

**DRAFT MINUTES  
AIR QUALITY ADVISORY COUNCIL  
January 16, 2013  
Department of Environmental Quality  
Multipurpose Room  
Oklahoma City, Oklahoma**

Official after AQAC Approval  
at April 17, 2013 meeting

**Notice of Public Meeting** – The Air Quality Advisory Council convened for its Regular Meeting at 9:00 a.m. on January 16, 2013, in the Multipurpose Room of the Department of Environmental Quality (DEQ), 707 North Robinson, Oklahoma City, Oklahoma. Notice of the meeting was forwarded to the office of Secretary of State on November 16, 2012. The agenda was posted at the DEQ twenty-four hours prior to the meeting. Ms. Beverly Botchlet-Smith, Assistant Director, Air Quality Division, acted as Protocol Officer and convened the hearings by the Air Quality Advisory Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51 and Title 27A, Oklahoma Statutes, Sections 2-2-201 and 2-5-101-2-5-118. She entered the agenda and the Oklahoma Register Notice into the record and announced that forms were available at the registration table for anyone wishing to comment on any of the rules. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Jeanette Nance called roll and confirmed that a quorum was present.

**MEMBERS PRESENT**

Gerald Butcher  
Gary Collins  
David Gamble  
Jim Haught  
Laura Lodes  
Bob Lynch  
Sharon Myers

**MEMBERS ABSENT**

Montelle Clark

**DEQ STAFF PRESENT**

Eddie Terrill  
Beverly Botchlet-Smith  
Cheryl Bradley  
Brooks Kirilin  
Rob Singletary  
Madison Miller  
Laura Finley  
Jennifer Boyle  
Rick Groshong  
Kent Stafford  
Madison Stirland  
Matthew Weis

**DEQ STAFF PRESENT**

Kendal Stegmann  
Sean Walker  
Heather Lerch  
Scott Thomas  
Joyce Sheedy  
Nancy Marshment  
Diana Hinson  
Dawson Lasseter  
Phil Martin  
Leon Ashford  
Richard McDaniel  
Jeanette Nance

**OTHERS PRESENT**

Christy Myers, Court Reporter

**Approval of Minutes** – Ms. Lodes called for a motion to approve the Minutes of the November 14, 2012 Special Meeting. Mr. Butcher made the motion to approve and Mr. Gamble made the second.

*See transcript pages 4 - 5*

Gerald Butcher	Yes	Bob Lynch	Abstain
Gary Collins	Abstain	Sharon Myers	Yes
David Gamble	Yes	Laura Lodes	Yes
Jim Haught	Yes		

**Election of Officers** – Ms. Myers made a motion to continue with the existing officers, with Ms. Lodes as Chair and Mr. Haught as Vice-Chair. Hearing no further discussion by the Council, Mr. Collins made the second.

	<i>See transcript pages 5 - 6</i>		
Gerald Butcher	Yes	Bob Lynch	Yes
Gary Collins	Yes	Sharon Myers	Yes
David Gamble	Yes	Laura Lodes	Yes
Jim Haught	Yes		

**OAC 252:100-7 Permits for Minor Facilities [AMENDED]**

Mr. Eddie Terrill, Division Director of the Air Quality Division, made a recommendation to consider the comments received on January 15 and 16 so the internal workgroup can continue to view the comments. Ms. Joyce Sheedy, Engineer Intern, Air Quality Division, stated the Department proposes to revise Part 9 of Subchapter 7, Permits for Minor Facilities, to add a new Permit by Rule (PBR) for minor facilities and area sources to address recent changes in federal NSPS and NESHAP affecting a significant number of minor facilities and area sources in the Oil and Natural Gas (O&NG) sector. The Department also proposes to amend existing language that applies to all PBRs. The proposal includes a change to the requirements regarding registrations under PBRs to make the registration effective upon receipt of the application by the Department. Following discussion by the Council and the public, Ms. Lodes proposed that the Council carry this rule forward to the next Council meeting. Ms. Myers moved to approve and Mr. Butcher made the second. Due to uncertainties, and on advice of Ms. Cheryl Bradley, Environmental Programs Manager, Air Quality Division, and Ms. Botchlet-Smith, the Council was advised to make a motion to amend the motion to continue this rule to a subsequent Council meeting for consideration of questions and comments.

	<i>See transcript pages 7 – 34</i>		
Gerald Butcher	Yes	Bob Lynch	Yes
Gary Collins	Yes	Sharon Myers	Yes
David Gamble	Yes	Laura Lodes	Yes
Jim Haught	Yes		

Ms. Botchlet-Smith advised the Council to vote on an amendment to the original motion. Ms. Lodes stated the original motion has been amended to add the word “subsequent” and earlier in the discussion, Ms. Myers made a motion and Mr. Butcher made the second.

	<i>See transcript pages 34-36</i>		
Gerald Butcher	Yes	Bob Lynch	Yes
Gary Collins	Yes	Sharon Myers	Yes
David Gamble	Yes	Laura Lodes	Yes
Jim Haught	Yes		

**OAC 252:100-13 Open Burning [AMENDED]**

Mr. Leon Ashford, Environmental Programs Specialist, Air Quality Division, stated the Department is proposing to amend Subchapter 13, Open Burning, to clarify the requirements for air curtain incinerators. The proposed rule would primarily affect the owners and operators of air curtain incinerators that are used on a temporary basis to burn trees, brush, and similar materials from land clearing, public health, safety, and disaster response activities. The proposal would expand the applicability of an existing rule requirement that land clearing operations in current and former nonattainment areas use air curtain incinerators to all counties in Oklahoma City and Tulsa Metropolitan Statistical Areas. The Department is proposing changes to add flexibility in the operation of these units, including an extension of the allowed hours of operation. Additionally, the Department proposes to modify the rule to allow, under certain conditions, the transport of materials from the site where they are generated to the site where they would be burned. Following questions and comments by the Council and none by the public, Ms. Lodes

called for a motion to pass the rule. Ms. Myers made a motion and Mr. Gamble made the second.

