standards for  
5 Hazardous Air Pollutants for Polyvinyl  
6 Chloride and Copolymer Production. Staff  
7 proposes this action because EPA has  
8 notified our legal staff that Oklahoma will  
9 not be given delegation over this MACT  
10 because of litigation.

11           Since this is a routine housekeeping  
12 measure, staff ask that the Council vote to  
13 approve this proposal and send it to the  
14 Environmental Quality Board with the  
15 recommendation that it be adopted as a  
16 permanent rule.

17                       MS. BOTCHLETT-SMITH: Questions  
18 from the Council?

19                       MR. PURKAPLE: Question.

20                       MR. PRICE: Yes, sir.

21                       MR. PURKAPLE: There is at least  
22 one other MACT that's been put on their  
23 rule that's been formatted, and that's the  
24 heater/boiler MACT?

25                       MR. PRICE: Right, that's 5(d).

1

2 MR. PURKAPLE: Yes.

3 MR. PRICE: And it's the same  
4 situation there. We didn't have it in the  
5 rule, but it's under litigation and they --  
6 EPA has notified us that it probably won't  
7 give us delegation for a while.

8 MR. PURKAPLE: Okay. Thank you.

9 MS. BOTCHLETT-SMITH: Other  
10 comments or questions from the Council?  
11 Public? Could you please come to the  
12 podium, Bud?

13 MR. GROUND: It's really just a  
14 question. I wondered if he could just  
15 explain why you're not getting delegation,  
16 I didn't quite understand that.

17 MR. PRICE: As I understand it,  
18 we have to -- EPA has the authority to send  
19 the delegation request into EPA. EPA has  
20 responded that they won't give us  
21 delegation while these rules are under  
22 litigation. Apparently they've been taken  
23 to court and we don't reference them in our  
24 rule if we're not going to have the  
25 delegation in order to enforce them, so

1 that's why they're not.

2 MR. GROUND: Okay. I'm sorry,  
3 but you're saying the litigation is EPA?

4 MR. PRICE: EPA, yes, yes, not  
5 us. EPA is being sued over this.

6 MR. TERRILL: Yes, EPA is being  
7 sued and until that's resolved, they won't  
8 give us delegation, so there's no since in  
9 us adopting it because it could change and  
10 we wouldn't want to adopt a rule that would  
11 create a problem.

12 I might mention that we normally  
13 take these rules to the Board, the meeting  
14 after we approve them here, but we will not  
15 be doing that in November. I've got to go  
16 to another meeting out of state and then  
17 the Region VI air director's meeting is on  
18 the same day as the Board meeting in  
19 Braman. So Beverly and Dawson and Scott  
20 will be representing us there, so we don't  
21 have anybody to go, and even though it's a  
22 fairly straightforward rule, we generally  
23 don't like to do that if we can't have  
24 staff there and if I can't be there.

25 So we plan on waiting until the

1 January Board meeting to take these two  
2 rules that are passed today to the Board.  
3 I just wanted to make everybody aware of  
4 that. It shouldn't effect anything,  
5 because it won't become effective anyway  
6 until June, so -- February, okay, we'll  
7 take them to the February 24th Board  
8 meeting.

9 MS. BOTCHLETT-SMITH: Okay. Do  
10 we have any other questions from the  
11 Council?

12 MS. MYERS: At this time, we'll  
13 entertain a motion.

14 MR. CURTIS: Move for approval.

15 MS. WORTHEN: Second.

16 MS. MYERS: We've got a motion  
17 for approval and a second. Myrna, would  
18 you call roll, please.

19 MS. BRUCE: Gary Martin.

20 MR. MARTIN: Yes.

21 MS. BRUCE: Jerry Purkaple.

22 MR. PURKAPLE: Yes.

23 MS. BRUCE: Laura Worthen.

24 MS. WORTHEN: Yes.

25

1 MS. BRUCE: David Branecky.

2 MR. BRANECKY: Yes.

3 MS. BRUCE: Bob Curtis.

4 MR. CURTIS: Yes.

5 MS. BRUCE: Sharon Myers.

6 MS. MYERS: Yes.

7 MS. BRUCE: Motion passed.

8 MS. BOTCHLETT-SMITH: The next

9 item on the agenda is OAC 252:100-1,  
10 General Provisions; OAC 252:100-37, Control  
11 of Emission of Volatile Organic Compound;  
12 and OAC 252:100-39, Emission of Volatile  
13 Organic Compounds in Nonattainment Areas  
14 and Former Nonattainment Areas. Mr. Max  
15 Price will give the staff presentation.

16 MR. PRICE: Thank you. Madame  
17 Chairman, Members of the Council, ladies  
18 and gentlemen, at the July 20th Air Quality  
19 Council meeting, staff presented a proposal  
20 to exempt tert-butyl acetate, TBAC, as a  
21 VOC for all regulatory purposes. At that  
22 time, we requested the Council hold this  
23 proposal over until this meeting because  
24 EPA and the department were at odds over  
25 whether or not TBAC should be inventoried.

1           As of this date, this disagreement  
2   has not been resolved, so the Department  
3   wishes to withdraw this proposal from  
4   consideration by the Council at this time.  
5   Staff will propose this action again at a  
6   later date in a different form which will  
7   not interfere with the Council's  
8   deliberations on New Source Review.

9           MS. BOTCHLETT-SMITH:   Any  
10   questions or comments from the Council?

11           MS. MYERS:   Matt, to withdraw the  
12   rule, do we have to make a motion or  
13   approve that?

14           MR. TERRILL:   I don't think we  
15   do.   We don't think so.   This is more of a  
16   informational --

17           MS. MYERS:   Okay.

18           MR. TERRILL:   -- more than  
19   anything else.

20           MS. MYERS:   Okay.   Thanks, Max.

21           MR. PRICE:   You're welcome.

22           MS. BOTCHLETT-SMITH:   The next  
23   item on the agenda is OAC 252:100-8,  
24   Permits for Part 70 Sources, Parts 1, 5, 7  
25   and 9.   And Dr. Joyce Sheedy will make the

1 presentation for staff.

2 DR. SHEEDY: Madame Chair,  
3 Members of the Council, ladies and  
4 gentlemen, the Department is proposing  
5 revisions to Parts 1, 5, 7 and 9 of  
6 Subchapter 8, Part 70 Sources. We propose  
7 to incorporate the NSR Reform update and  
8 clarify other portions of the rules  
9 regarding the PSD program and the NSR  
10 nonattainment program.

11 In addition to these proposed  
12 changes which were first presented at the  
13 July 20, 2005 Air Quality Council meeting,  
14 the Department also proposes to revise the  
15 definition of "insignificant activities" in  
16 Section 8-2 of Part 5 which is permits for  
17 part 70 sources. We want to revise this to  
18 reflect the changes to Subchapter 41 and  
19 the new Subchapter 42 regarding toxic air  
20 contaminants. We also propose to move  
21 paragraph (B) of the definition of "Begin  
22 actual construction" from Section 8-1.1 to  
23 Section 8-2, since this definition applies  
24 only to Part 70 permitting.

