

MINUTES  
AIR QUALITY COUNCIL  
January 21, 2009  
DEQ Multipurpose Room  
707 North Robinson  
Oklahoma City, Oklahoma

APPROVED AQC  
April 15, 2009

**Notice of Public Meeting** The Air Quality Council convened for its regular meeting at 9:00 a.m. January 21, 2009 at the 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 October 24, 2008 and amended on November 25, 2008 to change the date from the 14<sup>th</sup> to the 21<sup>st</sup>. Agendas were posted at the meeting facility 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. Mr. David Branecky, Chair, called the meeting to order and welcomed Mr. Pete White and Mr. Gary Collins to the Council. Ms. Bruce called roll and a quorum was confirmed.

<b>MEMBERS PRESENT</b>	<b>DEQ STAFF PRESENT</b>	<b>DEQ STAFF PRESENT</b>
David Branecky	Eddie Terrill	Diana Hinson
Montelle Clark	Beverly Botchlet-Smith	Sarah Penn
Gary Collins	Scott Thomas	Kendal Stegmann
Jim Haught	Cheryl Bradley	Dawson Lasseter
Laura Lodes	Joyce Sheedy	Patrick Farris
Bob Lynch	Max Price	Jay Wright
Sharon Myers	Rob Singletary	Karl Heinzig
Jerry Purkapple	Nancy Marshment	Myrna Bruce
Pete White		
<b>MEMBERS ABSENT</b>	<b>OTHERS PRESENT</b>	
	Steve Mason, EQB	
	Christy Myers, Court Reporter	

Transcripts and Attendance Sheet are attached as an official part of these Minutes

**Approval of Minutes** Ms. Lodes made motion to approve the October 15, 2008 Minutes as presented and Ms. Myers made the second.

*Transcript pages 5 - 7*

Jim Haught	Yes	Jerry Purkapple	Yes
Pete White	Abstain	Montelle Clark	Abstain
Gary Collins	Abstain	Bob Lynch	Yes
Sharon Myers	Yes	Laura Lodes	Yes
David Branecky	Yes		

**Election of Officers - Calendar Year 2009** Ms. Myers nominated Ms. Laura Lodes for Chair and Mr. Jerry Purkapple for Vice-Chair. Hearing no discussion, Mr. Branecky called for a second. Mr. Haught made the second.

*Transcript pages 7-8*

Jim Haught	Yes	Jerry Purkapple	Yes
Pete White	Yes	Montelle Clark	Yes
Gary Collins	Yes	Bob Lynch	Yes
Sharon Myers	Yes	Laura Lodes	Yes

David Branecky Yes

**OAC 252:100-9. Excess Emission Reporting Requirements [AMENDED]** Mr. Robert Singletary, DEQ Environmental Attorney, advised that the Agency proposal would amend Subchapter 9 to clarify its requirements and make them more compatible with EPA guidelines. Mr. Eddie Terrill and staff fielded questions and comments from the Council. Public comments were heard from Don Shandy, Attorney; and from Alan Shar, EPA. After much discussion, Ms. Lodes called for a motion. Mr. Haught made the motion to accept this rule as modified and Mr. Branecky made the second.

*Transcript pages 10 - 98*

Jim Haught	Yes	Jerry Purkaple	Yes
Pete White	Abstain	Montelle Clark	Yes
Gary Collins	Abstain	Bob Lynch	Yes
Sharon Myers	No	Laura Lodes	No
David Branecky	Yes		

**OAC 252:100-33. Control of Emission of Nitrogen Oxides [AMENDED]** Ms. Cheryl Bradley advised that the proposal would define the term ‘solid fossil fuel’ to resolve issues regarding NOx emission limits for equipment that uses more than one type of fuel and equipment with technological limitations. In addition, the changes clarify what types of fuel are covered. She identified the changes that had been proposed incorporating two changes recently proposed by Council members. Following discussion, Ms. Lodes called for a motion. Mr. Purkaple moved to adopt as presented with latest changes. The second was by Dr. Lynch.

*Transcript pages 3 - 16*

Jim Haught	Yes	Jerry Purkaple	Yes
Pete White	Abstain	Montelle Clark	Yes
Gary Collins	Yes	Bob Lynch	Yes
Sharon Myers	Yes	Laura Lodes	Yes
David Branecky	Yes		

**6. Finance Committee Report** – Mr. David Branecky advised that the Finance Committee had met with the accounting firm of John M. Aldrich and Associates regarding the financial audit for the Air Quality Division. He introduced representatives from the firm who fielded questions from the Council. Mr. Branecky asked for Council’s approval to move forward with the audit. Mr. Terrill assured that Council would stay updated on the progress of the audit. *Transcript attached – pages 1 - 29*

**7. Mercury Fish Flesh Sampling Presentation** - Jay Wright, DEQ Customer Services Division provided a presentation on how mercury accumulates in fish and update on DEQ’s recent sampling efforts and results.

**8. Boiler and Area Source MACTs Presentation** - Phillip Fielder, Engineering Manager, DEQ Air Quality Division, summarized the status of the federal MACT standards.

**9. Division Director's Report** - Eddie Terrill, Director, Air Quality Division had an update on ozone boundary issues; the Regional Haze SIP; and the upcoming Climate Registry national meetings. *Transcript attached – pages 29 – 40*

**10. New Business** - None

**11. Adjournment** – The meeting adjourned at 1:00 p.m.

**Transcripts and Attendance Sheet are attached as an official part of these Minutes.**

DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF OKLAHOMA

\* \* \* \* \*  
TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY MANAGEMENT ADVISORY  
COUNCIL MEETING  
ITEMS NUMBER 1 THROUGH 5A  
HELD ON JANUARY 21, 2009, AT 9:00 A.M.  
IN OKLAHOMA CITY, OKLAHOMA  
\* \* \* \* \*

MYERS REPORTING SERVICE  
Christy Myers, CSR  
P.O. Box 721532  
Oklahoma City, Oklahoma 73172-1532  
(405) 721-2882

MEMBERS OF THE COUNCIL

- 1
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- 3 LAURA LODES, CHAIR
- 4 JERRY PURKAPLE, VICE-CHAIR
- 5 DAVID BRANECKY
- 6 JIM HAUGHT
- 7 BOB LYNCH
- 8 SHARON MYERS
- 9 PETE WHITE
- 10 MONTELLE CLARK

DEQ STAFF

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- 12 MYRNA BRUCE
- 13 EDDIE TERRILL
- 14 BEVERLY BOTCHLET-SMITH
- 15 CHERYL BRADLEY
- 16 JOYCE SHEEDY
- 17 MAX PRICE
- 18 NANCY MARSHMENT
- 19 DIANA HINSON
- 20 SARAH PENN
- 21 DAWSON LASSETER
- 22 KENDAL STEGMANN

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## MEETING

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4 1 MEETING  
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6 3 MR. BRANECKY: Good morning  
7 4 everyone. Let's go ahead and get started.  
8 5 Before we do that I'd like to remind  
9 6 everyone, if you have a cell phone, to turn  
10 7 it off or mute it. So with that Myrna,  
11 8 would you call roll.  
12 9 MS. BRUCE: Jim Haught.  
13 10 MR. HAUGHT: Here.  
14 11 MS. BRUCE: Pete White.  
15 12 MR. WHITE: Present.  
16 13 MS. BRUCE: Gary Collins.  
17 14 MR. COLLINS: Here.  
18 15 MS. BRUCE: Sharon Myers.  
19 16 MS. MYERS: Here.  
20 17 MS. BRUCE: David Branecky.  
21 18 MR. BRANECKY: Here.  
22 19 MS. BRUCE: Jerry Purkaple.  
23 20 MR. PURKAPLE: Here.  
24 21 MS. BRUCE: Montelle Clark.  
25 22 MR. CLARK: Here.  
26 23 MS. BRUCE: Bob Lynch.  
27 24 DR. LYNCH: Here.  
28 25 MS. BRUCE: Laura Lodes.

1 MS. LODES: Here.

2 MS. BRUCE: We have a quorum.

3 MR. BRANECKY: Okay. Thank you,  
4 Myrna. Before we get started I would like  
5 to -- we do have a new Council Member,  
6 first time here, Pete White. I'd like to  
7 welcome Pete. He is an Oklahoma City  
8 Councilman in Ward 4. He's had experience  
9 in some wastewater utilities, trust, and  
10 various -- has been a Councilman for  
11 several years. So we'd just like to  
12 welcome you. And Pete, if you'd like to  
13 say anything, go right ahead.

14 MR. WHITE: I think I'll wait  
15 until I learn a little more about what  
16 we're doing before I start making comments.  
17 I appreciate that and I'm glad to be here.  
18 Honored to be here. Thanks.

19 MR. BRANECKY: All right, thank  
20 you. Gary, is this your first time too?

21 MR. COLLINS: Yes, it is.

22 MR. BRANECKY: Okay. Well I'm  
23 sorry. I apologize for that. Gary Collins  
24 with Terra Nitrogen --

25 MR. COLLINS: Yes.

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4 MR. BRANECKY: -- is also the  
5 first time here as a Councilman. And I  
6 don't have anything to say about you. I  
7 didn't -- nobody put anything in front of  
8 me. Go ahead and tell us something about  
9 yourself.

10 MR. COLLINS: That's okay. I'm  
11 going to just listen.

12 MR. BRANECKY: Okay. Well,  
13 welcome Gary and Pete. All right. Well,  
14 with that we'll look at the Minutes from  
15 the last time. Do we have any discussion  
16 on the Minutes?

17 MR. PURKAPLE: There is a  
18 correction that needs to be made at the top  
19 -- on the top left. It says to be approved  
20 by Air Quality Council, at least the copy  
21 that I've got, said January 14th. That  
22 needs to be today.

23 MR. BRANECKY: Where's that at?

24 MR. PURKAPLE: Top left.

25 MS. LODES: Right here.

(Comments)

MR. BRANECKY: Okay. Any other  
discussion about the Minutes? If not, I'll

1 entertain a motion.

2 MS. LODES: I move to accept the  
3 Minutes with the comment -- correction  
4 suggested by Jerry.

5 MS. MYERS: Second it.

6 MR. BRANECKY: Did you get that,  
7 Myrna?

8 MS. BRUCE: Uh-huh.

9 MR. BRANECKY: Sharon seconded  
10 it. All right. Myrna, call the roll  
11 please.

12 MS. BRUCE: Please remember to  
13 push the blue button on your microphones  
14 before you talk. Thank you.

15 Jim Haught.

16 MR. HAUGHT: Yes.

17 MS. BRUCE: Pete White.

18 MR. WHITE: I think since I  
19 wasn't here, I'll abstain.

20 MS. BRUCE: Gary Collins.

21 MR. COLLINS: Abstain.

22 MS. BRUCE: Sharon Myers.

23 MS. MYERS: Yes.

24 MS. BRUCE: David Branecky.

25 MR. BRANECKY: Yes.

1 MS. BRUCE: Jerry Purkaple.

2 MR. PURKAPLE: Yes.

3 MS. BRUCE: Montelle Clark.

4 MR. CLARK: Abstain.

5 MS. BRUCE: Bob Lynch.

6 DR. LYNCH: Yes.

7 MS. BRUCE: Laura Lodes.

8 MS. LODES: Yes.

9 MS. BRUCE: Motion passed.

10 MR. BRANECKY: Thank you, Myrna.

11 The next item on the Agenda is Election of  
12 Officers for 2009. I've served. I've done  
13 my time. It's time for me to move on so, I  
14 will entertain any motions besides  
15 nominating me.

16 MS. MYERS: I make a motion that  
17 we nominate Laura for Chair and Jerry  
18 Purkaple as Vice-Chair.

19 MR. BRANECKY: Okay. Any  
20 discussion from the Council on that? If  
21 not, I'll entertain a second to that.

22 MR. HAUGHT: I'll second that.

23 MR. BRANECKY: So we have a  
24 nomination and a second. Myrna.

25 MS. BRUCE: Jim Haught.

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4 1 MR. HAUGHT: Yes.  
5 2 MS. BRUCE: Pete White.  
6 3 MR. WHITE: Yes.  
7 4 MS. BRUCE: Gary Collins.  
8 5 MR. COLLINS: Yes.  
9 6 MS. BRUCE: Sharon Myers.  
10 7 MS. MYERS: Yes.  
11 8 MS. BRUCE: David Branecky.  
12 9 MR. BRANECKY: Yes  
13 10 MS. BRUCE: Jerry Purkaple.  
14 11 MR. PURKAPLE: I guess it's yes.  
15 12 MS. BRUCE: Montelle Clark.  
16 13 MR. CLARK: Yes.  
17 14 MS. BRUCE: Bob Lynch.  
18 15 DR. LYNCH: Yes.  
19 16 MS. BRUCE: Laura Lodes.  
20 17 MS. LODES: Yes.  
21 18 MS. BRUCE: Thank you. Motion  
22 19 did pass.  
23 20 MS. LODES: Beverly.  
24 21 MS. BOTCHLET-SMITH: Just waiting  
25 22 on you to turn it over to me, Laura.  
26 23 MS. LODES: Beverly, yes.  
27 24 MS. BOTCHLET-SMITH: Good  
28 25 morning. I am Beverly Botchlet-Smith,

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4 1 Assistant Director of the Air Quality  
5 2 Division. And as such, I will be serving  
6 3 as the Protocol Officer for today's  
7 4 hearings.

8 5 The hearings will be convened by the  
9 6 Air Quality Council in compliance with the  
10 7 Oklahoma Administrative Procedures Act and  
11 8 Title 40 of the Code of Federal Regulations  
12 9 Part 51, as well as the authority of Title  
13 10 27A of the Oklahoma Statutes, Section  
14 11 2-2-201, and Sections 2-5-101 through  
15 12 2-5-118.

16 13 Notice of the January 21, 2009  
17 14 hearings were advertised in the Oklahoma  
18 15 Register for the purpose of receiving  
19 16 comments pertaining to the proposed OAC  
20 17 Title 252 Chapter 100 rules as listed on  
21 18 the Agenda and will be entered into each  
22 19 record along with the Oklahoma Register  
23 20 filing. Notice of the meeting was filed  
24 21 with the Secretary of State on October 24,  
25 22 2008 and amended on November 25, 2008. The  
26 23 Agenda was duly posted 24 hours prior to  
27 24 the meeting here at this facility at the  
28 25 DEQ.

1                   If you wish to make a statement, it  
2 is very important that you complete one of  
3 these forms that are found at the  
4 registration table. And you will be called  
5 on at the appropriate time. Comments will  
6 be limited to ten minutes.

7                   Audience members please come to the  
8 podium to make your statement and please  
9 state your name prior to speaking.

10                   At this time, we will proceed with  
11 what's marked as Agenda Item Number 5A.  
12 This is OAC 252:100-9, Excess Emission  
13 Reporting Requirements.

14                   Mr. Robert Singletary, Environmental  
15 Attorney, will be giving the staff  
16 presentation.

17                   MR. SINGLETARY: Madam Chair,  
18 Members of the Council, ladies and  
19 gentlemen, thank you for the opportunity to  
20 present the Agency's proposed amendments to  
21 the Excess Emissions Reporting Requirement  
22 that are set forth in Subchapter 9.

23                   The Agency is proposing to amend  
24 the current version of Subchapter 9 in  
25 order to clarify some of its requirements,

1 and also to make the requirements more  
2 consistent with EPA guidelines. In doing  
3 so, the proposed amendments establish  
4 Affirmative Defenses that may relieve  
5 industry of monetary penalties that are  
6 associated with excess emissions during  
7 periods of startup, shutdown, or  
8 malfunction. In addition, the proposed  
9 amendments also provide exceptions to the  
10 immediate notice provisions or immediate  
11 notice requirements in certain situations  
12 involving low quantity excess emissions  
13 that are not likely to pose a significant  
14 threat. In addition, the monetary  
15 penalties may also be avoided in situations  
16 where the excess emissions are the result  
17 of startup and shutdown activities.

18 As most of you probably recall, the  
19 history of the proposed rules development  
20 is rather lengthy. I'll try and briefly  
21 outline that history for you today.

22 The proposed -- the process has  
23 included multiple opportunities for the  
24 public and for the Council to comment and  
25 participate in the development of the

1 proposed rule. In fact, if you include  
2 today's Council meeting, there have been  
3 seven public meetings and six external  
4 workgroup meetings for the purpose -- or  
5 that included discussions about the  
6 proposed rule and that's just during the  
7 last 21 months.

8           The Council's actual involvement in  
9 this rulemaking process began back at the  
10 April 2007 Council meeting, at which time  
11 DEQ staff members solicited public comments  
12 on the proposed rulemaking.

13           In addition, at the October 2007  
14 Council meeting, DEQ staff again solicited  
15 public comments on Subchapter 9, and also  
16 at that Council meeting, the subchapter 9  
17 workgroup was establish in order to assist  
18 the Agency in considering a wide range of  
19 issues and concerns associated with the  
20 development of a new Subchapter 9 rule.

21           The workgroup, of course, is  
22 comprised of various DEQ Air Quality  
23 Council Members. Two Council members are  
24 actually on the workgroup. We actually  
25 have external members representing various

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4 interested parties, but we also have  
5 members of DEQ staff, Air Quality staff and  
6 legal staff members.

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On November 26, 2007 the Agency held  
an open public meeting specifically for t  
he purpose of discussing Subchapter 9 and  
to provide additional opportunity for  
informal comment and discussion.

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On January 9, 2008 the workgroup had  
its initial meeting. And at the January  
17, 2008 Council meeting, DEQ staff  
presented various amendments to Subchapter  
9. The Council decided at that time to  
table the proposal until the July 2008  
Council meeting in order to allow the  
workgroup and the DEQ staff members to  
further develop the rule.

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In the meantime, the workgroup met  
on January 31, February 22, May 30, and  
July 11 of 2008, in order to work on the  
rule.

