

**SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO SUBCHAPTER 1, GENERAL PROVISIONS;
SUBCHAPTER 3, AIR QUALITY STANDARDS AND INCREMENTS; SUBCHAPTER
7, PERMITS FOR MINOR FACILITIES; AND SUBCHAPTER 8, PERMITS FOR PART
70 SOURCES**

**COMMENTS RECEIVED PRIOR TO AND AT THE *OCTOBER 27, 2010*
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

The Air Permitting Forum (APF or the Forum) - E-mail received on October 25, 2010 from Shannon S. Broome

1. **COMMENT:** Regarding greenhouse gas (GHG) revisions to Subchapter 8, the Forum recommended that DEQ include in the definitions of "subject to regulation" in OAC 252:100-8-2 and 252:100-8-31 an "expiration" or "sunsetting" of the provisions regulating GHG under the PSD and Title V programs, in light of the current litigation challenging EPA's decision to regulate GHG under the federal Clean Air Act.

RESPONSE: Staff feels that the problem pointed out by the Forum is already resolved by the introductory language to the definitions of "subject to regulation." As a result if a court was to invalidate for any reason the underlying applicable regulation that makes GHG regulated, then GHG would automatically not be contained in the definition of subject to regulation. However, to make the rule very clear on the matter, we have added "rescission" or "sunsetting" language to the definitions of "subject to regulation" in OAC 252:100-8-2 and 252:100-8-31 to stress that the State's GHG permitting requirements will not exceed those of EPA.

2. **COMMENT:** Regarding GHG revisions to Subchapter 8, the Forum also stated that Oklahoma's (and EPA's) definition of the term "regulated NSR pollutant" in OAC 252:100-8-31 includes not only "any pollutant that otherwise is 'subject to regulation' under the Act" but also "any pollutant for which a NAAQS has been promulgated" and "any pollutant that is subject to any standard promulgated under section 111 of the Act." EPA has received petitions to issue a NAAQS for GHGs, and EPA is also in the process of adopting NSPS for certain source categories under section 111 that would regulate GHGs. The "subject to regulation" qualifier, however, is not part of the "regulated NSR pollutant" definition for NAAQS and NSPS, which means that if EPA proceeds to issue a NAAQS or NSPS covering GHGs, the thresholds in the "subject to regulation" definition would no longer apply. One way to address this problem would be for the Department to limit subsections (A)(i) [for NAAQS] and (A)(ii) [for NSPS] of its definition of regulated NSR pollutant not to include GHGs above the thresholds specified in the "subject to regulation" definition. This could be accomplished by adding a new subsection (B)(iii) to the definition that would state "regulated NSR pollutant does not include ... (iii) GHGs emitted below the thresholds in Subparagraphs (C) through (E) in the definition of the term 'subject to regulation' in this section." This approach would give Oklahoma time to address any regulation of GHGs under the NSPS or

NAAQS rules if EPA proceeds with such rulemakings.

RESPONSE: Staff will give further consideration to this comment before the permanent rulemaking is proposed in January 2011.

RESPONSE UPDATED JANUARY 4, 2011: Staff agrees that there appears to be some ambiguity in the definition of "regulated NSR pollutant." The federal and proposed State definitions are substantively the same. By definition any pollutant that is subject to any standard promulgated under section 111 of the federal Clean Air Act is a "regulated NSR pollutant." The definition of "regulated NSR pollutant" also references the definition of "subject to regulation," which states that GHG is subject to regulation only if GHG emissions from a source exceed the PSD GHG applicability thresholds of 75,000 tpy CO₂e for modifications or 100,000 tpy CO₂e for new sources. It is unclear which definition would take precedence if an NSPS for GHG is promulgated. However, this is a national problem and Staff prefers to allow EPA the opportunity to clarify the relationship between "regulated NSR pollutant" and "subject to regulation." EPA has announced their intention to propose NSPS and emission guidelines for GHG emissions from electric generating units and refineries in 2011 and to finalize these standards in 2012. This gives the Department time to address the problem, if it is not resolved by EPA, before any NSPS for GHG becomes effective.

EPA Region 6 - Fax received on October 26, 2010 from Jeff Robinson, Chief, Air Permits Section

3. **COMMENT:** Mr. Robinson expressed support of the proposed emergency rule revisions to Subchapters 1, 7, and 8 relating to GHG emissions and encouraged the Department to expeditiously adopt the revisions as proposed to implement the GHG tailoring rule provisions by January 2, 2011.

OIPA (Oklahoma Independent Petroleum Association) and MOGA (Mid-Continent Oil and Gas Association of Oklahoma) - E-mail received on October 26, 2010 from Angie Burckhalter, V.P. Regulatory Affairs, OIPA and Michael Bernard, President, MOGA

4. **COMMENT:** OIPA and MOGA expressed concern that if the GHG requirements are vacated or delayed at the federal level, it would appear that the proposed revisions to Subchapter 8 would still require regulated entities in Oklahoma to comply with DEQ's GHG requirements. This would place Oklahoma in an economic disadvantage to other states that may not have GHG rules in place or that have language in place to address such a situation. OIPA and MOGA recommend that DEQ include language in the rules that would address this issue.