*See transcript pages 36 – 45*

Gerald Butcher	Yes	Bob Lynch	Yes
Gary Collins	Yes	Sharon Myers	Yes
David Gamble	Yes	Laura Lodes	Yes
Jim Haught	Yes		

**Ms. Botchlet-Smith concluded the hearing portion of the meeting.**

*See transcript page 45*

**Division Director's Report** – Mr. Terrill provided an update on other Division activities.

**New Business** – None

**Adjournment** – Ms. Lodes adjourned the meeting.

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

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY COUNCIL MEETING  
ON JANUARY 16, 2013, 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

# Myers Reporting

Sheet 2 Page 2

## MEMBERS OF THE COUNCIL

GERALD BUTCHER  
MONTELLE CLARK  
GARY COLLINS  
JIM HAUGHT  
LAURA LODES  
ROBERT LYNCH  
SHARON MYERS  
DAVID GAMBLE

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1 approval of the Minutes from the  
2 November 14, 2012 Special Meeting.  
3 The Minutes have been included.  
4 Do we have any comments or  
5 concerns regarding the minutes?  
6 Hearing no comments or  
7 concerns, I would need a motion to  
8 pass approval of the said Minutes.  
9 MR. BUTCHER: I'll make that  
10 motion.  
11 MR. GAMBLE: Second.  
12 MS. LODES: Thank you.  
13 Jeanette, will you please call roll.  
14 MS. NANCE: Mr. Butcher.  
15 MR. BUTCHER: Yes.  
16 MS. NANCE: Mr. Collins.  
17 MR. COLLINS: Abstain.  
18 MS. NANCE: Mr. Gamble.  
19 MR. GAMBLE: Yes.  
20 MS. NANCE: Mr. Haught.  
21 MR. HAUGHT: Yes.  
22 MS. NANCE: Mr. Lynch.  
23 MR. LYNCH: Abstain.  
24 MS. NANCE: Ms. Myers.  
25 MS. MYERS: Yes.

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1 PROCEEDINGS  
2 MS. LODES: I'd like to  
3 call today's meeting to order. This  
4 is to call the -- Jeanette, will you  
5 please call roll.  
6 MS. NANCE: Mr. Butcher.  
7 MR. BUTCHER: Here.  
8 MS. NANCE: Mr. Clark is  
9 absent.  
10 Mr. Collins.  
11 MR. COLLINS: Here.  
12 MS. NANCE: Mr. Gamble.  
13 MR. GAMBLE: Here.  
14 MS. NANCE: Mr. Haught.  
15 MR. HAUGHT: Here.  
16 MS. NANCE: Mr. Lynch.  
17 MR. LYNCH: Here.  
18 MS. NANCE: Ms. Myers.  
19 MS. MYERS: Here.  
20 MS. NANCE: Ms. Lodes.  
21 MS. LODES: Here.  
22 MS. NANCE: We have a  
23 quorum.  
24 MS. LODES: Thank you. The  
25 next item on today's Agenda is the

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1 MS. NANCE: Ms. Lodes.  
2 MS. LODES: Yes.  
3 MS. NANCE: Motion passed.  
4 MS. LODES: Okay. The next  
5 item on today's Agenda is the  
6 Election of Officers for 2013.  
7 MS. MYERS: I make a motion  
8 that we continue on with the existing  
9 officers, with you as Chair and Jim  
10 as Vice-Chair. You've done a great  
11 job and I think you should continue.  
12 MR. COLLINS: I'll second.  
13 MS. LODES: I appreciate  
14 that. We have no further discussion,  
15 apparently, on the matter. We have  
16 a motion.  
17 Jeanette, please call roll.  
18 MS. NANCE: Mr. Butcher.  
19 MR. BUTCHER: Yes.  
20 MS. NANCE: Mr. Collins.  
21 MR. COLLINS: Yes.  
22 MS. NANCE: Mr. Gamble.  
23 MR. GAMBLE: Yes.  
24 MS. NANCE: Mr. Haught.  
25 MR. HAUGHT: Yes.

# Myers Reporting

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1 MS. NANCE: Mr. Lynch.  
2 MR. LYNCH: Yes.  
3 MS. NANCE: Ms. Myers.  
4 MS. MYERS: Yes.  
5 MS. NANCE: Ms. Lodes.  
6 MS. LODES: Yes.  
7 MS. NANCE: Motion passed.  
8 MS. BOTCHLET-SMITH: Good  
9 morning. I'm Beverly Botchlet-Smith.  
10 I'm the Assistant Director of the Air  
11 Quality Division and as such I'll  
12 serve as the Protocol Officer for  
13 today's hearings.  
14 The hearings will be convened  
15 by the Air Quality Council in  
16 compliance with the Oklahoma  
17 Administrative Procedures Act in  
18 Title 40 of the Code of Federal  
19 Regulations, Part 51, as well as the  
20 authority of Title 27A of the  
21 Oklahoma Statutes, Section 2-2-201,  
22 Sections 2-5-101 through 2-5-118.  
23 Notice of the January 16, 2013  
24 hearings were advertised in the  
25 Oklahoma Register for the purpose of

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1 receiving comments pertaining to the  
2 proposed OAC Title 252 Chapter 100  
3 rules as listed on the Agenda and  
4 will be entered into each record  
5 along with the Oklahoma Register  
6 filing. Notice of the Meeting was  
7 filed with the Secretary of State on  
8 November 16, 2012. The Agenda was  
9 duly posted 24 hours prior to the  
10 meeting here at the DEQ.  
11 If you wish to make a  
12 statement, it is very important that  
13 you complete the form at the  
14 registration table. You'll be called  
15 upon at the appropriate time.  
16 Audience members, please come  
17 to the podium and state your name  
18 prior to making your comments.  
19 At this time we will proceed  
20 with what is marked as Agenda Item  
21 Number 5A on the Hearing Agenda.  
22 That is OAC 252:100-7, Permits for  
23 Minor Facilities.  
24 Dr. Joyce Sheedy will be giving  
25 the staff presentation.