25 As discussed at the July 2005 Air

1 Quality Council Meeting, in conjunction  
2 with the NSR Reform revision, the  
3 Department proposes to move 11 definitions  
4 from Subchapter 8 to Subchapter 1 and add  
5 two new definitions to Subchapter 1. At  
6 present, for reasons stated earlier, the  
7 Department is withdrawing the proposed  
8 revision to Subchapter 1, however, we plan  
9 to readvertise and repropose the addition  
10 of the definitions to Subchapter 1 for the  
11 January 2006 Air Quality Council Meeting.  
12 Prior to that time, we will give  
13 consideration to all the comments received  
14 regarding these definitions.

15           We propose to move eight definitions  
16 from Section 8-1.1 to Section 8-31, because  
17 they will apply only to PSD in Part 7 in  
18 the revised rule, and to move three  
19 definitions from Section 8-31 to Section 8-  
20 1.1, because these terms will also be used  
21 in the proposed new Part 11 for BART.  
22 There is a typographical error in the  
23 definition of "adverse impact on  
24 visibility" that occurred when it was moved  
25 to Section 8-1.1, and will be corrected to

1 indicate that the determination must be  
2 made by the DEQ.

3           The NSR finalized on December 31,  
4 2002, changes to methods of calculation of  
5 emissions baseline for purposes of  
6 determining whether or not a modification  
7 at a facility triggers NSR. Under the new  
8 rule, far fewer modifications will be  
9 classified as major modifications that  
10 require PSD permits and installation of up-  
11 to-date pollution control equipment  
12 determined by BACT.

13           EPA promulgated this revision in  
14 2002. Thereafter a suit was filed  
15 challenging the changes as inconsistent  
16 with the Federal Clean Air Act. The United  
17 States Court of Appeals for the District of  
18 Columbia Circuit on June 24, 2005, vacated  
19 parts of the rule dealing with the Clean  
20 Units and the PCPs and remanded the part  
21 concerning the recordkeeping.

22           In a document dated August 8, 2005,  
23 EPA requested the D.C. Circuit Court of  
24 Appeals must reconsider its ruling on the  
25 Clean Unit Provision and clarify the ruling

1 regarding to PCPs. In the petition, EPA  
2 argues that it should have the discretion  
3 to apply allowable or potential tests to  
4 increases in Clean Unit emissions. With  
5 regard to PCPs, EPA seeks clarification on  
6 whether the court ruling applies only  
7 prospectively or retroactively as well,  
8 arguing that it would be inequitable to  
9 penalize sources that had installed PCPs  
10 based on their good-faith reliance on EPA's  
11 regulations and guidance.

12           The major differences between the  
13 rule proposed today and the rule that was  
14 proposed at the July 2005 Air Quality  
15 Council meeting is deletion of the portions  
16 that dealt with Clean Units and the PCPs,  
17 both Parts 7 and Part 9, and the addition  
18 of the revision to Section 8-2 in Part 5.  
19 We also changed the citation date for  
20 incorporation by reference to January 2,  
21 2006 throughout both Parts 7 and 5. This  
22 is just a place holder date and will be  
23 adjusted depending on the date the proposed  
24 rule is forwarded to the Environmental  
25 Quality Board. We have made some language

1 and formatting changes of a nonsubstantive  
2 nature that I won't list at this time.

3           We have, however, made some changes  
4 based on comments from the July 2005 Air  
5 Quality Council meeting that are of a  
6 substantive nature.

7           On Page 25 of the rule, the addition  
8 of the phrase "of PAL major modification"  
9 in Paragraph (B) of the definition of  
10 "major modification" was made for clarity.

11           On Page 27, the definition of "net  
12 emissions increase", Paragraph (G), we no  
13 longer delete the word "replacement" based  
14 on EPA's comments.

15           On Page 28, in the definition of  
16 "projected actual emissions", Paragraph  
17 (A), the addition of "and full utilization  
18 of the unit would result in a significant  
19 emissions increase, or a significant net  
20 emissions increase at the major stationary  
21 source". This is in response to EPA's  
22 comments.

23           On Page 30, in the definition of  
24 "replacement unit", the addition of  
25 Paragraph (C), "replacement unit does not

1 alter the basic design parameters of the  
2 process unit". This is in response, again,  
3 to EPA's comments.

4           And on Page 40 in 8-35(b)(2), the  
5 addition of "modified or substitute models  
6 shall be submitted to the Administrator  
7 with written concurrence of the Director.  
8 In addition, use of a modified or  
9 substituted model must be subject to notice  
10 and opportunity for public comment under  
11 procedures set forth in Section 51.102".  
12 This is in response to the comments we  
13 received from EPA.

14           On Pages 45 and 46(sic), 8-36(b)(1)  
15 has been rewritten for clarity and to  
16 better meet the requirements of 40 CFR  
17 51.302 regarding protection of visibility;  
18 the deletion of what was subsection 8-38(c)  
19 in the rule presented at the July 2005  
20 Council Meeting regarding inconsistencies  
21 or duplications since it does not apply to  
22 the rule.

23           And on Page 49, the addition of  
24 "building, structure, facility, or  
25 installation" to the newly renumbered

1 Subsection (c) regarding the terminology  
2 related to 40 CFR 51.166(W). In Part 9,  
3 the differences include the deletion of  
4 what was 252:100-8-50.1(b) in the rule  
5 presented at the July 2005 Air Quality  
6 Council Meeting, regarding inconsistencies  
7 or duplications since it does not apply to  
8 this rule.

9           And on Page 52, the addition of  
10 "EPA" to the newly renumbered 252:100-8-  
11 51.1(b) regarding terminology related to 40  
12 CFR. On Page 52, the first paragraph in  
13 Section 8-51, regarding definitions has  
14 been rewritten. On Page 53 in Paragraph  
15 (A)(i), the definition "major  
16 modification", we've added "and/or oxides  
17 of nitrogen (NOx)", based on EPA's  
18 comments.

19           On Page 56, in the definition of  
20 "net emissions increase", paragraph (F),  
21 the word "replacement" is no longer deleted  
22 and this is based also on EPA's comments.  
23 And on Page 56, 252:100-8-51.1 regarding  
24 emissions reductions and offsets, this has  
25 been newly reworded due to a court ruling.

1  
2           We have received a number of comments  
3 since the July 2005 Air Quality Council  
4 meeting. These comments -- those comments  
5 and a summary of comments and our  
6 responses, our initial responses to them,  
7 will be made a part of the record and  
8 copies have been supplied to the Council  
9 and available for the public today. Some  
10 responses to comments may be supplemented  
11 at a later date since some of them were  
12 received just a few days prior to this  
13 meeting.