RESPONSE: Staff does not believe this is the case, but to make the rule very clear on the matter, "rescission" or "sunsetting" language has been added to the definitions of "subject to regulation" in OAC 252:100-8-2 and 252:100-8-31 to stress that the State's GHG permitting requirements will not exceed those of EPA.

5. **COMMENT:** OIPA and MOGA pointed out that the State of Texas raised some significant questions regarding state's right as it relates to an expedited GHG rule implementation in

relation to the SIP revision process under the CAA Section 166(a), the normal SIP revisions procedures under Section 110, and EPA's authority to impose a FIP on GHG without finding that a state has failed to make a required submission. They suggested that DEQ carefully consider these issues before moving forward with GHG regulations.

RESPONSE: Staff is aware of the Texas letter and awaits EPA's response to it with interest. However, staff feels it is in the best interest of the GHG emitting sources in Oklahoma to provide the protections afforded by the GHG tailoring rule in the event that EPA prevails. This proposed revision is an emergency rule and as such is temporary and will not become part of the State's SIP. The hearing on the permanent rulemaking regarding GHG was continued at the October 27, 2010 Council meeting until the January 2011 Council meeting. Staff hopes that by that time some of the issues surrounding GHG permitting will be resolved. Staff will amend the current proposed GHG rule revisions as appropriate prior to that meeting.

6. **COMMENT:** OIPA and MOGA recommended that OAC 252:100-7-2.1, relating to minor permits for GHG emitting facilities, be modified by the addition of "but are not limited to" in the last sentence so that it reads: "Physical or operational limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation, and/or restrictions on the type or amount of material combusted, stored, or processed."

RESPONSE: Staff agrees with this request and the suggested language has been added to the rule.

Oral Comments

Steve Mason, DEQ Board Member commented at the October 27, 2010 Air Quality Advisory Council meeting.

7. **COMMENT:** Mr. Mason asked why a permanent rule was not linked to the proposed GHG emergency revisions to Subchapter 8. Mr. Mason also stated that the Board could consider an emergency rule without a permanent rule submitted at the same time.

RESPONSE: A permanent rule is being proposed separately, however, the Department requested that the Council continue the hearing on the permanent rule proposal to its January 2011 Council meeting. This will allow the inclusion of EPA's PM_{2.5} PSD implementation requirements in the same proposal. In October, EPA promulgated the last part of its PM_{2.5} rules so these recent changes could not be included in the proposed rule for the October 2010 Council meeting. Because the GHG modification and the PM_{2.5} modification change the same section (OAC 252:100-8-31) and even the same definition ("Regulated NSR Pollutant"), the GHG, and PM_{2.5} modifications must be processed together or the PM_{2.5} modification could be delayed by a year.

8. **COMMENT:** Mr. Mason stated that Texas sent a letter to EPA refusing to promulgate GHG rules and questioning EPA's authority to regulate GHG under the federal Clean Air Act. Mr. Mason wondered if Texas was just not going to promulgate GHG rules and asked

if Oklahoma has that opportunity also.

RESPONSE: It is our understanding that Texas is taking the position that EPA does not have the authority to regulate GHG and intends to litigate the issue. After looking at a lot of different scenarios, Staff felt that DEQ owes it to the regulated community to provide some clarity on GHG permitting and to have an avenue for them to continue to obtain necessary permits from DEQ instead of EPA. The GHG tailoring rule does not require that sources obtain PSD or Part 70 permits. That is required by other existing federal and State rules and regulations and will automatically occur when GHG becomes a pollutant subject to regulation on January 2, 2011. The GHG tailoring rule exempts a large number of smaller GHG sources from the requirement to obtain PSD and Part 70 permits by raising the applicability thresholds for GHG in the PSD and Part 70 programs. The proposed emergency rule change to Subchapter 8 includes a rescission provision to address subsequent legislative or judicial actions on GHG and to ensure that the State's GHG permitting requirements will not exceed those of EPA.

Angie Burckhalter, V.P. Regulatory Affairs, OIPA commented at the October 27, 2010 Air Quality Advisory Council meeting.

9. **COMMENT:** Ms. Burckhalter repeated the request she made in the October 26, 2010 e-mail from OIPA and MOGA. She asked that the last sentence in new Section OAC 252:100-7-2.1 be revised to include "but are not limited to." The sentence would read: "Physical or operational limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation, and/or restrictions on the type or amount of material combusted, stored, or processed.

RESPONSE: The requested change has been made to 252:100-7-2.1.

Grover Campbell with Chesapeake Energy commented at the October 27, 2010 Air Quality Advisory Council meeting.

10. **COMMENT:** Mr. Campbell stated that one of the reasons to add the language suggested by Ms. Burckhalter is that energy efficiency will be one of the main BACT requirements for GHG emissions.