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Out of those workgroup meetings, a  
revised version of Subchapter 9 was  
developed and presented at the July 2008  
Council meeting. However, there were

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4 1 several issues that still needed to be  
5 2 finalized and addressed. So the Council  
6 3 agreed to continue to table the proposal  
7 4 until the October 2008 Council meeting.

8 5 At the October 2008 Council meeting  
9 6 staff presented a revised version of the  
10 7 rule. However, there were significant  
11 8 comments received just prior to and during  
12 9 the Council meeting. As a result, the  
13 10 Council decided to provide additional time  
14 11 for those comments to be addressed. As a  
15 12 result, the proposal was carried to this  
16 13 Council meeting.

17 14 On November 3, 2008 the workgroup  
18 15 met to resolve those outstanding issues,  
19 16 primarily concerning the clarification of  
20 17 the immediate notice requirements that are  
21 18 as set forth in the rule. At that time the  
22 19 workgroup indicated there were some minor  
23 20 modifications and supported the revised  
24 21 version. And that revised version is what  
25 22 was published for public comment and what  
26 23 was provided to the Council in their  
27 24 Council packets today.

28 25 In addition to the comments

1 concerning the clarity of the immediate  
2 notice provisions and the prior version,  
3 commenters at the last Council meeting also  
4 urged the Agency to consider an affirmative  
5 defense for maintenance activities. Staff  
6 considered the request, consulted with EPA,  
7 and was told by EPA that an affirmative  
8 defense for maintenance activities was  
9 directly against their agency's policy and  
10 that any SIP containing such a defense  
11 could not and would not be approved.

12           Examples of SIPs containing those  
13 types of affirmative defenses for  
14 maintenance activities that have not been  
15 approved by EPA, are the SIPs submitted by  
16 Texas and Alaska. Alaska's was submitted  
17 -- I believe that was sometime in 2007. As  
18 a result of EPA's comments, staff decided  
19 not to include an affirmative defense for  
20 maintenance activities in the proposed  
21 rule.

22           On a related issue there was one  
23 comment received since the last Council  
24 meeting. It was, in essence, a request  
25 that the proposed rule include a statement

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4 1 that maintenance activities that resulted  
5 2 in under four tons per years of a criteria  
6 3 pollutant or 1.5 tons per year of a HAP  
7 4 only be require to have a minor permit  
8 5 modification.

9 6 The Agency again, did not include  
10 7 that type of statement in the proposed rule  
11 8 for two reasons.

12 9 One is that the statement really is  
13 10 a permitting determination and would more  
14 11 properly belong in one of our permitting  
15 12 subchapters as opposed to the excess  
16 13 emissions subchapter. But more  
17 14 significantly the proposed language would  
18 15 result in a state rule that potentially  
19 16 weakened the federal requirement.

20 17 For example, four tons per years of  
21 18 a criteria pollutant seems like an  
22 19 insignificant amount; however, those four  
23 20 tons may actually cause a facility that  
24 21 already has permitted emissions already  
25 22 near federal thresholds to actually exceed  
26 23 those thresholds. Once that threshold is  
27 24 exceeded, the additional federal permitting  
28 25 requirements would be triggered, and a

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4 1 blanket provision requiring those emissions  
5 2 to be treated as minor modifications,  
6 3 again, would effectively weaken a federal  
7 4 requirement and would not be approved by  
8 5 EPA. That was another justification that  
9 6 EPA cited for its non-approval of the  
10 7 Alaska SIP in 2007, as well.

11 8           Since the last Council meeting,  
12 9 several additional comments have been  
13 10 received and written responses to those  
14 11 comments have been provided, with the  
15 12 exception of several verbal comments that  
16 13 were received last Friday. Those verbal  
17 14 comments were followed up with written  
18 15 comments that we received yesterday. Those  
19 16 comments actually request four changes be  
20 17 made to the rule that was currently before  
21 18 the Council.

22 19           We've indicated those changes and  
23 20 some other changes in a document entitled  
24 21 "Proposed Changes to the Text Distributed  
25 22 Previously", which should be before each  
26 23 you. And as you can see in that document  
27 24 the Agency has agreed to four of the -- or  
28 25 three of the four requested changes.

1 Specifically, OAC 252:100-9-7(b)(9), the  
2 word "required" was changed to "requested."

3 MS. LODES: Rob.

4 MR. SINGLETARY: Do we have  
5 those?

6 MS. LODES: No.

7 MR. BRANECKY: No. We do not  
8 have those.

9 MS. MYERS: No. I do not have a  
10 copy.

11 MS. LODES: Sorry, we just have  
12 the copy that was distributed yesterday --  
13 David and I have a copy that came from  
14 yesterday's --

15 MR. SINGLETARY: Should be  
16 highlighted at the top in yellow and it  
17 will say "Proposed Changes to the Text  
18 Distributed Previously".

19 MS. LODES: No. This is --

20 MR. BRANECKY: Okay. Get some  
21 more copies made.

22 (Comments)

23 MR. SINGLETARY: It's probably  
24 going to be a lot easier to follow along if  
25 you have that to look at.

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4 MS. LODES: Right. If you will  
5 wait just a minute on us to get a copy of  
6 those.

7 MR. BRANECKY: Take a break.

8 MR. LODES: We'll take a break  
9 while staff is making copies.

10 (Break)

11 MS. LODES: Shall we get started  
12 back up now. Were extra copies provided to  
13 all of the audience?

14 MR. BRANECKY: They had some on  
15 the table.

16 MR. SINGLETARY: They had them  
17 initially. There was just a  
18 mis-communication and you guys didn't get  
19 them. Everybody else in the room had them  
20 but you.

21 MS. LODES: Okay. As long as  
22 everybody else has them.

23 MR. SINGLETARY: Again I  
24 apologize for that.

25 As I was saying there were four  
requested changes in these -- the comments  
that were just received. They were just  
received on Friday and then followed up in

1 written form yesterday. But the Agency has  
2 decided -- has excepted three of the  
3 proposed changes. And those are indicated  
4 or reflected in that document.

5 The first one is specifically  
6 located at OAC 252:100-9-7(d)(9). The word  
7 "required" was changed to "requested".

8 The second change is in OAC  
9 252:100-9-8(b)(9). The entire provision at  
10 that location is replaced with the exact  
11 language that is in the corresponding  
12 provision of the existing rule at OAC  
13 252:100-9-3.3(a)(3). That's where that  
14 provision comes from. And it reads:

15 "To the maximum extent practicable,  
16 the air pollution control equipment or  
17 process equipment was maintained and  
18 operated in a manner consistent with good  
19 practice for minimizing emissions;  
20 provided, however, that the provision shall  
21 not be construed to automatically require  
22 the shutdown of process equipment to  
23 minimize emissions."

24 Similarly, in OAC 252:100-9-8(c)(8),  
25 the entire provision is replaced with the

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4 1 exact language from the corresponding  
5 2 provision in the existing rule, which is  
6 3 located at OAC 252:100-9-3.3(b)(4) which  
7 4 reads:

8 5 "The facility was operated in a  
9 6 manner consistent with good practice for  
10 7 minimizing emissions; provided, however,  
11 8 that this provision shall not be construed  
12 9 to require the use or installation of  
13 10 additional or redundant pollution control  
14 11 equipment not otherwise required and that  
15 12 this provision shall not be construed to  
16 13 automatically require the shutdown of  
17 14 process equipment to minimize emissions."

18 15 The last change that was requested  
19 16 in the comments was the complete  
20 17 elimination of the provision located at OAC  
21 18 252:100-9-8(d)(2), and also the amendment  
22 19 of Subsection (d)(5) to eliminate the last  
23 20 portion of the provision which consists of  
24 21 the phrase "or any other federally  
25 22 enforceable performance standard or  
26 23 emission limit."

27 24 In regard to Section (d)(2), the  
28 25 commenter explained that the provision

1 would prevent facilities that decided to  
2 permit startup/shutdown activities from  
3 being eligible for an affirmative defense.  
4 It is staff's position that, first of all,  
5 we can't support such a significant change  
6 to the proposed version without adequate  
7 time to properly consider the proposal, and  
8 the same goes for the provision in  
9 Subsection (d) (5).

10           Staff's initial concerns though with  
11 this proposal is that a facility being able  
12 to chose to permit startup/shutdown  
13 activities, thereby avoiding excess  
14 reporting requirements and also enjoying  
15 the protection from PSD enforcement, also  
16 being allowed to take advantage of the  
17 affirmative defense provisions that are in  
18 the proposed rule.

19           In addition, staff has serious  
20 concerns with how compliance with the NAAQS  
21 and PSD requirements will be demonstrated  
22 if the limits in Subsection (d) (2) are  
23 eliminated. The concern there is that  
24 without those limits in place and sharing  
25 compliance with those limits, that the only

1 other way to determine compliance with the  
2 NAAQS or PSD requirements would actually be  
3 through modeling after excess emissions.  
4 And I don't think that's something anybody  
5 wants required.

6           As a result, the Agency did not  
7 include these changes in the proposed  
8 version of the rule.

9           There was one last minor change  
10 agreed to by the Agency, and that's located  
11 at OAC 252:100-9-7(a) (2) which was amended  
12 to clarify the intent of the provision.  
13 It's just that simple clarification.

14           Again, all the proposed changes that  
15 I've talked about are in that document  
16 that's entitled, "Proposed Changes to Text  
17 Distributed Previously", and now they have  
18 been made available to the Council as well  
19 as the public.

20           Just to briefly sum up, during the  
21 last 21 months there has been a significant  
22 amount of participation in the development  
23 of the proposed rule, and this lengthy and  
24 collaborative process has resulted in a  
25 rule that we feel has taken into account a

1 wide-array of somewhat competing interests.

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3 And has balanced those interests in a  
4 proposed rule that enables the Agency to  
5 continue first and foremost to protect  
6 public health and the environment, but at  
7 the same time also to relieve some of the  
8 regulatory burden on industry.

9           For example, by reducing immediate  
10 notice reporting requirements; by providing  
11 additional time in which to submit written  
12 reports for excess emissions; there's also  
13 the potential avoidance of duplicative  
14 reporting requirements; and then also  
15 there's the potential avoidance of monetary  
16 penalties associated with excess emissions  
17 resulting from startup/shutdown or  
18 malfunction activities.

19           In addition, the proposed rule also  
20 allows the Agency to satisfy the  
21 requirements of the EPA, which of course,  
22 ultimately also had to approve of this  
23 rule.

24           Staff believes that the proposed  
25 rule is currently ready for final adoption

1 and, therefore, respectfully requests that  
2 the Council vote to send the proposed rule  
3 to the Environmental Quality Board with a  
4 recommendation that it be adopted as a  
5 permanent rule. Thank you.

6 MS. BOTCHLET-SMITH: At this time  
7 the staff will take questions and comments  
8 from the Council.

9 MS. LODES: Rob, I have a  
10 question. At the beginning you said that  
11 you couldn't do a blanket; that this would  
12 all be Tier I for modifications to the  
13 permits. Correct? If we're going to  
14 modify a permit to add startup, shutdown or  
15 maintenance emissions --

16 MR. SINGLETARY: I'm guessing --  
17 I'd actually probably defer that question  
18 to our permitting guys. But if it's -- my  
19 understanding there may be -- there are  
20 many situations where it would be a minor  
21 modification. I mean it just depends on  
22 the situation. Is that correct, Dawson? I  
23 mean if they're not near that threshold,  
24 and a few additional tons per year might  
25 not trigger an additional threshold

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4 1 requiring a major modification.

5 2 MS. LODES: Well, then at the end  
6 3 when you were talking about the affirmative  
7 4 defense, you said by opting to include it,  
8 5 they're afforded PSD protection. But could  
9 6 it be that that addition of startup and  
10 7 shutdown and maintenance emissions might  
11 8 trigger PSD review?

12 9 MR. SINGLETARY: Yeah. That was  
13 10 the point of the examples, that it could  
14 11 trigger -- in certain situations if a  
15 12 facility was already on a threshold, or  
16 13 close to a threshold, that maintenance  
17 14 activities could be enough to trigger that,  
18 15 and that's the reason we couldn't agree on  
19 16 a blanket exemption or a blanket definition  
20 17 or statement that it was a minor  
21 18 modification.

22 19 MS. LODES: Okay. So by taking  
23 20 away the affirmative defense -- or if you  
24 21 permit them, you're not allowed to do the  
25 22 affirmative defense. That really doesn't  
26 23 keep you out of any kind of PSD permitting  
27 24 review, because you may have had to go  
28 25 through that to begin with.

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4 MR. SINGLETARY: I see what  
5 you're saying. If there is an excess  
6 emission in addition to what was permitted  
7 then you --

8 MS. LODES: Right. Correct.

9 MR. SINGLETARY: Yes, there would  
10 still be the potential of, but there  
11 wouldn't be the potential of, if you didn't  
12 have that excess emission permitted -- part  
13 of that excess emission -- well, part of  
14 the startup/shutdown emissions permitted.  
15 The parts that are permitted you are  
16 protected from PSD review, because that  
17 would be considered in the permitting  
18 process. However, if you exceeded those  
19 limits, I guess there is still the  
20 potential that you could exceed a PSD  
21 threshold.

22 MS. LODES: Have you all also  
23 developed a time line? The rule here  
24 doesn't have a time line for when permit  
25 applications must be submitted for this. I  
26 know different dates, deadlines, and such  
27 have been talked about.

MR. SINGLETARY: Yes, I believe

1 that the --

2 MR. TERRILL: Are you talking  
3 about for permitting of the maintenance?

4 MS. LODES: For permitting  
5 startup/shutdown maintenance emissions.

6 MR. TERRILL: Yes. If the  
7 Council chooses to pass this rule today,  
8 what we're proposing -- it wouldn't go into  
9 effect until July of 2009. So we're  
10 proposing six months additional time from  
11 that, which would basically be the end of  
12 the year to get your application in. And  
13 once your application is in, if it takes us  
14 six months to a year, you're protected at  
15 that point. All we want is the paperwork  
16 in to get started or if you have a problem  
17 and can't get it in at that time, email us,  
18 send us a letter saying we need some  
19 additional time explaining that and we'll  
20 work with you on that too. Because we  
21 understand this somewhat of a burden for  
22 you, all as well as for us, to get this  
23 done. So we want to make sure that there  
24 is adequate time allowed for us and for you  
25 all.

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4 MS. LODES: I think the time line  
5 might need to be a little bit longer,  
6 because I know -- I can think of three  
7 companies alone that between the three  
8 would have over 500 facilities with permits  
9 that would need to be modified.

10 MR. TERRILL: Well, I'd prefer  
11 that you leave a target at the end of the  
12 year, but if you have extenuating  
13 circumstances we'll work with you on an  
14 individual basis to extend that. Again, we  
15 have to get to them as well. So it's not  
16 in our benefit to be flooded with these so  
17 we can't get to them. But if we don't have  
18 some target that's reasonable, we'll be  
19 doing this two years from now. But I think  
20 we need to at least have the process  
21 started so you're at least thinking about  
22 it, even if all we get say in November is  
23 "we're not there yet, can we have another  
24 whatever, six months", that's fine. You're  
25 considering it, you're getting it, you're  
working with us to get it done.

26 But I'd rather have a target in  
27 there that's, you know, somewhat reasonable

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4 1 so that we don't get a year and a half down  
5 2 the road and then not be anywhere even  
6 3 thinking about it yet.

7 4 So that's the purpose for the year.

8 5 MR. HAUGHT: How would that be  
9 6 part of the rule or would that -- how would  
10 7 that be documented?

11 8 MR. TERRILL: It's on the record.  
12 9 That's part of our commitment. And I think  
13 10 we felt like it would be very difficult to  
14 11 put that --

15 12 MR. SINGLETARY: I think even if  
16 13 we did put it in a rule, I think that would  
17 14 be a temporary blanket exemption that EPA  
18 15 could come back and disapprove the  
19 16 provisions because you would be allowing  
20 17 basically -- in the rule you would be  
21 18 codifying an exemption to permitting  
22 19 maintenance activities for a certain amount  
23 20 of time.

24 21 MR. TERRILL: And we'll use our  
25 22 discretion. Which I think that's -- we  
26 23 think this rule given the amount of work  
27 24 that's gone into it and the feedback we've  
28 25 gotten from EPA, could very well be a model

1 rule for the country. And given that, we  
2 feel like we'll use our discretion to take  
3 the time we need and use our resources to  
4 what we think is the best purpose. And if  
5 it takes two years to get this done, then  
6 it will take two years to get it done and  
7 we'll work with folks to do it. If we can  
8 get it done in a year, well that would be  
9 great. But we'll use our discretion and  
10 our commitment to the Council to work  
11 through that and make sure we get it done  
12 in a timely manner but one that doesn't  
13 waste resources, both ours and yours.

14 MR. PURKAPLE: Eddie, question.  
15 The direction that the DEQ is wanting to  
16 move in terms of permitting is for  
17 facilities to permit startup and shutdown  
18 emissions. Because clearly the option that  
19 a facility would have, they still would  
20 make use of affirmative defense, is not to  
21 permit those.

22 MR. TERRILL: Right. Right. And  
23 we're not saying you have to do it.  
24 Obviously, this is something that EPA feels  
25 would be helpful and we want to provide

1 that -- we think it would be wise too, but  
2 we're not going to tell you -- you all know  
3 your facilities better than we do and if  
4 you feel like you're better off taking the  
5 affirmative defenses and going through the  
6 process that we've got here, then avail  
7 yourself of that. If you think you can get  
8 it permitted, then do that. But the fact  
9 that you get these tradeoffs of not having  
10 to do the immediate reporting and not  
11 having to do some of the other things, we  
12 feel like that you should spend time to  
13 make sure that you get this as close as you  
14 can to being right in the permit so that  
15 you don't need the affirmative defense. So  
16 that's kind of -- it's kind of a tradeoff  
17 and a balance. But that's the direction  
18 we're going.