14           A workgroup meeting was held  
15 September 9th, 2005, at the DEQ building,  
16 to hear comments from the public regarding  
17 the proposed revisions to Part 7 and 9 of  
18 Subchapter 8, to incorporate the NSR Reform  
19 requirements. The majority of the comments  
20 received concerned the differences in the  
21 definition of "actual baseline emissions"  
22 between the proposed DEQ rule and the  
23 Federal rule in 40 CFR 51 Parts 165 and  
24 166. Commentors proposed that the 10-year  
25 look back period for all sources except

1 electric generating units and the use of a  
2 different 24-month period for each  
3 pollutant be added to the definition of  
4 actual baseline emissions, so that the  
5 definition in the DEQ rule will be the same  
6 as that in the NSR Reform.

7           The Department is concerned that  
8 such a long look back period will result in  
9 potential for significant increases in air  
10 pollution. The most accurate emission  
11 estimates are measured values coming from  
12 stack tests and Continuous Emission  
13 Monitors or CEMs. The AP-42 is commonly  
14 used when more accurate methods are not  
15 available. Analysis by Morris Moffett of  
16 our office of the emissions inventory  
17 submittals over the last 10 years indicates  
18 that the trend has been the replacement of  
19 the AP-42 estimates with more accurate  
20 methods. The AP-42 was reported for 33.4  
21 percent of all emissions in 1995. There  
22 has been a consistent improvement until in  
23 2004, only 18 percent of the emissions  
24 reported used that method. The estimated  
25 values were replaced with more specific or

1 measured values, including stack tests,  
2 CEMs and manufacturers' guarantee. The  
3 percentage of emissions reported using the  
4 best methods, stack tests and CEMs, has  
5 increased from 30.7 percent in 1995 to over  
6 48 percent in 2003. There are new  
7 emissions estimation tools and improvements  
8 on older ones and they also improved the  
9 emissions estimates. The result of all  
10 these changes has been the improvement of  
11 emission inventory estimates. There is  
12 more information and more accurate data  
13 based on better estimation methods.

14           We also have looked at two studies,  
15 the Rollback -- "Reform or Rollback? How  
16 EPA's changes to New Source Review Could  
17 Affect Air Pollution in 12 States". It's a  
18 joint study by the Environmental Integrity  
19 Project and the Council of State  
20 Governments/Eastern Region Conference, in  
21 October of 2003 and "Stop the Rollbacks,  
22 Cleaner, Healthier Air for Colorado" that  
23 was published in 2005 that analyzed  
24 emissions and permit data from state  
25 agencies to evaluate whether the 10 year

1 baseline for measuring emissions would  
2 increase air pollution and the results of  
3 them indicated that if the 10 year baseline  
4 were used, there was the potential for a  
5 significant increase in air pollution  
6 without triggering NSR and the requirement  
7 of BACT.

8           In the 12-state study, that study  
9 indicated there was a potential for 1,243  
10 major sources studied in those 12 states to  
11 increase emissions of PM by 48,805 tons per  
12 year, of NOx by over 335,000 tons per year,  
13 of SO2 by over 330,000 tons per year, by  
14 VOC by 173,000 tons per year, by CO, by  
15 488,000 tons per year, without undergoing  
16 NSR review, and installing BACT.

17           The study also found that other  
18 federal limits are not as stringent as the  
19 NSR and they may be absent altogether if  
20 the facility is grandfathered. The  
21 Colorado study expressed concern that under  
22 the NSR Reform, facilities can increase  
23 pollution to the highest levels in the past  
24 10 years without being required to install  
25 modern pollution controls. An analysis of

1 the emission data from 1995 to 2002 for  
2 Colorado's large industrial sources, except  
3 Electric Generating Units, that could use a  
4 longer period in determining baseline  
5 emissions indicated that the following  
6 pollution increases would be allowed under  
7 the NSR Reform rule. CO could be increased  
8 by 83 percent, NOx could be increased by 22  
9 percent, PM could be increased by 34  
10 percent, SO2 could be increased by 78  
11 percent and VOCs could be increased by 93  
12 percent. This could be done without  
13 triggering PSD review and the use of BACT.

14 For these reasons, DEQ has proposed  
15 a five year look back rather than a 10 year  
16 look back. We also received written  
17 comments since the last Council meeting  
18 from Don Whitney of Trinity Consultants in  
19 a letter dated October 6th, 2005: from  
20 Stanley Sprvill, EPA Region 6, via email,  
21 dated October 11, 2005, from Jim Shellhorn  
22 of Terra Nitrogen Limited Partnership by  
23 email on October 17, 2005, and I believe we  
24 received a hard copy through the mail  
25 yesterday; and from Meg Garakani --

1 MS. MYERS: Garakani.

2 DR. SHEEDY: -- Garakani, thank  
3 you, Garakani of Holcim US, Inc., in an  
4 email dated October 17, 2005; and from  
5 Angie Burkhalter of the OIPA, the Oklahoma  
6 Independent Petroleum Association, in an  
7 email dated October 17th, 2005.

8 In his email dated October 11, Mr.  
9 Sprvill of EPA Region 6, in addition to  
10 other comments, pointed out that the DEQ's  
11 proposed rule still contains recordkeeping  
12 provisions that were remanded by the DC  
13 Circuit Court of Appeals until EPA either  
14 revised the recordkeeping provisions or  
15 provided an acceptable explanation of its  
16 "reasonable possibility" standard for  
17 recordkeeping. To date, EPA has not  
18 responded to the Court's remand and Mr.  
19 Sprvill recommended that the DEQ consider  
20 the issues and explain how the proposed  
21 rule addresses the concerns of the Court  
22 regarding recordkeeping.

23 The NSR Reform requires the owners  
24 or operators that use the "actual to  
25 projected actual" test to determine that a

1 proposed modification would not be subject  
2 to NSR, would not be a major source. The  
3 rule requires that they keep records only  
4 if there was a reasonable opportunity -- a  
5 reasonable possibility that the project or  
6 modification might result in a significant  
7 emissions increase. If the owner or  
8 operator determines that there is no  
9 reasonable possibility that the project  
10 might result in a significant increase,  
11 they need not keep records, thus making it  
12 impossible to prove one way or the other.

13           Our proposed rules still contains  
14 the recordkeeping provisions that were  
15 remanded. The Department's currently  
16 considering changes that would subject the  
17 owners or operators using the "actual to  
18 projected actual" tests to the same  
19 recordkeeping requirements regardless of  
20 whether the owner or operator determines  
21 that there is no reasonable possibility  
22 that the project might result in a  
23 significant increase. We think that this  
24 would address the Court's concern.