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1 MR. TERRILL: Before Joyce  
2 starts, I want to kind of clarify  
3 something that I made the Council  
4 aware of yesterday. We're going to  
5 be making a recommendation that's a  
6 little bit different than what's in  
7 the packet. We convened the internal  
8 workgroup, which is several folks  
9 across various sections, yesterday  
10 morning to work through the comments  
11 that we had received as of yesterday  
12 morning on this particular rule and  
13 we spent a couple of hours going  
14 through what we had. Then we  
15 received a number of comments  
16 yesterday afternoon and yesterday at  
17 the close of business that we did  
18 not have time to address. So I  
19 instructed staff and Joyce to change  
20 our recommend from passage today to  
21 continuation so that we can continue  
22 to look at the comments that came in  
23 and make sure that we don't do  
24 something that's unintended. And I  
25 regret that we have to do that but I

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1 don't see any other way to fully  
2 address and take into consideration  
3 the comments that we didn't get until  
4 such a late hour. So I just want to  
5 make everyone aware of that, that  
6 we're going to change our  
7 recommendation and we'll be  
8 considering all the comments that  
9 came in today and that came in  
10 yesterday. Thanks.  
11 DR. SHEEDY: Madam Chair,  
12 Members of the Council, ladies and  
13 gentlemen, the Department proposes to  
14 revise Part 9 of Subchapter 7,  
15 Permits for Minor Facilities, to add  
16 a new permit by rule of PBR for  
17 minor facilities in the oil and  
18 natural gas sector which we call the  
19 O&NG sector sometimes.  
20 The Department also proposes to  
21 amend existing language that applies  
22 to all PBRs.  
23 The August 16, 2012 Federal  
24 Register contained EPA's final NSPS,  
25 New Source Performance Standards, and

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1 NESHAPs, National Emission Standards  
2 for Hazardous Air Pollutants, rules  
3 for the O&NG sector. These rules  
4 apply to oil and natural gas  
5 production industry and to the  
6 natural gas transmission, storage and  
7 processing industries.

8 In NSPS Subpart 0000, EPA  
9 revised the standards of VOCs from  
10 leaking components at natural gas  
11 processing plants and for SO2 from  
12 natural gas processing plants,  
13 essentially replacing both Subpart  
14 KKK, for equipment leaks, and Subpart  
15 LLL, for SO2 emissions from natural  
16 gas processing plants for sources  
17 that commence construction,  
18 reconstruction, or modification after  
19 August 23, 2011.

20 EPA also addressed the O&NG  
21 production segments, setting  
22 standards for several oil and natural  
23 gas affected facilities not  
24 previously covered by NSPS. The  
25 emission sources affected by 0000

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1 permits for construction or  
2 modification of any minor facility  
3 that is subject to an emission  
4 standard, or equipment standard, or  
5 work practice standard in a federal  
6 NSPS or NESHAP.

7 The DEQ has three types of air  
8 quality permits. We have PBRs, we  
9 have general permits, and we have  
10 individual permits. At this time  
11 many of the small facilities and area  
12 sources will be subject -- that are  
13 subject to the standards and  
14 requirements of Subpart 0000 or  
15 Subpart HH would be required to apply  
16 for an individual permit, which would  
17 be a burden to the industry and to  
18 the Department.

19 Since a PBR requires less time  
20 and money to obtain, the DEQ is  
21 proposing a comprehensive PBR that  
22 includes all the State and Federal  
23 Rules and Regulations that apply to  
24 these minor facilities and area  
25 sources. The proposed PBR is for

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1 include well completions, pneumatic  
2 controllers, equipment leaks from  
3 natural gas processing plants,  
4 sweetening units at natural gas  
5 processing plants, reciprocating  
6 compressors, centrifugal compressors,  
7 and storage tanks.

8 The revision that EPA made is  
9 the -- to the register also -- had a  
10 revision to NESHAP Subpart HH for oil  
11 and natural gas production. And they  
12 added standards for glycol  
13 dehydration units that are located at  
14 area sources in that industry.

15 A significant number of small  
16 oil and natural gas facilities that  
17 are subject to the NSPS Subpart 0000  
18 and/or the NESHAP Subpart HH will be  
19 to -- were previously exempt from the  
20 (inaudible) have an air Quality  
21 permit and now they will be required  
22 to have one for the first time.  
23 Subchapter 7 of the Oklahoma Air  
24 Pollution Control Rules requires air  
25 quality construction and operating

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1 equipment and processes located at  
2 onshore O&NG production sites, and  
3 natural gas processing plants,  
4 transmission facilities, and  
5 distribution facilities, and requires  
6 the owners and operators of  
7 facilities registered under it to  
8 comply with the applicable  
9 requirements and standards contained  
10 in NSPS Subparts 0000 for O&NG  
11 production, transmission, and  
12 distribution facilities.

13 IIII for stationary compression  
14 ignition internal combustion engines.

15 JJJJ for stationary spark  
16 internal combustion engines.

17 In NESHAPs Subparts  
18 HH for natural gas production  
19 facilities.

20 And ZZZZ for reciprocating  
21 internal combustion engines, and in  
22 the OAC 252:100 Subchapters 5, 9, 19,  
23 25, 29, 31, 33, 37, 39, and 43.