19 MS. MYERS: So if a facility goes  
20 through the process and permits excess  
21 emissions for startup or malfunction and  
22 should unforeseen events happen and you go  
23 over what you estimated that you thought  
24 you might have, and you permitted that,  
25 where does that leave you for the balance?

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4 1 Does that leave you without affirmative  
5 2 defense? Because that's the way I read  
6 3 this. I mean there is not a slam-dunk  
7 4 guarantee that with your best efforts  
8 5 you're going to capture every potential  
9 6 occurrence.

10 7 MR. SINGLETARY: I guess there  
11 8 are two parts to the question. You had  
12 9 mentioned malfunction and startup/shutdown.  
13 10 There would be no expectations that  
14 11 malfunctions could be permitted in any way,  
15 12 shape, or form.

16 13 MS. MYERS: Okay.

17 14 MR. SINGLETARY: So that wouldn't  
18 15 be --

19 16 MS. MYERS: I was thinking  
20 17 malfunction leading to maintenance, but  
21 18 okay.

22 19 MR. SINGLETARY: As far as  
23 20 startup and shutdown, that's our position.  
24 21 That's the position that we have right now  
25 22 that if the facility has made the choice to  
26 23 try and quantify these and get the  
27 24 protections from having it in the permit  
28 25 that they wouldn't also be eligible to

1 receive the benefit of receiving an  
2 affirmative defense. So, yes, it would be  
3 an excess emission that wouldn't -- that  
4 you would not automatically, if you set  
5 aside those elements under the affirmative  
6 defense be entitled to relief from.

7 MS. MYERS: So for a facility  
8 that might have some unforeseen event that  
9 they tried to capture in a permit amount --

10 MR. SINGLETARY: If the  
11 unforeseen event was -- if there was some  
12 type of malfunction or something, I mean  
13 clearly that would be still -- even if  
14 there was a malfunction occurring during a  
15 startup or shutdown event that would be  
16 something that could be eligible for an  
17 affirmative defense under the malfunction  
18 provision.

19 I recognize that it may be  
20 difficult, depending on the industry, to  
21 actually permit certain startup/shutdown  
22 emissions and that choice -- I mean that's  
23 one reason you -- the choice has been  
24 provided to -- there's no requirement to  
25 actually get them permitted.

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4 MS. MYERS: Right.

5 MR. SINGLETARY: It's actually up  
6 to the facility to examine their situation  
7 and make the choice that's right for them.

8 MR. HAUGHT: On the last page of  
9 the rule, 9-8(d)(5), on the part where  
10 there was a comment that you didn't accept  
11 it. We spent some time talking about (2),  
12 where we addressed them specifically in  
13 this, but you didn't about the kinds that  
14 would fit in together on the last part  
15 where there was a recommendation to strike  
16 the -- after the citations to strike the  
17 rest of that sentence. Does that exclude  
18 -- because it talks about federal  
19 enforceable emission limits, does that mean  
20 that any synthetic minor facility or any  
21 Title V facility is prohibited from the --

22 MR. SINGLETARY: I think that  
23 that could be interpreted that way. I  
24 think our concern with changing it is that  
25 we just -- that was actually a comment that  
we didn't receive until yesterday. And  
that wasn't one that we even received

1 verbally last week. That was one that we  
2 talked about for the first time yesterday  
3 afternoon and we didn't feel like -- it  
4 seemed like a pretty significant change.  
5 And we hadn't really had an opportunity to  
6 address it or consider it the way we needed  
7 to before we felt comfortable making a  
8 recommendation to the Council that it be  
9 removed. I do understand the concern with  
10 the potential of it being interpreted that  
11 way.

12 MR. HAUGHT: So how do we address  
13 that? Because essentially you're going to  
14 have to take out a large portion of  
15 facilities that would otherwise --

16 MR. SINGLETARY: To be eligible  
17 --

18 MR. HAUGHT: -- be eligible for  
19 it with that terminology. And I don't know  
20 what it intends to capture, if it doesn't  
21 intend to capture those individual permit  
22 limits.

23 MR. SINGLETARY: I think that  
24 would be something that we would probably  
25 be interested in hearing some of the other

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4 1 comments in regard to that proposed change  
5 2 and if we could take those in the light. I  
6 3 think if we have a chance to consider it a  
7 4 little more possibly even during this  
8 5 hearing, I mean that may be something we  
9 6 would be a little more amenable to  
10 7 supporting. But at this point we haven't  
11 8 really had a chance to hear all of the  
12 9 different issues and opinions on it.

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14 MR. TERRILL: Jim, we talked  
15 about that this morning. And I think staff  
16 -- I've got some concerns but then I'm not  
17 as smart about the issues as the staff is.  
18 They don't think it's that big. It's a  
19 concern, but we think we can work through  
20 that part probably today. What we're not  
21 willing to give on though is the (2). We  
22 think that's -- for us that's a  
23 deal-breaker to lose that. But staff  
24 believes that we can modify (5) so that  
25 it's not as broad and still captures the  
26 (2) of the affirmative defense loss there,  
27 if you chose to permit the facility.

28 So Rob is right. We would kind of  
29 like to hear if there are any other

1 thoughts about that. We wanted to hear  
2 from you all and from anybody from the  
3 public. But that's one area that we think  
4 we can fix today so that it's not as broad,  
5 but we still keep that affirmative defense  
6 exemption under (2). So as soon as the  
7 Council is interested in hearing that, we  
8 can probably talk about that if we get  
9 interest from you all and from the public  
10 to make that change.

11 MS. LODES: I'm interested in  
12 making that change. I would like to talk  
13 about it. What are the thoughts or  
14 concerns, Eddie, where you all might be  
15 able to work on rewording that -- tweaking  
16 it?

17 MR. TERRILL: Go ahead, Rob.

18 MR. SINGLETARY: I think that we  
19 wouldn't necessarily be opposed to striking  
20 out that portion of (d)(5) that was  
21 proposed depending on what we hear -- you  
22 know, comments from the rest of the Council  
23 and from the public.

24 MR. TERRILL: Again, we're  
25 looking at unintended consequences here.

1 And if we don't hear anything that anybody  
2 raises on this short notice, we don't see  
3 -- I'm sorry, I turned my microphone off.

4           Again we're looking at unintended  
5 consequences here. I mean we looked, we  
6 got it yesterday, we at first blush there  
7 was some concern from staff, but the more  
8 they looked at it, the more they thought,  
9 well, maybe this is a little bit broad and  
10 maybe we could narrow it down and not lose  
11 what we were looking for in (2). But we  
12 wanted to hear from some the Council and  
13 from the public, because if somebody raised  
14 an issue that we hadn't thought about, then  
15 obviously we would want to hold it over and  
16 give that some thought.

17           But if we don't hear anything, we're  
18 amenable to doing that. But we would like  
19 to hear, you know, is there something we've  
20 missed, because the whole thing in here is  
21 unintended consequences of making these  
22 changes this close to, you know, passage.

23           MR. HAUGHT: Do you know what the  
24 staff concerns were that weren't covered --  
25 that weren't considered in those parts that

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4 are listed in 60, 61 or 63?

5 MR. SINGLETARY: I think we're  
6 more afraid of what we haven't -- if we've  
7 missed something that it wouldn't be  
8 covered in those other provisions that  
9 we're not thinking of. And that's the  
10 unintended consequences that Eddie was  
11 talking about. That's why we were amenable  
12 to the change, but we wanted to get some  
13 more input. Because this is obviously --  
14 the removal of that hadn't been something  
15 that we had any input on except from the  
16 person who made the comment yesterday.

17 MR. HAUGHT: Well, this prohibits  
18 those categories -- it just says category  
19 intended. The Agency still has discretion  
20 if something shows up later on in a federal  
21 rule you can (inaudible). It's not a -- I  
22 guess I don't see that it would tie your  
23 hands at some point if that did come up on  
24 an individual basis, that you could still  
25 decline that affirmative events request or  
-- that doesn't mean that -- isn't that  
subjective anyway on your part?

MR. TERRILL: And I think that's

1 probably what they thought too. I think  
2 that's what our folks thought too. But  
3 again we wanted to make sure that -- we  
4 wanted to kind of hear what your thoughts  
5 were, and we're getting that.

6 MR. HAUGHT: And not being a part  
7 of the workgroups, I didn't see it until  
8 this morning either. So I kind of had some  
9 questions about it (inaudible) but it does  
10 seem to be a problem if we're going to try  
11 this and we're not sure that what we're  
12 covering excludes all major sources and all  
13 synthetic minor sources. Take the  
14 affirmative defense off the table as an  
15 option for them, and I've got a problem  
16 with that.

17 MR. SINGLETARY: Sure.

18 MS. LODES: Maybe we should see  
19 if we've got anymore questions from the  
20 Council -- or should we hear from the  
21 public, Jim, and see what comments we get  
22 there on that issue?

23 MS. BOTCHLET-SMITH: Okay. At  
24 this time we'll take comments from the  
25 public. Don Shandy.

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MR. SHANDY: Members of the Council, my name is Don Shandy, and I have been involved in the workgroup. This has been a tedious task, to say the least. It has been something that probably -- I would think that most people that have worked on this workgroup would say it's been one of the more difficult tasks in terms of rulemaking.

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I'm not going to go over all of the ground that Rob has covered. But before I get there, I actually want to say thanks to Rob, because he and I have had many discussions. I think that's a safe thing to say. And we have discussed these issues that he's talked about this morning. The letter or the four issues that Rob raised were -- the comments were provided by me. And so I appreciate the DEQ resolving those first three issues.

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I'm going to confine my comments primarily to the affirmative defense section. And you've covered a lot of the ground that Rob and I have had extensive discussions about in the past few days.

1                   You know, my understanding was the  
2 basic desire for startup and shutdown  
3 emissions were to get those permitted. And  
4 I don't know which Council Member made the  
5 comment but as we continue to read through  
6 this rule for probably a hundred times,  
7 questions started to arise in my mind about  
8 Paragraph (2) of the affirmative defense  
9 section as well as Paragraph (5).

10                   Again what the basic intent being, I  
11 think, to permit those emissions. The  
12 longer I looked at this language, the more  
13 concerned I got, because it appeared to me  
14 that the language was essentially  
15 swallowing the rule.

16                   And what I look at when I look at  
17 this rule, I look at it not only from a  
18 administrative standpoint but from the  
19 standpoint of how would a judge look at  
20 this down the road.

21                   And my concern, quite honestly, is  
22 not just from an administrative  
23 perspective, but also from a perspective of  
24 a potential citizen suit.

25                   So here's the scenario that concerns

1 me. Someone comes in in good faith,  
2 permits the emissions, has an event or a  
3 series of events that exceeds that permit  
4 limit, then you have absolutely no  
5 affirmative defense. And I just think from  
6 an industry perspective and the people that  
7 I represent, which is a consortium of  
8 industries, the language is unacceptable.  
9 We are prepared, and I am prepared to say  
10 we agree with the rule subject to Paragraph  
11 (2) being taken out, and a portion of  
12 Paragraph (5) I think that you have in  
13 front of you, being taken out.

14 One of the fundamental problems that  
15 I also have with this section is that if  
16 you -- if you look at Paragraph (5) the  
17 language says "any enforceable limits". My  
18 concern is that language -- for example, if  
19 you have a judge that would look at this  
20 and they understood Title V, the first  
21 thing they would ask is -- if they  
22 understood -- if you have a Title V permit,  
23 is anything in there an enforceable limit?  
24 The answer, yes.

25 I think the logical legal conclusion

1 at that point is -- if that is the case,  
2 which I believe that it is -- that if you  
3 have a Title V permit with any limit which  
4 is enforceable, then you have no  
5 affirmative defense.

6           And I think, you know, in the Air  
7 Quality Division's defense again, these  
8 comments came up relatively late. But I'd  
9 rather get it right and be late, than get  
10 it wrong and never comment on it. And so I  
11 think there are significant concerns, legal  
12 issues, related to this language that just  
13 simply can be resolved by taking the  
14 language out.

15           Another point that I think is  
16 important. When I made the comment -- I'm  
17 not asking, for example, in the rule, to do  
18 any violations to injunctive claims for  
19 injunctive relief. In Item (3), "excess  
20 emissions that cause an exceedance of the  
21 NAAQS or a PSD increment". Item (4)  
22 "failure to meet a federally promulgated  
23 emission limit including but not limited to  
24 40 CFR 60, 61, and 63". Or Item (5),  
25 "violations of requirements that are

1 derived from 40 CFR Part 60, 61 and 63".

2           What I'm trying to address narrowly  
3 here in this affirmative defense prohibited  
4 section, is a surgical approach to it,  
5 which leaves the sacred areas which we all  
6 recognize are things such a NAAQS, PSD  
7 increment, injunctive relief.

8           If the state needs to go seek an  
9 injunction against the facility because  
10 they're not operating correctly and it's  
11 creating a health problem or an  
12 environmental problem, I would be the first  
13 one to stand up and say we should never,  
14 never, never do anything to prohibit the  
15 State's ability to proceed. But what I am  
16 saying is we should not adopt language in a  
17 rule that swallows the rule and defeats the  
18 fundamental intent of the rule.

19           So I would say today, I would  
20 recommend approving the rule subject to  
21 these changes.

22           I will try to answer any questions  
23 that you all might have. I don't want to  
24 go and belabor the points any further. I  
25 think Rob articulated pretty well, the

1 State's position. And I just wanted to  
2 make sure you all understood where we were  
3 coming from.

4 And I will say I'm glad I don't have  
5 your job.

6 MS. BOTCHLET-SMITH: Next  
7 commenter is Mr. Alan Shar from EPA.

8 MR. SHAR: Chairman, Members of  
9 the Council, and the public, my name is  
10 Alan Shar. I am with the Air Planning  
11 Program from EPA Region 6, Dallas, Texas.  
12 I would like to thank the members of the  
13 Excess Emission Workgroup for their  
14 dedication and hard work of many months --  
15 nearly two years of working on this  
16 project.

17 Obviously, a regulated community in  
18 the state of Oklahoma now faces the excess  
19 emission subchapter that you have in front  
20 of you. One is a 1993 version that EPA has  
21 on its books, which is federally  
22 enforceable. The other one is the state  
23 enforceable rule, the 1998 or 1999 version.  
24 I think adoption of the rule that combines  
25 and takes some of that ambiguity out would

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4 1 be prudent.

5 2           Some of these changes introduced are  
6 3 known to us; we haven't had an opportunity  
7 4 at EPA to review this, so it would be  
8 5 improper for me to endorse or reject it one  
9 6 way or another. Excess emissions is a  
10 7 controversial topic and EPA regional office  
11 8 not only has to coordinate (inaudible) but  
12 9 also (inaudible) assurance for any  
13 10 revisions made on the rules that are  
14 11 proposed today.

15 12           I would like, for the record, to  
16 13 introduce a ruling of the 6th Circuit Court  
17 14 of Appeals, dating the year 2000 in the  
18 15 case law of Michigan Department of  
19 16 Environmental Quality and Michigan  
20 17 Manufacturing Association versus EPA. In  
21 18 that case the Court sided with EPA. I  
22 19 would like to officially introduce this  
23 20 document for the record.

24 21           MS. LODES: Do we have copies of  
25 22 that document?

26 23           MR. SINGLETARY: We can make  
27 24 copies for you.

28 25           MS. LODES: Okay. Thank you.

1 MS. BOTCHLET-SMITH: That  
2 concludes comments from the public. If we  
3 have any other questions from the Council,  
4 we can take those at this time.

5 MS. LODES: Okay. I have a  
6 question on the issue with -- and my  
7 primary question is going to be centered  
8 around the last portion, where Jim was  
9 talking about the synthetic minors in Title  
10 V -- on Item (5). And here's the scenario  
11 I have because -- and Kendal may end up --  
12 I'll throw her under the bus on this one.

13 You have a synthetic minors site,  
14 let's say an oil and gas site, because we  
15 have several hundred or thousand of those  
16 here in the state. Individual Minors  
17 Source Permit. It has a condensate  
18 throughput limit for VOC to keep it under  
19 synthetic minor. You also have a d-hyd at  
20 the site. And typically in those  
21 individual minors source permits, if you  
22 have a d-hyd, they go ahead and put a line  
23 item permit limit for VOC and everything  
24 else on there. If you have an excess  
25 emission at that d-hyd, because it's a

1 synthetic minor, do you lose any  
2 affirmative defense for that d-hyd because  
3 you have a synthetic -- because you are a  
4 synthetic minor because of the condensate  
5 storage tanks?

6 MR. SINGLETARY: Under the  
7 currently proposed (d) (5)?

8 MS. LODES: Yes.

9 MS. STEGMANN: I would say no.

10 But I think it could be construed in the  
11 affirmative, the other way as well.

12 MS. LODES: Okay.

13 MS. STEGMANN: It's a wishy-washy  
14 answer.

15 MS. LODES: Well, like Jim said,  
16 that is my concern. There's no telling how  
17 many synthetic minors are out there. Every  
18 general permit in the state for an oil and  
19 gas facility or any of the others, are all  
20 synthetic minors, which most of those don't  
21 have individual limits. But there's a huge  
22 number of synthetic minors, I know, for oil  
23 and gas facilities and other industries.  
24 And that's really what I see they're -- the  
25 big unintended consequence with this would

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4 be the synthetic minors even more so, I  
5 think, than the Title V's.

6 MR. TERRILL: Laura, your concern  
7 is with the way it was proposed now, not  
8 with the changes that Don proposed?

9 MS. LODES: Correct. I'm just  
10 reading (5) and I --

11 MR. TERRILL: The changes that  
12 Don proposed would fix that; right?

13 MS. LODES: I believe they would  
14 fix that if you struck the "or any other  
15 federally enforceable permit standard or  
16 emission limit".