25           Staff requests that the Council

1 continue this hearing on the proposed  
2 revisions to Parts 1, 5, 7 and 9 of  
3 Subchapter 8 to the next Air Quality  
4 Council meeting to give the Department  
5 additional time to consider the comments  
6 received regarding the definition of  
7 "actual baseline emissions" and to allow  
8 additional time for consideration of the  
9 recordkeeping requirement changes. Thank  
10 you.

11 MS. BOTCHLETT-SMITH: Any  
12 questions from the Council?

13 MR. BRANECKY: Yes. Joyce, you  
14 gave several reasons for going from 10  
15 years to 5 years. What was EPA's reasoning  
16 to allow 10 years to begin with?

17 DR. SHEEDY: I believe that some  
18 of their reasoning was inflexibility that  
19 the -- it would give companies more  
20 flexibility.

21 MR. BRANECKY: So is EPA not  
22 concerned about you're saying there would  
23 be an increase?

24 DR. SHEEDY: Well --

25 MR. BRANECKY: Is EPA not

1 concerned about that?

2 DR. SHEEDY: -- I feel sure this  
3 was brought to their attention.

4 MR. TERRILL: Let me address  
5 that. What EPA has said that the CARE rule  
6 and other rules that are out there that are  
7 designed to reduce emissions from utilities  
8 will more than offset the changes to NSR.  
9 Of course, as you all know, we're not a  
10 CARE state, so we're not going to get the  
11 benefits locally of those changes.  
12 However, to be fair about it, we should get  
13 some benefits from transport from the  
14 states that are within CARE and there are  
15 some other things out there that will  
16 probably reduce our overall emissions, too.

17 One of the things that we want to do  
18 and we feel an obligation to do because we  
19 represent the citizens in the state as well  
20 as the regulated community, is we want to  
21 take a couple of real world examples that  
22 we've actually permitted over the last four  
23 or five years and take a look and see what  
24 the process that we went through under the  
25 old rules, what the net was there, and then

1 what it would be under the new and make  
2 that available to the public so they can  
3 see what a real world example would  
4 actually mean.

5           It could be that it's not going to  
6 make that much difference in the overall  
7 scheme of things, having the longer  
8 baseline won't be there. But when they did  
9 -- when the analysis was done in the other  
10 states, it went anywhere from five percent  
11 to 60 percent projected increase in  
12 emissions. And given the fact that we have  
13 in Tulsa an ongoing ozone situation, a  
14 potential ozone situation, we feel like we  
15 need to make the folks aware of that and  
16 make the Council aware of it, too, so that  
17 you all can make an informed decision. But  
18 at the end of the day, it's going to be you  
19 all's call on what you want to do. But we  
20 feel like we want to -- we need to do that  
21 and make that, regardless of what it shows,  
22 available to you all so you can make a  
23 better decision.

24           MS. MYERS: I've got a question,  
25 comment, observation. Some of the

1 statistics that you presented are  
2 interesting. However, based on real world  
3 experience, I think you may see a  
4 significant increase in reported emissions  
5 based on more accurate measurements than  
6 you actually see in true increase in  
7 emissions. You're going to see an apparent  
8 increase that has really not changed  
9 anything. In fact, they may actually be  
10 better than what they were 15 years ago,  
11 but because of the accuracy of the  
12 measurement compared to some of the AP 42  
13 factors that have been used, it's distorted  
14 and it's not a real world look.

15 DR. SHEEDY: And the numbers that  
16 we --

17 MS. MYERS: And so some of the  
18 statistics that you're throwing out I would  
19 challenge as being skewed, just based -- I  
20 mean, when you've got accuracy now to the  
21 parts per billion, where 15, 20 years ago  
22 they weren't even taking measurements of  
23 some of these things --

24 DR. SHEEDY: That's true.

25 MS. MYERS: -- you're getting

1 some skewed results that you're now using  
2 as these large statistics to try to  
3 influence us into making some of these  
4 changes, when in truth, there may not have  
5 been any increase in pollutants.

6 DR. SHEEDY: Well, in the  
7 studies, the 12-state study and the  
8 Colorado study, those are all potential  
9 maximum. That is a maximum potential that  
10 it could do this.

11 MS. MYERS: Okay. So there's  
12 some skewed -- there's some skewed big  
13 numbers here that --

14 DR. SHEEDY: But who knows, they  
15 say themselves, you know, that this is like  
16 the worst case that could happen.

17 MS. MYERS: Okay. But what I'm  
18 saying is, is that some of the numbers that  
19 have been thrown out this morning in the  
20 course of this discussion on potential  
21 increases, if we allow a 10 year look back  
22 are very possibly skewed, based on studies  
23 that were done on a maximum potential and  
24 actual measurements compared to estimates,  
25 and we need to keep that in mind as we go

1 forward in discussing this rule, because  
2 there may not have been any significant  
3 increases in actual pollution.

4 DR. SHEEDY: Yeah, these were --  
5 these were not actual increases, they were  
6 calculated potential maximum..

7 MR. TERRILL: And that's the  
8 reason I think it's important we -- that we  
9 take some real world examples that we have  
10 actually done within the Agency and see  
11 what it would mean, because I think that's  
12 important that you all be able to see,  
13 here's what it would really mean. It may  
14 mean nothing. If it does, then there is  
15 really no issue here and we'll agree to  
16 make the changes to the rule. And you all  
17 may decide to, anyway, because again,  
18 there's so much unknown about this. I  
19 mean, EPA could change their position on  
20 this in three or four years and we would go  
21 back at what we had and it's really hard to  
22 say what's going to -- how this is going to  
23 actually play out in the end.

24 But again, we represent the whole  
25 state and that includes the regulated

1 community as well as the citizens and I  
2 just think that we need to show what we  
3 believe be the real world impacts are going  
4 to be on this and then let the Council make  
5 their decision and we'll make our  
6 recommendations based on that and that's  
7 the reason I want to hold this rule over.  
8 That and the fact that we need to figure  
9 out what we're going to do for sure on the  
10 recordkeeping and give EPA an opportunity  
11 to give some guidance on that, although I  
12 don't expect that to happen. I think we'll  
13 have to move forward with our best guess as  
14 to what recordkeeping should be.

15           And there's really no hurry to get  
16 this done. There are going to be a number  
17 of states that are going to refuse to do  
18 anything with this rule and there are some  
19 states that are where we are, they're not  
20 quite ready to pass a final rule. But EPA  
21 has indicated that as long as you're making  
22 reasonable progress and you're discussing  
23 the rule, they have no intentions of doing  
24 anything once the deadline passes at the  
25 end of the year. So we want to get this

1 thing wrapped up anyway in January, so  
2 we're hoping to have a final rule done.

