

April 2, 2007

**REVISED SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO OAC 252:100-9, Excess Emission Reporting
Requirements**

**COMMENTS RECEIVED PRIOR TO AND AT THE April 18, 2007, AIR QUALITY
ADVISORY COUNCIL MEETING**

DEQ has not proposed amendments to Subchapter 9, however the agency has requested comments.

Written Comments

EPA Region 6 – Letter dated January 10, 2007, received by E-Mail on January 10, 2007, signed by Thomas H. Diggs, Chief, Air Planning Section and David Neleigh, Chief, Air Permits Section.

1. **COMMENT:** EPA's interpretation of the CAA provides that all periods of excess emissions are violations of applicable SIP standards. EPA articulated its policy on excess emissions from startup, shutdown, maintenance and malfunctions in initial guidance in 1982. That policy recognizes that all emissions in excess of permit or SIP limits, or orders are not allowed under the CAA. Therefore, EPA cannot approve into the SIP any rule which allows an automatic exemption for periods of excess emissions. The rationale for this position is that SIPs are ambient-based standards intended to protect increments and the NAAQS. Emissions above allowable limits may cause or contribute to violations of the NAAQS.

Startup, shutdown and maintenance are part of a source's normal operations and should be accounted for in the planning, design and implementation of operating procedures for the source's process and control equipment.

Enforcement discretion may be appropriate for infrequent periods of startup, shutdown, or malfunction emissions where circumstances are entirely beyond the control of the owner/operator and which could not have been prevented through careful planning and design. EPA has outlined criteria States may consider in exercising enforcement discretion for excess emission violations. States may go beyond enforcement discretion approach and provide an affirmative defense to civil penalties for SIP violations due to excess emissions if the source can meet certain defined criteria. The defendant has the burden of proof to demonstrate that those criteria are met. The State may always bring an action for injunctive relief.

An affirmative defense is not appropriate for maintenance activities. Maintenance is a predictable or anticipated event which can be scheduled to a large extent at the discretion of the source. In guidance documents issued by EPA and other final rulemakings, we have indicated that scheduled maintenance activities are predictable events that are subject to planning to minimize releases, unlike malfunctions or upsets, which are sudden, unavoidable or beyond the control of the owner or operator.

EPA's interpretation of Section 110 of the Act and related policies allows an affirmative defense to be asserted against civil penalties in an enforcement action for excess emissions events which are sudden, unavoidable or caused by circumstances beyond the control of the owner or operator and where emissions control systems may not be consistently effective during startup or shutdown periods. However, EPA has determined that it is inappropriate to include scheduled maintenance as an event that could excuse excess emissions from a penalty action. The State may choose to exercise its enforcement discretion for excess emissions due to predictable events such as scheduled maintenance activities.

EPA cannot approve a SIP that provides for affirmative defense to Federally-promulgated standards and programs such as NSPS, NESHAP, Acid Rain, and approved SIP limitations.

While the State may wish to direct its enforcement resources to aggressively target certain categories of excess emissions, EPA encourages the State to consider all excess emissions, not only the most serious events, in tailoring its enforcement program. In any revisions to the State's existing SIP rules, it is important to acknowledge that all unauthorized emissions from such activities are violations of applicable emission limitations, subject to enforcement action by the State, EPA or a citizen suit.

EPA cannot approve into the SIP any rule which provides for Director's Discretion to exempt a source from compliance with the emission limitations or which could limit EPA or citizens' ability to seek enforcement action for violation of emission limitations during excess emissions.

Oklahoma Gas and Electric Co. (OG&E) - Letter dated January 10, 2007, received on January 10, 2007, signed by Melody Martin, Air Quality Coordinator.

2. **COMMENT (paraphrased):** Immediate reporting of excess emissions should occur only if excess emissions exceed a preset threshold (time based or quantity based).
3. **COMMENT (paraphrased):** The demonstration of cause should be filed only if the sum of the time of excess emissions during the respective quarter exceeds 1.5% of the operating time in that quarter.
4. **COMMENT (paraphrased):** A demonstration of cause should not be required if the excess emissions are due to "technical limitations" as defined in OAC 252:100-9-1.

Environmental Federation of Oklahoma - Letter dated January 12, 2007, received on January 12, 2007, signed by James Barnett, President and General Counsel

5. **COMMENT (paraphrased):** The requirement for immediate notice is overly burdensome because even small amounts of excess emissions must be reported immediately and then followed up with a written report within 10 days. It is suggested that a "de minimis level"

or a “level of significance” be established within which such a notice and follow-up reports would not be required.

6. **COMMENT:** At times, excess emissions are caused by a single event for which the resolution may take several days during which excess emissions may be continual or intermittent. The rule is unclear about how and when these ongoing excess emissions are to be reported. We suggest the immediate report should indicate whether the event is concluded or ongoing, and if it is ongoing, then no additional notification should be required until the conclusion of the event. Similarly, the written report should not be required until ten days after the last day of the event; otherwise, it may be required before the event has ended.
7. **COMMENT (paraphrased):** Merge the requirement for the determination of cause with the quarterly reporting requirements for technical limitations where ongoing excess emissions are due solely to technical limitations.