24 The Department is also  
25 proposing to revise, clarify, and

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1 reformat the requirements in  
2 252:100-7-60 that applies to all  
3 PBRs. Most of these changes are not  
4 substantive. However, the staff does  
5 propose to change the PRB process so  
6 that construction under a PBR may  
7 begin upon receipt of the  
8 registration request and application  
9 fee by the DEQ instead of waiting  
10 for a written reply from the DEQ.

11 Staff became aware that some  
12 Council Members had concerns about  
13 the proposed rule contained in the  
14 Council packet and posted on our  
15 website, and in response to these  
16 concerns staff modified the proposed  
17 rule and provided copies to the  
18 Council, I believe, on January the  
19 14th by email probably.

20 The modified proposal has  
21 replaced the original proposal and  
22 what is available on the handout  
23 table. In the modified proposal,  
24 staff removed redundant language in  
25 the reporting requirements by

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1 referencing the inventory  
2 requirements in Subchapter 5, rather  
3 than repeating them in Subchapter 7.  
4 And staff added for completeness and  
5 clarity, the requirement for  
6 compliance with Subchapter 9 for  
7 excess emission reporting.  
8 Subchapter 9 is applicable to PBRs,  
9 but it was inadvertently omitted from  
10 the original proposal. The  
11 modification makes clear that  
12 facilities registered under a PBR  
13 must pay annual operating fees as  
14 required by Subchapter 5. And staff  
15 modified the PBR for oil and natural  
16 gas 7-60.5(d) which sets  
17 process-specific limitations for  
18 storage vessels. We modified it for  
19 clarity and to ensure that the limits  
20 on storage vessels for those owners  
21 or operators, who choose to use it,  
22 would be federally enforceable.

23 Notice of the proposed rule  
24 changes was published in the Oklahoma  
25 Register on December 17, 2012. The

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1 notice requested written comments  
2 from the public and other interested  
3 parties. Written comments were  
4 received via email from Devon on  
5 January 11, 2013, from MOGA on  
6 January 15, 2013, and from OIPA also  
7 on January 15, 2013. Unfortunately,  
8 these comments were not received in  
9 enough time for staff to prepare a  
10 written response prior to this  
11 meeting.

12 Staff had intended to request  
13 that the proposed amendments to  
14 Subchapter 7 be forwarded to the  
15 Environmental Quality Board with the  
16 recommendation that they be adopted  
17 as permanent rule changes. However,  
18 the complexity of the comments  
19 received on January 15th, made it  
20 impossible for us to analyze them in  
21 time to make any recommendations or  
22 changes at this meeting. Therefore,  
23 we are going to ask the Council --  
24 we are asking Council to continue  
25 this hearing until a subsequent Air

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1 Quality Advisory Council meeting to  
2 allow resolution of the issues that  
3 were brought up in the comments.  
4 Thank you.

5 MS. BOTCHLET-SMITH: At this  
6 time we're ready for Council  
7 questions but before we get started I  
8 would just like to note, I've seen  
9 several people come in after Dr.  
10 Sheedy got started and I just want  
11 to make sure everyone knows that the  
12 rule she's referring to is over on  
13 the table and I think they came in  
14 the other door and they might not  
15 have seen those. So, Nancy, if you  
16 would direct those people to the  
17 table, that would be good. Okay.  
18 Thank you.

19 Questions from the Council?

20 MS. LODES: Joyce, I know  
21 that for the most part we have been  
22 through our comments prior and I just  
23 haven't had a chance to read OIPA's  
24 or MOGA's comments yet in any detail.  
25 I had talked to Devon and so I was

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1 aware in, at least, a general sense  
2 of their comments.  
3 I know that one of the  
4 questions -- one of the comments that  
5 they had and I think it was a valid  
6 one, was on 252:100-7-60.5(a)(1) and  
7 I think she had -- it said it here  
8 if I can remember what page, we say  
9 for ONG project -- production  
10 segments and the natural gas  
11 processing transmission and  
12 distribution segments. Can we see  
13 about adding in gathering stations?  
14 Because it doesn't -- gatherings are  
15 listed different in some other  
16 federal regulations and if we put  
17 natural gas gathering processing  
18 transmissions, and that way it's  
19 clear that we intend to -- we didn't  
20 -- we're not trying to exclude  
21 gathering.

22 DR. SHEEDY: No. Right.

23 MS. LODES: Right. So  
24 since that's not there I would like  
25 to see that added in here.

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1 DR. SHEEDY: Yeah. I think  
2 that's probably one that could be  
3 added without making any --

4 MS. LODES: It shouldn't be  
5 anything --

6 DR. SHEEDY: -- because  
7 that's what we intended, I believe.

8 MS. LODES: Right. It  
9 shouldn't be anything substantive.

10 DR. SHEEDY: It was just  
11 probably my not under --  
12 understanding that I hadn't covered.

13 MS. LODES: Actually, I  
14 don't see on here. I know I had  
15 discussed it. It thought it was  
16 with her I discussed that that she  
17 wanted it in there.

18 DR. SHEEDY: Well, we --

19 MR. HAUGHT: In one of the  
20 comments it was.

21 MS. LODES: Okay. In one  
22 of the comments it was in there. I  
23 was actually just --

24 DR. SHEEDY: Yeah. We did  
25 discuss that but we didn't make any

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1 changes beyond the January 14th --  
2 MS. LODES: Right.  
3 DR. SHEEDY: -- modification  
4 that we send out to you all. After  
5 we got the other comments, we felt  
6 like we needed to consider them all  
7 before we -- because some of the  
8 comments certainly have merit.

9 MS. LODES: Yes. One of  
10 the other comments we discussed last  
11 week in the pre-meeting, that wasn't  
12 mentioned here and I know several  
13 people have asked it is, is there a  
14 way to do a combined process where  
15 we can file a combined construction  
16 and operating? Are you all going to  
17 make that available, maybe as an  
18 option on the forms?