17 MR. TERRILL: And I think we're  
18 okay with doing that. Because, again, you  
19 know, this rule can be looked at like we  
20 looked at the one we did in 2000. I'm sure  
21 we haven't thought of everything. And the  
22 offer then is the same I'm making now. If  
23 we do have an unintended consequence, we'll  
24 fix it.

25 I mean until you actually implement  
26 this rule you really don't know what you've  
27 missed and what you haven't. But we're not  
28 looking to do anything other than reduce

1 the reporting requirements for you all and  
2 for us and to shift this whole discussion  
3 to more of what's important to protect the  
4 public health, which is being more  
5 cognizant of the startup and shutdown  
6 emissions, or cognizant of maintenance  
7 emissions, or cognizant of malfunction  
8 emissions and doing what you can to reduce  
9 those. I mean that's the whole purpose of  
10 this.

11 So I think we're okay with making  
12 that change because it's not our intent to,  
13 you know, drag in all those thousands of  
14 sources. And at the end of the day it's  
15 probably not going to do much for  
16 environmental protection anyway.

17 MS. LODES: Right. And that was  
18 my example on the d-hyd, those are usually  
19 small emissions and you're not talking  
20 about much of anything there that wouldn't  
21 throw you into the rest of this anyway.

22 MR. TERRILL: Since it looks like  
23 we're sort of winding down here and you  
24 guys are thinking about what you want to  
25 do, let me just throw this out there. I've

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4 1 been thinking about how to bring this full  
5 2 circle. And I think that a little bit of  
6 3 history might be in order here. And a  
7 4 little bit of looking forward as to what  
8 5 might happen over the next few months.

9 6 This whole issue relative to excess  
10 7 emission came up about two, to two and a  
11 8 half years ago. I'm the Co-Chair of the  
12 9 Enforcement Committee for what was  
13 10 STAPPA/ALAPCO and is now NACAA or the  
14 11 National Association of Cleaner Air  
15 12 Agencies. And that is basically the State  
16 13 Air Directors. And as such, myself and my  
17 14 Co-Chair, meet with the Regional Air  
18 15 Managers with EPA, the ten regions and the  
19 16 OECA Senior Enforcement Staff at least once  
20 17 a year, but generally on a twice-a-year  
21 18 basis, just to talk about national policy  
22 19 and those sort of things.

23 20 And this issue came up relative to  
24 21 excess emission malfunction and the issues  
25 22 that Eric Shaffer raised with the  
26 23 Environmental Integrity Project and the  
27 24 paper that he wrote four or five years ago  
28 25 that detailed this problem. And Adam

1 Kushner who is the Chief of the Air  
2 Enforcement, at the time indicated he was  
3 considering asking for a SIP call to force  
4 the states to look at this issue.

5           They really didn't want to go down  
6 that route because there was a rift between  
7 the program side of EPA and the enforcement  
8 side of EPA. It was bad then, it got  
9 worse. It got worse over time, but it  
10 would have been a really nasty thing to try  
11 to do or to try to convince EPA to do at  
12 that time, and they really didn't want to  
13 do it.

14           So what we talked to them about was  
15 taking this issue to our membership at one  
16 of our annual meetings and turn it over to  
17 the states to determine whether or not it  
18 was appropriate for them to address this  
19 issue ahead of an EPA SIP call. So that's  
20 what we did.

21           And that's kind of what started our  
22 discussions 18 months ago. And we have  
23 been meaning to take a look at this rule  
24 for a long period of time, and this was  
25 kind of impetus for us to take a look at

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4 1 it. Because the way our rule is right now,  
5 2 both the 1993 version and the changes we  
6 3 made in 2000 are not going to be approvable  
7 4 by EPA; they're just not.

8 5 And so the workgroup was formed and  
9 6 I think that they've done an excellent job.  
10 7 I think that Julia did a good job of  
11 8 herding the cats along and trying to get,  
12 9 you know, things moving. And I think that  
13 10 Laura, and Sharon, and Don, and all the  
14 11 other folks that worked on this -- and  
15 12 especially our staff, that I'm most proud  
16 13 of -- did a good job of putting together a  
17 14 rule that took into the consideration that  
18 15 you all had about the burden that this  
19 16 reporting had on you. But still balanced  
20 17 the need for making sure that it doesn't  
21 18 lose what we intend for it do, which is to  
22 19 get you to focus on the things that matter  
23 20 relative to startup/shutdown/malfunction  
24 21 and try to reduce those emissions. But we  
25 22 feel really strongly about this too -- this  
26 23 affirmative defense being prohibited in the  
27 24 event you permit them.

28 25 I don't doubt that what Don says is

1 probably -- is a possibility. But anything  
2 we do is a possibility to get sued on. If  
3 you look around, EPA gets sued every day on  
4 issues. And at some point you've got to  
5 make a decision that, you know, we think  
6 this is the right way to go and we'll take  
7 our chances with it. And our staff is  
8 willing to do that. What we're not willing  
9 to do is give up (2) without giving it  
10 further consideration.

11 We believe that the rule is a model  
12 rule for EPA. We think that this is  
13 something that they will push nationwide if  
14 we pass this. And I'm really proud of the  
15 work that they've done on it. But we're  
16 willing to not pass that today and go back  
17 and take another look, in trying to fix it.

18  
19 But here's a risk you're going to  
20 take with doing that. As you know  
21 yesterday, there was pretty much a SEE  
22 change in the way things are going to be  
23 done federally in this country. If you  
24 look at the appointments at EPA, you've got  
25 a fairly aggressive group of leaders at

1 EPA. In our role as a Committee Chair, we  
2 had discussions with Obama's transition  
3 team, with EPA, and what they're looking  
4 for. And one of the things that was top of  
5 their list was fixing this rift between the  
6 programs and the enforcement; so that  
7 they're all on the same page on these  
8 issues and moving forward and trying to  
9 write rules that are enforceable and not  
10 fight among themselves at cross purposes.  
11 And that's going to happen. That's going  
12 to be one of the first things that the  
13 EPA's new Administrator is going to do, is  
14 say we can no longer have this fight.

15 So I think you're going to see a lot  
16 more cooperation between enforcement and  
17 compliance and the program side.

18 And I don't know who the head of  
19 OECA is going to be. But I know two of the  
20 three candidates that I think have a likely  
21 possibility to get this position, feel like  
22 the excess emission malfunction is  
23 something that has to be addressed.

24 And Adam Kushner, who originally  
25 brought this issue to our attention, is now

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4 1 the head of all civil enforcement. And he  
5 2 still thinks it's a major issue.

6 3 So I'm willing to continue with the  
7 4 rule we've got and sit back and see what  
8 5 EPA does with this, because I think it's  
9 6 going to be one of the first things they  
10 7 address and we'll let them work through the  
11 8 thorny things.

12 9 But I think one of the things you  
13 10 risk losing is the things that we think are  
14 11 good. And we will fight for these if we  
15 12 get the opportunity. But I can tell you  
16 13 that the notion of reportable quantity is  
17 14 not one that's favorable among a lot of the  
18 15 top EPA folks. I think it makes a lot of  
19 16 sense because it drops out things that  
20 17 don't matter. But that's going to be  
21 18 something that's going to be a tough sale.  
22 19 So you do run some risk either way you go  
23 20 with this rule. You run some risk if we  
24 21 leave it in; you run some risk if we wait.  
25 22 But it's up to the Council. It's a tough  
26 23 decision to make, but I think you need to  
27 24 weigh all of this as we move forward.

28 25 But we just can't really support

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4 1 removal of (2) without going back and  
5 2 taking a look at it and we would ask that  
6 3 you -- if that's something that you want us  
7 4 to do, that you remand that back to us to  
8 5 take another look. And we may or may not  
9 6 bring it back in March. It kind of depends  
10 7 on what we -- because I don't think --  
11 8 we'll try to look for a fix for this that  
12 9 gets us what we need, and maybe gets Don's  
13 10 folks what they need. But if we can't come  
14 11 up with a fix for it, we're not willing to  
15 12 budge on that. And then you'll have to  
16 13 make a decision as to whether or not you  
17 14 want to pass it or not.

18  
19 MR. BRANECKY: I don't  
20 16 necessarily disagree, Eddie, that EPA may  
21 17 make this a top priority, but for EPA to  
22 18 move between now and April is probably  
23 19 pretty quick for EPA to do anything at all.  
24 20 So I don't have any problem delaying it  
25 21 until April. But if we do delay it until  
26 22 April, and we pass it in April, it won't go  
27 23 to the Board until their July meeting. And  
28 24 so the rule, unless we pass it as an  
29 25 emergency rule, will not become effective

1 until June of 2010.

2 MR. TERRILL: That's correct.

3 And I don't know that -- well that's  
4 assuming the Board meets in July. Because  
5 they've had a history over the last couple  
6 of years of not meeting until late summer  
7 or early fall and not doing the July -- it  
8 just kind of depends on what they've got  
9 going on. But even at that, won't the  
10 Legislature be out of session? And it  
11 still won't make any difference. If we  
12 don't, we'll miss the cycle anyway.

13 MS. LODES: Well, Eddie, I'd like  
14 to -- I know we've got the EPA document  
15 now. I'd like to suggest at least a ten  
16 minute break so that we can review this EPA  
17 document because I would like to read that.

18  
19 MR. SINGLETARY: Madam Chair, may  
20 I quickly respond to some of the public  
21 comments that were made before we --

22 MS. LODES: That would be great.

23  
24 MR. SINGLETARY: I think what I'm  
25 hearing from our staff is that, you know,

1 we do recognize that concern with the  
2 (d) (5) provision. And that removing that  
3 may be appropriate. However, in regard to  
4 (d) (2), as Mr. Terrill was saying, we do  
5 have serious concerns still with that. Two  
6 of the comments made by Don Shandy tend to  
7 support the elimination of that concerning  
8 the SIP and sue concern, and that there be  
9 no damage to the NAAQS or any of the other  
10 essential requirements. It's our position  
11 -- first of all in regard to NAAQS and PSD  
12 increments that, you know, without those  
13 limits that are set in (d) (2) it really  
14 becomes meaningless. Because like I said,  
15 without requiring some kind of modeling  
16 after every excess emission we won't be  
17 able to know whether or not a NAAQS or a  
18 PSD increment is in danger or has exceeded  
19 in those limits and to help us to ensure  
20 that doesn't happen.

21 But also in regard to the SIP and  
22 sue provision, I don't know that I  
23 necessarily completely agree with that  
24 concern. If you look down at the very last  
25 sentence of the proposed rule, it indicates

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4 1 that this section shall not be construed as  
5 2 limiting EPA or citizens authority under  
6 3 the act.

7 4 I interpret that to mean that this  
8 5 affirmative defense section, regardless of  
9 6 what the DEQ says, if we say it is an  
10 7 affirmative defense or not, they still may  
11 8 be -- and the facility may still be subject  
12 9 to citizens' suits, based on just the -- if  
13 10 an excess emission occurs and this is  
14 11 something that we've already been told  
15 12 directly by EPA, this is verbatim out of  
16 13 their policy and it has to be in there  
17 14 otherwise they will not approve it. I just  
18 15 wanted to make those comments. Thank you.

19 16 MS. LODES: Thank you, Rob. Do  
20 17 we have any other comments from the  
21 18 Council?

22 19 MR. PURKAPLE: Yeah. The thing  
23 20 that I wanted to say is that, number one, I  
24 21 appreciate all the work that the DEQ has  
25 22 placed on this and the workgroup as well.  
26 23 I'm kind of torn between the fact that  
27 24 they've put in so much effort to move it  
28 25 forward, but yet at the same time, with the

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4 1 desire for this to be a model rule, I can't  
5 2 believe that these same questions wouldn't  
6 3 eventually come up again down the road.  
7 4 And it seems prudent to consider the  
8 5 comments that have been made, although  
9 6 admittedly late.

10 7 I know last time in looking at the  
11 8 minutes, it was a common agreement amongst  
12 9 everybody that we're awfully close. I mean  
13 10 that this has got to be -- that this is  
14 11 almost it. And yet, not to minimize the  
15 12 fact that this issue has come up again. It  
16 13 seems to me that it would just be prudent  
17 14 to give staff additional time to consider  
18 15 that Number (5) or whichever one --

19 16 MS. LODES: It's (2).

20 17 MR. PURKAPLE: -- whichever one  
21 18 we were talking about here, and see what  
22 19 see what the ultimate decision is on that.

23 20  
24 21 MR. TERRILL: We're certainly  
25 22 willing to do that, but I would be less  
26 23 than candid with you all if I didn't tell  
27 24 you that the chances of us being able to  
28 25 find a solution that's going to satisfy our

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4 1 concerns, EPA's concerns, and Don's  
5 2 concerns are remote, at best.

6 3 And again, the feedback I'm getting  
7 4 -- the feedback we've gotten from the OECA  
8 5 folks that have looked at this is that they  
9 6 like -- of course, they're going to like  
10 7 the rule. It's just something that has not  
11 8 been done anywhere in the country. It's a  
12 9 unique way of looking at things, especially  
13 10 with the reportable quantity. I don't  
14 11 think you're going to get them to give on  
15 12 this (2); and I don't think that we're  
16 13 going to give on it. And so really what  
17 14 it's going to come down to is the Council  
18 15 is going to have to decide, whenever, do  
19 16 you want to pass it with it or without it.  
20 17 And to be honest with you, I've got to tell  
21 18 you that I'll go to the Board and ask for  
22 19 it to be sent back if it's not in there.

23 20 MS. LODES: Well, Eddie --

24 21 MR. TERRILL: I feel that  
25 22 strongly about it.

26 23 MS. LODES: -- before we vote one  
27 24 way or the other, I really would like to  
28 25 see the EPA document --

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4 MR. TERRILL: Right.

5 MS. LODES: -- and give us at  
6 least 15 minutes to read the document. So  
7 why don't we pass those out and take a 15  
8 minute break. How does that sound?

9 (Comments)

10 MS. LODES: I want to say a 15  
11 minute break, because I want to read the  
12 EPA document before I make a decision one  
13 way or the other.

14 MR. CLARK: Madame Chair.

15 MS. LODES: Yes.

16 MR. CLARK: I'm afraid this will  
17 feel a little bit like backtracking, but I  
18 have some, sort of broader, more general  
19 questions that might be beneficial to those  
20 of us who came on the Council after this  
21 whole rulemaking began and also beneficial  
22 to the members of the public who don't have  
23 the technical literacy to follow much of  
24 this discussion. Would you prefer that I  
25 ask those questions now, or would you  
prefer that I wait until after the break?

They're not as specific in detail as  
the issues that you guys are discussing.

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4 1 It's more intended to get a better sense of  
5 2 the scale of excess emissions in Oklahoma.

6 3  
7 4 MS. LODES: Why don't you go  
8 5 ahead and ask those now and that way we can  
9 6 make sure that if there's anything else  
10 7 that needs to be mulled over, they can in  
11 8 the break.

12 9 MR. CLARK: Okay. Thank you. I  
13 10 appreciate it. And I suppose that Robert  
14 11 can answer these questions.

15 12 Can you tell me how many excess  
16 13 emissions events we had in Oklahoma in the  
17 14 most recent year for which you have a  
18 15 count?

19 16 MS. STEGMANN: My name is Kendal  
20 17 Stegmann. I'm the Compliance and  
21 18 Enforcement Manager for Air Quality and I  
22 19 got -- he gave me your questions earlier  
23 20 and I got some rough numbers. From  
24 21 calendar year 2008 we had roughly 2,800  
25 22 excess emission events reported to us.

26 23 MR. BRANECKY: Can you define an  
27 24 event?

28 25 MS. STEGMANN: Well, how is it

1 defined in our --

2 MR. TERRILL: While she's doing  
3 that let me make a comment here, because  
4 these numbers are a little bit misleading.  
5 One of the things we really wanted to look  
6 at in making this change to the rule, was  
7 focusing on what really matters relative to  
8 these events. And the way our rule is  
9 structured now, there's not any leeway  
10 relative to -- or much leeway as to what  
11 you have to report. And it's more of a  
12 reporting and doing the jumping through the  
13 hoops, and all that stuff that -- that's  
14 got its place, don't get me wrong. I think  
15 making reports and notifying us when these  
16 things happen are important. But without  
17 the reportable quantity portion, which we  
18 think is really important to folks that may  
19 not know what's important at the fence  
20 line, and what's important for us to be  
21 looking at, you really lose sight of it in  
22 these numbers, because a lot of this would  
23 drop out because they don't rise to the  
24 level of being a public health  
25 significance.

1                   And so 2,800 sounds like a lot and  
2 it is a lot, but I can say with pretty much  
3 certainty that 99 percent of those did  
4 nothing relative to protecting the public  
5 health that satisfied our rule.

6                   MS. STEGMANN: Right. And we're  
7 talking about maybe missing opacity  
8 standard six minute average maybe by, you  
9 know, 20 percent -- maybe 21 percent, or 22  
10 percent. You have to report that. It may  
11 be a pounds per hour. Whatever their -- if  
12 they have an exceedance of an applicable  
13 standard. It may be a pounds per hour. It  
14 may be a .1 or a .2 over their pounds per  
15 hour, you know. It could be small amounts;  
16 it could be larger amounts.

17                   So the numbers don't give an  
18 accurate reflection of actually what is  
19 being emitted. And I don't have the  
20 numbers right now on the actual emissions.  
21 So that would take a little more time.

22                   MR. CLARK: Then could you define  
23 it by what percentage of those events led  
24 to an enforcement action or fines?

25                   MS. STEGMANN: I can -- for

1 fiscal year 2008 we had roughly about 50  
2 enforcement actions dealing with excess  
3 emissions. Several of those are dealing  
4 with reporting requirements, dealing with  
5 immediate notice or not submitting a 10 day  
6 report or a DOC.