3           So this will just give us some time  
4 to analyze this and come back with real  
5 numbers. Although, I will say that the  
6 analysis that was done, that Joyce  
7 presented today, has been peer reviewed by  
8 some neutral parties and they believe the  
9 numbers to be accurate. Now, it's a worst  
10 case scenario and we think it's more  
11 accurate to give real world examples and  
12 how that could impact, because it will  
13 probably be substantially less.

14           DR. SHEEDY: Listen, if anybody  
15 wants to see either of those studies, I can  
16 email them.

17           MR. CURTIS: Joyce, I have one  
18 quick question in regard to, do we have an  
19 estimate of the number of facilities that  
20 may be impacted by this rule?

21           DR. SHEEDY: It would be all of  
22 the major sources and I'm not sure how many  
23 major sources we have. Does any -- Morris  
24 is not here and I don't know if Dawson  
25 would know that number, either, off the top

1 of his head.

2 MR. TERRILL: Two or three  
3 hundred, I imagine, would be my guess.

4 DR. SHEEDY: We can find that  
5 out.

6 MR. CURTIS: And is there a  
7 particular source category that's affected  
8 more than another?

9 DR. SHEEDY: I don't think so.

10 MR. TERRILL: No, if you're doing  
11 any kind of modification at a major source,  
12 you're a potential to be (inaudible) list.  
13 New construction is really not going to be  
14 affected by this, it's all modifications.  
15 Obviously, the industry that's going to be  
16 most effected by is utilities, because this  
17 is really what this is designed to get.

18 DR. SHEEDY: Yes, you're only  
19 going to get a five year look back on  
20 utilities.

21 MR. TERRILL: Right.

22 MR. CURTIS: Regardless?

23 DR. SHEEDY: Regardless.

24 MR. TERRILL: Regardless, yes.

25 DR. SHEEDY: I don't know why

1 that is, but that's the way it is right  
2 now.

3 MS. MYERS: Joyce, part of that  
4 has to be because some industries are very  
5 cyclical, cement industry is tied to the  
6 economy. There's going to be some years,  
7 15, 20 years ago when our production  
8 literally was cut in half and we operated  
9 the facility at half capacity. Utilities  
10 run all the time. They don't store their -  
11 - they don't store their products.

12 DR. SHEEDY: That makes sense.

13 MS. MYERS: So the 10 year look  
14 back is very important to most industries.

15 DR. SHEEDY: But utilities are  
16 more consistent in their operations.

17 MR. TERRILL: And actually, we do  
18 have a provision in there that would  
19 provide for a 10 year look back even with  
20 our more restrictive rules. if the industry  
21 shows that it's more representative of the  
22 emissions and there's some concern that  
23 that would leave that to the discretion of  
24 us and that, you know, people change and  
25 the views of that may change, so that's a

1 legitimate concern. But again, I think  
2 it's real important for us to take a look  
3 at what this would actually mean in a real  
4 world application and see what the  
5 differences are and then come back to you  
6 all and say, here's an example.

7           And what we will do is, we will do  
8 that analysis and if it turns out that  
9 there are some either positive or negative  
10 changes, we'll make that available on our  
11 website for the general public to look at  
12 and then available to the Council so you  
13 all can take a look at it for our  
14 discussion at the next meeting.

15           MR. PURKAPLE: Joyce, I have a  
16 question. First of all, thank you for your  
17 summary. Other states in Region 6, do you  
18 have a feeling of how many of those are  
19 going this route to proposing this  
20 restrictive, more restrictive 5 year look  
21 back, are we unique in that or are other  
22 states following that approach and  
23 tightening down a little bit beyond EPA's  
24 rule.

25           DR. SHEEDY: I'm not sure that I

1 know of any state that has --

2 MR. TERRILL: Arkansas, they just  
3 adopted by reference. Louisiana, I'm not  
4 sure they've moved forward yet, they've got  
5 some other issues, so I'm not sure what  
6 they're going to do. Texas always does  
7 what Texas is going to do and they have got  
8 so many other restrictions relative to  
9 their nonattainment areas in Houston and  
10 Dallas, that they'll probably end up  
11 adopting close to what EPA has got. And I  
12 honestly don't know about New Mexico.

13 DR. SHEEDY: Colorado -- what did  
14 they finally do? They did something and  
15 their Legislature sent it back.

16 MR. TERRILL: Yes, they ended up  
17 adopting pretty much the rules as they are.

18 DR. SHEEDY: Right.

19 MR. TERRILL: Yes.

20 DR. SHEEDY: Yes, that's what I  
21 thought I heard.

22 MR. TERRILL: And that would be  
23 the easiest thing for us to do, I just  
24 don't think that's the -- you know, the  
25 whole idea here is to debate these rules

1 and come to the best decision for everyone;  
2 that includes the regulated community, as  
3 well, because we also don't want to create  
4 a competitive disadvantage because that's  
5 not good for anyone. But a discussion of  
6 what this actually means, I think is  
7 important. But again, you know, there's so  
8 much going on out there relative to, the  
9 cleaner fuels are going to mean something  
10 in the near term and then certainly for the  
11 long term and I would feel a lot better  
12 about this if we were a CARE state.

13 MR. BRANECKY: Of the major  
14 sources, do we have a feel for how many  
15 sources would actually take advantage or  
16 use the NSR provisions? I mean just  
17 because it's on the books doesn't  
18 necessarily mean that all 300 of them are  
19 going to do so.

20 DR. SHEEDY: You mean a 10-year  
21 look back?

22 MR. BRANECKY: Yes.

23 DR. SHEEDY: Well, you know, not  
24 all of them may have records that are good  
25 enough to look back 10 years. That's one

1 of the stipulations, in that you have to  
2 have --

3 MS. MYERS: If that's the case,  
4 then, the Department certainly has the  
5 latitude to say, no, you can't have 10  
6 years. If they can't provide the  
7 documentation, Joyce, it would be --

8 DR. SHEEDY: Yes. If you can't  
9 document it, you can't (inaudible) that's  
10 what the rule says.

11 MS. MYERS: So I don't see that  
12 as a handicap on having the 10 year look  
13 back.

14 DR. SHEEDY: No, but I'm just  
15 saying that some people might not be able  
16 to use the 10-year look back because they  
17 may not have the records to do it with.  
18 And that just means they can't use it, it  
19 doesn't mean that other people can't use  
20 it.

21 MS. MYERS: Right.

22 MR. TERRILL: I think one of our  
23 concerns about this is the longer period  
24 you've got to look back and the more you  
25 rely on records that may or may not be

1 accurate, I think it was pointed out at the  
2 -- whenever we did our workgroup, the  
3 recordkeeping is a lot better than it used  
4 to be and this may not be that big of an  
5 issue.