19 DR. SHEEDY: I think it  
20 will be an option on the forms and  
21 then the instructions. We don't see  
22 anything in our regulations that  
23 would prohibit it.

24 MS. LODES: Okay.

25 DR. SHEEDY: And I believe

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1 that we may be getting some that way  
2 already and in the previous PBRs, but  
3 the permit writers would know that  
4 better than I do.

5 MS. LODES: And I know that  
6 was something that was brought up  
7 during the meeting, Philip, when we  
8 caught him on the fly the other day.  
9 And so -- and I know it was one of  
10 ours. Was that -- I'm trying to  
11 think if there were any -- I think  
12 that was the main comment we had  
13 that you guys were going to try and  
14 look at because we felt like there's  
15 probably a way to do that as one,  
16 and I saw that comment also mentioned  
17 in several of these.

18 DR. SHEEDY: Yes. I  
19 believe it was mentioned in -- by  
20 more than one commenter.

21 MS. LODES: Right. I think  
22 -- without having a chance to go  
23 through these comments and see what  
24 else there is, I don't know that I  
25 have anything else at this time

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1 because we have been through it.  
2 Jim, or anybody else on the  
3 Council, did you all have questions?  
4 MS. BOTCHLET-SMITH: Okay.  
5 We've had one person sign up to  
6 speak on this rule. Brian Woodard  
7 from OIPA.  
8 MR. WOODARD: Good morning,  
9 Chair, Council Members, my name is  
10 Brian Woodard. I'm the  
11 Vice-President of Regulatory Affairs  
12 with the Oklahoma Independent  
13 Petroleum Association. Today we  
14 simply wanted to state our support,  
15 in support of the staff, in their  
16 development of this permit by rule.  
17 We do believe that this will  
18 streamline our permitting efforts for  
19 hundreds, if not thousands, of  
20 facilities going forward throughout  
21 the state. And this will afford  
22 additional assistance for all those  
23 operators that had existing issues  
24 due to federal -- new federal  
25 regulations under NSPS and NESHAP

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1 rules. We would also like to note,  
2 by the submission of our formal  
3 written comments and remaining  
4 concerns and hope that we can  
5 continue a dialogue with staff to  
6 work on clarifications of the final  
7 PBR. And also -- I guess, I would  
8 also mention that the revisions that  
9 were just discussed, we are generally  
10 in support of.  
11 Thank you for your time.  
12 MS. BOTCHLET-SMITH: Okay.  
13 Is there anyone else in the public  
14 that wish to make a comment at this  
15 time?  
16 Hearing none, any other  
17 questions from the Council?  
18 MS. LODES: If we -- this  
19 -- just so everybody here knows,  
20 since it doesn't look like we can  
21 pass this today, the only way to  
22 make it effective this year before  
23 the October compliance date is if can  
24 justify it as an emergency rule.  
25 And I know, Eddie, you've looked at

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1 that and what are you're -- I mean,  
2 if you want to address that concern.  
3 MR. TERRILL: It's going to  
4 be tough. We looked at that and, in  
5 fact, we thought about proposing it  
6 as an emergency rule initially and  
7 given that we thought that we were  
8 going to get it done today and to  
9 the Board next month we elected not  
10 to try to leap that hurdle.  
11 Rob, do you remember what the  
12 phrase is that might fit this?  
13 MR. SINGLETARY: Yeah. The  
14 -- it would be -- we would have to  
15 prove with substantial evidence that  
16 there is serious prejudice of the  
17 public interest by not having it in  
18 effect.  
19 MR. TERRILL: I think what  
20 that translates to what real world  
21 is, there's going to have to be a  
22 substantial burden on the industry  
23 that they won't be able to get their  
24 permits from us and that in turn is  
25 going to substantially harm their

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1 ability to, you know, get their work  
2 done, get their wells drilled, and  
3 sort of thing. And I'm not even  
4 sure that that -- and I probably  
5 haven't stated it as elegantly as it  
6 needed to be stated, but that's, in  
7 general, I think the way -- what's  
8 going to have to happen.  
9 Now there may be some other  
10 things that we can look at that  
11 meets that burden but it's just been  
12 a lot more difficult over the last  
13 year or so to use the emergency  
14 rule. It used to be no big deal.  
15 If you asked for it, you got it, but  
16 in this case it might be worthwhile  
17 thinking about how we can meet that  
18 burden. And if you all have lawyers  
19 that might have some ideas about how  
20 we can make that work, who've done  
21 it in other rulemaking in the past,  
22 then get with our folks and we'll  
23 see if we can get that done. We're  
24 not opposed to doing it. We just  
25 didn't believe that we could

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1 legitimately make that claim. And we  
2 -- we're very sensitive about taking  
3 things to the Legislature that we  
4 can't legitimately support because it  
5 undermines our credibility with them  
6 and that's something you can't repair  
7 easily. It's not that we're not  
8 opposed -- we're not for doing that  
9 if we can, we're just going to need  
10 your help to help us make that case.  
11 MS. LODES: Okay. I think,  
12 Eddie, on that note, one thing that  
13 we can say is the only way to get  
14 this -- and, Phillip, I think you're  
15 here. Make sure I'm right on this.  
16 The only way to get the six ton per  
17 year limit for construction permit is  
18 if we go through the oil and gas  
19 general permit. Correct? We can't  
20 use the area source general permit  
21 for a six ton per year limit for  
22 construction?  
23 MR. FIELDER: That -- I  
24 think we -- I think we did allow a  
25 process under there, did we not?