7 MR. TERRILL: Again focusing our  
8 resources on things that really don't meet  
9 -- that don't matter to the environment.  
10 We want to avoid that. It didn't do any  
11 thing for us. It didn't do anything for  
12 the facility. It didn't do anything for  
13 the environment. We want to avoid that.  
14 We want to shift this, like I said, to the  
15 things that matter. So we probably  
16 wouldn't have that many --

17 MS. STEGMANN: Right. And those  
18 numbers are even low. Because I think when  
19 we started this workgroup I -- we really  
20 wanted to move away from the details of  
21 reporting requirements and actually focus  
22 on the excess emission event; and focus our  
23 enforcement on the excess emission instead  
24 of the actual reporting requirement.

25 So we have been using a lot of

1 enforcement discretion, if they were a day  
2 late on their immediate notice and it's  
3 qualified for an excess emission under our  
4 rule, it was startup/shutdown or  
5 malfunction, we would probably still give  
6 them credit for that.

7 MS. LODES: And Montelle, I  
8 noticed you used the term DOC a minute ago.  
9 That's "Demonstration of Cause". I didn't  
10 know if you were familiar with that since  
11 you're not doing as many of these. And  
12 that is a form that the facility will fill  
13 out and Kendal can explain.

14 MS. STEGMANN: We haven't been as  
15 strict as -- if it was actually a true  
16 startup/shutdown, or a malfunction we  
17 haven't been as strict in the reporting  
18 requirements. That may change, I don't  
19 know.

20 MR. CLARK: I'm just concerned  
21 with violation of reporting requirements  
22 and I like the fact that these rules  
23 apparently reduce the reporting  
24 requirements or make it less onerous on  
25 industry. I'm more just concerned with the

1 size of these events and if it's as you  
2 say, just a minor --

3 MS. STEGMANN: Right.

4 MR. CLARK: -- event that has  
5 very little impact on the environment and  
6 public health, then that's not as much of a  
7 concern. But if, you know, and it has been  
8 alleged in other states by the  
9 Environmental Integrity Project, if any  
10 event led to emissions that exceeded the  
11 actual amount that was allowed under a  
12 permit, then that's obviously something  
13 that's much different.

14 MS. STEGMANN: And we do take  
15 that into account and we do -- when get all  
16 of these reports for  
17 startup/shutdown/malfunction we verify  
18 every single one that they actually qualify  
19 for a malfunction, or a startup/shutdown  
20 and if they do not we will take enforcement  
21 action.

22 MS. LODES: Now, Montelle, one  
23 thing to understand here in this proposed  
24 rule -- and I know you haven't had to deal  
25 with this much. But even if you're a tenth

1 of a pound over that pound per hour permit  
2 limit under this excess emissions rule, you  
3 still have to report it.

4 MR. CLARK: Right.

5 MS. LODES: The only change is  
6 you may not have to do an immediate notice  
7 if you are within 10 percent of your permit  
8 limit. You have to do the 30 day notice.

9  
10 MR. CLARK: Right.

11 MS. LODES: So nobody gets a free  
12 pass on reporting their excess emissions to  
13 the Agency on anything here.

14 MR. CLARK: Right. Yeah. I  
15 understand that. I think that's a good  
16 modification in the rule.

17 MS. LODES: Okay.

18 MR. COLLINS: Montelle, can I  
19 interject one question that I have? Does  
20 the state definition -- current definition  
21 of an excess emission, does it include  
22 emissions that might exceed a reportable  
23 quantity threshold but not be subject to  
24 any federal or state limits? Does your  
25 data include that?

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4 MS. STEGMANN: But if you report  
5 an excess emissions --

6 MR. COLLINS: Let's say you make  
7 a report of a reportable quantity that's  
8 covered say under CERCLA --

9 MS. STEGMANN: Under CERCLA?

10 MR. COLLINS: -- HEPA.

11 MS. STEGMANN: No. We don't. We  
12 should not have -- unless you submit it, an  
13 actual excess emission to us, it won't be  
14 included in our numbers.

15 MR. COLLINS: Okay.

16 MR. CLARK: Are our excess  
17 emissions included in DEQ's annual  
18 inventory?

19 MS. STEGMANN: Yes. They are --  
20 and when they get their -- submit their ED  
21 -- in their emissions inventory there is a  
22 section to include your excess emissions.

23 MR. CLARK: Is there -- it's not  
24 really a question, but is there a mechanism  
25 for accounting for excess emissions almost  
26 like an offset in the permit itself,  
27 assuming those excess emissions are not in  
28 the permit? Do you understand what I'm

1 asking? In other words, if it's known that  
2 a particular industry or company is going  
3 to be having a frequent number of excess  
4 emissions, and I believe it was in October  
5 it was mentioned that some have them  
6 virtually daily.

7 MS. STEGMANN: Uh-huh.

8 MR. COLLINS: Is there a  
9 mechanism for accounting for that or  
10 offsetting in their permit emissions?

11 MS. STEGMANN: I don't think so.

12 But are you talking about their excess  
13 emissions taking away from the -- taking up  
14 some of their permitted emissions? Is that  
15 what you're talking about?

16 MR. CLARK: Yes. In permitting  
17 and modeling, et cetera. I'm trying to get  
18 a sense of -- of whether the excess  
19 emissions are sort of separately -- is  
20 there an offset, I guess would be the best  
21 way -- best term that I could use. I don't  
22 know if -- if we're just talking about one  
23 or two percent that's not very much, but if  
24 those excess emissions amount to a  
25 considerable number, then it seems like we

1 would want to have some adjustments in the  
2 permit to account for that.

3 MS. STEGMANN: Right. And I  
4 think that's one of the benefits of being  
5 able to permit your excess emissions -- do  
6 your startup/shutdown right now. Because  
7 right now there haven't been really  
8 quantified up front. So I think it's hard  
9 to make that offset when they haven't made  
10 those calculations yet. Usually they don't  
11 make those calculations until the actual --  
12 actual excess emissions happens.

13 MR. TERRILL: Yeah, that was the  
14 allegations that were made in the  
15 Environmental Integrity Projects Report  
16 where there were a number of sources, not  
17 in Oklahoma because they didn't look in  
18 Oklahoma, that they alleged had unpermitted  
19 emissions, off the books emissions, if you  
20 would, that greatly exceeded their  
21 permitted limits. And they were protected  
22 by the way the rules were written. That's  
23 the reason they're going to -- I don't know  
24 whether it was that bad or not. I suspect  
25 like with everything else there were a few

1 that were. But I suspect that was  
2 overstated somewhat. Some of the groups  
3 tend to do that. But they're trying to  
4 make a point, which is a good point, that  
5 this needs to be addressed.

6 MS. STEGMANN: Yeah. I will say  
7 in enforcement, if we see a large amount of  
8 excess emissions it will be seen as a  
9 pattern or, you know, poor maintenance or  
10 poor operations. We can view it that way  
11 and we will take enforcement and we have  
12 done that in the past.

13 MR. TERRILL: And I just really  
14 don't believe that we've got the issues  
15 that were illustrated in that report and  
16 we've got a pretty good handle on what our  
17 facilities are doing, we think. We hope we  
18 do. And we just don't see the same type of  
19 concerns that have been raised. But again,  
20 if -- they may -- this is going to be an  
21 issue that they are going to take up, one  
22 way or another in the next year to 18  
23 months, however long it takes them to look  
24 at it.

25 MS. LODES: Well, as you say, I

1 mean, I want to keep to the rule at hand,  
2 here as it's written, so we've got --  
3 because some of those are -- yeah, and they  
4 are permitting issues and they are  
5 understandable questions.

6 MR. CLARK: Yeah. That's all I  
7 had. I appreciate it. Thank you

8 MS. LODES: Okay. Then why don't  
9 we take that 15 minute break now, for real,  
10 at 10:35 since we started to break a second  
11 ago and then we'll be back in 15 minutes.

12 (Break)

13 MS. LODES: I'd like to get  
14 restarted.

15 MS. BOTCHLET-SMITH: We've heard  
16 all the comments from the public and I  
17 think we're back to if there's any further  
18 questions or discussion from the Council.

19 MS. LODES: Beverly, I think upon  
20 review, we're really down to one point.

21 And I know all of us would really like to  
22 pass this rule today. So what I would like  
23 is to invite Don Shandy back up here to  
24 make -- to try and clarify (2) and his  
25 concerns on item -- on (d) (2) and have Rob

1 discuss it so we can maybe get this passed.

2 MR. SHANDY: Thank you, Laura. I  
3 feel like Rob and I are dueling banjos. I  
4 will tell you that somebody back there made  
5 -- I had more than one person say this just  
6 a wonderful marketing opportunity for  
7 lawyers. I think Rob or I, either one,  
8 would like just as soon put this to bed.

9 And I don't know if Laura -- the  
10 specific questions that you would have at  
11 this point would be what? Sharon?

12 MS. MYERS: If Provision Number 2  
13 is removed, you still have the very last  
14 sentence that states "this section should  
15 not be construed as limiting EPA or  
16 citizens authority".

17 There still is -- there's still a  
18 provision in there that allows for suit.  
19 But this Number 2 Provision as it's written  
20 right now takes away all of our affirmative  
21 defense.

22 MR. SHANDY: Well, I think that's  
23 essentially right. And I think Rob may  
24 have misunderstood the point that I was  
25 trying to make. You're not going to get

1 rid of the citizens suit provision. I mean  
2 you can always be sued under that  
3 provision, whatever applicable provision;  
4 Federal, State, or whatever that might  
5 exist out there. What I'm suggesting is,  
6 it's the defense side of it that I'm  
7 concerned about. And if you leave  
8 Paragraph 2 in, my concern, is that in the  
9 event you get sued out there somewhere, at  
10 a minimum it takes an argument away at the  
11 courthouse. And my concern is that a  
12 particular facility may have a very  
13 legitimate argument why they exceeded the  
14 permit limit. And that's really my  
15 concern.

16 I mean I understand Eddie's  
17 comments. I don't minimize his concerns at  
18 all. And you know, I find this somewhat  
19 ironic we're down to one issue. I mean  
20 we're -- we -- think about this, we agree  
21 on 99.9 percent of everything else. We're  
22 down to one issue, and so I think that  
23 that's the concern that I have. You're not  
24 going to take away the ability of someone  
25 to file suit if they think that's

1 warranted.

2 MS. MYERS: But it also does not  
3 take away the ability of the Agency to  
4 enforce if that's taken out.

5 MR. SHANDY: No. I wouldn't  
6 think so because if you -- the way I would  
7 look at this is if -- let's say you have a  
8 permit and someone exceeds that limit.  
9 Well, then I presume you would go report  
10 your excess emission under the  
11 startup/shutdown provision. You would have  
12 an affirmative defense, but I -- you know,  
13 I don't see that even remotely being an  
14 absolute bar to any kind of enforcement  
15 action the state would take at all.

16 I think -- you know, I'm not saying  
17 it may not be a little more difficult, to  
18 be quite honest, on the state, but I don't  
19 think it takes that ability away.

20 And again, my concern is not so much  
21 from, you know, Eddie's perspective and the  
22 state's perspective, it's really more what  
23 could happen in the courthouse. And I know  
24 people are saying, well, you know, you can  
25 "what if" this thing into oblivion but some

1 of those "what ifs" I've had to defend and  
2 I know how difficult that can be and I just  
3 think that, you know, you shouldn't have  
4 both hands tied behind your back if you  
5 find yourself or if a client finds themselves  
6 in that situation.

7 MR. COLLINS: Don, if Chapter 2  
8 is not removed, what would your advice be  
9 to your clients as far as startup/shutdown;  
10 what's that going to do to your folks you  
11 represent? Would your advice be to not  
12 permit those startup/shutdowns?

13 MR. SHANDY: I think at an  
14 absolute minimum, Gary, you would -- my  
15 advice to a client would be you're going to  
16 have very serious reservations before you  
17 go permit these emissions. And let's face  
18 it some people are -- you know, it's going  
19 to have to be a case-by-case analysis.  
20 There are going to be some facilities, it's  
21 an easy decision to go get a permit.  
22 Because perhaps they are able to quantify  
23 those emissions. They don't go up and down  
24 in terms of their startups and shutdowns  
25 very often and so it's easier for them to

1 quantify. So the risk to them would be  
2 less.

3           On the other hand, there are people  
4 I work with that that's not the case. And  
5 in that situation I don't know that I would  
6 advise them to do that. And you know, of  
7 course, the retort to that perhaps would be  
8 well, that's their decision on how they do  
9 it. But the concern I've got is -- what I  
10 was hoping to come out of the rule with was  
11 that we really would have this blanket  
12 encouragement under the rule to get people  
13 to go get a permit. Because in all  
14 honesty, I think that's the better way to  
15 address it. Because I think what it does  
16 when people are encouraged to get their  
17 facilities permitted they tend to watch  
18 things a little bit closer. That's my 24  
19 years of experience of, you know, being  
20 involved in this area.

21           So I think again that kind of  
22 motivation should be provided, not taken  
23 away. But again, I can see both sides of  
24 the argument. I just, you know -- we're  
25 just going to have to agree to disagree

1 with the State on this rule. Any other  
2 questions?

3 MS. LODES: Rob.

4 MR. SINGLETARY: I think I would  
5 respond by first saying as Don said, I mean  
6 you're still going to be subject to the  
7 citizens suit provision. I mean we can't  
8 get around that. So if there's an excess  
9 emission and there's some other things that  
10 have to happen before a citizen can take  
11 suit. But there's still going to be that  
12 availability there.

13 I guess I would just reiterate that  
14 the first concern we had was that, you  
15 know, your PTE's already going to be  
16 considered if you get these emissions  
17 permitted. And you're going to get  
18 protection from that and with your PSD  
19 enforcement, you're not going to have to do  
20 any excess emission reporting as long as  
21 you stay within those limits. And with  
22 that PTE already considered -- PTE already  
23 considered it wouldn't be, in our opinion,  
24 appropriate to go ahead and allow you to  
25 also -- if you exceed that to also get the

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4 1 opportunity to, you know, take advantage of  
5 2 the affirmative defenses.

6 3 But again, like I said in my initial  
7 4 presentation, more significantly is the  
8 5 concern that these limits are how we  
9 6 demonstrate compliance with the NAAQS and  
10 7 with the PSD increments. And without them  
11 8 in there -- we have that provision in there  
12 9 but there is no real way for us to  
13 10 determine whether or not an excess emission  
14 11 is going to be in compliance with those  
15 12 unless we did modeling after each excess  
16 13 emission.

17 14 MS. LODS: Well, with that said,  
18 15 if Don is going to recommend clients not  
19 16 permit their emissions, you really want  
20 17 them in this -- you really want them in  
21 18 there for that demonstration. So is it not  
22 19 in our interest to get -- to do whatever we  
23 20 can to encourage people to permit that.

24 21 MR. SINGLETARY: I think we do  
25 22 want to encourage those emissions to be  
26 23 permitted but I don't think we want it to  
27 24 the extent that we're going to jeopardize  
28 25 being able to demonstrate compliance with

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4 1 the NAAQS and the PSD increments.

5 2 MS. MYERS: Is that not covered  
6 3 in Item Number 5?

7 4 MS. LODES: And (3). Which (3)  
8 5 says excess emissions that cause --

9 6 MS. MYERS: I mean you've already  
10 7 got it in other places, Rob. Why do you  
11 8 have to have Number 2 in there?

12 9 MR. SINGLETARY: Well, I think  
13 10 we're -- it would definitely be covered  
14 11 under (5), if (5) wasn't amended as  
15 12 proposed.

16 13 MS. MYERS: And what about (3)?

17 14 MR. SINGLETARY: But (3), I think  
18 15 we're missing in those two provisions as  
19 16 modified, we would be missing the permit  
20 17 limits. I mean if there is a specific  
21 18 limit that's required in the NESHAPs or  
22 19 NSPS standards, then, yes, it would be  
23 20 covered. But other permit limits wouldn't  
24 21 be covered.

25 22 MS. MYERS: Well, that's  
26 23 (inaudible) to permitting to make sure that  
27 24 they've got all the rules covered. Which  
28 25 -- I mean we do that, when we come in for

1 permits. We go through --

2 MR. SINGLETARY: Sure.

3 MS. MYERS: -- and determine  
4 applicability for the different rules to  
5 that particular permit and how it needs to  
6 be worded. I'm just -- I'm having  
7 difficulty seeing why we really need that  
8 in there.

9 MR. SINGLETARY: I think what I'm  
10 saying is that permit limits that weren't  
11 specifically the result -- or specific  
12 limits that were already considered in Part  
13 60, 61, and 63, those would not be covered  
14 if we took Number (d)(2) out or Section  
15 (d)(2) out.

16 MS. MYERS: What?

17 MR. SINGLETARY: Because then  
18 we're just talking about the specific  
19 provisions in the CFR's that are going to  
20 be covered. Not the specific permit in  
21 this which we're also concerned about.

22 MR. TERRILL: You know, we're  
23 getting into a dialogue here that raises  
24 the exact concern that I've got about  
25 taking this out without referring it back.

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4 1 If the Council really believes that we need  
5 2 to look at this, then send it back to us.  
6 3 Because I cannot in good conscience take  
7 4 this to the Board without us having time to  
8 5 look at it. And if you take it out then  
9 6 we're going to have to ask the Board to  
10 7 send it back. I mean I'm just being honest  
11 8 with you about it. I think you all have  
12 9 seen what's going -- the downside of having  
13 10 it in there. We don't know what the  
14 11 downside of taking it out is. I think that  
15 12 there's been plenty of bites at this apple.  
16 13 I think that you can make your decision to  
17 14 permit this or not permit it. That's your  
18 15 call.