6           But one of the things it does, it  
7 puts us in an adversarial mode, if you  
8 will, from the git-go because we're trying  
9 to determine whether or not you meet all  
10 these criteria and, you know, even with the  
11 relaxation or however you want to look at  
12 this rule, it's still a complicated rule.  
13 I go back to what the discussions we had  
14 with EPA when they promulgated this and the  
15 fact that the folks that actually wrote the  
16 rule could not answer questions that we  
17 had, the states had for them, about how to  
18 interpret their own rule. And so that's  
19 just -- that's kind of disheartening to go  
20 through all of this and then EPA can't  
21 answer real world questions about this.

22           So I don't think that this is going  
23 to clear up or make anything less clear, it  
24 just may, at the end of the day, provide  
25 some additional flexibility or however you

1 want to term it, for folks not to have to  
2 add back when they do their modifications  
3 where in the past they might have. So -- I  
4 forgot my -- I rambled on, I forgot my  
5 point.

6           But anyway, that was our concern  
7 from the git-go, because of the longer  
8 period of time, it does kind of put us in  
9 an adversarial position as far as being  
10 able to document if these will apply, or if  
11 they don't. But David, you're right, until  
12 we actually get a rule on the books and  
13 have some experience with it, who knows, it  
14 may not mean anything, real world.

15           MS. WORTHEN: My other question  
16 would be, what's the logic still in not  
17 allowing a different two year period or a  
18 24-month period for each pollutant?

19           DR. SHEEDY: Where's Matt?

20           MR. TERRILL: Well, again, what  
21 we want to do, we want to take a look and  
22 use some examples and see if it really does  
23 make any difference. It's going to be  
24 confusing for us to track this, for one  
25 thing. If you've got a different two-year

1 period for each different pollutant and all  
2 the things that go into that -- and one of  
3 the things that you all want as a regulated  
4 industry is quick turnaround on this stuff  
5 and the pressure for us to get permits out  
6 the door, is rightfully so, always there  
7 because we're in a competitive environment.  
8 And the more complicated that the permits  
9 coming in the door are, the more  
10 complicated they are going out the door.  
11 And also, you know, if you make the  
12 determination that no permit is required,  
13 I'll promise you, we are going to be  
14 looking at those determinations as part of  
15 our compliance efforts and, again, the more  
16 complicated it is, the more difficult it is  
17 for you all to show us that it wasn't --  
18 the permit wasn't required, and the more  
19 difficult it is for us to determine that  
20 you're right.

21 MS. WORTHEN: But that's still up  
22 to the industry's choice if they want a  
23 quick turnaround and don't want it to be as  
24 hard for you all, they can choose to just  
25 do the same two year. But if they were

1 willing to put together the documentation  
2 and realize that it might take longer to  
3 get the permit issued, I mean that's still  
4 up to -- that's industry's prerogative.

5 MR. BRANECKY: And I think the  
6 burden of proof is on industry.

7 MS. WORTHEN: Right. I mean --

8 MR. TERRILL: Yes, but I also  
9 know how that works when actually it's in  
10 the door, too, and -- so what you said is  
11 true, but in real world, that's only as  
12 good as the folks doing the work and it's a  
13 problem. But again, it's one of those  
14 things, we want to look at it and we very  
15 well might decide that you all are right  
16 and the Council may decide, regardless of  
17 what we present, that we're wrong. So I  
18 just think it's important for us to take a  
19 little bit longer to look at this because  
20 we want to make sure that all the  
21 information is out there so that a good  
22 decision can be made.

23 DR. SHEEDY: It just seemed like  
24 there was this huge number of permutations  
25 that could come out of this -- every

1 pollutant having a different two years at a  
2 plant, but as Eddie says, we'll look at  
3 that, as well.

4                   MR. CURTIS: Joyce, I have  
5 another question. I know that the  
6 reporting requirement is still kind of  
7 nebulous in regards to those issues, but  
8 what sort of added reporting would be  
9 involved, say, over an existing Title V  
10 permit?

11                   DR. SHEEDY: I believe the -- let  
12 me find the place in here -- and I'm not  
13 sure that all this is over an existing  
14 Title V permit, some of it might duplicate  
15 what's required there. Let's see. Hang in  
16 there a minute until I find the place where  
17 it has this. Okay.

18                   It would be like on Page 46 of this  
19 rule, 8-36.2(c), contains the requirements  
20 that you must do -- basically,  
21 recordkeeping that you must do if you use  
22 projected actual emissions. And the  
23 owner/operator elects to use this method  
24 calculating the emissions before they begin  
25 the actual construction, they have to make

1 a record of these things that are a  
2 description of the project, identification  
3 of the existing emission units whose  
4 emissions would be effected, the  
5 description of the applicability test used.

6 MR. PAQUE: The rule doesn't  
7 require any new reporting requirements  
8 unless you're going to undertake a new -- a  
9 project. So there's no new -- in the rule  
10 there is no new reporting requirements in  
11 addition to Title V unless you're going to  
12 go ahead and use this projected actual to  
13 emissions test to do a new modification.

14 DR. SHEEDY: To determine whether  
15 you do or do not need to -- whether your  
16 modification will or will not be subject to  
17 NSR, that when you use this actual  
18 projected actual emission test, you make  
19 that determination and you determine that  
20 you don't have to do -- you're not going to  
21 be subject to PSD based on this test, then  
22 these are the records that you need to keep  
23 and these may not be all that different  
24 from the records that you would have to put  
25 in your Title V permit anyway because not

1 being subject to NSR, I'm not sure that  
2 that means that you don't have to upgrade  
3 your Title V permit on this project, it  
4 just means they're not PSD.

5 MR. CURTIS: Okay.

6 DR. SHEEDY: So -- but that's in  
7 Section (c) there, and it lists the types  
8 of information they want you to keep. Now,  
9 the way this is written at the moment, you  
10 only have to keep that if you decide that  
11 you don't have to do PSD on your  
12 modification and there's not a reasonable  
13 chance that you could actually be subject  
14 to PSD because you used that test and that  
15 test wasn't good enough. So if you think  
16 there was no reasonable chance that you  
17 would be, then you don't have to keep any  
18 records. That's what was remanded.

19 MR. CURTIS: And right now, the  
20 State does not have any, I don't believe,  
21 PSD areas.

22 DR. SHEEDY: PSD is anywhere,  
23 it's nonattainment.

24 MR. CURTIS: Excuse me, I meant  
25 nonattainment.

1 DR. SHEEDY: No, we don't have  
2 any nonattainment NSR areas.

3 MR. CURTIS: Okay.

4 MS. BOTCHLETT-SMITH: Any further  
5 questions from the Council?

6 MR. PURKAPLE: Just a question  
7 about process. So within the next two or  
8 three months then, there are still some  
9 things that we want to resolve, some  
10 uncertainties, and the expectation is that  
11 in January we will take final action?