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1 MS. LODES: I was --  
2 MR. FIELDER: It might be  
3 an individual permit required first  
4 for that process --  
5 MS. LODES: Right.  
6 MR. FIELDER: -- but you  
7 can't get it directly.  
8 MS. LODES: That's what I'm  
9 saying. We can't file an NOI to  
10 construct under the area source  
11 general permit --  
12 MR. FIELDER: Right.  
13 MS. LODES: -- with the six  
14 ton per year limit. So the only way  
15 to obtain that six ton per year  
16 limit is to file your NOI construct  
17 under the general oil and gas permit.  
18 MR. FIELDER: Right.  
19 MS. LODES: Which does have  
20 more reporting burdens -- and, Eddie,  
21 this is where, I think, we can  
22 justify, is that that's -- that PDR1  
23 is because it's considered a  
24 synthetic minor and these sources  
25 would qualify as true minors that's

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1 got a higher liability risk for  
2 industry that they usually like the  
3 area source, because these are true  
4 minor sites and -- and then we can  
5 also say that the oil and gas  
6 general permit when it's inspected  
7 has got a lot more recordkeeping and  
8 regulatory burden there than this  
9 permit by rule of the area source.  
10 And that would be -- I mean, that's  
11 something for whoever is going help  
12 try and put this together and I'm  
13 supportive of it, but I think this  
14 is the path we're going to have to  
15 go down to try and justify it -- if  
16 we're going to try and pass this as  
17 emergency in April if we can justify  
18 it.  
19 MR. TERRILL: Unfortunately,  
20 I'm not the one you have to  
21 convince. I'm all for it. So we'll  
22 just have to see and we've got folks  
23 that work on the Legislature a lot  
24 that kind of have a sense of how  
25 this would work and so, that is

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1 something that is really important  
2 that we're going to have to address  
3 if we're going to get this done as  
4 an emergency. So we've got some  
5 time to get our heads together and  
6 think about it and make the case and  
7 so we'll just do the best we can to  
8 make that happen.  
9 Let me point something else out  
10 too, since we're going to be  
11 considering this. We've had a number  
12 of comments about the requirement --  
13 and this is in the PBR requirement  
14 under Part 9 of Subchapter 7 about  
15 the inventory and the five tons and  
16 the burden that is. I've been  
17 chastised in the 15 years I've been  
18 here, when I asked the Council to  
19 trust me on issues, and while they're  
20 willing to do that to some degree,  
21 they always come back and say that,  
22 you know, I could leave or my memory  
23 could fade. That seems to be what's  
24 happened with this requirement  
25 because if you all remember, those of

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1 you who worked on this rule  
2 previously, when we did the -- or  
3 not this rule but when we worked on  
4 the permitting exempt and on the PBR  
5 we exempted inventories, there was  
6 this understanding that if we needed  
7 help with inventories in the future  
8 that that would be forthcoming  
9 industry-wide. Yet when we asked for  
10 that help in doing the the Environ  
11 (ps) Oil and Gas Study there were a  
12 number of you all that had other  
13 things that were more important to  
14 do. So you can't have your cake and  
15 eat it too. It makes me think that  
16 you're all for doing the special  
17 inventories when we need them because  
18 you want to get this done, but I'm  
19 going to have to have some assurances  
20 -- we don't want to ask anything  
21 more from you than we really need.  
22 And we may be willing to change  
23 that, but the PBR is the requirements  
24 for inventory, and they are what they  
25 are. And so I'm going to have to be

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1 convinced that we can get what we  
2 need before I'm going to be willing  
3 to change that. And you've got  
4 nobody to blame but those folks that  
5 elected not to help us do that.  
6 Because we have not asked for an  
7 inventory or any help like we have  
8 the authority to do, for ten years.  
9 Yet, when we did, we didn't get it.  
10 So we were able to make it work.  
11 But that's -- that just doesn't set  
12 well with me when we agree to do  
13 something and we don't get the  
14 response back from the industry folks  
15 that we all agreed to, because I'm  
16 sure if it was on the other foot and  
17 we had done that, you all wouldn't  
18 be too happy about it. So I'm just  
19 telling you that I'm a little bit  
20 jaded in the comments that I've  
21 received on this because of the  
22 response that we got when we needed  
23 that help. So just a word to the  
24 wise.

MS. BOTCHLET-SMITH: Ready

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1 for a motion?  
2 MS. LODES: Seeing no  
3 further questions or comments the  
4 staff has proposed that we carry this  
5 forward to the next Council meeting.  
6 MS. MYERS: So moved.  
7 MS. LODES: I have a  
8 motion. Do I have a second?  
9 MR. BUTCHER: Second.  
10 MS. BOTCHLET-SMITH:  
11 (Inaudible) motion.  
12 MS. LODES: Oh. Okay.  
13 Sorry.  
14 MS. BRADLEY: Cheryl  
15 Bradley. Oklahoma Air Quality  
16 Division.  
17 We have, let's say,  
18 discontinued using next Council  
19 meeting because we've encountered  
20 uncertainties on these.  
21 MS. LODES: Okay.  
22 MS. BRADLEY: If you would  
23 -- if the motion would include a  
24 subsequent Council meeting that will  
25 give us more flexibility.

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1 MS. LODES: Okay.  
2 MS. BOTCHLET-SMITH: You're  
3 going to need to amend your motion.  
4 MS. MYERS: Okay. So I  
5 want to amend my motion to make it  
6 the April Council meeting.  
7 MS. LODES: Subsequent.  
8 MS. MYERS: Okay.  
9 Subsequent Council meeting.  
10 MR. BUTCHER: Second.  
11 MS. BOTCHLET-SMITH: You're  
12 going to need to make a motion to  
13 amend your motion and then you're  
14 going to have to second it, you're  
15 going to have to vote on it and then  
16 you can vote --  
17 (Comment)  
18 MS. BOTCHLET-SMITH: -- and  
19 then vote on the amendment.  
20 MS. MYERS: Okay. I make a  
21 motion to amend my motion that we  
22 continue this to a subsequent Council  
23 meeting for consideration.  
24 MS. LODES: Okay.  
25 MR. BUTCHER: Second.