19 16 Nobody's -- and we've satisfied 99.9  
20 17 percent. We've given a lot in this. We've  
21 18 relieved the burden a lot. And there's  
22 19 some things though that you've just got to  
23 20 say we respectfully disagree. And that's  
24 21 where we are with this.

25 22 And, of course, the Council can do -  
26 23 - is going to do what they think is best  
27 24 for the public and we're going to -- we'll  
28 25 abide by it, but I would be less than

1 honest with you if I didn't say I would go  
2 to the Board and ask them to send it back  
3 if you take it out, without us having the  
4 opportunity to look at it.

5 MS. LODER: Would you have that  
6 opportunity within now and whenever -- when  
7 does the Board meet?

8 MR. TERRILL: I don't know if we  
9 will or not to be honest with you. I don't  
10 know if I can -- it's in February. But  
11 we've got to send it to them pretty quickly  
12 and whether or not can get it to our  
13 satisfaction or not I just -- I'll just be  
14 honest with you, I just don't see us being  
15 able to agree to take this out. I just  
16 don't see where we are. We've given so  
17 much in so many other areas, that I just  
18 have a hard time believing we're going to  
19 be able to figure out a way to make this  
20 work as it's written. Now are we sure  
21 we've got a way to make it work by wording  
22 it differently, maybe we can. I don't  
23 know. But just to remove it, that's going  
24 to -- that's a deal breaker for us. I'm  
25 just being totally honest with you about

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4 1 it.

5 2 MR. HAUGHT: Eddie, what would  
6 3 this take -- at some point later on, what  
7 4 would it take to revisit this, to open this  
8 5 subchapter again and address that in the  
9 6 future?

10 7 MR. TERRILL: How long do we have  
11 8 to leave it closed if -- assuming it passes  
12 9 this time, when is the earliest we could  
13 10 reopen it? Is it a year from now?

14 11 MS. BRADLEY: Actually after  
15 12 codification which would be July 1st.

16 13 MR. TERRILL: Okay.

17 14 MS. BRADLEY: Once these changes  
18 15 become effective and permanent then --

19 16 MR. TERRILL: So at that point we  
20 17 can open it back up?

21 18 MS. BRADLEY: Uh-huh.

22 19 MR. TERRILL: Yeah. And that's  
23 20 always been our position anyway on this.

24 21 I'm really surprised that we're eight years  
25 22 or nine years after we've made these  
26 23 changes that we would reopen this again  
27 24 anyway. I thought we were -- two or three  
28 25 years people were tired of the paper work

1 trail but it just never happened. So  
2 realistically we can open it up in six  
3 months, I guess, if we needed to.

4 MR. HAUGHT: Yeah. The whole  
5 rule has been on this to-do-list for a  
6 while.

7 MR. TERRILL: And again we're not  
8 looking to have unintended consequences  
9 either. If it turns out -- and Lord knows  
10 there's plenty of folks that are vocal on  
11 the side representing industry here, that  
12 we'll be -- they'll let us know if there's  
13 a problem with it. And that's your job to  
14 work with us to fix it. Because we don't  
15 want to create unintended consequences for  
16 industry but on the other hand we don't  
17 want to create unintended consequences for  
18 us in our responsibility to protect public  
19 health.

20 MR. BRANECKY: I think the only  
21 consequence is if you leave it in you're  
22 probably not going to have very many people  
23 applying for permits.

24 MR. TERRILL: That may be and it  
25 may be that we need to --

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4 1 MR. BRANECKY: Is that what you  
5 2 want?

6 3 MR. TERRILL: Well, no. But, at  
7 4 least the opportunity is there and it will  
8 5 -- and we'll take a look at it too, to see  
9 6 if there is a way that we can fix it so it  
10 7 gets at what we want. And I don't know  
11 8 there may not be. I -- when we were  
12 9 talking about it yesterday we couldn't see  
13 10 a way to fix this problem. But having said  
14 11 that, you know, we're not the only ones out  
15 12 there. There's plenty of other states that  
16 13 will be taking a look at this. And if we  
17 14 can come back and figure out a way to  
18 15 encourage folks that might be reticent then  
19 16 we'll do that too.

20 17 But at the end of the day we don't  
21 18 have to have them permitted. I think the  
22 19 main thing is the focus -- the refocus on  
23 20 what's important, the moving away from the  
24 21 reportable quantity thing is as big a deal  
25 22 to us as it is to you all, believe it or  
26 23 not. Because it relieves our burden on  
27 24 doing things that don't make any  
28 25 difference. So we like that part of it.

1                   But we just don't feel like we can  
2 give on this today without taking another  
3 look at it. But then again, we believe the  
4 rule given the changes that we've agreed to  
5 today is a good one to take and let's try  
6 it out for six months or a year, two years  
7 and see how it works.

8                   MS. STEGMANN: I do have one  
9 comment just on the compliance side with  
10 Number 2. By permitting those excess  
11 emissions you're quantifying those  
12 startup/shutdowns in your permit. And in  
13 the permitting process I think you're able  
14 to ensure that those excess emissions are  
15 not in compliance with the NAAQS or PSD  
16 increment.

17                   And if we take (2) away, that  
18 insurance is gone. You're still going to  
19 have the ability to have a cushion on top  
20 of those allowed excess emissions, if you  
21 will.

22                   So our concern is you're having your  
23 cake and eating it too. You're quantifying  
24 your excess emissions and then without (2)  
25 you still have the ability to emit more

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4 1 excess emissions without enforcement, if  
5 2 you will.

6 3 MS. LODES: Well really, all (2)  
7 4 does is give you an affirmative defense.  
8 5 And it's still at the Agency's discretion  
9 6 to whether or not they're going to allow  
10 7 that affirmative defense.

11 8 MS. STEGMANN: Right. But if it  
12 9 qualifies -- if (2) is taken out and you go  
13 10 over your permitted excess emissions and it  
14 11 still is a startup/shutdown, or  
15 12 startup/shutdown, that takes away our  
16 13 ability to issue a penalty.

17 14 MS. LODES: Right.

18 15 MS. STEGMANN: I know in some  
19 16 cases --

20 17 MS. LODES: I guess my question  
21 18 is if -- all this is, is taking away the  
22 19 affirmative -- I mean it allows them to  
23 20 apply for an affirmative defense for it.

24 21 MS. STEGMANN: Right.

25 22 MS. LODES: But how does that --  
26 23 just them applying for an affirmative  
27 24 defense, how does that take away your  
28 25 ability to enforce on it?

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4 MS. STEGMANN: Well, I mean we  
5 still have the injunctive relief on it. We  
6 can make them fix the problem. However, a  
7 lot of the times we need a penalty to back  
8 that up.

9 MS. LODES: But -- I guess --

10 MR. TERRILL: Well, the whole  
11 purpose is deterrent so it doesn't happen  
12 again. And if you had your bite at the  
13 apple and you still have this problem, then  
14 we should have the ability to have the  
15 deterrent effect. Having said that, we  
16 also have the enforcement discretion to  
17 take into account these unforeseen things  
18 that you just truly couldn't account for.  
19 And we always do that. I know there are  
20 some --

21 MS. STEGMANN: Those unforeseen  
22 things are mainly malfunctions. They're  
23 not startup/shutdown. And if it's the  
24 startup/shutdown, unforeseen, it could be  
25 construed as part of a malfunction event.  
26 And by taking (2) out you have your permit  
27 excess emission and you're allowed to emit,  
28 basically, more emissions on top of that.

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4 MS. LODES: Well, no. But it --  
5 I don't see it as being allowed to, it just  
6 gives you the option to apply for an  
7 affirmative defense on it. But it doesn't  
8 mean -- do you all have to accept the  
9 affirmative defense when somebody applies?  
10

11 MS. STEGMANN: If you meet the  
12 definitions for --

13 MR. SINGLETARY: If you satisfy  
14 the elements in the proposed rule.

15 MR. TERRILL: And I've been doing  
16 this too long to know that if we didn't,  
17 Steve would be over in front of folks  
18 wanting to know why you're not doing it.  
19 Why you're picking on this company? Why  
20 you're not following your own rules. So I  
21 know how this game is played, too. So  
22 that's the reason that -- again I'll come  
23 back to where I was, if the Council wants  
24 us to consider this then please send it  
25 back to us and we'll look at it. But if  
26 you pass this, there are too many things  
27 here that we haven't considered, that I  
28 just cannot support this at the Board. I

1 just can't.

2 MS. LODES: Any other questions  
3 from the Council?

4 MS. MYERS: I guess one of the  
5 things that I keep looking at on this Item  
6 Number 2 -- back in some of the older rules  
7 we had technological limitations that are  
8 fact. There are technological limitations.  
9 You can't always predict what you're going  
10 to have during a given time. And then  
11 there are so many variables that it's  
12 difficult to try to put your arms around  
13 everything. I don't know. I think that  
14 for some of the industries that do truly  
15 have some technological limitations, it  
16 becomes a problem. And again I guess we  
17 have the choice of not trying to permit  
18 those.

19 MR. SINGLETARY: Yeah. I think  
20 that's the reason the choice is provided in  
21 there because it's recognized that  
22 sometimes you can completely quantify these  
23 emissions, and sometimes it's a little bit  
24 more difficult. And that's why there's a  
25 choice.

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MR. TERRILL: And if we can figure out a way to tweak this so that we retain what we think is important, but still allow folks to come in, we'll do that at a later date. And I'll make that commitment. Because I agree, we do want to get these permitted. And this is going to be a barrier to some industries that may not want to risk it. But we'll continue to look at that. I'm not saying we'll figure out how to do it. But it's not in our best interest not to look at it.

MS. LODES: Any other comments or questions from the Council? A motion?

MR. HAUGHT: I'll make a motion that we accept this rule as modified in the handout entitled "Proposed Changes to the Text Distributed Previously" this section, with the additional modification to strike in Section 252:100-9-8(d)(5) after the reference of Part 63, "the comma, or any other federally enforceable performance standard or emission limit".

MR. BRANECKY: I'll second that.

MS. LODES: Myrna, will you call

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4 1 the roll.

5 2 MS. BRUCE: Jim Haught.

6 3 MR. HAUGHT: Yes.

7 4 MS. BRUCE: Pete White.

8 5 MR. WHITE: Abstained.

9 6 MS. BRUCE: Gary Collins.

10 7 MR. COLLINS: Abstained.

11 8 MS. BRUCE: Sharon Myers.

12 9 MS. MYERS: No.

13 10 MS. BRUCE: David Branecky.

14 11 MR. BRANECKY: Yes.

15 12 MS. BRUCE: Jerry Purkaple.

16 13 MR. PURKAPLE: Yes.

17 14 MS. BRUCE: Montelle Clark.

18 15 MR. CLARK: Yes.

19 16 MS. BRUCE: Bob Lynch.

20 17 DR. LYNCH: Yes.

21 18 MS. BRUCE: Laura Lodes.

22 19 MS. LODES: No.

23 20 MS. BRUCE: Motion passed.

24 21 (Items 1-5A Concluded)

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C E R T I F I C A T E

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STATE OF OKLAHOMA )  
 ) ss:  
COUNTY OF OKLAHOMA )

I, CHRISTY A. MYERS, Certified  
Shorthand Reporter in and for the State of  
Oklahoma, do hereby certify that the above  
meeting is the truth, the whole truth, and  
nothing but the truth; that the foregoing  
meeting was taken down in shorthand by me  
and thereafter transcribed under my  
direction; that said meeting was taken on  
the 21st day of January, 2009, at Oklahoma  
City, Oklahoma; and that I am neither  
attorney for, nor relative of any of said  
parties, nor otherwise interested in said  
action.

IN WITNESS WHEREOF, I have hereunto  
set my hand and official seal on this, the  
30th day of January, 2009.

CHRISTY A. MYERS, C.S.R.  
Certificate No. 00310

1 DEPARTMENT OF ENVIRONMENTAL QUALITY

2 STATE OF OKLAHOMA

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8 TRANSCRIPT OF PROCEEDINGS

9 OF THE AIR QUALITY MANAGEMENT ADVISORY

10 COUNCIL MEETING

11 ITEM NUMBER 5B

12 HELD ON JANUARY 21, 2009, AT 9:00 A.M.

13 IN OKLAHOMA CITY, OKLAHOMA

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23 MYERS REPORTING SERVICE

Christy Myers, CSR

P.O. Box 721532

Oklahoma City, Oklahoma 73172-1532

(405) 721-2882

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- BEVERLY BOTCHLET-SMITH
- CHERYL BRADLEY
- JOYCE SHEEDY
- MAX PRICE
- NANCY MARSHMENT
- DIANA HINSON
- SARAH PENN
- DAWSON LASSETER
- KENDAL STEGMANN

## 1 MEETING

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MS. BOTCHLET-SMITH: The next

item on the Agenda is Item Number 5B.

That's OAC 252:100-33, Control of Emissions

of Nitrogen Oxides, and Ms. Cheryl Bradley

will give the staff presentation.

MS. BRADLEY: Madam Chair,

Members of the Council, ladies and

gentlemen, we are proposing to amend

Subchapter 33 to define the term "solid

fossil fuel", to resolve issues regarding

NOx emission limits for equipment with

technological limitations, and to add a

formula for determining NOx emission limits

for fuel-burning equipment utilizing more

than one type of fuel. We are also

proposing some non-substantive changes for

consistency with the other rules in Chapter

100 and we propose to correct some

grammatical errors as well.

These changes were first presented

to the Council at the meeting held on

January 17, 2008. That hearing was

continued until July 16, 2008. Because

1 there were still outstanding issues, the  
2 July hearing was continued until October of  
3 2008, at which time it was determined that  
4 the hearing would be continued to today.

5           After careful evaluation of the  
6 technical issues and comments received, the  
7 Department has made one major change in its  
8 original proposal.

9           The Department has decided not to  
10 include an exemption for all direct fired  
11 fuel-burning equipment from the standards  
12 contained in Subchapter 33. This is a  
13 significant change. The specific changes  
14 that were included in the version of the  
15 rule in your packet:

16           The proposed revision to OAC  
17 252:100-33-1.1 adds the definition for  
18 solid fossil fuel.

19           The proposed revision to OAC  
20 252:100-33-1.2(a)(2) clarifies that the  
21 rule applies to solid fossil fuel, gas  
22 fuel, and liquid fuel, or a combination  
23 thereof.

24           The proposed revision to OAC  
25 252:100-33-1.2(b) adds the requirement that

1 NOx emissions from the fuel-burning  
2 equipment in question, shall not cause or  
3 contribute to an exceedance of any NAAQS or  
4 PSD increment. This was added at the  
5 request of EPA.

6 The proposed revision renumbers what  
7 was OAC 252:100-33-2 to 252:100-33-2(a) and  
8 adds a new paragraph (4) which provides a  
9 formula for setting NOx emission for  
10 equipment that burns a combination of fuel  
11 types.

12 The proposed revision to OAC  
13 252:100-33-2 also adds a new  
14 Subsection (b) which sets requirements for  
15 fuel-burning equipment that because of  
16 technological limitations cannot meet the  
17 standards in Subsection (a) during startup  
18 and/or shutdown. Other changes of a non-  
19 substantive nature are also proposed.

20 Notice of the proposed rule changes  
21 were published in the Oklahoma Register on  
22 December 15, 2008 and comments were  
23 requested.

24 As a result of comments received  
25 from the Mr. Braneky and Ms.

1 Lodes, during a meeting yesterday, staff  
2 has recommended two additional minor  
3 changes for clarity.

4           You will find in your folder a  
5 version of the rule, with yellow  
6 highlighting at the top, that says  
7 "Proposed Changes in Text".

8           One. We are proposing to change the  
9 term "gas fuel" to "gaseous fuel". The  
10 phrase "gas fuel" should be changed in  
11 Section 33-1.2(a)(2) and that same term  
12 appears again on Page 2 in 33-2(a)(4).

13           The one additional change was for  
14 clarification of wording on the last  
15 sentence in the last paragraph on Page 2.  
16 We are proposing that the wording of that  
17 sentence would now be "Approval of  
18 technological limitations by the Director  
19 in an Air Quality Division permit does not  
20 mean automatic approval by EPA."

21           As these additional changes were for  
22 clarity only and non-substantive, staff  
23 will request that the Council consider  
24 recommending the proposed rule with the  
25 three additional changes to the

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4 1 Environmental Quality Board for adoption as  
5 2 a permanent rule.

6 3 MS. BOTCHLET-SMITH: Do we have  
7 4 any questions from the Council for Ms.  
8 5 Bradley?

9 6 MS. MYERS: Cheryl, where is  
10 7 direct fired process defined?

11 8 MS. BRADLEY: I'll defer that  
12 9 question to Joyce.

13 10 MS. BOTCHLET-SMITH: Joyce, could  
14 11 you please come to the microphone so we can  
15 12 hear you when you comment.

16 13 DR. SHEEDY: Direct fired  
17 14 process, I'm not sure that we have got it  
18 15 defined now for this subchapter. That's  
19 16 one of the changes that we want to add to  
20 17 Chapter 1, I believe. I need to call on  
21 18 Max Price, who might or might not be here.

22 19 (Inaudible conversations)

23 20 MR. PRICE: If I remember  
24 21 correctly --

25 22 MS. MYERS: Step up to the  
26 23 microphone, please.

27 24 MR. PRICE: I'm not really  
28 25 prepared for this but I do believe that

1 we're looking at moving the term "direct  
2 fired" into Subchapter 1 so that it will be  
3 used as an adjective to explain all of  
4 these.

5 DR. SHEEDY: Is it defined in  
6 (inaudible)?

7 MR. PRICE: We have -- direct  
8 fired is already in -- what subchapter is  
9 that -- Particulate Rule under -- I take --  
10 and it's already defined there as a direct  
11 fired, like a kiln would be direct fired.  
12 In-direct fired is like boilers. So we  
13 have the term already defined in Chapter  
14 100 Rules. But we're going to gather all  
15 of these -- all these definitions into one.