12 MR. TERRILL: Yes, that's what --  
13 and I don't think we have to. If there are  
14 some issues out there that come up between  
15 now and then that the Council feels that we  
16 need to resolve or that we feel like we  
17 need to resolve, I don't feel any pressure  
18 that we have to do this, but I'd like to.  
19 I means there's -- really we're only down  
20 to this one issue of look back and we just  
21 need to -- I would like for us to put  
22 together some examples to let you all be  
23 aware of, here's what could actually have  
24 happened and then make your decision based  
25 on that, because I think we resolved

1 everything else that we're going to adopt  
2 pretty close to what EPA has done. But in  
3 the recordkeeping thing, we would like to  
4 massage around a little bit, but I would  
5 anticipate that we will pass this in  
6 January, unless the Council chooses to do  
7 differently.

8 MS. BOTCHLETT-SMITH: Okay. I've  
9 only received one notice of oral comment.  
10 If anyone else wishes to comment, if you  
11 could give your form to Gail at the  
12 registration table. And at this time, I  
13 would call on Mr. Bud Ground, representing  
14 EFO.

15 MR. TERRILL: While Bud's coming  
16 up, I would encourage -- we had some good  
17 discussion when we did our workgroup  
18 meeting from some of the regulated sources  
19 and from some of the consultants as to how  
20 our proposed changes would impact them.  
21 And we would be interested, if you haven't  
22 submitted any comments as to how our  
23 proposal would impact your particular  
24 industry, we would like to hear that  
25 because that factors in to what our final

1 recommendation is going to be. So if you  
2 weren't at the workgroup meeting and you  
3 feel like that what we're proposing is  
4 going to impact you, if you would make  
5 those comments available to us, it would be  
6 helpful.

7 MS. BOTCHLETT-SMITH: Bud.

8 MR. GROUND: Well, thank you,  
9 very much. Again, I'm Bud Ground, I'm  
10 representing Environmental Federation of  
11 Oklahoma. And EFO really appreciates the  
12 opportunity to submit comments and we  
13 really appreciate that the DEQ would hold a  
14 workshop and allow us to come in and talk  
15 to you about these proposals, it just -- it  
16 really helps when we have these  
17 conversations and we do believe that you  
18 should use real world studies and real  
19 world analysis on what's going on.

20 I'm not going to go through any real  
21 examples. You received some comments and  
22 since this will be stayed until the next  
23 meeting, I'm not going to go through a lot  
24 of comments. But I would like to say that  
25 we do not believe that you should use

1 studies such as the Integrity Project to  
2 use as a basis for not allowing a 10-year  
3 look back. We really hope that you use --  
4 and like you said, Eddie, this turns out to  
5 be an economic impact on Oklahoma. And  
6 because Oklahoma right now is on an  
7 economic incline, we'd like to keep it that  
8 way and we hope that all of our companies  
9 in Oklahoma that, if there is an  
10 opportunity to expand a unit here versus  
11 expanding a unit in another state, that it  
12 comes to Oklahoma. And if that means a 10-  
13 year look back versus a 5-year or using a  
14 different two year period on each  
15 pollutant, we really hope that we're  
16 allowed that latitude and that flexibility  
17 that's in the EPA rules now.

18           And so what we're -- I guess what  
19 I'm really asking is that you allow us to  
20 have that flexibility and allow us to use  
21 the opportunity to prove to you that that  
22 is a valid -- a valid look back period when  
23 we come in for applications. And we also  
24 believe that the real world will show you  
25 that there has been a steady decrease in

1 emissions over the past 20 years and that  
2 there will continue to be a decrease due to  
3 a lot of regulations that are going to  
4 impact Oklahoma industry and not just  
5 utilities but -- like you said,  
6 specifically the utilities will be impacted  
7 but other industries, as well.

8           So that's really all I wanted to  
9 say. We really appreciate it and just hope  
10 that you give us the flexibility that EPA  
11 has in their rules. Thank you.

12           MS. BOTCHLETT-SMITH: Okay.  
13 Receiving no other notices of oral comment,  
14 I guess I'll turn it back over to Council  
15 for one last opportunity for questions.

16           Is there somebody back there that  
17 raised their hand to speak? I guess not.  
18 Okay.

19           Any other questions from the  
20 Council?

21           MS. MYERS: So at this point, if  
22 there's no other questions from Council  
23 Members, we need to entertain a motion to  
24 carry this rule forward.

25           MR. CURTIS: So moved.

1 MS. MYERS: We have a motion to  
2 carry it forward to the next Council  
3 meeting.

4 MR. MARTIN: Second.

5 MS. MYERS: And a second. Myrna,  
6 would you call roll, please.

7 MS. BRUCE: Gary Martin.

8 MR. MARTIN: Yes.

9 MS. BRUCE: Jerry Purkaple.

10 MR. PURKAPLE: Yes.

11 MS. BRUCE: Laura Worthen.

12 MS. WORTHEN: Yes.

13 MS. BRUCE: David Branecky.

14 MR. BRANECKY: Yes.

15 MS. BRUCE: Bob Curtis.

16 MR. CURTIS: Yes.

17 MS. BRUCE: Sharon Myers.

18 MS. MYERS: Yes.

19 MS. BRUCE: Motion approved.

20 MS. BOTCHLETT-SMITH: The next  
21 item on the agenda is OAC 252:100-8,  
22 Permits for Part 70 Sources, Part 11, and  
23 Mr. Matt Paque will give the staff  
24 presentation.

25 MR. PAQUE: Madame Chair, Members

1 of the Council, my name is Matt Paque, I'm  
2 an attorney for the Department's Air  
3 Quality Division. This item on the agenda,  
4 I'll discuss the Department's proposed  
5 revision to OAC Title 252 Chapter 100,  
6 Subchapter 8, Part 11. In 1999, the U.S.  
7 Environmental Protection Agency announced  
8 an effort to improve the air quality in  
9 national parks. This effort resulted in  
10 the development of the Regional Haze Rule.  
11 This rule calls for state and federal  
12 agencies to work together to improve  
13 visibility in class one areas, which  
14 include 156 national parks and wilderness  
15 areas. The Wichita Mountains, southeast of  
16 Lawton, Oklahoma, is one of these areas.  
17 States are required to submit Regional Haze  
18 State Implementation Plans outlining the  
19 methods for improving visibility to EPA by  
20 December 2007. One mandatory method that  
21 states are required to utilize in improving  
22 visibility is the application of final Best  
23 Available Retrofit Technology, known by the  
24 acronym "BART". EPA published amendments  
25 to the regional haze rule in the BART

1 guidelines in the Federal Register on July  
2 6, 2005.

3           The process for establishing BART  
4 emission limitations can be logically  
5 broken down into three steps. First,  
6 states identify those sources which meet  
7 the definition of a "BART eligible source"  
8 set forth in the proposed OAC 252:100-8-71.