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1 MS. LODES: I have a motion  
2 and a second for the amendment.  
3 MS. LODES: So, Jeanette,  
4 will you call roll on that one.  
5 MS. NANCE: Mr. Butcher.  
6 MR. BUTCHER: Yes.  
7 MS. NANCE: Mr. Collins.  
8 MR. COLLINS: Yes.  
9 MS. NANCE: Mr. Gamble.  
10 MR. GAMBLE: Yes.  
11 MS. NANCE: Mr. Haught.  
12 MR. HAUGHT: Yes.  
13 MS. NANCE: Mr. Lynch.  
14 MR. LYNCH: Yes.  
15 MS. NANCE: Ms. Myers.  
16 MS. MYERS: Yes.  
17 MS. NANCE: Ms. Lodes.  
18 MS. LODES: Yes.  
19 MS. NANCE: Motion passed.  
20 MS. LODES: Okay.  
21 MS. BOTCHLET-SMITH: That  
22 passed that you were making an  
23 amendment to your original motion and  
24 now you have to vote on the motion.  
25 MS. LODES: We had an

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1 original motion and a second, and  
2 Gerald had done the second on that  
3 one as well.  
4 MS. BOTCHLET-SMITH: Okay.  
5 The original motion has now been  
6 amended to add the word "subsequent".  
7 MS. LODES: The original  
8 motion has now been amended to add  
9 the word "subsequent" and we had --  
10 and since it's had a motion and a  
11 second we can now call roll on that  
12 one, Jeanette.  
13 MS. NANCE: Mr. Butcher.  
14 MR. BUTCHER: Yes.  
15 MS. NANCE: Mr. Collins.  
16 MR. COLLINS: Yes.  
17 MS. NANCE: Mr. Gamble.  
18 MR. GAMBLE: Yes.  
19 MS. NANCE: Mr. Haught.  
20 MR. HAUGHT: Yes.  
21 MS. NANCE: Mr. Lynch.  
22 MR. LYNCH: Yes.  
23 MS. NANCE: Ms. Myers.  
24 MS. MYERS: Yes.  
25 MS. NANCE: Ms. Lodes.

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1 MS. LODES: Yes.  
2 MS. NANCE: Motion passed.  
3 MS. BOTCHLET-SMITH: Okay.  
4 We're now ready for the next item on  
5 our Agenda, it's Number 5B, OAC  
6 252:100 Subchapter 13, Open Burning.  
7 Mr. Leon Ashford will be giving the  
8 staff presentation on this proposal.  
9 MR. ASHFORD: Madam Chair,  
10 Members of the Council, members of  
11 the public, the Department is  
12 proposing to amend OAC 252:100-13,  
13 Open Burning, to clarify the  
14 requirements for and encourage the  
15 use of air curtain incinerators, also  
16 known as air curtain destructors and  
17 open-pit incinerators. The proposal  
18 would extend the existing rule  
19 requirement in OAC 252:100-13-7(4)(B)  
20 that land clearing operations in  
21 current and former nonattainment  
22 areas, specifically Oklahoma and  
23 Tulsa Counties, use Air Curtain  
24 Incinerators, to all counties in the  
25 Oklahoma City and Tulsa Metropolitan

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1 Statistical Areas. The Oklahoma City  
2 Metropolitan Statistical Area is  
3 comprised of Canadian, Cleveland,  
4 Grady, Lincoln, Logan, McClain, and  
5 Oklahoma Counties; and the Tulsa  
6 Metropolitan Statistical Area is  
7 comprised of Creek, Okmulgee, Osage,  
8 Pawnee, Rogers, and Tulsa Counties.  
9 Burning of land clearing  
10 materials in an Air Curtain  
11 Incinerator instead of a burn pile  
12 can reduce emissions by about 90  
13 percent and lower the risk of escaped  
14 fires and embers. Certified ozone  
15 data for the years 2009 through 2011  
16 show that the Oklahoma City and Tulsa  
17 metro areas are in violation of the  
18 2008, 75 parts per billion ozone  
19 standard, and the 2010 through 2012  
20 data will continue to be in violation  
21 in both metro areas.  
22 The extension of the rule to  
23 cover the Oklahoma City and Tulsa  
24 metropolitan statistical areas could  
25 be included as an ozone reduction

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1 measure in the Oklahoma City and  
2 Tulsa Ozone Advance Action Plans.  
3 EPA guidance states, where  
4 control measures are actively being  
5 implemented in an area, EPA may allow  
6 time to determine whether ozone  
7 reduction measures bring an area back  
8 into attainment.

9 The Department is proposing  
10 changes to encourage the use of air  
11 curtain incinerators, such as an  
12 extension of allowed hours of  
13 operation.

14 Additionally, the Department  
15 proposes to modify the rule to allow,  
16 under certain conditions, the  
17 transport of materials from the site  
18 where it is generated to the site  
19 where it would be burned.

20 To encourage adequate  
21 protection of the public health by  
22 reducing air pollution on days that  
23 ozone or particulate matter  
24 concentrations are expected to exceed  
25 the National Ambient Air Quality

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1 Standards, the Department proposes to  
2 prohibit open burning in areas under  
3 an Ozone or Particulate Matter Watch.

4 Staff is researching possible  
5 options to streamline the permitting  
6 process for air curtain incinerators.

7 We received two emails from EPA  
8 making comments on the rule changes.  
9 The comments from their October 5th  
10 email had two points.

11 The first, EPA appreciates the  
12 ban on open burning on ozone and PM  
13 Watch days.

14 And the second, EPA's opinion  
15 is that a Title V permit is required  
16 for all air curtain incinerators not  
17 being used for disaster recovery.