16  
17 MS. LODES: Max. Max. You say  
18 it in the -- which Subchapter?

19 MR. PRICE: It would be 19, I  
20 think.

21 MS. LODES: Okay.

22 MR. PURKAPLE: That directly  
23 fires, is in Subchapter 19.

24 MR. PRICE: Yes, sir.

25 MS. LODES: Okay.

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4 MR. PRICE: In the definition --  
5 direct fired, here we go. Directly fired,  
6 in this case means that the hot gases  
7 produced by the flame or heat source --  
8 indirectly fired, okay -- do not come in  
9 direct contact with the material met.  
10 Directly fired means just the opposite. It  
11 means that the hot gases produced by the  
12 flame or heat source come into direct  
13 contact with the material being processed  
14 or heated.

15 So I think the plans are, the next  
16 go around on the definition (inaudible)  
17 because these definitions are used in 33 as  
18 well as 19, we're going to move a somewhat  
19 modified definition into one that will  
20 apply to both.

21 MR. COLLINS: I've got a  
22 question, Joyce, that maybe you can answer.  
23 The -- and this may have been asked and  
24 answered in previous changes to this rule.  
25 But what would constitute an increase or as  
the definition states "resulting in  
increased emissions of nitrogen oxides"  
that would subject a unit that wasn't

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4 1 previously included? Something that was  
5 2 built after that date?

6 3 DR. SHEEDY: Okay. Something  
7 4 that was built after the date -- oh, sorry.

8 5 MR. COLLINS: Any increase.

9 6 DR. SHEEDY: Okay. The question  
10 7 was what would be --

11 8 MR. COLLINS: Would you like for  
12 9 me to state it again?

13 10 DR. SHEEDY: Yes, sir, I would.

14 11 MR. COLLINS: All right. What

15 12 would the definition of "resulting in  
16 13 increased emissions", what is the  
17 14 definition of that as it relates to a unit  
18 15 that was previously not covered by this  
19 16 rule that would be because of, say, a  
20 17 change to that unit?

21 18 DR. SHEEDY: A modification.

22 19 MR. BRANECKY: Is there a certain  
23 20 increase you have to have before you become  
24 21 subject to it, I think is what you're  
25 22 trying to say?

26 23 MR. COLLINS: Yes.

27 24 MR. BRANECKY: Or is it just a  
28 25 hundredth of a pound, or does it have to be

1 ten pounds, or a ton, or what?

2 DR. SHEEDY: Well, it would have  
3 to be greater than fifty million BTU.

4 MR. BRANECKY: But is there --  
5 what increase in the emissions has to --

6 DR. SHEEDY: Any.

7 MR. BRANECKY: -- occur? Any  
8 increase?

9 DR. SHEEDY: Any increase.

10 MR. BRANECKY: No matter how  
11 small, any increase?

12 DR. SHEEDY: Yes. Yeah. Because  
13 we haven't put any kind of a trigger on  
14 that.

15 MS. BRADLEY: That was  
16 information provided by Dawson Lasseter.

17 MR. BRANECKY: Okay.

18 MR. COLLINS: Thank you.

19 MS. BOTCHLET-SMITH: Any further  
20 questions from the Council? We've not  
21 received any notice to comment from the  
22 public on this rule. So if -- Montelle,  
23 did you have a question?

24 MR. HAUGHT: Beverly, I just one  
25 second. I just -- real quick if I can, for

1 consistency change the term "the  
2 applicability from gas to gaseous  
3 (inaudible) fuel. And then we still use  
4 gas fired fuel-burning equipment. So is  
5 that consistent? I'm assuming that the  
6 reason for the change to gaseous fuel have  
7 you got -- to address fuels other than what  
8 you typically call natural gas, so does  
9 that need to be for consistency change  
10 those other terms?

11 MS. BRADLEY: We had a discussion  
12 yesterday, and the term "gas fired" is an  
13 entrenched term and we felt there was not a  
14 need to differentiate that term. However,  
15 "fuel gas" was a term that's very similar  
16 to "gas fuel" and it had a completely  
17 different meaning.

18 DR. SHEEDY: We don't think we  
19 need to change "gas fired" to "gaseous  
20 fired". I believe that --

21 MR. HAUGHT: So "gas fired" is  
22 going to apply to any of those fuel types  
23 then? Gaseous or gas fired?

24 DR. SHEEDY: "Gaseous fuel" would  
25 be, yeah, gas fired.

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4 MS. BOTCHLET-SMITH: Montelle.

5 MR. CLARK: Cheryl, just a  
6 question again on the history here. Can  
7 you tell me a little bit about the  
8 exception for glass melting furnaces and  
9 why that exception is in there?

10 MS. BRADLEY: The glass melting  
11 furnaces were unable, due to their process,  
12 and the NOx emissions created by that  
13 process to meet the standard. As an  
14 alternative they went through a thorough  
15 review of process to determine what Best  
16 Achievable Control Technology would be.  
17 And we hold them to that control  
18 technology. Actually the best achievable  
19 or Best Available Control Technology is  
20 also the Lowest Achievable Emission Rate,  
21 LAER.

22 We went through a SIP revision  
23 process and provided technological  
24 demonstration to EPA to justify this  
25 deviation. And it's -- they are unable to  
meet the limits. And originally this rule  
only applied to indirect fired fuel-burning  
equipment. And there was a change made

1 more than a decade ago to expand the scope  
2 of the rule to include all fuel-burning  
3 equipment, bringing in direct fired.

4 We did not become aware of the  
5 problem for the direct fired units -- the  
6 glass melting furnaces until after that  
7 date.

8 And the bottom line is they  
9 underwent a very stringent review and they  
10 are held to a standard the Agency has  
11 determined is appropriate for that type  
12 source.

13 MR. CLARK: Okay.

14 MR. TERRILL: This is another  
15 example of an unintended consequence that  
16 we went back and fixed. The facilities  
17 were as clean as they could possibly be,  
18 clean as any in the country. And it  
19 allowed that facility to be built where  
20 otherwise it wouldn't. And that was never  
21 the purpose of the rule. The rule changes  
22 didn't account for that and nobody showed  
23 up representing the industry, saying this  
24 is going to affect us. And then when we  
25 had a new source come in it came to our

1 attention and it never was -- the Council  
2 originally never intended to say we don't  
3 want them built. They just didn't realize  
4 by making that change it pulled them in.

5 So the facility that got this  
6 exemption has got one of the cleanest  
7 facilities in the country. So it was a  
8 good result all the way around.

9 MR. CLARK: Thank you.

10 MS. BOTCHLET-SMITH: Any other  
11 questions? I believe you're ready for a  
12 motion.

13 MS. LODES: Can I have a motion?

14 MR. PURKAPLE: I move we adopt  
15 with the latest changes we have here.

16 MS. LODES: Do I have a second?

17 DR. LYNCH: Second.

18 MS. LODES: Myrna, call the roll,  
19 please.

20 MS. BRUCE: Jim Haught.

21 MR. HAUGHT: Yes.

22 MS. BRUCE: Pete White.

23 MR. WHITE: Abstain.

24 MS. BRUCE: Gary Collins.

25 MR. COLLINS: Yes.

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4 MS. BRUCE: Sharon Myers.  
5 MS. MYERS: Yes.  
6 MS. BRUCE: David Branecky.  
7 MR. BRANECKY: Yes.  
8 MS. BRUCE: Jerry Purkaple.  
9 MR. PURKAPLE: Yes.  
10 MS. BRUCE: Montelle Clark.  
11 MR. CLARK: Yes.  
12 MS. BRUCE: Bob Lynch.  
13 DR. LYNCH: Yes.  
14 MS. BRUCE: Laura Lodes.  
15 MS. LODES: Yes.  
16 MS. BRUCE: Motion passed.  
17 MS. BOTCHLET-SMITH: That  
18 concludes the hearing portion of today's  
19 meeting, Laura.  
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21 (Item 5B Concluded)  
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STATE OF OKLAHOMA )  
 ) ss:  
COUNTY OF OKLAHOMA )

I, CHRISTY A. MYERS, Certified  
Shorthand Reporter in and for the State of  
Oklahoma, do hereby certify that the above  
meeting is the truth, the whole truth, and  
nothing but the truth; that the foregoing  
meeting was taken down in shorthand by me  
and thereafter transcribed under my  
direction; that said meeting was taken on  
the 21st day of January, 2009, at Oklahoma  
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attorney for, nor relative of any of said  
parties, nor otherwise interested in said  
action.

IN WITNESS WHEREOF, I have hereunto  
set my hand and official seal on this, the  
30th day of January, 2009.

CHRISTY A. MYERS, C.S.R.  
Certificate No. 00310

DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF OKLAHOMA

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY COUNCIL MEETING  
DIRECTOR'S REPORT  
HELD ON JANUARY 21, 2009, AT 9:30 A.M.  
IN OKLAHOMA CITY, OKLAHOMA

\* \* \* \* \*

MYERS REPORTING SERVICE  
Christy Myers, CSR  
P.O. Box 721532  
Oklahoma City, Oklahoma 73172-1532  
(405) 721-2882

MEMBERS OF THE COUNCIL

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Kendal Stegmann

MEETING

MR. BRANECKY: As you all recall -- and Pete, I'm getting a copy made for you since you haven't seen a copy of this memo or the letter.

In December, Eddie sent out a scanned copy of a letter from the accounting firm of John M. Aldrich and Associates along with a memo. We met with the representative, and they are here today to answer any questions about their proposal for doing an audit of the Air Quality Division.

One thing I think I need to make clear, this is not process audit. They're not doing an audit to see the needs of the Division but it's a financial audit. And what we're asking today is for Council's approval to move ahead with this financial audit. So you all remember the memo and the letter.

Jim, is there anything else we need to add to that?

MR. HAUGHT: I thought what we were proposing at this point was for the firm to investigate the process. What are they doing, how are they accounting, how is time being billed right now, not how the money is being spent. So I looked at this as the first step. We want a financial audit as to the needs and the dollars. But I think this was the preliminary to -- that we would need to get there. So this isn't the (inaudible) audit from what I understand. At least that's my understanding.

MR. TERRILL: My recollection is the same as Jim's. So if that's wrong --

MR. BRANECKY: No.

MR. TERRILL: -- we probably need to get that clarified, too. This is just kind of a first step.

MR. BRANECKY: Right. And I guess what I'm saying, this is not a -- like a TVA -- TBA study they did in the '90s --

MR. HAUGHT: Yes.

MR. BRANECKY: -- Air Quality needs this many people to do this work and this -- Title V constitutes this much --

MR. HAUGHT: It's not that we may not want to get there --

MR. BRANECKY: Yeah, we may want to get there eventually, but this is the first step towards that.

MR. HAUGHT: Yes.

MR. CLARK: Are we going to be voting on this?

MS. LODES: No.

MR. TERRILL: I don't think we need to vote. I just think if there's a problem that you all see or comments you want to make that this is not the direction that you initially want us to go, then we would kind of like to hear that. Otherwise we're going to give the accounting firm authority to move forward. But we just kind of want to make sure that we're on the right track. And we're comfortable -- the Agency is comfortable that we are.

MR. BRANECKY: I think Jim and I are comfortable with -- after we met with them that this is the first step that we need to take.

MR. CLARK: Okay. Actually, I do have a couple of questions then. And again, for the benefit of those of us that haven't been on the Council since -- before this started, I guess. I'm not sure, it started a year and a half ago.

Can you give me a little background on what led to this? Was there a problem detected or something presented that indicated there was a discrepancy?

MR. TERRILL: Let me -- the way this started was -- I don't remember the exact Council meeting, but last year or towards the end of the year before last, we realized that we were going to have a shortfall in our program. The money we would need to run our program. And a lot of it was passed along costs that we didn't get, relative to benefits and things like that, that we have to account for. And the only way that we really had to recoup that was to increase our Title V fees and our minor source fees. We already get a pretty good -- not a lot but we do get some general appropriations money and we just didn't have enough of that to cover these costs. And so we made the

case to the Council to have what was an unprecedented increase in the Title V fees -- the fees that our regulated industry pay for both major and minor sources. And, in fact, the increase that we asked for was the greatest that has ever been asked for and it was probably more than we've ever gotten since the inception of the program, if you total it all together.

So it was a big commitment of additional resources from -- in regulated industry to us. And as particular of that, the notion came up -- we've always had this discussion about Title V, non-Title V; are the minor sources paying for the major sources work? Are the major sources paying for the minor sources work? And that never has really been resolved and it kind of went back and forth. And so one of the things that Steve Thompson, my boss, and the Executive Director of the Agency said that we would do to try to make sure that the concerns that were raised from the regulated industry about the fees that they were paying was we would do an audit.

Which we've never been opposed to doing an audit, it was just a matter of having the money to do it. But Steve had enough money available that we could -- that wasn't allocated for other purposes, that he felt like that it was important enough for us to address this. And I think that it's important enough for the regulated industry that we do this for them to make sure that they're comfortable that their fees are being -- that they're appropriate and they're being spent in the right manner.

So that's how it started. It was a concession, if you will, but one that we've never been opposed to. We just never had the resources to do it. And Steve had that, and was willing to do that, as a trade off for getting the fees that we need to move forward. So it's something that's kind of been out there. We don't think there's going to be a problem, but just have a third party take a look and say, yeah, you're right; or if we need to make some adjustments, we'll do that too.

MR. CLARK: Air Quality Division, I assume, does their own internal audits and evaluations of division of income, et cetera; correct?

MR. TERRILL: We have a time and effort program that we use that we're constantly emphasizing to our staff the importance of making sure that it's accurate. In fact, we just got through doing another look at that to make sure that the categories that we've got are reflective of the work our folks are doing and that they understand that that's important that they, as closely as they can, allocate their time between major and minor sources and other types of programs and the way that they're funded and what they're actually doing. And then that goes through an audit internal with our finance folks.

And I'm just about to step out of what I know about it because Beverly does most of this. But the short answer to your question is, yeah, we do keep track of that but it's an internal track and it's not -- other than the fact that we're financially audited by the Office of State Finances periodically, I don't know that they're going to take a look at the -- well, they don't take a look at the detail and the issues that are going to be looked at in this audit. But we do do an -- we do audit -- we are audited by the Office of State Finance.

Patrick Farris is back there with accounting. He probably has a better answer than I do. Patrick, would you -- they can probably hear you better. This is not on the record but --

MR. FARRIS: Thank you. I'm Patrick Farris, and I'm comptroller for Agency. And I first want to -- do the Members of the Council have a copy of the November 17th letter from the accounting firm, in reference to David Dyke. David is sick today and I'm stepping in, in his place. I want everyone to be clear that -- if you're not a CPA, you're probably not familiar with the term.

This is an agreed upon procedure and not really -- it technically would be called an audit. It's an agreed upon procedure for the items that are listed in Number 2 here on -- in the letter to David. There's two gentlemen here from the accounting firm that prepared this letter that -- Jim, would you or Kelly like to -- I'll let them comment.

But I want -- I just wanted you to understand this is not what you would call a financial audit, it's an agreed upon procedure, is the term a CPA would use.

?: I am Jim ?, I'm the managing partner of John Aldrich and Associates. We were first approached as we are the auditors for the Drinking Water Capitalization Project Fund that the Agency has and that has had a single auditor requirement for many years. And so therefore, we were approached about this project and the ultimate end of this is likely to be an audit. But it was expressed in the process of, let's see where we are before we go and do an audit and get, you know, that opinion or, you know, the books don't balance or something like that. Let's see where we are on this.

And so what the discussion led to was this letter and essentially it's kind of three pieces.

It is determine the standard of what we need to follow. Similar to what you were talking about for two hours here. Set the standard. Determine what that is. And we're kind of not sure if there is a standard here, but determine if that's the case.

And then secondly, determine what we're doing. Determining, you know, how we allocate costs, how we divide them between certain parts of the Agency and others, how we share common costs. And then determine whether there is appropriate documentation to support that in the way of time records, in the way of invoices, cancelled checks. Those kinds of things. And then determine what the reporting of that is and how that's done. Determining if that's fair.

And in the end, determine what the gap is, the standard versus the practice. And see what recommendations need to be made to determine how do we get to the standard.

It's as simple as that. It's really a -- it's a three step deal. So that's what you're seeing there in one, two, and three.

The six steps under Number 2 give you -- give you kind of the meat of the subject of what do we look at in that process.

MR. TERRILL: I think that's what Jim was referring to in the first step. This is the first step, with others to follow as we get them to get you where you want to go.

MR. HAUGHT: Yeah. And I think some of the discussion was along the lines of potentially, we know what the management of the Agency -- what their expectations are and what they -- the guidance that they are putting out to the supervisors as far as the individual people coding their time. They're not sure if that's how people are really coding their time or is that really being passed down and is that what's happening in practice.

So before you look at those dollars and say, okay, yeah, they coded this much time to Title V and that's what it takes, you've got to make sure that that's properly being coded; that that process is happening right at that level. And so this increase was requested that -- I think there is no doubt that some increase was needed. Was that the correct increase? The Council went along with that increase that was requested contingent upon this look to see if that was the right number.

So it's kind of an after the fact look at the trust (inaudible) that was put in. And so there just wasn't enough documentation up front provided to where the Council was totally comfortable. And so this look at how that's being coded, how those resources are being allocated, and is that the right amount, was how they got comfortable enough to pass that to meet the immediate need, to me.

MR. CLARK: Procedure sounds very reasonable to me, especially if this leads to -- does lead to an audit. I'm guessing -- I don't have any idea, but I'm guess the cost on this will be considerable. I don't know if we have a range for what we're talking about here but given that we're in a budget constrained environment, from

what I hear from our Governor, that every division in the state will end up taking reductions on their budget.

In the absence of some evidence that there's a problem in the way DEQ has been handling this, I'm concerned about the expenditure for an audit when there are so many other pressing needs in the Department.