9           Second, states determine whether  
10 such sources emit any air pollutant which  
11 may reasonably be anticipated to cause or  
12 contribute to any impairment of visibility  
13 in a class one area. Sources that meet  
14 this description is subject to BART.

15           Third, for each source subject to  
16 BART, States on facilities then identify  
17 the appropriate type and the level of  
18 control for reducing emissions. The level  
19 of control is to be established on a case  
20 by case basis, taking into consideration  
21 the criteria listed in the "BART"  
22 definition, which is in the proposed OAC  
23 252:100-8-71. The identification of a  
24 "BART eligible" emission unit at a facility  
25 involves a three-step process.

1           The emission unit must have been in  
2   existence prior to August 7, 1977, and  
3   begun operation after August 7, 1962.   The  
4   emission unit must be located at a facility  
5   which falls into one of 26 categories.  
6   These categories are also listed in the  
7   proposed rule.

8           The aggregate potential emissions of  
9   all emission units identified and in Steps  
10  1 or 2 must be greater than or equal to 250  
11  tons per year of any visibility impairing  
12  pollutant.   The pollutants that reduce  
13  visibility include particulate matter,  
14  PM10, PM2.5, and compounds which contribute  
15  to PM2.5 formation, such as nitrous oxides,  
16  sulphur dioxides, and under certain  
17  conditions volatile organic compounds and  
18  ammonia.

19           The DEQ has currently identified 22  
20  BART eligible sources and may identify a  
21  few more in the coming weeks.   Most all of  
22  the identified facilities have been in  
23  contact with the Division regarding their  
24  BART status.

25           Under the proposed rule, owners or

1 operators of such sources must submit the  
2 proposed BART or proposed BART exemption  
3 from BART requirements for these sources to  
4 the Department by December 1st, 2006.

5 Under the rule as currently proposed, BART  
6 must be installed and operated at sources  
7 subject to BART requirements no later than  
8 five years after DEQ approval of the  
9 proposed BART.

10 Notice of the proposed rule changes  
11 was published in the Oklahoma Register on  
12 September 15, 2005, comments were  
13 requested. At this time no comments have  
14 been received.

15 At this time, staff asks the Council  
16 to continue the hearing to allow for  
17 further consideration and comments from  
18 both the public and regulated community.

19 MS. BOTCHLETT-SMITH: Questions  
20 or comments from the Council? I didn't  
21 receive any notice of comment from the  
22 public. Do we have any questions?

23 MR. TERRILL: I might point out  
24 that we're in the process through our  
25 regional consortium, the CENRAP, and our

1 partners, both the tribes and -- well,  
2 actually, it will be our own decision, but  
3 we'll work with the tribes and FLMs and the  
4 regulated community to determine whether or  
5 not we're going to -- what our trading  
6 program might look like and at some point  
7 in the near future, we're going to have to  
8 decide if the trading program for this  
9 particular rule is going to be appropriate  
10 for us in Oklahoma. So if you've got a  
11 BART source and potentially if you don't  
12 have a BART source, because we're still  
13 going to have to show through our SIP that  
14 we're meeting the reasonable progress and  
15 meeting the goals of regional haze, that  
16 may expand out beyond the BART eligible  
17 sources depending on what the modeling in  
18 class one areas outside the state shows  
19 impact. So just because you don't have a  
20 BART source, that doesn't necessarily mean  
21 you're off the hook because we're going to  
22 have to figure out what reductions we're  
23 going to have to have, if any, hopefully we  
24 won't have to have any, but what reductions  
25 we're going to have to have to show

1 regional progress and where those are going  
2 to come from. So if you're a large source,  
3 whether you're BART eligible or not, you  
4 might be thinking about and keeping an eye  
5 on what's going on relative to trading  
6 within CENRAP so you can be part of the  
7 discussion. We haven't made a decision yet  
8 and we'll make that partnership with the  
9 regulated folks as to whether we think it's  
10 appropriate for Oklahoma or not.

11 MR. BRANECKY: Eddie, what's the  
12 status of the modeling? Isn't CENRAP doing  
13 some modeling currently?

14 MR. TERRILL: Yes, some of the  
15 results are starting to come in. In fact,  
16 we've got folks -- that's the reason --  
17 well, Scott's out, but he wouldn't be here  
18 today anyway. We're having a meeting here  
19 in Oklahoma City of all of the states to  
20 start taking a look at some of the modeling  
21 and what it showed relative to causes of  
22 haze and start the collaborative process  
23 and we're probably, without Lee here to  
24 tell me, we're probably two-thirds of the  
25 way through with the modeling and the

1 results should start coming in -- all the  
2 results should be coming in in the next  
3 couple or three months. I think the big  
4 key here is going to be what the modeling  
5 shows as our impact on other class one  
6 areas, because that's where --

7 MR. BRANECKY: As a state -- the  
8 whole state's impact on (inaudible), is  
9 that what the modeling --

10 MR. TERRILL: -- well, I think  
11 it will be more specific than that. I  
12 think that from what I've seen, you're  
13 going to have actual sources, the other  
14 states are going to be looking at the  
15 impact of other sources, similar to what  
16 the CARE rule did and similar to what a 126  
17 petition would do, they're going to make  
18 recommendations at this point rather than  
19 allegations that these sources are  
20 impacting their particular class one area.  
21 But it could be if they can't identify it,  
22 yes, it could be just impacts that we  
23 believe are coming from your state and not  
24 necessarily identify what the sources are.  
25 And then the fun part comes as you debate

1 with that state whether or not their data  
2 is right or not. And it will be a very  
3 interesting and unusual procedure that we  
4 go through for this, unlike any we've ever  
5 done before.

6 MS. BOTCHLETT-SMITH: Any other  
7 questions? Sharon.

8 MS. MYERS: At this point, we'll  
9 entertain a motion to carry this rule  
10 forward to the next Council meeting.

11 MR. CURTIS: So moved.

12 MS. MYERS: Thank you.

13 MR. PURKAPLE: Second.

14 MS. MYERS: We have a motion and  
15 a second to carry this rule forward to the  
16 January Council meeting. Myrna, would you  
17 call roll, please.

18 MS. BRUCE: Gary Martin.

19 MR. MARTIN: Yes.

20 MS. BRUCE: Jerry Purkapple.

21 MR. PURKAPLE: Yes.

22 MS. BRUCE: Laura Worthen.

23 MS. WORTHEN: Yes.

24 MS. BRUCE: David Branecky.

25 MR. BRANECKY: Yes.

1 MS. BRUCE: Bob Curtis.  
2 MR. CURTIS: Yes.  
3 MS. BRUCE: Sharon Myers.  
4 MS. MYERS: Yes.  
5 MS. BRUCE: Motion approved.  
6 MS. BOTCHLETT-SMITH: That  
7 concludes the hearing portion of today's  
8 meeting. I'll turn it back over to Sharon.

9

10 (END OF PROCEEDINGS)

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