18 In their email from November  
19 9th, EPA said that they supported our  
20 intent to perform outreach to those  
21 who use land clearing services. We  
22 received another comment questioning  
23 if there are enough air curtain  
24 incinerators available in the two  
25 MSAs, Oklahoma City and Tulsa, to

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1 meet the demand for land clearing  
2 operations. This rule would not take  
3 effect until July, so there's greater  
4 than four months to anticipate the  
5 demand.

6 While researching this rule I  
7 found at least three air curtain  
8 incinerators that were for sale in  
9 the Tulsa metropolitan area. An  
10 equipment rental company in Oklahoma  
11 City list three different models on  
12 their webpage. There is a company  
13 in Stillwater that purchased one in  
14 two weeks and cleared five acres of  
15 trees in five days. Many of our  
16 surrounding states have rules  
17 pertaining to air curtain incinerator  
18 use.

19 On December 20, 2012, EPA  
20 Administrator Lisa Jackson, signed a  
21 Reconsideration and Final Amendments  
22 of the Commercial and Industrial  
23 Solid Waste Incinerator Rule. This  
24 action closed a permitting loophole  
25 that existed for commercial and

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1 industrial solid waste incinerator  
2 units.

3 Notice of the proposed rule  
4 changes as permanent was published in  
5 the Oklahoma Register on December 17,  
6 2012. The Notice requested written  
7 comments from the public and other  
8 interested parties. Staff requests  
9 that the proposed amendments to  
10 Subchapter 13 be adopted by the  
11 Council and forwarded to the  
12 Environmental Quality Board in  
13 February, with the recommendation  
14 that they be adopted as permanent  
15 rule changes.

16 MS. BOTCHLET-SMITH: At this  
17 time we can take questions from the  
18 Council for Mr. Ashford.

19 Hearing none at this time, I  
20 also would like to note I have not  
21 received any Notice of Comments from  
22 the public. Has anyone changed their  
23 mind and they wish to comment on  
24 this Subchapter 13?

25 MS. MYERS: I do have a

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1 question.  
2 MS. BOTCHLET-SMITH: Okay.  
3 Hearing none from the public, I'll  
4 put it back to the Council.  
5 MS. MYERS: What about  
6 shingles and those kinds of  
7 materials? Are those included as --  
8 what about shingles and those kinds  
9 of materials? Are those included in  
10 being allowed?  
11 MR. ASHFORD: Land-clearing  
12 operations includes wood, waste and  
13 clean lumber. There are no --  
14 shingles would not be allowed.  
15 MS. MYERS: They would not.  
16 Okay.  
17 MR. COLLINS: I've got a  
18 question, Leon. The existing rule,  
19 did it require a permit?  
20 MR. ASHFORD: The  
21 requirement of a permit has been  
22 federal and at one time -- they  
23 (inaudible) that we are commercial  
24 and industrial solid waste rule, it  
25 was -- it took eight years for that

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1 to be changed and they just changed  
2 it, I think, within the last week or  
3 two. And it went from a kind of  
4 questionable -- you could interpret  
5 it two different ways, to now there's  
6 only one interpretation and again, a  
7 Title V Permit is required. And EPA  
8 has -- there is a letter I have that  
9 they -- one of their administrators  
10 wrote that said their interpretation  
11 has always been that a Title V  
12 Permit is required for an air curtain  
13 incinerator.  
14 MS. BRADLEY: You might  
15 mention that the exemptions go into  
16 two categories of the federal rule.  
17 MR. ASHFORD: For an air  
18 curtain, you don't need a permit for  
19 an air curtain incinerator use in  
20 disaster recovery.  
21 MS. BRADLEY: In an  
22 emergency response (inaudible).  
23 MR. ASHFORD: Okay. In a  
24 disaster or a declared emergency.  
25 Okay. Thank you.

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1 MS. BOTCHLET-SMITH: Any  
2 other questions from the Council?  
3 Laura, I guess we're ready for  
4 a motion.  
5 MS. LODES: Staff has  
6 recommended that we carry this rule  
7 forward. Oh. Sorry.  
8 Staff has recommended that we  
9 pass this rule today, if I remember  
10 which one we're on.  
11 Do I have a motion to pass  
12 this regulation?  
13 MS. MYERS: I would make a  
14 motion that we pass this regulation.  
15 MS. LODES: I have a  
16 motion. Do I have a second?  
17 MR. GAMBLE: Second.  
18 MS. LODES: I have a motion  
19 and a second. That was David.  
20 Jeanette, will you please call roll.  
21 MS. NANCE: Mr. Butcher.  
22 MR. BUTCHER: Yes.  
23 MS. NANCE: Mr. Collins.  
24 MR. COLLINS: Yes.  
25 MS. NANCE: Mr. Gamble.

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1 MR. GAMBLE: Yes.  
2 MS. NANCE: Mr. Haught.  
3 MR. HAUGHT: Yes.  
4 MS. NANCE: Mr. Lynch.  
5 MR. LYNCH: Yes.  
6 MS. NANCE: Ms. Myers.  
7 MS. MYERS: Yes.  
8 MS. NANCE: Ms. Lodes.  
9 MS. LODES: Yes.  
10 MS. NANCE: Motion passed.  
11 MS. BOTCHLET-SMITH: That  
12 concludes the hearing portion of  
13 today's meeting. I'll turn this back  
14 over to Laura for the remainder of  
15 the meeting.  
16 (Rulemaking hearing concluded)

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## 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 hearing is the truth, the whole truth, and nothing but the truth; that the foregoing hearing was taken down in shorthand and thereafter transcribed by me; that said hearing was taken on the 16th day of January, 2013, 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 23rd day of January, 2013.

*Christy Myers*

CHRISTY A. MYERS, CSR  
Certificate No. 00310

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January 16, 2013  
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