MR. TERRILL: I'll address that. This money is one time money that Steve -- it's penalty money, is what it is, and so we don't ever use penalty money to makeup short falls or for budgetary purposes. If we got into that, that's a slippery slope that we don't want to go down. It's fine if you don't abuse it, but there's a fine line there. So Steve has never, to my knowledge, used that money for anything other than other purposes; cleanups or one time things that the Agency needs. And we've talked about this -- Steve and I have talked about this on a number of occasions and we've known that there's a need to do this for a long time. And it's not something that he lightly said, oh, well, just go ahead and do it, just to get the money.

We think it's appropriate to take a look at this. It would be helpful to us to make sure that the way we're tracking this is the right way to do it and it meets what we believe should be the standard. And this is also a national issue. We're not the only state and local that's faced with a budget problem, and we're also not the only state and local whose industry has said, gee, we're paying our fair share, it's about time the EPA came up with their fair share or the taxpayers came up with their fair share when this is a -- you've got mobile sources that is a huge particular of our issue here and how do you account for that. So we really need this too. And it's not -- I don't think it will be wasted money.

And I understand your concern and if it was coming out of budgets that we had for people to actually get work done, then I would say we might want to rethink that, but it's not. Steve's already got the money allocated to do it. And if it turns out that once we get this preliminary work done, if the overall thing is too costly, then we'll figure out a phased approach to get it done.

But I'm committed and I really think this is a good step for us to do. I understand your concerns but I don't think in this instance that what we're -- this money would be allocated for our budget anyway. And so this gets us where we need to get long term. It gives some comfort to the regulated sources, that yeah, they do know what they're doing when they have their folks code their time and it's not a 100 percent, but it's accurate enough we can get a gauge of what their needs are.

So I would just urge that -- I think it's important enough to us for a transparency for those that are paying the bill, that they have that opportunity. Because if it wasn't coming out of their pockets then it wouldn't really be any of their business, but it is and it is their business. So that's the way I feel about it.

MR. PURKAPLE: Eddie, do you have a feeling for the timing on this and what we think the cost might be? What is the time to get this piece of it done, roughly?

MR. ALDRICH: You know, it is a busy time of year, but I do believe we can work with our schedule and get this done as soon as you all need it.

MR. BRANECKY: We meet next in April. Would that be --

MR. ALDRICH: Between now and April --

MR. BRANECKY: -- could we expect something back in April?

MR. ALDRICH: It's a busy time.

MR. BRANECKY: Yeah, I'm just asking.

MR. ALDRICH: But, you know, it's good to know that now. And as far as -- and we can work with you all on schedule as to what it needs to be. One thing about it, it is agreed upon procedures, there'll be time on site, most of the time we'll be on site. There won't be a lot of time having to be spent writing disclosures and reports and stuff like that. So you don't have as much of that as you would have in an audit and in dealing with all of those issues. It will be focusing mainly on the cost issues and those kinds of things.

In that regard, I've estimated \$20,000.00 to do this, you know, in just adding up hours and looking at, you know, various scenarios that may happen in the process. So that's what I ball-parked it at, you know, and we could enter into that kind of an agreement or we could enter into a range, you know, if you so believe that that would be more appropriate.

MR. HAUGHT: I just wanted to note that the next meeting is on April 15th.

(Comment)

MS. LODES: That was actually going to be my comment. Since the next meeting is on April 15th, do we need it by April or would we -- would the July meeting work a little bit better in awareness of what you have going on between now and April 15th.

MR. ALDRICH: Well, July is always better, but if you needed it April 15th we can.

MR. TERRILL: Let's do this, if they can get it done, then we'll get to you in April, if not we'll keep the Finance Committee and then through the Finance Committee, the rest of you updated on what's going on. Our concern is that -- I don't have a problem letting you all know what's going on. I just want to make sure we don't get into a problem of quorum and that sort of thing. I don't think we would but we're not -- this is not a rule. But if you'd just leave that up to us, as far as working with the Finance Committee to either get it to you in April or June and then we'll -- from that point we'll figure out where we go from there, what the next steps are and then I think we'll have a better idea of the overall costs. But this is well within the first step for us. This not a big issue.

MS. LODES: I know this isn't something we vote on per se, but what do you need from us to get this to move forward?

MR. TERRILL: If I don't hear somebody saying don't do it, and actually I would prefer that if you've got a real concern I'd rather work that out privately. We really need to do this. And I want to do it. And so I -- if some of you have individual concerns, if you'd work through me, we'll get that addressed because we want everybody to get what they want out of this. And we want to get what we need out of it too. So all I need is just a general consensus of let's move forward. And then we'll have something in April at the earliest, it may be June, to see where we are and we'll move forward from there.

I'd like to get this whole thing wrapped up this year, this fiscal year, the whole nine yards.

MS. LODES: Eddie, I think -- is there any other comments or issues from the Council?

DR. LYNCH: Yeah, I do have one. I just want to make that it's clear that in this bid that was made, that we're going to increase fees that at some point would be -- because this is going to come up again, perhaps, some point you're going to come and say we need to increase the fees again, that we have a clear understanding -- I guess we're not going to get it at this point -- as to what the needs are to be able to do the work that's required. I think what my understanding is of what we're going to get from this is are we accounting things correctly? The bigger question is do we have all we need to run this program as it is now, and any other requests for new programs (inaudible). That's the big question.

MR. TERRILL: First step. Yeah.

DR. LYNCH: I think we have a commitment from Steve that that question would be answered to the needs of the Council and then the general regulated community so they can see that you have enough or don't have enough to do what is required for you to do.

MR. TERRILL: I'm going to have to push back a little bit on that because it depends on -- I think we may be talking about the same thing but we may not be. To do a true needs analysis that was done by the TBNA study, we're probably talking a million bucks to do that. But having said that, this is not an issue that is unique to Oklahoma. This is a nationwide crisis issue, relative to how you fund the air programs moving forward.

We're participating with our regional groups in SARA to give EPA data relative to what constitutes a small, medium sized, and large program, you know, what you need to run those types of programs to give them that data. We're working through our national organizations to provide EPA with financial data as to what folks are spending their money on, what are we doing now and how are we spending our money, what are we looking at in the future and how we spend our money. What I'm hoping is, this national issue with the new EPA, they're going to have to come to grips with how they move Air Quality forward in the new era.

And so we spend a lot of time doing a lot of things that don't amount to a lot. And those resources could be spent in other places. And EPA, I think, understands that they have got to come to grips with that because the financial crisis that we're experiencing across the country has kind of crystallized that.

And there's not going to be any new money out there for a while. And so we've got to figure out how to be smart about it. What are the needs; what are the programs we need to do to protect public health. So we will try to get you what you need. I understand what you're saying but I don't know if we'll get all the way there, but at least we'll have the financial particular of it done to say that we are -- you know we do have the accountability to show where the money is being spent and we can justify that the money that we're needing is being spent to where it needs to go.

If we can do this other -- this final piece, I'd like to see it but it's going to be -- it may be in conjunction with a bigger effort nationwide.

MS. LODES: I believe -- my understanding is that this first piece is what's needed before we can even get to the much larger piece.

MR. TERRILL: Right. And it could be that maybe we can figure out a way to do it in a more cost effective manner and get the whole enchilada, but let's have the tamale first and then we'll look at the enchilada later.

MS. LODES: Then I think --

MR. HAUGHT: I think the fact that there is a need for this first piece kind of justified the look. Everybody wasn't really sure how all of those numbers were being accumulated.

MR. TERRILL: And this is kind of murky because every state does it differently. There is no standard that I'm aware of that EPA has to say this is how you should account for your time, and how you should allocate it to figure out whether or not your fees are being adjusted right.

We've had audits by EPA at least twice since I've been here, that says that our Title V fees are appropriate and being spent for the proper purposes. Now having said that, I wouldn't want to go to the bank on that. But they do the best they can with the information they've got.

And it's a slippery slope for them too, because if we didn't have an adequate program, well, what are they going to do? Say they're going to take it over? They can't run it. And they're not going to get us any more money, and they can't supply us any more money. So EPA says that -- the real desire of Congress, when they enacted the Title V program at that time, was to shift the burden to industry to pay for the air program.

Now that's exactly what they intend to do and that's what EPA would like to see happen but it's just not realistic. It just can't -- we're at the point where we've really got to make some decisions about how we're going to move these programs forward.

And we're not even talking about climate change and how -- who's going to pay for that. And who's going to do that work. But this is a very necessary first step, that gets you all the comfort that -- if we're going to ask for another \$5.00 a ton, then you all need to be shown that it's needed and here's why. Not that we're there. Just that we're good. We're good.

(Inaudible multiple conversations)

MR. TERRILL: If we do that, we'll have a united purpose. We'll all be for it.

DR. LYNCH: Yeah, I wanted to make sure that the increase that we did vote for was justified before we start talking about additional.

MR. TERRILL: Yeah.

MS. LODES: Yeah.

DR. LYNCH: And this was to justify what was already put in place. It wasn't (inaudible) for additional fees down the road.

MR. TERRILL: But also it gives some comfort that how we're looking at this is justified for what we're looking at down the road, if that's necessary.

MS. LODES: I think, why don't we go ahead and direct to do this first step and the audit with the assumption you'll bring to us what you can by April. If it's completed, great; if not, we'll see this completed by July.

MR. TERRILL: We'll do an update in April as to where we are.

MS. LODES: Okay. Thank you.

MR. ALDRICH: Thank you all.

MS. LODES: We need a quick five minute break because I know we're getting close to noon, I'd like get through this.

(Agenda Items 7 and 8 not transcribed)

(Next Item is the Director's Report)

MR. TERRILL: I am cutting this down significantly but I do have several things I wanted to give you, but most of the stuff can wait. Ozone boundary issues as most of you know the Governor has got to make his recommendation relative to the State of Oklahoma and what the recommendations are for attainment and boundary. We had a couple of public hearings, and as you might suspect, most of the comments we got back was make that boundary as small as possible so you affect as few people as possible. For the most particular, we agree with that. We do have some hoops we have to jump through in order to justify that.

One thing we are doing is that we've recommended to the Governor and he's taking it under advisement subject to getting a letter from the COGs and other interested parties supporting this, we would like to see him just defer this recommendation until we see what the 2009 data is going to look like. It really doesn't do anything. The negotiation period won't start relative to final boundaries until the end of the year 2009, and by that time we'll have our 2009 data in and we can look at '07, '08, and '09 and determine where we are. It is possible that we're close enough, especially in Oklahoma City, to come back into attainment.

Tulsa, I think, is a little more problematic. If this drought doesn't break, we are all problematic because it is so dependent on weather; and having a drought this time of year is not going to help our hot, dry spells in the summertime. Anyway, we will just have to wait to see what the Governor decides to do but that is our recommendation that he send a letter to EPA deferring a declaration until such time as we either go out based on the 2009 data or the 2009 shows we are clean. That's kind of where we are with that.

We did get a Notice of Deficiency from EPA relative to our Regional Haze SIP. We knew this was coming. We are about a year overdue getting it in, but there's reasons why we haven't done that and it starts a two-year clock for us to get that in and we will continue to work. That kind of goes back to my comments earlier about a

National strategy. Regional Haze has a lot of the same pollutants that are involved in ozone and PM and I just think they need to address this nationally and not piecemeal these regulations, especially with a static standard. So we may end up having to do something but I would like to wait to see what EPA does with this and we'll address that in the next few months.

The only other thing is that I'm going to speak at the Climate Change -- Climate Registry meeting in February. They've divided up -- the Climate Registry is a registry we joined a few years ago that's putting together a voluntary methodology for accounting of CO2 emissions or greenhouse gas emissions, not CO2, greenhouse gas emissions and also third party verifying those so that they can be traded or sold. And it's kind of the anticipation that this might be a model for the nation. Whether that becomes correct or not, I don't know; but forty states, several provinces in Canada and Mexico, several tribes all belong to this. Right now it is still putting together the methodologies, protocols and all that but they are having a series of regional meetings. We were asked to go to Denver, but I didn't feel like we had a lot in common with the western states so we opted to go to the southeast, which is Tampa. We couldn't get the Secretary of Environment to go, so I am going to go and talk about what we are doing relative to climate change, which won't take long, and leave a lot of time for the other states to talk. But we are all in the same boat. I don't think anybody that is going to be there is doing a whole lot with this but if your company believes that this is something you want to become involved with, the Climate Registry would be one you might want to investigate. I told them that I would put a plug in for that because they are trying to get companies to voluntarily join. It will cost you to join. There's a money catch to all of this, but hopefully when EPA comes up with their final rule relative to greenhouse gas, it will clarify that they are going to do something separate, or they are going to embrace the Climate Registry and this is the route they are going to go because they need to make a decision as to who is going to collect this data and how it's going to be evaluated. And if

it's going to be the Climate Registry, they need to say that and move on down the road. The rule -- the federal rule has been at ONB for a while now, so now we have a change in administration. I think that rule is going to come back to EPA and we'll see when it comes out. Hopefully, it will be out in the next two or three months. I can tell you there is a lot of effort among a lot of states trying to make the Climate Registry the body to which you will have to submit your information to in order for it to go into either a cap and trade system, or to just any accounting where you've got reductions that have to be made. So, it wouldn't -- if you are not aware of what the Climate Registry is doing, I would go to their website or contact me and I'll get you information. You can kind of see where this is going.

Anyway, the next meeting is in Denver, the Tampa one is February 3 -- the Denver meeting is February 26 and there's a Columbus, Ohio meeting in March. And they kind of divided it up among the states. And like I said, they wanted us to go to Denver but we opted to go to the southeast.

Anyway, that's all I've got. You guys need to keep track of what is going to EPA. A lot of big changes, a lot of new faces, and a lot of faces that we all know, not necessarily new to us but it's going to be a different direction. That's all I've got. Any questions? Yes.

MR. CLARK: Eddie, can you comment on the news report that recently found high levels of air toxics near schools in Sand Springs?

MR. TERRILL: My blunt statement is that I thought that was irresponsible of USA Today to publish that without going through a little bit more rigorous methodology relative to how they did that. It threw up a lot of concerns with folks. And I don't doubt that there are some areas who have toxics that do impact schools, and not just schools but citizens that live around these particular sources. But to make the blanket statement like they did, we don't have any data to back any of what they said.

In fact, our data that we've got relative to the toxics monitoring in Tulsa says just the opposite. Having said that, we think there is enough of a concern that we are going to expedite the look that we were taking as far as our normal toxic program in the Tinker area of Oklahoma City, in Midwest City area and one other area. We are looking across the state with this. This is not a new issue. But the model they used -- our folks, that know more about this than I do, were not surprised that they got the results they got because the model was not designed to do what they did with it. It was designed to be used as a screening tool to say there might be a risk here, you need to go back and investigate it. It wasn't designed to say -- actually it was designed to weigh the risk across the community and say this might have a better chance of having an issue than this area over here. But you don't want the baseline -- the baseline may have been so small that there was no issue anywhere but relative to one area over another, yeah, this one does have a greater risk.

Not to say though that they didn't bring to light an issue that has been out there for a while, in that sometimes people build schools where they shouldn't be built and they do that for money reasons. They are getting schools built, they are trying to do what is best for their community and sometimes they get a deal that's too good to pass up, they build where they shouldn't be built.

I can't name you the number of stories I heard from folks within EPA, about in their community -- about folks getting a good deal on land for a school and it turns out to be next to a smelter or something else that impacts those kids. This is really an issue we need to be looking at about where we are putting our kids and how we are educating them, and what are the acceptable risks for our kids. And the other big thing that nobody really knows is, what is the impact on the kids that are in development stages both physically and mentally to these toxins that we are all exposed to every day.

You know, at what point are we going to say, well, we don't want any more of it, or it's acceptable for the lifestyle we enjoy. But it's nothing that money and a lot of research can't be thrown at.

But we saw that, we looked at it immediately. We don't think there is that big of a concern, but we do want to verify and make sure, if nothing else, to give those folks that were on that list some additional level of comfort that there is not anything going on. But we don't believe that the issues they cited were valid.

I would be more concerned about the mom and pop things that we didn't know about that is just out there, than I would be about the sources they identified. But that's just my first take. We will be glad to revisit that as we get more data in the next few months, but we are going to address that.

I did have on this list to talk about our DERA grant. We got some money for school bus retrofits this year. We must have made it too complicated. But we did a public presentation trying to get folks to sign up, and we only got one for sure signed up. So if you all know of school districts, or work with school districts or on school boards, that think they might have an interest, we reopened the comment period. We want to work with folks to try and figure out why it was they didn't want to take free money to retrofit these school buses to make it safer for their kids to be on. We really need to get this. One way or the other, we're going to do this retrofit and we would like to use it in areas that get the biggest bang for the buck.

We did get -- we do have a project that we are doing in Tulsa relative to trash trucks. We think we've got that off the ground. That was a different project, but we are going to reduce diesel emissions from trash trucks in the Tulsa area to some degree. But we really would like to spend this DERA money for good things relative to school buses.

So if any of you know of a school system that could benefit from this, give me a call, or Beverly a call, or have them call us and we'll tell you how to get plugged in to that money. Thank you.

MS. LODES: I don't believe there was any new business, so that will conclude this Air Quality Council meeting. Thank you.

(Meeting Concluded)

## C E R T I F I C A T E

STATE OF OKLAHOMA )

) ss:

COUNTY OF OKLAHOMA )

I, CHRISTY A. MYERS, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the above meeting is the truth, the whole truth, and nothing but the truth; that the foregoing meeting was taken down in shorthand by me and thereafter transcribed under my direction; that said meeting was taken on the 21st day of January, 2009, at Oklahoma City, Oklahoma; and that I am neither attorney for, nor relative of any of said parties, nor otherwise interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this, the 6th day of March, 2009.

CHRISTY A. MYERS, C.S.R.  
Certificate No. 00310